

(3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons;

(4) Whether the contribution to public understanding of Federal government operations or activities will be significant;

(5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and

(6) Whether the magnitude of any identified commercial interest to the requester is sufficiently large in comparison with the public interest in disclosure that disclosure is primarily in the commercial interest of the requester.

(g) Documents will be furnished without charge or at a reduced charge if the official having initial denial authority determines that the request concerns records related to the death of an immediate family member who was, at the time of death, an employee of the Department or a member of the Coast Guard.

(h) Documents will be furnished without charge or at a reduced charge if the official having initial denial authority determines that the request is by the victim of a crime who seeks the record of the trial or court-martial at which the requestor testified.

§ 7.45 Transcripts.

Transcripts of hearings or oral arguments are available for inspection. Where transcripts are prepared by a nongovernmental contractor, and the contract permits the Department to handle the reproduction of further copies, § 7.43 applies. Where the contract permits the Department to handle the reproduction of further copies, § 7.43 applies. Where the contract for transcription services reserves the sales privilege to the reporting service, any duplicate copies must be purchased directly from the reporting service.

§ 7.46 Alternative sources of information.

In the interest of making documents of general interest publicly available at as low as cost as possible, alternative sources shall be arranged whenever possible. In appropriate instances, material that is published and offered for sale may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; U.S. Department of Commerce's National Technical Information Service (NTIS), Springfield, Virginia 22151; or National Audio-Visual Center, National Archives and

Records Administration, Capital Heights, MD 20743-3701.

Issued in Washington, DC, on March 24, 1997.

Rodney E. Slater,

Secretary of Transportation.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95-88, Notice 3]

RIN 2127-AG02

Amendment of Standard No. 121, Brake Hoses by Revision of the Whip Resistance Test Conditions

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

ACTION: Denial of petition for reconsideration.

SUMMARY: This document announces the denial of a petition for reconsideration of the agency's decision to amend the whip test requirements of Standard 106, Brake Hoses to allow the use of a supplemental support for testing certain brake hose assemblies. The petition is denied on the basis that the petitioner provided no new information on which to justify amending the standard.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590:

For non-legal issues: Sam Daniel, Vehicle Dynamics Division, Office of Crash Avoidance Standards, (202-366-4921)

For legal issues: Mr. Marvin L. Shaw, NCC-20, Rulemaking Division, Office of Chief Counsel, (202-366-2992).

SUPPLEMENTARY INFORMATION:

Request for Interpretation

On December 8, 1994, Earl's Performance Products (Earl's) asked the agency to issue an interpretation of the whip resistance requirements in Standard No. 106. Specifically, that company asked that an alternative whip resistance test apparatus be allowed for testing its hydraulic brake hose assemblies. Earl's has manufactured armored brake hose assemblies for use in off-road, high performance race cars since the 1960s. That company sought permission to use the alternative fixture

because it wished to begin selling its armored brake hose for use on conventional motor vehicles. It claimed that its product is of very high quality and easily meets all of the requirements in Standard No. 106, except for the whip resistance test. Earl's brake hose is armored with braided stainless steel while most current brake hoses are made from rubber tubing alone.

Earl's armored brake hose is installed on a vehicle differently than a conventional brake hose. Earl's hose passes through and is held in place by a supplemental support (consisting of a ball bearing with a hole in it and the ball bearing housing) which cannot be removed from the hose. The support slides into and is held in place by a bracket which is attached to the vehicle frame or some other solid vehicle structure. The alternative test apparatus proposed by Earl's simulates the attachment of the supplemental support bracket to a vehicle.

Earl's recognized that if the supplemental support is not properly attached or mounted to the vehicle, its hoses could fail the whip resistance test due to cyclic stress at the interface between the hose and the swaged collar at the fixed end of the hose assembly. Earl's indicated, however, this was not a problem when the hose is protected by the supplemental support. Earl's further indicated that it had successfully tested hose assemblies from 9 inches to 24 inches long, using its alternative mounting technique.

On April 24, 1995, NHTSA responded to Earl's request for an interpretation, concluding that the rule as then written did not permit the use of a supplemental support to mount a brake hose when conducting the whip test. NHTSA stated that section 6.3 could not be interpreted to permit mounting the brake hose at the "whip dampener." S6.3.1 *Apparatus* specifies a test apparatus that mounts the brake hose at "capped end fittings" on one end and "open end fittings" on the other, and specifies no mounting points in between. Thus, a test apparatus that mounts the brake hose at a "whip dampener," which is not an end fitting, would not meet Standard No. 106.

The agency then stated that it would initiate rulemaking to further consider whether to amend the whip resistance test to permit the use of a supplemental support.

Agency Rulemaking Amending Whip Resistance Test

On November 16, 1995, NHTSA issued a notice of proposed rulemaking (NPRM) in which it proposed amending the whip resistance test of Standard No.

