U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

Federal Motor Vehicle Safety Standards and Regulations

With Amendments and
Interpretations Issued Through
December 1992

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Foreword

This reference volume contains Federal Motor Vehicle Safety Standards and Regulations, including amendments and interpretations, issued through December 1989.

The volume is divided into three sections. The first section contains procedural rules and regulations. The second section contains the standards. The third section contains rulings and additional regulations.

Each section is sub-divided into Parts which correspond to the Part numbers appearing in the *United States Code of Federal Regulations,* as shown in the following examples:

Part 551—Procedural Rules
Part 567—Certification
Part 571—Motor Vehicle Safety Standards
Part 575—Consumer Information

The arrangement of the Parts within a section consists of preamble material, followed by the applicable standard or regulation. To simplify the incorporation of amended material into the text, amendments are issued as full replacement pages, with each page having the same page number as the page it replaces.

The page numbering system is designed to keep related materials together, while permitting expansion of the material within a section. Each page number identifies: the Part to which it belongs, the standard or regulation with which it is concerned, and the page number. For example, page one of Standard No. 108 is listed as PART 571; S 108–1. Preamble material (which is not amended) has the same numbering system, except that the abbreviation PRE precedes the page number (e.g. PART 571; S 108–PRE 1).

New standards, amendments, interpretations and other changes are issued periodically as supplements to this document. These are loose leaf, pre-punched and distributed automatically to subscribers to this publication. A sample layout of a changed page with explanatory annotations appears on page iii.

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Material enclosed in brackets represents amendment to standard

SAMPLE PAGE

MOTOR VEHICLE SAFETY STANDARD NO. 203

Impact Protection for the Driver from the Steering Control System—Passenger Cars

S1. Purpose and scope. This standard specifies requirements for steering control systems that will minimize chest, neck, and facial injuries to the driver as a result of impact.

S2. Application. [This standard applies to passenger cars. However, it does not apply to vehicles that conform to the frontal barrier crash requirements (S5.1) of Standard No. 208 (§ 571.208) by means of other than seat belt assemblies. **(40 F.R. 17992—April 24, 1987. Effective: 5/27/87)**]

S3. Definitions. "Steering control system" means the basic steering mechanism and its associated trim hardware, including any portion of a steering column assembly that provides energy absorption upon impact.

S4. Requirements.

S4.1 Except as provided in S4.2, when the steering control system is impacted by a body block in accordance with Society of Automotive Engineers Recommended Practice J944, "Steering Wheel Assembly Laboratory Test Procedure," December 1965 or an approved equivalent, at a relative velocity of 15 miles per hour, the impact force developed on the chest of the body block transmitted to the steering control system shall not exceed 2,500 pounds.

S4.2 A Type 2 seat belt assembly that conforms to Motor Vehicle Safety Standard No. 209 shall be installed for the driver of any vehicle with forward control configuration that does not meet the requirements of S4.1.

S4.3 The steering control system shall be so constructed that no components or attachments, including horn actuating mechanisms and trim hardware, can catch the driver's clothing or jewelry during normal driving maneuvers.

Interpretation

The term "Jewelry" in paragraph S4.3 refers to watches, rings, and bracelets without loosely attached or dangling members.

32 F.R. 2414
February 3, 1987

Issue of *Federal Register* in which amendment was issued and effective date of amendment

Issue of *Federal Register* in which Standard was originally issued

Part of *Code of Federal Regulations* in which Standard appears

Standard number

Page number

Date of latest revision

Section One

PREAMBLE TO PART 510—INFORMATION GATHERING POWERS

(Docket No. 78-01; Notice 3)

ACTION: Final rule.

SUMMARY: This notice establishes a final rule governing the issuance and use of compulsory process by the National Highway Traffic Safety Administration (NHTSA) in carrying out its duties under the National Traffic and Motor Vehicle Safety Act of 1966, as amended, (the Safety Act), and the Motor Vehicle Information and Cost Savings Act, as amended, (the Cost Savings Act). This final rule was preceded by an interim final rule, which set forth the procedures the agency would use in exercising its information gathering powers, and solicited comments on those procedures. This rule informs the public of those procedures, and of the rights which the public has with respect to those procedures.

EFFECTIVE DATE: This rule will become effective (45 days after publication in the Federal Register).

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

A. *Background.* At 42 FR 64628, December 27, 1977, NHTSA published an interim final rule establishing 49 CFR Part 510, *Information gathering powers.* That regulation set forth the procedures to be followed by NHTSA in exercising its information gathering powers. It was issued as an interim final rule without prior notice or opportunity for comment. This is permitted by 5 U.S.C. 553 (b) (3) (A), which allows rules which are strictly procedural to be issued without the normally required notice and opportunity for comment. However, because of this agency's policy of encouraging public participation in all agency activities, Part 510 was issued as an interim rule, and comments from interested members of the public were solicited. On February 2, 1978, the comment period was extended for an additional 20 days in response to a petition requesting such an extension; see 43 FR 5516, February 9, 1978. The agency received many comments on Part 510 from members of the automotive industry, automotive associations both large and small, associations of automobile users and consumers, and at least one private citizen who did not indicate any affiliation. All comments were considered and the most significant ones are addressed below.

In response to the comments received, several changes have been made to the interim rule. However, most of these changes are for the purpose of clarification or to make explicit what had been implicit in the interim rule. The most significant changes are outlined below.

B. *Most significant changes.* The following are the most significant differences between the interim rule and this final rule:

1. The final rule reorganizes the category of "investigational hearing" contained in the interim rule into two smaller categories. The first reorganized category is the "information gathering hearing", in which the agency can compel a witness to appear and answer questions under oath. The agency's rulemaking meetings are the most common example of this type of proceeding. Generally, these hearings will be public, and questioning of the witness will be limited to the presiding officer and any other members of a panel. The other reorganized category, which is derived from the interim rule's investigational hearing, is the "administrative deposition". This is used in investigations and is modeled after a deposition under the Federal Rules of Civil Procedure.

2. The final rule requires that any process issued under it recite the statutory authority under which the process is issued.

3. The final rule requires that any process issued under it contain a brief description of the investigation or inquiry in connection with which it is being issued.

4. The final rule adds a form of compulsory process, the written request for the production of documents and things. This was implicit in the concept of the general or special order established in the interim rule, but has been made explicit in this final rule to avoid any confusion as to the availability and proper uses of this form of process.

5. The final rule expands the right to counsel by deleting the authority for the agency to exclude a person as counsel if such person were counsel for a number of other witnesses in the same investigation or if such person had personally been subpoenaed to testify.

6. The interim rule had not specifed any time limitations on the duty to supplement responses to compulsory process. This final rule includes the following limitations: with respect to process issued in connection with a rulemaking action, the duty to supplement terminates when a final rule is issued or the action is otherwise ended. With respect to process issued in connection with an enforcement investigation, the duty to supplement responses terminates when the defect investigation is closed. Finally, with respect to process not issued in connection with a specific rulemaking action or enforcement investigation, the duty to supplement terminates 18 months after the date of the original response to the process.

C. *Discussion of comments.*

1. *Comments on the procedure followed for issuing this rule.* One commenter suggested that the interim rule may be void because it was issued without a prior notice of proposed rulemaking and opportunity for public comment. Moreover, this defect might not be cured by the publication of a final rule after consideration of comments received, according to this commenter, in which case the final rule would also be void.

The commenter asserted that any rule which substantially affects the rights of persons subject to the authority of an agency must be promulgated with notice and opportunity for comment, no matter whether the rule is labeled substantive or procedural. However, the authority cited by the commenter does not support that assertion. Instead, the cases suggest that when it is difficult to determine whether a rule is substantive or procedural, the court will consider the impact on the regulated parties. If that impact is significant, it is likely that the rule is substantive. Thus, in *Pickus v. United States Board of Parole,* 507 F.2d 1107 (D.C. Cir. 1974), the board of parole argued that its regulation was procedural, but the regulation also established some criteria for parole eligibility. In *Pharmaceutical Manufacturers Association v. Finch,* 307 F. Supp. 858 (D. Delaware 1970), the FDA established procedural regulations which also set up the requirements with which drug manufacturers would have to comply to establish that a new drug was safe and effective. And in *National Motor Freight Traffic Association v. United States,* 268 F. Supp. 90 (D.D.C. 1967), *aff'd,* 393 U.S. 18 (1968), the Interstate Commerce Commission's procedural regulations also established a remedy for the recovery of overcharges. In none of these cases did the court find the regulation to be purely procedural.

Numerous cases have upheld the validity of procedural rules issued without notice and opportunity for comments, even when the rules had a major impact on the parties. *See Eastern Kentucky Welfare Rights Organization v. Simon,* 506 F2d 1278 (D.C. Cir. 1974) *vacated on other grounds,* 436 U.S. 26 (1976); *Shell Oil Co. v. Federal Power Commission,* 491 F.2d 82 (5th Cir. 1974); *Buckeye Cablevision, Inc. v. United States,* 438 F.2d 948 (6th Cir. 1971). The agency believes that Part 510 is purely procedural, since it does not even arguably establish any criteria for obtaining favorable consideration by the agency, nor does it establish any remedies for violations of substantive agency rules. Indeed, it appears to NHTSA that the regulation does not substantially affect the rights of any parties, since Part 510 only implements information gathering powers and remedies for violations of those powers granted to NHTSA in various statutes, without adding to or deleting from those powers and remedies in any way.

Furthermore, even if NHTSA accepts *arguendo* the commenter's claim that the interim rule should have been preceded by notice and opportunity for comment, that failure would be cured by the agency's solicitation of comments on the interim rule and the issuance of this final rule in response to the comments received. The commenter's position that no "cure" is possible is based on four

cited cases. Three of those cases involved a situation where the agency involved never issued a notice indicating that there had been any consideration of the comments received and no modifications of the rule were ever made. Hence, the courts in *Community Nutrition Institute v. Butz,* 420 F. Supp. 751 (D.D.C. 1976), *NLRB v. Wyman-Gordon Co.,* 394 U.S. 759 (1969), and *National Motor Freight Traffic Association v. United States, supra,* were not presented with the issue of whether a defectively issued rule can be cured by soliciting and considering comments.

