

**§ 1600.4 Operation.**

In exercising its functions, duties, and responsibilities, the CSB utilizes:

(a) The CSB's staff, consisting of specialized offices performing investigative, administrative, legal, and financial work for the Board.

(b) Rules published in the **Federal Register** and codified in this title of the Code of Federal Regulations.

(c) Meetings of the Board Members conducted pursuant to the Government in the Sunshine Act and part 1603 of this title (CSB Rules Implementing the Government in the Sunshine Act) or voting by notation as provided in § 1600.5(b).

(d) Public hearings in connection with incident or hazard investigations.

**§ 1600.5 Quorum and voting requirements.**

(a) *Quorum requirements.* A quorum of the Board for the transaction of business shall consist of three Members; provided, however, that if the number of Board Members in office is fewer than three, a quorum shall consist of the number of Members in Office; and provided further that on any matter of business as to which the number of Members in office, minus the number of Members who have disqualified themselves from consideration of such matter is two, two Members shall constitute a quorum for purposes of such matter. Once a quorum is constituted, a simple majority of voting Members is required to approve an item of the Board's business. A tie vote results in no action.

(b) *Voting.* The Board votes on items of business in meetings conducted pursuant to the Government in the Sunshine Act. Alternatively, whenever a Member of the Board is of the opinion that joint deliberation among the members of the Board upon any matter at a meeting is unnecessary in light of the nature of the matter, impracticable, or would impede the orderly disposition of agency business, such matter may be disposed of by employing notation voting procedures. A written notation of the vote of each participating Board member shall be recorded by the General Counsel who shall retain it in the records of the Board.

**§ 1600.6 Office location.**

The principal offices of the Chemical Safety and Hazard Investigation Board are located at 2175 K Street NW, Washington, DC 20037.

Dated: November 14, 2003.

**Raymond C. Porfiri,**

*Deputy General Counsel.*

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BILLING CODE 6350-01-P

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****49 CFR Parts 571 and 590**

[Docket No. NHTSA 2003-16524]

RIN 2127-AJ22

**Federal Motor Vehicle Safety Standards: Tire Pressure Monitoring Systems; Controls and Displays; Amendment in Response to Court Decision**

**AGENCY:** Department of Transportation, National Highway Traffic Safety Administration (NHTSA).

**ACTION:** Final rule; notice of manufacturer responsibilities and agency plans.

**SUMMARY:** The agency is revising the Code of Federal Regulations to conform to a court decision vacating a Federal motor vehicle safety standard for tire pressure monitoring systems. Per a mandate in the Transportation Recall Enhancement, Accountability and Documentation Act, the agency issued a rule in June 2002 establishing the standard. The U.S. Court of Appeals for the Second Circuit concluded in *Public Citizen, Inc. v. Mineta* that a portion of the standard was both contrary to law and arbitrary and capricious, but vacated the entire standard. Since this document simply revises the Code to conform to the court decision, prior notice and public comment are not required.

**DATES:** The amendments made by this final rule are effective on November 20, 2003.

**ADDRESSES:** Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For technical and other non-legal issues, you may call Mr. George Soodoo or Mr. Samuel Daniel, Office of Crash Avoidance Standards (Telephone: 202-366-2720) (Fax: 202-366-4329).

For legal issues, you may call Eric Stas, Office of Chief Counsel (Telephone: 202-366-2992) (Fax: 202-366-3820).

You may send mail to these officials at National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** Congress enacted the Transportation Recall Enhancement, Accountability, and

Documentation (TREAD) Act (Pub. L. 106-414) on November 1, 2000. Section 13 of the TREAD Act mandated the completion of "a rulemaking for a regulation to require a warning system in new motor vehicles to indicate to the operator when a tire is significantly under inflated." NHTSA published a final rule establishing a standard requiring tire pressure monitoring systems on June 5, 2002. (67 FR 38704) Public Citizen, Inc., New York Public Interest Research Group, and the Center for Auto Safety, petitioned for judicial review of the standard. On August 6, 2003, the U.S. Court of Appeals for the Second Circuit issued an opinion vacating the rule establishing the standard. *Public Citizen, Inc. v. Mineta*, No. 02-4237, 2003 U.S. App. LEXIS 16556 (2d Cir. Aug. 6, 2003). The mandate from the Court issued on the same date.

Pursuant to the Court's decision, NHTSA is removing the regulatory text added to the Code of Federal Regulations by the rule issued on June 5, 2002. Consequently, motor vehicle manufacturers have no obligation to begin certifying their vehicles to the standard on November 1, 2003, as previously required. However, NHTSA intends expeditiously to issue a standard setting forth performance-based requirements consistent with the Court's decision and in accordance with the Administrative Procedure Act.