106. (60 FR 57562). Under that proposal, Section 6.3.2 would be amended to permit an optional mounting procedure for certain brake hose assemblies for the whip resistance test through the use of a supplemental support. Without such an amendment, some armored brake hose assemblies would remain prohibited because they could not comply with the whip resistance test in effect at that time. The proposed amendment was intended to allow a brake hose assembly to be mounted in the whip test apparatus in the same manner in which it would be mounted in the real world on a vehicle. The agency stated that the proposal would apply to those brake hose assemblies that are fitted with a supplemental support that cannot be removed intact from the hose without destroying the hose. The supplemental support would be positioned and mounted in a bracket that would simulate vehicle mounting, in accordance with the recommendation of the brake hose assembly manufacturer.

The agency invited comments on the appropriateness of the proposed modification to the whip resistance test. NHTSA received comments on the proposed amendment from vehicle manufacturers BMW and Chrysler and from automotive equipment suppliers Goodridge (UK) Ltd., Goodyear Tire & Rubber Co. and Titeflex Industrial Americas.

BMW and Chrysler supported the revisions to the whip test procedure. Goodyear Tire & Rubber Company did not express support for or against the amendments, but requested clarification regarding a number of technical issues. Titeflex Industrial Americas and Goodridge (OK) Ltd. objected to the proposed changes to the whip test, stating that the changes would allow an unfair advantage to Earl's Performance Products and would also reduce the level of safety now achieved with the existing whip test.

On August 9, 1996, NHTSA published a notice in the **Federal Register** (61 FR 41510) announcing a final rule amending Standard 106, Brake Hoses by revising the whip resistance test to permit the use of a supplemental support bracket. Along with adopting the proposed requirements, the final rule included some additional provisions, including package labeling requirements for brake hose assemblies designed for use with a supplemental support. The notice further required that

a brake hose assembly equipped with a permanently attached supplemental support be tested on the whip test apparatus in a position which simulates proper installation on a vehicle.

Petition for Reconsideration of the Whip Test Amendments

On September 7, 1996 a petition for reconsideration was received from Goodridge (USA) Inc. and Goodridge (UK) Ltd. The Goodridge petition questioned the appropriateness of allowing the introduction of a "proprietary specification" that can be only produced by Earl's, and cited several concerns regarding the safety of the new Earl's product.

Goodridge claimed that the amendments published in the final rule give Earl's an unfair advantage because of the introduction of a proprietary specification that is protected by patents. The agency finds this argument unpersuasive. Any company that develops a brake hose assembly with an integral supplemental support may test the assembly for whip resistance in accordance with the procedures specified in Docket No. 95-88, Notice 2. The amendment of Section 6.3.2 does not specify the design of the supplemental support, as implied by Goodridge. Further, the amendment does not restrict other manufacturers from using this modified whip test apparatus if their brake hose assemblies meet the requirements, that is, include a permanently attached supplemental support, and a means of attaching the support to a fixture.

Goodridge claimed that the brake hose assemblies allowed by the amendment to the whip test procedures would reduce overall vehicle safety since the brake hoses could be improperly installed by inexperienced technicians or private citizens. The agency disagrees with Goodridge on this issue. The agency believes the required package labeling will assure correct installation of brake hose assemblies with supplemental supports. Brake technicians and private citizens who opt to utilize these products will likely be aware prior to acquisition that the assemblies have unique installation requirements. Further, the package labeling must detail proper installation instructions as well as the consequences of improper installation. Goodridge claimed that there is no test data to support the amendments to the standard. The tests in SAE J1401, from

which the Federal safety requirements were adopted, were developed to be non-vehicle specific, cover all road vehicles, and represent the exposure that a component would experience in the actual use. It has long been the position of the SAE and others responsible for product testing that if a brake hose can pass the requirements of FMVSS 106, Brake Hoses, or SAE J1401 Road Vehicle-Hydraulic Brake Hose Assemblies, there is no compromise to safety since the testing represents the vehicle mounting and exposure parameters of all vehicle types.

The agency, in the final rule issued on August 9, 1996, made it clear that there are design choices and investment decisions associated with each product that is developed to meet the requirements of a safety standard. Along with those decisions goes the risk of products being displaced by new design approaches to solve old problems. It also indicated that it must remain open to amending the safety standards consistent with its statutory authority based upon changing vehicle technology. NHTSA believes that Goodridge has submitted no new information to support the claim that the design of Earl's brake hose which is properly mounted with a supplemental support is more prone to failure than any other manufacturer's brake hose that does not use a supplemental support.

As indicated in the final rule, if failures were to occur, the agency would treat them the same way it treats any other safety-related failure of a motor vehicle or item of motor vehicle equipment. The agency would expect the manufacturer to conduct a recall if one were appropriate.

The agency does not envision a large increase in the replacement installation of armored brake hoses by the general public. In many applications, vehicle modification would be required to allow for a supplemental support bracket.

Accordingly, the agency has decided to deny the petition.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: April 17, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

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