The other case cited by the commenter for the position that no cure is possible was *City of New York v. Diamond,* 379 F. Supp. 503 (S.D.N.Y. 1974). In that case, the Department of Labor published a rule as final without any prior notice or opportunity for comment. There was a statement in the rule that any comments received in response thereto would be acted upon as though the rule were a notice of proposed rulemaking. No final rule showing some consideration of comments was ever published.

The court held that this rule was void for failure to comply with the requirements of the Administrative Procedure Act. The rationale for the decision is explained at 379 F. Supp. 517, where the court said, "Permitting the submission of views after the effective date is no substitute for the right of interested persons to make their views known in time to influence the rulemaking process in a meaningful way." The court expressed doubts that an after-the-fact opportunity to comment would be meaningful since people would be unlikely to submit comments and the agency would be unlikely to consider changes after a *fait accompli.*

This reasoning is inapposite in the instant situation. There has been no claim by this or any other commenter that they were not allowed to make their views known in time to influence the rulemaking process. The doubts that comments would be submitted can be allayed with regard to this interim rule. A total of 26 written comments were submitted in response to the invitation for comments in the interim rule, and many of these were long and detailed. The comments have been considered at length. Changes outlined above have been made to the interim rule in response to the comments received.

Further, the remedy for a defectively issued rule is that the invalidly issued rule is void and the agency must follow the notice and comment procedures before promulgating any new rule on the subject. In this case, voiding the permanent rule and requiring the agency to solicit comments is unnecessary. Detailed comments have already been submitted by representatives of many different segments of the interested public. Reissuance of a proposal identical to the interim rule would serve no useful purpose.

2. *General comments.* Several commenters expressed concern that the issuance of Part 510 signalled an end to a relatively cooperative relationship concerning the agency's information gathering needs, and a beginning of a new, more adversarial relationship. NHTSA believes this concern is unfounded. The agency has always had the power to compel the production of information, and has in fact made numerous mandatory requests for information before the issuance of Part 510. Part 510 is simply an effort by the agency to state its authority with regard to information gathering, and set forth the procedures it will follow in exercising that authority, as well as setting forth the rights parties have when confronted with compulsory process by this agency.

The existence of this rule will not change the agency's general reliance on the voluntary submission of information. For its part, the agency will continue where feasible to rely on persons and entities to voluntarily provide the agency with information if the party will do so. NHTSA believes that most parties will continue to do so, since it is in the interest of those persons, as well as that of the agency and the public, for NHTSA to be well informed in its activities.

There were also repeated concerns that the information gathering powers in Part 510 are potentially oppressive, and could violate the right to privacy. The information gathering authority of this agency has been used and will continue to be used in a responsible manner.

Persons subject to the agency's information gathering powers have protections more secure than this agency's assurances of good intent. Under the provision of Part 510, persons may informally protest the exercise of the information gathering powers and seek to informally negotiate terms of compliance that would not be oppressive. If the party chooses, there are more formal ways of

protesting at the administrative level, such as filing motions to quash or modify the process before the Deputy Administrator. Finally, a person who has been served with compulsory process and exhausted the available administrative remedies may raise any available defense in an action brought by NHTSA to enforce the process in the appropriate United States District Court.

A number of commenters, particularly those representing small businesses, stated that additional Federal paperwork requirements would be unbearable. This agency is aware of the problems caused business, especially smaller businesses, by requirements which cause the business to prepare more paperwork. As explained above, issuance of this rule will not lead to a significant change in the information gathering practices of this agency.

One commenter inquired whether the agency would seek out differing opinions in the information gathering process. NHTSA has always tried to obtain a variety of views in its information gathering activities, particularly in the area of rulemaking, where the policy issues involved are best considered in the light of contrasting opinion. The agency has in the past sought information and views from various persons and entities. Typically, voluntary requests and compulsory process are sent to manufacturers, since they are most likely to possess the type of information needed by the agency. To inform the public of these information gathering efforts, copies of the process and requests are placed in the dockets. This information gathering has been supplemented at the notice and comment stage of rulemaking by such means as inviting public participation to ensure that a wide range of views is represented.

Several commenters expressed the view that the information gathering powers discussed in Part 510 were unnecessary, duplicative of the authority of the National Transportation Safety Board, and not contemplated by Congress. It is clear that Congress has given the agency broad information gathering powers. Before the 1974 amendments to the Safety Act, NHTSA's investigative and information gathering authority under that Act was relatively circumscribed. In 1974, the Congress amended the Safety Act to give the agency broad authority similar to the authority it already possessed under Title I of the Cost Savings Act. With respect to the 1974 amendments, the House Committee stated that the amendments authorize:

> the Secretary to conduct informational hearings and to obtain evidence from any person who has information relevant to the implementation of the Act. *Despite the vital importance of information gathering to successful implementation of the Act, the Secretary does not possess general authority for this purpose.* This lack is anomalous in view of the extensive information gathering authority in the property damage reduction provisions of the Motor Vehicle Information and Cost Savings Act. *This paragraph would give the Secretary similar broad authority in the more important pursuit of preventing highway deaths and injuries.* (emphasis added) H. Rep. 93–1191, 93rd Cong., 2d Sess. at 36–37.

In connection with the agency's duties under Title V of the Cost Savings Act, dealing with automotive fuel economy, Congress granted similar broad information gathering authority in section 505. To assist NHTSA in its duties to prevent odometer fraud, Congress also granted the agency broad information gathering powers in Title IV of the Cost Savings Act at section 414.

NHTSA's information gathering powers complement, but do not duplicate those of the National Transportation Safety Board (NTSB). The functions and information needs of the two agencies, even in the safety area, differ significantly. The function of the NTSB is to investigate significant transportation accidents, whether on the highways, rails, sea, or air, to determine the cause of those accidents. NTSB then publicly reports the results of these investigations. It also issues general recommendations for reducing the risks of accidents and publishes reports on the general transportation safety consciousness of other government agencies.

The functions of NHTSA include issuing specific rules to prevent highway deaths and injuries, reduce property damage in the event of an accident, increase the average fuel economy of automobiles, and prevent odometer fraud. Any validly issued rule which is violated subjects the violator to civil penalties. These differing functions illustrate why the two agencies have differing information needs. Further NTSB does not obtain

any information which could be used to assist NHTSA in its fuel economy, damageability, or odometer fraud activities. With respect to NHTSA's safety activities, this agency is concerned with more than just the cause of an accident. NHTSA must also obtain information which could support the establishment of safety standards in the area, establish that there has been some noncompliance with such standards, or show the existence of a safety-related defect.

3. *Specific comments.*

a. *Recitation of authority.* A commenter suggested that Part 510 require that any process issued thereunder indicate the statute that authorizes the particular process. The agency agrees that this is a reasonable requirement, and §510.3(b) (2) of the final rule includes this requirement. The agency would like to note that the practice under the interim rule has been to indicate the statutory basis for the process issued thereunder, although the interim rule did not require this.

b. *Statement of purpose.* There were also a number of comments suggesting that Part 510 should be amended to require that any compulsory process contain a brief description of the purpose and scope of the investigation in connection with which the process is issued, so that a respondent or a reviewing court would have a basis for determining whether the process is reasonably relevant to that investigation. This agency agrees to change the interim rule to add a requirement in § 510.3 (b) (4) of the final rule that compulsory process contain a brief description of the purpose and scope of the agency's investigation. Again, the agency notes that process issued under the interim rule has routinely carried a brief description of the purpose of the agency's investigation.

It must be kept firmly in mind that the agency need not and will not go into a detailed and specific discourse about any investigation to support compulsory process. As stated by the Court of Appeals for the District of Columbia Circuit in *Federal Trade Commission v. Texaco,* 555 F.2d 864 (D.C. Cir.); *cert. den.,* 431 U.S. 974 (1977):

> . . . an investigating agency is under no obligation to propound a narrowly focused theory of a *possible* future case. Accordingly, the relevance of the agency's subpoena requests may be measured only against the general purposes of its investigation. 555 F. 2d at 874 (emphasis in original)

More recently, the District Court for the District of Columbia decided a case dealing specifically with the information gathering powers of NHTSA in *United States v. Firestone Tire and Rubber Co.,* 455 F. Supp. 1072 (D.D.C 1978). The court there addressed this issue saying:

> The agency need not narrow its focus from the beginning, and it is not for this court to determine whether the information sought is relevant to whatever eventual action the agency might take. This court may look only to the *general* purpose of the investigation and determine if the information sought, however broad, is relevant to that purpose. 455 F. Supp. at 1083 (emphasis in original)

One commenter suggested that Part 510 be amended to require that compulsory process inform the respondent of the identity of the person or entity under investigation. In most enforcement investigations the agency now identifies the persons subject to the investigation in its information requests and compulsory process. The agency must be free, however, to gather information relevant to the general purpose of investigations which are not yet focused on potential violations and violators. There may also be investigations in which nondisclosure of the identity of those under investigation will be necessary to prevent harm to the outcome of the investigations or harm to informants. The Supreme Court has said that it is a proper purpose for an administrative subpoena "to discover and procure evidence, not to prove a pending charge or complaint, but upon which to make one if, in the Administrator's judgment, the facts thus discovered should justify doing so." *Oklahoma Press Publishing Co. v. Walling,* 327 U.S. 186, at 201 (1946). In other words, agency investigations and compulsory process issued in connection with those investigations need not be focused on a limited number of persons or entities, but can be intended simply to determine if there are violations of any standards; *United States v. Morton Salt Co.,* 338 U.S. 632 (1950). Adoption of the requirement urged by this commenter in all cases would unduly hamper NHTSA's ability to conduct these authorized and proper types of investigations and the comment is, therefore, rejected.

c. *Production of documents.* Interim Part 510 listed a subpoena *duces tecum* as the only form of compulsory process through which this agency

could compel the production of documents. Although it was not specifically identified as such, the authority to issue general or special orders includes the authority to compel the production of documents.

