

### B. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, NHTSA has evaluated the effects of this proposed action on small entities. I hereby certify that this notice of proposed rulemaking would not have a significant impact on a substantial number of small entities.

The following is the agency's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The amendments proposed herein would primarily affect manufacturers of medium and heavy weight trucks. The Small Business Administration (SBA) regulation at 13 CFR part 121 organizes size standards according to the Standard Industrial Classification (SIC) codes. SIC code number 3711, *Motor Vehicles and Passenger Car Bodies*, prescribes a small business size standard of 1,000 or fewer employees. SIC codes No. 3714, *Motor Vehicle Part and Accessories*, prescribes a small business size standard of 750 or fewer employees.

Most of the intermediate and final stage manufacturers of vehicles built in two or more stages have 1,000 or fewer employees. However, the agency expects testing for FMVSS No. 105 to be conducted by the original equipment manufacturers, most, if not all, of which do not qualify as a small business under SBA guidelines. Further, if adopted, the proposed amendments would not require use of the roll bar structure and therefore would not require any increased costs or other burdens on truck manufacturers. The proposed amendments to FMVSS No. 105 would permit the use of a roll bar structure at the manufacturer's option, on test vehicles undergoing brake testing. Accordingly, there would be no significant impact on small businesses, small organizations, or small governmental units by these amendments. For these reasons, the agency has not prepared a preliminary regulatory flexibility analysis.

### C. Executive Order No. 13132

NHTSA has analyzed this proposed rule in accordance with the principles and criteria set forth in Executive Order 13132, Federalism and has determined that this proposal does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. The proposal would not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

### D. National Environmental Policy Act

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

### E. Paperwork Reduction Act

This proposed rule does not contain any collection of information requirements requiring review under the Paperwork Reduction Act of 1995 (Pub. L. 104-13).

### F. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104-113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments." Society of Automotive Engineers (SAE) Recommended Practice J1626 APR96, *Braking, Stability, and Control Performance Test Procedures for Air-Brake-Equipped Truck Tractors*, includes an option for using a roll bar structure for testing at LLVW. While the SAE practice applies to air braked trucks, the SAE tests performed at LLVW are similar to tests performed at LLVW under FMVSS No. 105. The proposed amendment would permit the use of a roll bar structure in a similar manner as the SAE recommended practice.

### G. Civil Justice Reform

This proposal would not have any retroactive effect. Under 49 U.S.C. 21403, 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. 21461 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 suit in court.

### H. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a

written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with base year of 1995). This rulemaking would not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of \$100 million annually.

### I. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier 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.

### J. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we 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 us.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866 and does not involve decisions based on environmental, health, or safety risks that disproportionately affect children. The proposed rule, if made final, would permit manufacturers to use a roll bar structure when testing medium and heavy hydraulic braked trucks and buses at LLVW.

### K. Executive Order 13211

Executive order 13211 (66 FR 28355, May 18, 2001) applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significant adverse effect on the supply of, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. If made final, this rulemaking would permit the voluntary and limited use of