NHTSA has determined that it has "good cause" under section 553(b)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), to promulgate this final rule without prior notice and opportunity for comment. The agency finds it "unnecessary" to provide an opportunity to comment because this action involves a ministerial removal of regulatory text in direct response to a court decision. The rule amends only those regulatory provisions directly affected by the Court's decision. For the same reasons, the agency finds that this final rule should be effective immediately because the public would benefit from the prompt removal from the Code of Federal Regulations of regulatory requirements that are no longer applicable as a result of the court's decision.

**VIII. Administrative Requirements**

*A. Executive Order 12866: "Significant Regulatory Action Determination"*

This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action is also not considered to be significant under the Department's

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). While the June 2002 final rule establishing a standard requiring tire pressure monitoring systems was economically significant, that rule was vacated by a court decision, and today's action merely involves a ministerial removal of regulatory text in direct response to that court decision. Therefore, this action is not a "significant regulatory action" under the terms of Executive Order 12866 and is not subject to OMB review.

*B. Regulatory Flexibility Act Compliance as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the APA or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

*C. Paperwork Reduction Act*

The Administrator has determined today's action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Burden means the total time, effort, or financial resources expended to generate and maintain, retain, or provide information as required by a rule. Today's rule imposes no such burden on any entity.

*D. Submission to Congress and the Comptroller General*

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report (which includes a copy of the rule) to each House of the Congress and to the Comptroller General of the United States. NHTSA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to its

effective date. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

*E. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, NHTSA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any single year. Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the APA or any other statute, it is not subject to sections 202 and 205 of the UMRA. In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA.

*F. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255; August 10, 1999), requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, NHTSA may not issue a regulation that has Federalism

implications, that imposes substantial direct compliance costs, and that is not required by statute unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or NHTSA consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation that has Federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. This action will not alter the overall relationship or distribution of powers between governments for the Title V program. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*G. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Pub. L. 104-113, section 12(d) (15 U.S.C. 272 note), directs NHTSA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, *etc.*) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs NHTSA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. Today's action does not involve any decision whether to adopt a technical standard. Therefore, NHTSA is not considering the use of any voluntary consensus standards in issuing this action.

*H. Executive Order 12988: Civil Justice Reform*

Pursuant to Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), the agency has considered whether this rulemaking will have any retroactive effect. This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard

is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file a suit in court.

*I. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045, "Protection of Children from Environmental Health and Safety Risks" (62 FR 19855, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental, health, or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

This final rule removes the existing TPMS standard from the CFR in response to a court decision. This rulemaking action is neither economically significant, nor does it involve decisions based upon health

and safety risks that disproportionately affect children. Consequently, no further analysis is required under E.O. 13045.

*J. National Environmental Policy Act*

NHTSA has analyzed this rulemaking for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

*K. Regulatory Identification Number (RIN)*

The Department of Transportation assigns a regulation identification number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

*L. Privacy Act*

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit <http://dms.dot.gov>.

**List of Subjects in 49 CFR Parts 571 and 590**

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA is amending 49 CFR part 571 and removing part 590 as follows:

**PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS**

■ 1. The authority citation for part 571 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.101 is amended by revising paragraph S5.2.3 and Table 2 to read as follows:

**§ 571.101 Standard No. 101; Controls and displays.**











\* \* \* \* \*

S5.2.3 Any display located within the passenger compartment and listed in column 1 of Table 2 that has a symbol designated in column 4 of that table shall be identified by either the symbol designated in column 4 (or symbol substantially similar in form to that shown in column 4) or the word or abbreviation shown in column 3. Additional words or symbols may be used at the manufacturer's discretion for the purpose of clarity. Any telltales used in conjunction with a gauge need not be identified. The identification required or permitted by this section shall be placed on or adjacent to the display that it identifies. The identification of any display shall, under the conditions of S6, be visible to the driver and appear to the driver perceptually upright.

\* \* \* \* \*

**BILLING CODE 4910-59-P**

**Table 2**  
**Identification and Illustration of Displays**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>	<b>Column 5</b>
<i>Display</i>	<i>Telltale Color</i>	<i>Identifying Words or Abbreviation</i>	<i>Identifying Symbol</i>	<i>Illumination</i>
Turn Signal Telltale	Green	Also see FMVSS 108	 1,5	_____
Hazard Warning Telltale		Also see FMVSS 108	 2, 5	_____
Seat Belt Telltale	_____4	Fasten Belts or Fasten Seat Belts Also see FMVSS 208	 or 	_____
<u>Fuel Level</u> Telltale ----- Gauge	----- _____	Fuel	 or 	----- Yes
<u>Oil Pressure</u> Telltale ----- Gauge	----- _____	Oil		----- Yes
<u>Coolant Temperature</u> Telltale ----- Gauge	----- _____	Temp		----- Yes
<u>Electrical Charge</u> Telltale ----- Gauge	----- _____	Volts, Charge or Amp		----- Yes
Highbeam Telltale	Blue or Green 3	Also see FMVSS 108	 5	_____

1. The pair of arrows is a single symbol. When the indicator for left and right turn operate independently, however, the two arrows will be considered separate symbols and may be spaced accordingly.
2. Not required when arrows of turn signal tell-tales that otherwise operate independently flash simultaneously as hazard warning tell-tale.
3. Red can be red-orange. Blue can be blue-green.
4. The color of the telltale required by S4.5.3.3 of Standard No. 208 is red; the color of the telltale required by S7.3 of Standard No. 208 is not specified.
5. Framed areas may be filled.