The agency's authority to issue a type of compulsory process that required the production of documents outside the context of a hearing, in which a subpoena would be issued, was upheld in *United States v. Firestone Tire and Rubber Co., supra.* In that case, NHTSA issued a special order to Firestone commanding the company to produce and provide information about a group of documents. Firestone specifically challenged the agency's authority to compel the production of documents outside the context of a hearing. NHTSA argued that section 112 (c) (2) of the Safety Act (15 U.S.C. 1401 (c) (2)) gave the agency this authority . The court analyzed the legislative history of this section and found that Congress had intended to give the agency broad investigatory powers. In conclusion, the court said:

> Following Firestone's argument would emasculate these newly-granted investigatory powers. As such, the court must read the requirements of this Act within the context of Congressional intent. The Secretary's investigative power is broad enough to compel the production of documents and the analysis thereof. 455 F. Supp. at 1082.

It is clear from this analysis that NHTSA has the power to compel the production of documents by the use of general or special orders under the Safety Act. Sections 104 (a)(2), 204(b), 414 (c) (2), and 505 (b) (1) (B) of the Cost Savings Act (15 U.S.C. 1914 (a) (2), 1944 (b), 1990d (c) (2), and 2005 (b) (1) (B)) use language identical to that used in section 112 (c) (2) of the Safety Act. The use of identical language shows the same intent to give NHTSA broad authority and necessarily grants that broad authority.

To make it explicit in this final rule that the agency may exercise this authority, a form of compulsory process not specifically set forth in the interim rule has been added to this rule. The process is called a written request for the production of documents and things. This process may be issued alone or as a part of a general or special order. A written request for the production of documents and things is the functional equivalent of a subpoena *deces tecum.*

d. *Service of process; when and where returnable.* One commenter argued that service of compulsory process should be effected only by personal service, rather than allowing the agency the option of mail service, as is permitted by section 510.3(c). The reason offered for this requested change is that personal service is the only permissible service for process issued by the courts of the United States in civil matters, as set forth in Rule 45 (c) of the Federal Rules of Civil Procedure. Personal service, of course, offers the greatest certainty that the person named in the process received actual notice thereof. However, a requirement of personal service would add a great deal of cost, time, and burden for the agency in connection with the issuance of compulsory process.

The commenter cited no authority which would prohibit the agency from effecting service by mail, nor is the agency aware of any such authority. In fact, many Federal agencies use mail service for their compulsory process. *See, e.g.,*16 CFR §4.4 (a) (Federal Trade Commission); 17 CFR § 201.4(b) (3) (Securities and Exchange Commission). The judgment made by these agencies is that the possibility of a party not receiving notice by mail service is so slight that the additional expenditure of taxpayers' money required to effect personal service would not be justified. This agency concurs with that determination and will, therefore, permit service by registered or certified mail. If the respondent does not receive the process when it is served by mail, NHTSA will give that fact due consideration when determining the appropriate action to be taken in response to the respondent's failure to comply.

The same commenter raised the question of issuing compulsory process to foreign citizens or nationals of foreign countries residing abroad who are not served with process in the United States, or who have not appointed an agent for the service of process in the United States. The commenter argued that subpoenas to such persons would have to be considered requests, rather than commands, because such persons would be beyond the jurisdiction of the United States. The agency's compulsory process is bounded by the jurisdictional limits of the United States courts where the process is enforceable. The agency has no doubt, however, that a corporation or perosn amenable to service can be required to produce records located outside the territorial limits of the United States.

Several commenters suggested that when service is effected by mail, the date of service should be the date the respondent receives the process, rather than the date on which the service is mailed, with three additional days allowed to perform the required act, as is required by § 510.3(d). One commenter urged that the agency could easily determine the date of receipt by using return receipt mailing methods. The provision in the interim rule was adopted directly from Rule 6 (e) of the Federal Rules of Civil Procedure. This provision has not led to any difficulties or unfairness in the Federal courts such as some commenters suggested would result from this provision in Part 510.

Return receipt mail would add costs for the agency and could add delay and cause other difficulties in delivering process. These burdens would not be outweighed by being able to ensure absolutely that the respondents actually had available to them the period to respond to the process which was stated in the process. The agency will always entertain motions to extend the return date of its process, if the respondent can show that the period available to it was inadequate. Since these motions can be filed for all process issued by the agency, the benefit of using return receipt mailing would be insubstantial.

One commenter suggested that Part 510 should allow service of compulsory process to a business to be made upon an agent designated to receive service, as an alternative to the agent-in-charge. NHTSA agrees with this suggestion, and the rule has been modified to reflect this new provision.

Many commenters addressed the issue of the amount of time which should be permitted to respond to compulsory process. Generally, the commenters indicated that compulsory process should be returnable in a reasonable amount of time. Although this was not specifically required by the interim rule, NHTSA intends to continue its policy of requiring that process be returnable in a reasonable amount of time. Further, NHTSA believes that the requirement for reasonable amount of time to respond to compulsory process is so fundamental that it need not be explicitly stated in the final rule.

Some commenters suggested that a certain period of time, such as 30 days, be presumed by the agency to be a minimum reasonable time. Other commenters noted special factors which should lengthen the amount of time that could be considered reasonable. Examples of these special factors were language differences and the size of the companies to which the process was directed.

NHTSA concurs with the implicit statement in these latter comments that the determination of what is a reasonable period of time to respond must necessarily be an *ad hoc* one, which will of necessity consider the facts involved in each individual case. The agency notes that, in addition to the burden imposed on the respondents, the determination of what is a reasonable time period in which to respond must also consider the agency's need for the information so that it can perform its functions in a timely manner. However, the fact that a determination of what is a reasonable period of time must, almost by definition, be made on a case-by-case basis leads the agency to conclude that the establishment of even a presumptively reasonable amount of time in which to respond would unnecessarily limit the ability to consider the particular facts of each case. In the past, NHTSA has been willing to grant extensions of time for responses to compulsory process where it appeared that such extensions were necessary and consistent with the public interest. No departure from that policy is contemplated.

One commenter inquired where NHTSA's compulsory process would be returnable. Although most compulsory process will be returnable at the offices of NHTSA, situations may arise where the process would be returned at some other place. This question of where process must be returned should also be considered on a case-by-case basis.

e. *Investigational hearings.* The interim rule set forth one section which was intended to cover all agency hearings and which referred to all hearings as investigational hearings. These hearings were structured to be a mechanism with which to gather facts, opinions or other data relevant to an agency investigation, inquiry or rulemaking and were not adjudicative or quasi-adjudicative procedures. The presiding officer at these hearings would have had the authority to rule on objections, "unless an immediate ruling would be unwarranted, and except where a refusal to answer was based upon the privilege against self-incrimination." This limitation was necessary because the presiding officer would not be a judicial officer, and so would not rule on any legal points.

The problem which became apparent with this formulation was that the differences between hearings in connection with rulemaking and hearings in connection with enforcement proceedings make it impossible to decribe both hearings in one section. Although the section in the interim rule dealing with investigational hearings did set forth all fundamental points of the two types of hearings which the agency will hold, it was not an entirely accurate description of either hearing.

In this final rule, § 510.5 sets forth the procedures for hearings in connection with rulemaking, which are called "information gathering hearings." Section 510.6 sets forth the procedures for hearings held in connection with enforcement investigations, and these are now called "administrative depositions." By separating these types of hearings, this final rule provides a more accurate description of each.

The information gathering hearings will generally be open to the public. Information gathering hearings include hearings in connection with pending rulemaking actions, hearings on an initial determination by the agency of a safety-related defect or noncompliance with an applicable Federal motor vehicle safety standard, held pursuant to the authority of section 152 of the Safety Act (15 U.S.C. 1412), and hearings on whether a manufacturer has reasonably met its obligation to notify and remedy a defect or failure to comply, which hearings are held pursuant to the authority of section 156 of the Safety Act (15 U.S.C. 1416). In addition to the presiding officer, one or more other persons may be designated as members of the panel. The members of the panel may question any witness. If any person not a member of the panel wishes to pose a question to a witness, that person may write down the question and submit it to the panel. Any member of the panel may then pose the question if that member feels it appropriate to do so. The presiding officer at an information gathering hearing runs the hearing, and ensures that it proceeds in an orderly fashion.

The administrative deposition, which is held in connection with enforcement investigations, will generally be closed to the public. This proceeding has been adapted from the procedures for deposition procedures set forth in the Federal Rules of Civil Procedure. An officer authorized to administer oaths will put the deponent under oath and record the person's testimony. NHTSA will examine the witness first and then the witness's attorney may examine the witness.

A number of commenters argued that the right to counsel provided in interim Part 510 was too restrictive. One commenter stated that the provisions of the interim rule, which allowed any witness at an investigational hearing to be accompanied by counsel, to confer with counsel, and to allow counsel to raise and explain any objections to any question asked of the witness was a limitation on the right to counsel guaranteed in the Administrative Procedure Act at 5 U.S.C. 555, where a person compelled to appear in person before an agency is entitled to be "accompanied, represented and advised" by counsel. This commenter stated that the words "accompanied", "represented, " and "advised" have different shades of meaning signifying varying rights under the law. NHTSA agrees with this latter statement. It is not clear to this agency, however, what the words "accompanied, represented and advised" mean in addition to the rights to have counsel present, to confer with that counsel, and to have that counsel raise and explain objections, which were granted in the interim rule. Notwithstanding this point, NHTSA has no objections to modifying the language of Part 510 in this final rule to track the language of the Administrative Procedure Act.

Another commenter suggested that the rights of counsel to state and argue objections should be expanded. The interim rule provided that counsel could object to any quetion and state the basis for that objection on the record. This commenter believes that the right to counsel consists of, at a minimum, the right to make objections on the record and argue briefly the basis for the objections. NHTSA does not believe that it would be appropriate to modify the final rule to permit counsel to argue objections. In the information gathering hearings, the presiding officer will not be ruling on legal points, so no useful purpose would be served by airing legal points at length during the course of the hearing. With respect to the administrative depositions, the presiding officer as set forth in the interim rule has been replaced in this final rule by an officer authorized to administer oaths, and this officer will not rule on any objections. Accordingly, once the objection has

been stated and the basis therefor explained, no purpose, other than delaying the deposition, would be served by arguing the objection.

Several commenters urged that the final rule should allow cross-examination of witnesses at investigational hearings. Since the investigational hearings in the interim rule have been divided into information gathering hearings and administrative depositions in this final rule, the comment has been considered with respect to both forms of hearings. At an information gathering hearing, there will be more than one witness, and these witnesses will be expressing differing views and opinions. If each of these witnesses could be cross-examined the hearing would be lengthened considerably. Especially since interested persons may submit questions to be asked by the presiding panel and are typically permitted a chance to supplement their comments after these hearings, the agency concludes that the rule should not be amended to permit cross-examination of witnesses.

Administrative depositions will focus on one witness, and the testimony of that witness will be considered by NHTSA in determining whether an enforcement action is necessary. If the agency decides to pursue an enforcement action it will be important that the testimony of the witness be as probative and accurate as possible. In this context, examination of the witnesses will generally be more administratively workable, because there will be only a single witness. The final rule has been accordingly modified to allow the witness's attorney or representative to examine the witness after NHTSA finishes its examination of the witness. Following this examination, NHTSA may reexamine the witness, and the witness's attorney may then reexamine the witness, and so forth, as appropriate.

Many objections were raised to the provision in the interim rule which excluded persons who were subpoenaed to testify at an investigational hearing from acting as counsel or representative for any other witnesses at that investigational hearing. One commenter argues that this provision could easily be abused by NHTSA to improperly exclude a counsel or representative. After a consideration of these comments and a reexamination of the exclusion, the agency has determined that the final rule should be modified.

The reason for including this authority was to prevent a situation where a counsel or representative advising a number of persons in the same proceeding could interfere with the investigation by, either consciously or subconsciously, tailoring testimony to conform with testimony already given. Several courts have stated that this general purpose is legitimate, and could support a decision to exclude a counsel or representative in these circumstances. *SEC v. Csapo,* 553 F.2d 7 (D.C. Cir. 1976); *SEC v. Higashi,* 359 F.2d 550 (9th Cir 1966). However, both these cases indicate that authority to exclude counsel must be kept within permissible limits. The automatic exclusion of counsel has been deleted for both the information gathering hearings and the administrative depositions. For information gathering hearings § 510.5 (e) of this final rule retains authority for the Administrator to take appropriate action if a counsel or representative refuses to comply with the presiding officer's directions or to adhere to reasonable standards of orderly and ethical conduct. Appropriate actions could include the exclusion of that counsel or representative from the hearing.

For an administrative deposition, the rule does not specifically provide for any exclusion, regardless of the behavior or conduct of a counsel or representative. In the event that it becomes necessary to prevent annoyance, embarrassment, oppression, or undue expense or delay to the witness or the agency, NHTSA will file an action in a United States District Court to seek an order to enforce the subpoena and to end the annoyance, embarrassment, oppression, or undue expense or delay, pursuant to the provision of § 510.6 (c) (5). This motion would be analogous to a motion for a protective order, which could be filed under Rule 26 (c) of the Federal Rules of Civil Procedure.

As an adjunct to this modification, the agency is changing the requirements of § 510.6(f) to provide that NHTSA may, in a nonpublic investigation and for good cause shown, decline to provide a copy of the transcript of his or her testimony to the witness. In those cases, the witness will be limited to an inspection of the transcript of the deposition. Such a limitation is explicitly authorized by the Administrative Procedure Act; 5 U.S.C. 555 (c). The purpose of this change is to prevent witnesses from tailoring their testimony to conform to testimony given by previous witnesses.

One commenter suggested that the provision in Part 510 regarding the time in which a witness is allowed to sign the transcript of his or her testimony be made more flexible. The 30-day

period included in the interim rule was drawn directly from Rule 30(e) of the Federal Rules of Civil Procedure, where experience has not shown it to be inadequate. Nonetheless, the language in § 510.6 (d) has been modified to allow the agency to designate some period other than 30 days as the period by which the testimony must be signed. The agency will allow a longer or shorter period as appropriate in particular circumstances.

A section has been added to the final rule which would also permit the agency to correct errors in the transcript of the deposition. Upon receiving a copy of the testimony given at the deposition, NHTSA would note any errors it believed had occurred in the transcription of the deposition, and forward notice of the alleged errors to the witness at the deposition, along with the transcript of the deposition. This notice would ask the witness to stipulate that the errors had occurred and agree to the corrections. If the witness would not make this stipulation, NHTSA would ask the presiding officer to have the record of the testimony reflect the dispute and show the NHTSA's version of the testimony as well as the version signed by the witness. The parties could then attempt to get an affidavit from the stenographer as to which version was most accurate, or take other steps to try to verify their version as the most accurate.

f. *Subsequent use of testimony.* Several commenters objected to the interim rule insofar as it provided that testimony obtained pursuant to NHTSA's information gathering authority may be "used in any investigation or administrative or judicial adjudicative proceeding." It was claimed that that agency could not and should not attempt to control what a Federal judge or an administrative law judge would admit into evidence in a proceeding before the judge. It was further stated that the absence of certain procedural rights in the investigational hearings, such as the right to cross-examine witnesses, would automatically preclude the use of the testimony in a subsequent adjudicative proceeding.

NHTSA obviously cannot control, nor did it seek to control, what a presiding judge will admit into the record of the proceeding over which he or she presides. The reason that this language appeared in the interim rule was to put respondents on notice that any information obtained under Part 510 could be considered and used by NHTSA in the manner it deems most appropriate, including *offering* such information into the record of an administrative or judicial proceeding. Whether such information would be allowed into the record is, of course, a decision which must be made by the presiding judge, in accordance with the applicable rules of evidence.

g. *Motions to modify, limit, or quash process.* A number of comments were received addressing motions to quash compulsory process. After a review of these comments, the agency has determined that the interim rule's provisions should be retained almost in their entirety.

Many commenters argued that the agency should expand the availability of these motions, so that a recipient of a general or special order could file a motion to modify, limit, or quash that process. Some of these commenters argued that NHTSA was required to permit these motions for general and special orders, if it chose to permit them for subpoenas. This issue was before the court in *United States v. Firestone Tire and Rubber Co., supra,* and the court held that the interim rule's provisions allowing motions to modify, limit, or quash subpoenas, but not allowing such motions for general or special orders, were legally acceptable. 455 F. Supp. at 1080.

As a practical matter, NHTSA issues general and special orders and written requests for the production of documents and things far more frequently than it does subpoenas. To require the Deputy Administrator to consider all of the possible objections to each of these forms of compulsory process would place an overwhelming burden on that office. Furthermore, the practice under interim Part 510 and before of not allowing formal objections to be filed to these types of compulsory process has worked very satisfactorily for both the agency and the respondents to its compulsory process. Given the acceptability of the present procedures and the fact that expansion of motions to quash to include all forms of compulsory process could readily be abused to delay compliance for frivolous and insubstantial reasons, the agency has determined that only subpoenas should be the subject of motions to modify, limit, or quash.

One commenter stated that respondents to the agency's compulsory process should be permitted to informally negotiate the terms of compliance

with that process. NHTSA believed that the opportunity for informal negotiation of the terms of compliance with process was implicit in the interim rule. However, the agency has no objection to modifying the final rule to state explicitly that informal negotiations as to the terms of compliance are permissible, so § 510.3 (f) now states that the Chief Counsel is authorized to negotiate the terms of compliance with any process issued under Part 510.

As set forth in this final rule, motions requesting some change to the terms of process will be decided by the Deputy Administrator. If the Deputy Administrator is not available, these motions will be decided by the Associate Administrator for Administration. In response to a comment, the final rule makes explicit what the agency had considered to be implicit in the interim rule; i.e., the Deputy Administrator is free to structure relief, through modifications or limitations of the subpoena, to achieve the resolution he or she believes is most appropriate. The final rule has also been modified to require that any motions to modify, limit, or quash process be filed not later than 15 days after service of the process or five days before the return date of that process, whichever is earlier, except in the rare event that the return date is less than five days after the service of the process. This requirement, similar to time limitations on these motions suggested in several comments, will eliminate last minute filings of these motions. The elimination of last minute filings will serve two important purposes. First, these motions will not be subject to abuse as a means of delaying compliance. Second, the prompt filing of these motions will facilitate more reasoned responses by the NHTSA to such motions.

It was suggested by many commenters that the filing of a motion to modify, limit, or quash should automatically toll the return date of the process. NHTSA has not adopted that suggestion, since any automatic tolling provision would be easily subject to abuse as a dilatory tactic. However, the agency will entertain requests to extend the return date of any process, and will consider such requests on the basis of the individual set of circumstances. The pendency of a good faith objection would be given due consideration.

One commenter suggested that the agency catalog the grounds upon which process can be modified, limited, or quashed. The rule has not been changed in this way, since the agency does not wish to foreclose any legitimate grounds for protesting some process. NHTSA will state that it believes that most objections will be based upon the alleged burdensomeness of the process, some assertion of privilege, or a question of the relevance of the information. However, this is not an exhaustive list of the possible objections, and any objections will be considered on their merits.

Many commenters objected to the provision that would have the Deputy Administrator deciding motions to quash. These commenters believed that the Deputy Administrator could not impartially decide these motions, because the process would have been issued by that individual, or with the concurrence of that individual or a superior, such as the Administrator. This situation was said to establish an institutional bias in favor of the validity of the process which, according to those commenters, violates the due process requirements of the Fifth Amendment.