Table 2 (continued)

Column 1	Column 2	Column 3	Column 4	Column 5
<i>Display</i>	<i>Telltale Color</i>	<i>Identifying Words or Abbreviation</i>	<i>Identifying Symbol</i>	<i>Illumination</i>
Brake System 8	Red 3	Brake, Also see FMVSS 105 and 135	_____	_____
<u>Malfunction in</u> Anti-lock or ----- Variable Brake Proportioning System 8	Yellow  ----- Yellow	Antilock, Anti-lock or ABS. Also see FMVSS 105 and 135  ----- Brake Proportioning, Also see FMVSS 135	_____  ----- _____	_____  ----- _____
Parking Brake Applied 8	Red 3	Park or Parking Brake, Also see FMVSS 105 and 135	_____	_____
<u>Malfunction in</u> Anti-lock	Yellow	ABS, or Antilock; Trailer ABS, or Trailer Antilock, Also see FMVSS 121	_____	_____
Brake Air Pressure Position Telltale	_____	Brake Air, Also see FMVSS 121	_____	_____
Speedometer	_____	MPH, or MPH and km/h 7	_____	Yes
Odometer	_____	_____ 6	_____	_____
Automatic Gear Position	_____	Also see FMVSS 102	_____	Yes

6. If the odometer indicates kilometers, then "KILOMETERS" or "km" shall appear, otherwise, no identification is required.
7. If the speedometer is graduated in miles per hour and in kilometers per hour, the identifying words or abbreviations shall be "MPH and km/h" in any combination of upper or lower case letters.
8. In the case where a single telltale indicates more than one brake system condition, the word for Brake System shall be used.

**§ 571.138 [Removed and Reserved]**

- 3. Remove and reserve § 571.138.

**PART 590—[REMOVED AND RESERVED]**

- 4. Under the authority of 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50, remove and reserve part 590.

Issued: November 14, 2003.

**Jeffrey W. Runge,**  
*Administrator.*

[FR Doc. 03–28942 Filed 11–19–03; 8:45 am]

BILLING CODE 4910–59–C

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 229**

[Docket No. 030221039–3280–03; I.D. 111403A]

RIN 0648–AQ04

**Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule.

**SUMMARY:** The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,356 square nautical miles (nm<sup>2</sup>) (4,651 km<sup>2</sup>), east of Portsmouth, NH, for 15 days. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

**DATES:** Effective beginning at 0001 hours November 22, 2003, through 2400 hours December 6, 2003.

**ADDRESSES:** Copies of the proposed and final Dynamic Area Management rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** Diane Borggaard, NMFS/Northeast Region, 978–281–9328 x6503; or Kristy

Long, NMFS, Office of Protected Resources, 301–713–1401.

**SUPPLEMENTARY INFORMATION:****Electronic Access**

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP Web site at <http://www.nero.noaa.gov/whaletrp/>.

**Background**

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) as well as to provide conservation benefits to a fourth non-endangered species (minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's Dynamic Area Management (DAM) program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15-day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15-day period and asking fishermen not to set any additional gear in the DAM zone during the 15-day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm<sup>2</sup> (139 km<sup>2</sup>)) such that right whale density is equal to or greater than 0.04 right whales per nm<sup>2</sup> (1.85 km<sup>2</sup>). A qualified individual is an individual ascertained by NMFS to be reasonably

able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On November 7, 2003, a vessel-based survey reported a sighting of four right whales in the proximity of 42°49' N lat. and 70°01' W long. This position lies east of Portsmouth, NH. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. Pursuant to this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15-day restricted period unless it is modified in the manner described in this temporary rule. The DAM zone is bound by the following coordinates:

43°09' N, 70°26' W (NW Corner)  
43°09' N, 69°36' W  
42°32' N, 69°36' W  
42°32' N, 70°26' W

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone.

**Lobster Trap/Pot Gear**

Fishermen utilizing lobster trap/pot gear within the portion of the Northern Nearshore Lobster Waters, Northern Inshore State Lobster Waters, and Stellwagen Bank/Jeffreys Ledge Restricted Area that overlap with the