NHTSA believes that this comment reflects a serious misunderstanding of the purpose of this agency level mechanism for considering objections to the compulsory process. This mechanism will not be and is not intended to be an adjudication of the rights of the affected parties. The due process rights to an impartial decisionmaker do not apply outside the context of a determination of the rights of the affected parties. The sole purpose of having an agency review of any objections is to provide a respondent with a means which guarantees that senior agency officials will consider any objections raised by respondents to compulsory process issued by this agency. This ensures that any position taken on the motion or objection is the final agency position. Given this purpose, it is perfectly proper to have an official as senior as the Deputy Administrator personally consider the respondent's objections and decide the validity thereof. Any respondent desiring a hearing which comports with the due process requirements and determines the rights of the respective parties can obtain this by resisting compulsory process and raising its objections in an enforcement action in a United States District Court.

h. *Duty to supplement responses to process.* Several comments were received relating to the duty to supplement responses to compulsory

process based on after-acquired information. The language in the interim rule which imposed the duty to supplement responses was taken almost verbatim from Rule 26 (e) of the Federal Rules of Civil Procedure, which requires that a response be supplemented when after-acquired information shows that the response was incorrect when made or the response, though correct when made, is no longer correct, and the failure to amend the response is a knowing concealment. Two basic objections were raised to this requirement. First, it was asserted that the duty to supplement was not limited by any time period, and would therefore impose a perpetual duty to provide the agency with information. The commenters stated that this result would be extremely burdensome to respondents while yielding minimal benefits to the agency, since much of the amended information would concern investigations which had been ended. These commenters pointed out that the duty imposed by the Federal Rules ends when the litigation ends.

NHTSA agrees with the commenters that the duty to supplement should not be open-ended. Accordingly, the final rule has modified the requirements of the interim rule to specify a limitation on the duty to supplement. If process is issued in connection with a rulemaking action or enforcement investigation, the duty to supplement terminates with the issuance of a final rule or termination of the rulemaking or with the closing of the investigation, respectively. In the case of process not issued in connection with a specific rulemaking action or enforcement investigation, the duty to supplement expires 18 months after the date of the response.

It should be noted that this amendment does not in any way diminish the agency's authority to specifically require a respondent to update some response after the duty under this part to supplement has expired. Further, the authority of the agency to require specific supplementation of responses while the general duty to supplement is in effect is not limited by that general duty.

The second basic objection to the duty to supplement as set forth in the interim rule concerned the burden imposed on respondents to correct "trivial" or "minor" errors. One commenter urged that the duty to supplement should be limited to instances where there is a "significant" change in the information originally given to NHTSA. The agency has not adopted this suggestion. Respondents are under a duty to give accurate responses to compulsory process. Errors which appear to be trivial or minor to a respondent exercising the utmost good faith may not be so judged by the agency in the context of all the information gathered by the agency. NHTSA believes that it must determine whether a change is trivial. This requirement does impose any significant added burden on respondents, because it should typically be easier for a respondent to write down the changed information and send it to NHTSA than to inform a responsible agency official of the change and have him or her examine the change to determine whether it can properly be deemed trivial. Since there is little additional burden imposed in requiring the change to be submitted to the agency and the information is necessary for NHTSA to properly perform its function of evaluating the significance of the change, the final rule does not limit the duty to supplement as suggested.

One frequent comment of the duty to supplement was that it would be extremely burdensome for the respondents to constantly check their responses for accuracy, even if the requirement were not open-ended. NHTSA disagrees with this assertion. The duty to supplement can be wholly satisfied by checking on a periodic basis with the sources within respondent having knowledge of the area to determine whether any new facts or information have arisen which might trigger a duty to supplement. If there are such new facts or information the respondent promptly informs the agency about them. NHTSA agrees that this creates some burden for respondents, but does not agree that the burden is excessive or substantial. Moreover, NHTSA notes that much of the factual information which is subject to change, such as reports of warranty claims, is compiled for the respondents' own purposes on a regular basis. In those cases, the duty to supplement will be readily satisfied by making the update promptly available to the agency.

i. *Confidentiality of information.* Great concern was expressed over the confidentiality of alleged trade secret and confidential business information obtained by the agency by using its information gathering powers. NHTSA has published a notice of proposed rulemaking on this general subject entitled Part 512, *Confidential business*

information; 43 FR 22412, May 25, 1978. That notice proposes a detailed scheme for the treatment of confidential business information received by NHTSA. The agency anticipates that the final rule on this subject will soon be published. When Part 512 is published, its requirements will supersede those set forth in § 510.3 (e). Until that time, however, NHTSA will follow the procedures set forth in § 510.3 (e) for handling and evaluating allegedly confidential information obtained by the use of compulsory process. That paragraph provides that any claims for confidentiality must be made in writing, that information for which confidential treatment is requested will be kept confidential until the confidentiality claim is evaluated, and that the agency will afford reasonable advance notice to the submitter of the information of the contemplated release of any information for which the submitter requested confidential treatment.

j. *Fees.* Several comments were received addressing the issue of compensation by NHTSA of persons or entities for expenses incurred in connection with the responses to the agency's compulsory process. One commenter suggested that the agency make explicit that the term "person", as used in the section which provides reimbursement for the travel expenses of "persons" subpoenaed to testify at hearings, includes officers, agents, and employees of corporations. NHTSA has amended the rule to state that the term "person" as used in this and all other sections of the rule includes agents, officers, and employees of corporations in their individual capacities.

One commenter stated that a witness compelled to testify orally before the agency should not be required to pay for a copy of his or her testimony. The agency still finds it reasonable to require a person who wishes to retain a copy of his or her testimony at either an information gathering hearing or an administrative deposition to pay for that copy in most circumstances.

Copies of transcripts will be furnished without charge or at a reduced charge if the Associate Administrator for Administration determines that a waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefitting the general public.

Any witness has the right to inspect the transcript of his or her testimony at no charge, and a provision is made in connection with administrative depositions for the submission of a copy of the witness's testimony to that witness for his or her signature. Hence, NHTSA does not believe that there is any financial barrier to the opportunity of any witness to thoroughly review his or her testimony.

Several commenters stated that respondents to compulsory process should be reimbursed completely for their expenses incurred in complying with the process. The agency does not believe that complete reimbursement is appropriate. First, it must be noted that the provision for reimbursement contained in NHTSA's authorizing statutes allows the agency to pay witnesses the same mileage and fees that can be paid witnesses in the courts of the United States. *See* section 112 (c) (5) of the Safety Act, 15 U.S.C. 1401 (c) (5) and sections 104(a) (5), 204 (e), 414 (c) (5), and 505 (b) (3) of the Cost Savings Act, 15 U.S.C. 1914 (a) (5), 1944 (e), 1990d (c) (5), and 2005(b) (3). Part 510.11 of this rule expressly authorizes the payment of these fees.

NHTSA recognizes that the expense associated with complying with compulsory process is a major component of the burdensomeness of that process. The question, however, is whether an *undue* burden is imposed. If respondents believe the burden to be undue, they can file a motion with NHTSA to quash the process and can litigate this issue if the agency does not resolve it to their satisfaction.

k. *Remedies for failure to comply with compulsory process.* Several commenters made strenuous objection to the provision of the interim rule which allows the agency to seek civil penalties against a respondent which fails to comply with NHTSA's compulsory process. The arguments made were basically that the availability of civil penalties for failure to comply was not contemplated or authorized by the Cost Savings Act or the Safety Act, and that if the penalties were authorized, that authorization would be unconstitutional. NHTSA rejects these contentions for the reasons set forth below.

There were two primary arguments raised to support the view that the agency does not have the authority to seek the imposition of civil penalties

for a failure to comply with compulsory process. First, it was asserted that the authorizing statutes provide judicial enforcement of compulsory process in a United States District Court as an exclusive remedy for the failure to comply with compulsory process. With respect to Titles I, II, and IV of the Cost Savings Act, this assertion is plainly inaccurate. Sections 106 (a) (3), 206(1), and 416 of the Cost Savings Act (15 U.S.C. 1916(a) (3), 1946 (1), and 1990 (f) state that no person shall fail to provide the information requested by the agency. A violation of this prohibition subjects the violator to civil penalties, which shall be assessed by the agency. Sections 107 (a), 208 (a), and 412 (a) of the Cost Savings Act; 15 U.S.C. 1917 (a) 1948 (a) and 1990b (a).

The commenters specifically pointed to the fact that the Safety Act at section 112 (c) (4), 15 U.S.C. 1401 (c) (4), and Title V of the Cost Savings Act at section 505 (c) (2), 15 U.S.C. 2005 (c) (2), provide that the agency may seek judicial enforcement in the case of a failure to respond to compulsory process. However, the commenters did not point out that the respective Acts also authorize the agency to impose civil penalties for a failure to comply with any "rule, regulation, or order" issued under the information gathering authority contained in that title; section 108 (a) (1) (E) and 109 (a) of the Safety Act, 15 U.S.C. 1397 (a) (4) and 1398 (a), and section 507 (3) and 508 of the Cost Savings Act, 15 U.S.C. 2007 (3) and 2008. No commenter cited any language in the statutes themselves or the relevant legislative history which states that judicial enforcement was intended to be the exclusive remedy for a failure to comply.

NHTSA believes that the availablity of civil penalties for a failure to comply with compulsory process is a necessary complement to judicial enforcement. If judicial enforcement were the sole remedy for failure to comply with the agency's compulsory process, a respondent could always fail to comply with the agency's compulsory process until such time as the agency began a judicial enforcement proceeding. Then, at any time before the court entered its order compelling compliance with agency process, the respondent could comply with the order, thereby mooting the enforcement action. Any respondent would have available to it a penalty-free mechanism for delaying compliance with NHTSA's compulsory process. There is no indication that Congress intended or sanctioned such a mechanism. Considering "the vital importance of information gathering to the successful implementation of the Act," H.R. Rep. 93-1191, 93 Cong., 2d Sess. at 37, and the absence of any indication whatsoever that judicial enforcement was to be the sole remedy, NHTSA is not persuaded by this argument.

The second argument raised to support the view that the agency lacks authority to impose civil penalties was that subpoenas and general and special orders were not "orders" within the meaning of section 108 (a) (1) (E) of the Safety Act and section 507 (3) of the Cost Savings Act, the violation of which can give rise to civil penalties. The argument is that subpoenas are not "orders", because both statutes discuss "order" and "subpoena" in the disjunctive. Since a subpoena is not an order, the argument concludes that general and special orders are not "orders" either, because general and special orders are the functional equivalent of subpoenas.

This argument is not convincing. It is a well established and accepted rule of statutory construction that the words of a statute are to be given their common meaning, absent some indication of a contrary legislative intent. 2A Sutherland, Statutory Construction, § 47.28 and the cases cited therein (4th ed. 1973). The word "order" is defined in *Webster's Second International Dictionary* as "a rule or regulation made by competent authority; also a command; mandate; precept; direction". The *Oxford English Dictionary* defines "order" as "an authoritative direction, injunction, mandate; a command, oral or written; an instruction." It is obvious that both subpoenas and general and special orders fall within this common meaning of the word "order", and that the Acts must be construed in that manner unless there is a contrary legislative intent.

The only authority which has been cited by a commenter to show a contrary intent is the language in Section 112 (c) (4) of the Safety Act, and section 505 (b) (2) of the Cost Savings (called "the judicial enforcement sections" for the rest of this discussion) giving the district court of the United States authority to compel compliance with any subpoena or order issued by NHTSA. General and special orders are specifically referred to as "orders" in these judicial enforcement sections.

Sections 108 (a) (1) (E) and 109 of the Safety Act and 507 (3) and 508 of the Cost Savings Act (called the civil penalty sections for the rest of this discussion) give NHTSA authority to impose civil penalties for the violation of any "rule, regulation, or order". There is no reason to believe that the "order" referred to in the civil penalty sections does not include the forms of process included within the meaning of "order" in the judicial enforcement sections. Congress has shown its intent that the violation of general and special orders issued by NHTSA would subject the violator to possible civil penalties.

The reference to subpoenas and orders in the disjunctive occurs in the judicial enforcement sections, which provide that compliance with a subpoena or an order can be mandated by a court. NHTSA's authority to issue subpoenas and general and special orders comes from two different grants of authority, and so it is grammatically necessary to use the disjunctive to indicate that compliance with either can be mandated by a court. There is, however, no indication in the Acts or the legislative history that Congress intended for subpoenas and general and special orders to be enforced differently. Indeed, the judicial enforcement sections treat these forms of process identically for enforcement purposes. Accordingly, the agency concludes that the use of the disjunctive in the judicial enforcement sections is not by itself a sufficient showing of a Congressional intent that subpoenas not be included within the meaning of "order" as that term is used in the civil penalty section, and so Congress intended that the word "order" as used in the civil penalty sections have its common meaning. The common meaning embraces all compulsory process issued by NHTSA, whether general or special orders, subpoenas, or written requests for the production of documents and things.

The commenters raised two Constitutional arguments in support of the position that the civil penalties could not be imposed for failure to comply with the agency's compulsory process. The first argument was that the agency could not constitutionally impose civil penalties, since this self-enforcement would give judicial power to NHTSA, a grant Congress could not make. One commenter was concerned that NHTSA was trying to set up a procedure where the agency could hold a respondent in contempt. NHTSA has never intended to hold a non-complying respondent in contempt of the agency, and the interim rule contained no such provision. To enforce and collect any civil penalty will require the agency to bring an action in a United States District Court, requesting the court to enforce the penalty. No question of self-enforcement arises in connection with this procedure.

A more complex issue was raised by commenters in the second Constitutional argument, which was that a party desiring to mount a good faith challenge to the validity of compulsory process issued by the agency could do so only by refusing to comply with that process. If the agency were to impose a penalty for this refusal, the argument runs, the respondent would have had a penalty imposed on it for exercising its right to have a judicial review of the validity of the process.

NHTSA agrees with the commenters' assertion that there is a due process right to contest the validity of a legislative or administrative order without having to pay substantial penalties if the suit is lost. However, this right does not mean that penalties begin to accrue only upon a final judgment in NHTSA's favor. In *St. Regis Paper Co. v. United States,* 368 U.S. 208 (1961), the FTC had ordered a company to file special reports with that agency. Section 10 of the Federal Trade Commission Act, 15 U.S.C. 50, specified a penalty of $100 for each day a special report was overdue. The company challenged this provision of the Act, alleging that it had been denied its day in court to challenge the validity of the underlying order to file special reports. The company alleged that, in effect, the order was not judicially reviewable except if the company paid the civil penalty, and that this scheme violated the due process requirements.

The Supreme Court found this penalty scheme to be consistent with due process, because the petitioner had an opportunity for judicial review without having to pay the penalty. Specifically, the Court found that the company could have filed an action for declaratory judgment and a concurrent motion to stay the effective date of the FTC order pending a ruling by the court on the validity of the order. This opportunity for review is sufficient to satisfy the requirements of due process. 368 U.S. at 225–227.

This reasoning has been applied to the civil penalty provisions for failure to comply with a NHTSA order requiring a manufacturer to furnish notification of a defect to owners, purchasers, and dealers, and to remedy the defect without charge, as specified in section 152 of the Safety Act (15 U.S.C. 1412). In *Ford Motor Co. v. Coleman,* 402 F. Supp. 475 (D.D.C. 1975) *aff'd,* 425 U.S. 927 (1976); it was asserted that this statutory provision violated the due process rights of the manufacturer by forcing the manufacturer to either comply with an erroneous order or risk a substantial civil penalty if it lost its challenge to the order. The court stated that this statutory provision did not offend due process rights, since a manufacturer which could present a substantial, nonfrivolous challenge to the validity of NHTSA's determination could obtain a preliminary injunction against the enforcement of the order. The court would have jurisdiction to issue a temporary order restraining the imposition of the penalties pending its determination of the motion for preliminary injunction, and to issue a preliminary injunction that would stay the accrual of penalties until the completion of the *de novo* enforcement proceedings in district court on the underlying order. The civil penalties would begin accumulating against the manufacturer only if the manufacturer could not convince the court to issue a preliminary injunction, i.e., if the manufacturer could not show that it had reasonable and substantial grounds for contesting the order. According to the opinion, the due process right to a judicial determination of the validity of the order does not require that a manufacturer be permitted to press a frivolous or insubstantial objection without risk of a penalty.

Several commenters cited *Reisman v. Caplin,* 375 U.S. 440 (1964) as authority for the proposition that the civil penalty scheme as set forth in the interim rule would violate due process rights. That case involved an order by the Commissioner of Internal Revenue to a taxpayer to furnish certain documents. The taxpayer contended that since he had to risk a large fine and imprisonment for not complying with the order, he had been effectively denied the due process right to a judicial review of the validity of the order. The Court disagreed with this contention, stating that the statute authorizing civil and criminal penalties for failure to comply with an order must be read so as not to apply while a respondent is making a good faith challenge to the validity of the order. In this agency's opinion, this reasoning is identical to that used in *St. Regis, supra,* and *Ford Motor Co. v. Coleman, supra.* The civil penalty provisions in the interim rule do not restrict the right of a respondent to process to obtain a judicial review of the validity of that process without a civil penalty, if the challenge is not insubstantial. Since this complies with the requirements of due process, no change has been made to the civil penalty section of this rule from what was set forth in the interim rule.

In consideration of the foregoing, Chapter V of Title 49, Code of Federal Regulations is amended by adding a new Part 510, *Information Gathering Powers,* to read as set forth below.

The attorney principally responsible for the development of this final rule is Stephen Kratzke.

Issued on April 28, 1980.

Joan Claybrook
Administrator

45 F.R. 29032
May 1, 1980

PREAMBLE TO AN AMENDMENT TO PART 510
INFORMATION GATHERING POWERS

ACTION: Final Rule.

SUMMARY: This Notice incorporates a delegation of authority to the Deputy Administrator and, in the absence of the Administrator and the Deputy Administrator, to the Managing Director to exercise all authority lawfully vested in the Administrator and reserved to him or her, except where specifically limited by law, order, regulation or instruction. This Notice also makes technical revisions to the agency's organization and delegation rules, including the correction of legal citations, updating to reflect recent statutory enactments, and inclusion of materials which had been inadvertently omitted in previous printings of the Code of Federal Regulations.

DATE EFFECTIVE: July 12, 1988.

SUPPLEMENTARY INFORMATION: Due to internal reorganization, the National Highway Traffic Safety Administration is amending its delegation of authority to allow the Deputy Administrator to exercise, in the Administrator's absence, those authorities previously reserved to the Administrator and to allow the Managing Director to exercise those authorities previously reserved to the Administrator in the absence of both the Administrator and the Deputy Administrator.

Additionally, because of internal agency reorganization, the position of Executive Secretary is retitled the Director of the Executive Secretariat and is assigned the functions previously delegated to the Executive Secretary, with the exception of subpoena authority. This authority is transferred from the Director of the Executive Secretariat to the Chief Counsel.

The amendment set forth below relates solely to the organization and assignment of duties within the agency, and has no substantive regulatory effect. Thus, it is not covered by the notice and comment and effective date requirements of the Administrative Procedure Act or the requirements of Executive Order 12291 or the Department of Transportation's regulatory policies and procedures. Notice and public procedure are, therefore, not required, and the amendment may be made effective in less than thirty days after publication.

Section 510.4 is revised to read as follows:

510.4 Subpoenas, generally.

NHTSA may issue to any person, sole proprietorship, partnership, corporation, or other entity a subpoena requiring the production of documents or things (subpoena duces tecum) and testimony of witnesses (subpoena as testificandum), or both. relating to any matter under investigation or the subject of any inquiry. Subpoenas are issued by the Chief Counsel. Then a person, sole proprietorship, partnership, corporation, or other entity is served with a subpoena ad testificandum under this part, the subpoena will describe with reasonable particularity the matters on which the testimony is required. In response to a subpoena ad testificandum, the sole proprietorship, partnership, corporation, or other entity so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and set forth, for each person designated, the matters on which he or she will testify. The person so designated shall testify as to matters known or reasonably available to the entity.

Diane K. Steed
Administrator

53 F.R. 26257
July 12, 1988

PART 510—INFORMATION GATHERING POWERS

§ 510.1 Scope and purpose.

This rule governs the use of the information gathering powers of the National Highway Traffic Safety Administration contained in section 112 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended 15 U.S.C. 1401, and sections 104, 204, 414, and 505 of the Motor Vehicle Information and Cost Savings Act, as amended 15 U.S.C. 1914, 1944, 1990d, and 2005.

§ 510.2 Definitions.

(a) "NHTSA" means the National Highway Traffic Safety Administration.

(b) "Administrator" means the Administrator of the National Highway Traffic Safety Administration.

(c) "Chief Counsel" means the Chief Counsel of the National Highway Traffic Safety Administration.

(d) "Deputy Administrator" means the Deputy Administrator of the National Highway Traffic Safety Adminstration.

(e) "Person" includes agents, officers, and employees of sole proprietorships, partnerships, corporations, and other entities.

§ 510.3 Compulsory process, the service thereof, claims for confidential treatment, and terms of compliance.

(a) NHTSA may use any of the following means to conduct investigations, inspections, or inquiries to obtain information to carry out its functions under the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 15 U.S.C. 1381 *et seq.*, and the Motor Vehicle Information and Cost Savings Act, as amended, 15 U.S.C. 1901 *et seq.:*

(1) Subpoenas;

(2) Information gathering hearings;

(3) Administrative depositions;

(4) General or special orders; and

(5) Written requests for the production of documents and things.

(b) A person, sole proprietorship, partnership, corporation, or other entity served with compulsory process under this part shall be provided with the following information at the time of the service—

(1) The name of the person, sole proprietorship, partnership, corporation, or other entity to which the process is addressed;

(2) The statutory provision under which the compulsory process is issued;

(3) The date, time, and place of return;

(4) A brief statement of the subject matter of the investigation, inspection, or inquiry; and

(5) In the case of a subpoena *duces tecum* or a written request for the production of documents and things, a reasonably specific description of the documents or things to be produced.

(c) Service of the compulsory processes specified in paragraph (a) of this section is effected:

(1) By personal service upon the person, agent-in-charge, or agent designated to receive process under 15 U.S.C. 1399 (e) of the sole proprietorship, partnership, corporation or other entity being investigated, inspected, or inquired of; or

(2) By mail (registered or certified) or delivery to the last known residence or business address of such person or agent.

(d) The date of service of any compulsory process specified in paragraph (a) of this section is the date on which the process is mailed by the agency, or delivered in person, as the case may be. Whenever a period is prescribed for compliance with compulsory process, and the process is served upon the party by mail, 3 days are added to the period.

(e)(1) Any person, sole proprietorship, partnership, corporation, or other entity submitting information or producing documents or things in response to any compulsory process issued under this part may request confidential treatment for all or part of that information or for those documents or things.

(2)(A) Except as provided in paragraph (e)(2)(B) of this section, requests for confidentiality shall be in writing, and addressed to the Chief Counsel.

(B) Requests for confidentiality made during an information gathering hearing or an administrative deposition may be made orally to the presiding officer. Any oral request for confidentiality shall be supplemented by a written request, and this written request must be addressed to the Chief Counsel and received by NHTSA within five days of the date of the oral request.

(C) A written request for confidentiality under paragraph (e) of this section shall specify the information, documents, or things which are to be kept confidential, specify the grounds upon which the claim is based, provide such information as may be necessary to permit the NHTSA to determine whether the claim is valid, and specify the period of time for which confidential treatment is requested.

(f) The Chief Counsel, or his or her delegate, is authorized to negotiate and approve the terms of satisfactory compliance with any compulsory process issued under this part.

§ 510.4 Subpoenas, generally.

NHTSA may issue to any person, sole proprietorship, partnership, corporation, or other entity a subpoena requiring the production of documents or things (subpoena *duces tecum)* and the testimony of witnesses (subpoena *ad testificandum),* or both, relating to any matter under investigation or the subject of an inquiry. Subpoenas are issued by the [Chief Counsel]. When a person, sole proprietorship, partnership, corporation, or other entity is served with a subpoena *ad testificandum* under this part, the subpoena will describe with reasonable particularity the matters on which the testimony is required. In response to a subpoena *ad testificandum,* the sole proprietorship, partnership, corporation, or other entity so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and set forth, for each person designated, the matters on which he or she will testify. The person so designated shall testify as to matters known or reasonably available to the entity. **[53 F.R. 26257—July 12, 1988. Effective: July 12, 1988.]**

§ 510.5 Information gathering hearings.

(a) NHTSA may issue a subpoena to compel any person, sole proprietorship, partnership, corporation, or other entity to provide information at an information gathering hearing. The subpoenas are used for the purpose of obtaining testimony from a witness under oath and obtaining relevant documents and things. The Administrator, or a NHTSA employee designated by the Administrator, presides at the hearing. Information gathering hearings are open to the public unless the presiding officer rules otherwise, and the hearings are stenographically reported.

(b) In addition to the presiding officer, one or more other persons may comprise the panel. Each member of the panel may question any witness at the hearing. No person who is not a member of the panel may ask questions of a witness. However, any person may submit to the panel, in writing, proposed questions to be asked of a witness. A member of the panel may pose these questions to the witness if that member deems the questions useful and appropriate. Proposed questions may be submitted to the panel at any time before or during the course of the hearing.

(c) The stenographic record of each witness's testimony will be available to the public, unless the testimony was not given publicly and the witness requests confidential treatment for some or all of his or her testimony. When an oral request for confidential treatment is made during the course of a witness's testimony, the presiding officer may order the hearing closed to the public at that point and continue the questioning of the witness, or may note the request for confidentiality and direct the witness not to answer the question at that time, but require the witness to answer the question in writing within some specified period, or take such other action as the presiding officer deems appropriate. If a request for confidential treatment is made, the release of the record is governed by the applicable laws or regulations relating to the handling of allegedly confidential information. To the extent that some or all of a witness's testimony is not publicly available, that witness may procure a copy of his or her testimony as recorded upon payment of lawfully prescribed costs.

(d)(1) Any person who is required by subpoena or designated by an entity that is required by subpoena to provide information at an information gathering hearing conducted under this section may be accompanied, represented, and advised by counsel. Any member of the bar of a Federal court or the courts of any State or Territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, and any representative, official, or employee of the sole proprietorship, partnership, corporation or other entity under subpoena may act as counsel.

(2) A witness appearing in response to a subpoena my confer in confidence with his or her counsel or representative concerning any questions asked of the witness. If such witness, counsel, or representative objects to a question, her or she shall state the objection and basis therefor on the record

(e) The presiding officer at an information gathering hearing takes all necessary action to regulate the course of the hearing, to avoid delay, and to assure that reasonable standards of orderly and ethical conduct are maintained. In any case in which counsel for or a representative of a witness has refused to comply with the presiding officer's directions, or to adhere to reasonable standards of orderly and ethical conduct in the course of a hearing, the presiding officer states on the record the reasons given, if any, for the refusal and, if the presiding officer is someone other than the Administrator, immediately reports the refusal to the Administrator. The Administrator thereupon takes such action as the circumstances warrant.

(f) Where appropriate, the procedures established in this subsection may be utilized in informal hearings conducted by NHTSA pursuant to its authority under sections 152 and 156 of the Safety Act (15 U.S.C. 1412, 1416) to receive data, views and arguments concerning alleged safety-related defects. The rights accorded to witnesses in this subsection may also be accorded to witnesses who appear voluntarily at such hearings.

§ 510.6 Administrative depositions.

(a) NHTSA may issue a subpoena to compel any person, sole proprietorship, partnership, corporation or other entity to provide information as a witness at an administrative deposition. These depositions are for the purpose of obtaining information from the witness under oath and receiving documents and things relevant to an agency investigation. These depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the deposition is taken. Unless otherwise ordered by the Administrator, administrative depositions are closed to the public.

(b) Any person who is required by subpoena or designated by an entity that is required by subpoena to produce documents or things or to give testimony as a witness at an administrative depostion conducted under this section may be accompanied, represented, and advised by counsel. Any member of the bar or a Federal court or the courts of any State or Territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia and any representative, official, or employee of the person, sole proprietorship, partnership, corporation, or other entity under subpoena may act as counsel.

(c) During an administrative deposition:

(1) The presiding officer before whom the deposition is to be taken puts the witness on oath and personally, or by someone acting under his or her direction and in his or her presence, records the testimony of the witness. The testimony is stenographically reported.

(2) After NHTSA has examined the witness at the deposition, that witness's counsel or representative may examine the witness. NHTSA may then reexamine the witness and the witnesses' counsel or representative may reexamine the witness and so forth, as appropriate.

(3) A witness appearing in response to a subpoena may confer in confidence with his or her counsel or representative concerning any questions asked of the witness. If such witness, counsel, or representative objects to a question, he or she shall state the objection and the basis therefor on the record.

(4) Objections to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, and any other objection to the proceedings shall be noted by the officer on the record, and shall be treated as continuing. Evidence objected to shall be taken subject to the objections. Errors and irregularities occurring at a deposition in the manner of the taking of the deposition, in the form of questions or

answers, or in the oath or affirmation, and errors of any kind which might be obviated, removed, or cured if promptly presented shall be deemed to be waived unless reasonable objection is made thereto at the taking of the deposition.

(5) If the witness refuses to answer any question or answers evasively, or if the witness or his or her counsel engages in conduct likely to delay or obstruct the administrative deposition, such refusal, evasive answer or conduct shall be a failure to comply with the subpoena issued to the witness.

(6) Upon completion of the examination of a witness, the witness may clarify on the record any of his or her answers.

(d) The transcript of the testimony of a witness who testified in response to a subpoena at an administrative deposition is submitted to the witness for signature, unless the witness waives the right to sign the transcript. If a witness desires to make any changes in the form or substance contained in the transcript, the witness shall submit, together with the transcript, a separate document setting forth the changes and stating the reasons for such changes. If the deposition is not signed by the witness within 30 days of its submission to the witness, or such other period as the NHTSA may designate, the officer before whom the deposition was taken or a NHTSA employee signs the transcript and states on the record the fact of the waiver of the right to sign or the fact of the witness's unavailability or inability or refusal to sign together with the reasons, if any, given therefor.

(e) The transcript of the testimony of a witness will be inspected by NHTSA to determine if there are any errors in the transcription of the questions posed to the witness and the testimony in response to those questions. If NHTSA discovers any errors, it notes that fact and forwards the notation of errors together with the transcript to the witness, requesting the witness to stipulate that the transcript is in error and that the corrections made by NHTSA are accurate. If the witness will not make this stipulation, NHTSA may make a motion to the presiding officer to include its notation of error and its corrections in the record along with the version of the testimony signed by the witness.

(f)(1) Upon payment of lawfully precribed costs, any person who is required by subpoena or designated by a sole proprietorship, partnership, corporation, or other entity that is required by subpoena to appear as a witness at an administrative deposition may procure a copy of the deposition as recorded, except that in a nonpublic investigatory proceeding, the witness may, for good cause, be limited to an inspection of the record of the deposition.

(f)(2) A copy of the record of the deposition may be furnished to the witness without charge or at a reduced charge if the Associate Administrator for Administration determines that waiver of the fee is in the public interest because furnishing the copy can be considered as primarily benefitting the general public. Any witness who seeks a waiver of the copying charge may apply in writing to the Associate Administrator for Administration, and shall state the reasons justifying waiver of the fee in the application.

(g) The testimony obtained in an administrative deposition may be used or considered by the NHTSA in any of its activities, and may be used or offered into evidence in any administrative proceeding in accordance with the provisions of 5 U.S.C. 554, or in any judicial proceeding.

§ 510.7 General or special orders.

The NHTSA may require by the issuance of general or special orders any person, sole proprietorship, partnership, corporation, or other entity to file with the NHTSA, in such form as NHTSA may prescribe, periodic or special reports or answers in writing to specific questions. The responses to general or special orders will provide NHTSA with such information as it may require, including, but not limited to, information relating to the organization of that person, sole proprietorship, partnership, corporation, or other entity, its business, conduct, practices, management, and relation to any other person or entity. General or special orders which are required to be answered under oath are issued by the Chief Counsel. Any general or special order issued under this section contains the information specified in section 510.3 (b). Reports and answers filed in response to general or special orders must be made under oath, or otherwise, as NHTSA may prescribe.

§ 510.8 Written requests for the production of documents and things.

The NHTSA may, by the issuance of a written request for the production of documents and

things, require any person, sole proprietorship, partnership, corporation, or other entity to produce documents or things. A written request for the production of documents and things may be issued alone, or as a part of a general or special order issued under section 510.7. Written requests for the production of documents and things are issued by the Chief Counsel. Any written request for the production of documents and things issued under this section shall contain the information specified in section 510.3(b).

§ 510.9 Motions to modify, limit, or quash process.

(a)(1) Any person, sole proprietorship, partnership, corporation, or other entity served with a subpoena issued under section 510.4 may file with the Deputy Administrator a motion to modify, limit, or quash that subpoena. If there is no Deputy Administrator, or the Deputy Administrator is not available, such motions shall be filed with and decided by the Associate Administrator for Administration. A motion to modify, limit, or quash must be filed not later than 15 days after the service of the process or five days before the return date specified in the process, whichever is earlier, except that, if the process is served within five days of its return date, such motion may be filed at any time before the return date. Any motion must set forth the grounds and theories of why and how the party believes the process should be modified, limited, or quashed and must contain all facts and arguments which support those grounds and theories.

(2) The Deputy Administrator may, upon receiving a motion filed pursuant to paragraph (a)(1) of this section—

(A) Deny the motion;

(B) Modify the return date of the subpoena;

(C) Modify, limit or quash the subpoena;

(D) Condition granting the motion upon certain requirements; or

(E) Take any other action he or she believes to be appropriate in the circumstances.

(3) The Office of the Deputy Administrator serves the decision on the motion on the moving party or the counsel or representative of the moving party. This service may be made by personal service, by registered or certified mail, or by reading a copy of the decision to the moving party or the counsel or representative of the moving party.

(4) A denial of any motion properly filed under this section shall be in writing, and shall contain a brief statement of the facts involved and the conclusions drawn from those facts by the Deputy Administrator.

(b) The Deputy Administrator's decision on the motion to modify, limit, or quash, filed under paragraph (a) of this section is not subject to reconsideration by NHTSA.

§ 510.10 Supplementation of responses to process.

(a) A person, sole proprietorship, partnership, corporation, or other entity which has provided NHTSA with information under this part, which information was complete and accurate at the time the information was given to NHTSA, is not required to supplement that information in the light of after acquired information, except:

(1) The person or entity to whom the process is addressed shall supplement the response with respect to any question directly addressed to the identity and location of persons having knowledge of information obtainable under this part.

(2) The person or entity to whom the process is addressed shall seasonably amend a prior response if that person or entity obtains information upon the basis of which the person or entity knows that response was incorrect when made or the person or entity knows that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(b) The requirement to supplement information set forth in paragraph (a) of this section terminates when:

(1) The compulsory process stated that it was issued in connection with a contemplated rulemaking action, and a final rule is issued on that subject or a notice is issued announcing that the rulemaking action has been suspended or terminated.

(2) The compulsory process stated that it was issued in connection with an enforcement investigation, and the investigation is closed.

(3) The compulsory process does not state that it is issued in connection with a specific rulemaking action or enforcement investigation, and 18 months have passed since the date of the original response.

(c) This section in no way limits NHTSA's authority to obtain supplemental information by specific demands through the means specified in section 510.3.

§ 510.11 Fees.

Any person compelled to appear in person in response to a subpoena issued under this part at an information gathering hearing or an administrative deposition is paid the same attendance and mileage fees as are paid witnesses in the courts of the United States, in accordance with Title 28, United States Code, Section 1821.

§ 510.12 Remedies for failure to comply with compulsory process.

Any failure to comply with compulsory process authorized by law and issued under this part is a violation of this part. In the event of such failure to comply, NHTSA may take appropriate action pursuant to the authority conferred by the National Traffic and Motor Vehicle Safety Act or the Motor Vehicle Information and Cost Savings Act, as appropriate, including institution of judicial proceedings to enforce the order and to collect civil penalties.

45 F.R. 29032
May 1, 1980

PREAMBLE TO PART 511—ADJUDICATIVE PROCEDURES

(Docket No. 78-15; Notice 2)

ACTION: Final rule.

SUMMARY: This rule establishes procedures that will be followed in adjudications to enforce Title V of the Motor Vehicle Information and Cost Savings Act (dealing with automotive fuel economy). These regulations supersede interim regulations established in 1978. They are necessary to carry out the authority vested in the Secretary of Transportation to enforce the automotive fuel economy standards, gas mileage guide availability, reporting, and other requirements of that title and regulations established thereunder. These regulations are intended to enable a full, fair, and expeditious hearing in all cases of alleged violations of these requirements.

DATE: This regulation is effective 30 days after its publication in the *Federal Register.*

FOR FURTHER INFORMATION CONTACT:
Roger Fairchild, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 426-2992.

SUPPLEMENTARY INFORMATION: On October 6, 1978, in 43 FR 47507, the National Highway Traffic Safety Administration (NHTSA) established interim procedures for conducting enforcement proceedings under Title V of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2001 *et seq.* Because of the anticipated need to have enforcement procedures in place as soon as possible and because of the procedural nature of the rules, the interim procedures were made effective 30 days after their publication. See 5 U.S.C. 553(b). Although the use of notice and comment rulemaking procedures was not legally required to establish these rules, the agency deemed it desirable to obtain the views of interested individuals and organizations on the procedures. Therefore, NHTSA included an invitation in the preamble to the interim procedures for the public to comment on those procedures while they were in effect to assist in developing a final rule.

Only limited comment was received on the interim procedures. The only detailed comments submitted were those of the Motor Vehicle Manufacturers' Assocation (MVMA). Ford Motor Company and General Motors submitted brief comments which incorporated and reiterated the comments of MVMA. No automobile dealers (who are potentially subject to the regulations), dealer organizations, public interest groups, or other individuals or organizations commented on the interim procedures. The comments received expressed general approval for the interim procedures, suggesting only relatively minor revisions.

Therefore, the agency is establishing final adjudicative procedures for fuel economy-related cases, with only minor differences from the interim procedures. A detailed discussion of the features of the selected procedures is contained in the preamble to the interim procedures and will not be repeated here. Generally, the rule established full, trial-type procedures in accordance with sections 554, 556, and 557 of Title V of the United States Code (the Administrative Procedure Act), due to the requirement in section 508(a) (2) of the Cost Savings Act for a hearing "on the record" in fuel economy enforcement cases. The specific procedures adopted were based largely on those employed by the Consumer Product Safety Commission (16 CFR Part 1025) and the Federal Rules of Civil Procedure. Departures from those models have been made in certain instances to accommodate specific requirements under the Cost Savings Act.

Most Significant Changes to the Interim Procedures

The most significant change to the interim procedures is the deletion of a "two-tier" system (interveners and non-party participants) for participation in enforcement hearings by individuals or organizations other than the agency and the respondent, in favor of a single "participant" status. Also, some changes are made to the language used in certain areas of the regulation (particularly with respect to discovery) to make the language more consistent with the Federal Rules of Civil Procedure. The final procedures also recognize the privileged status of attorney's "work product" with respect to the discovery process.

Comments Received on the Interim Procedures

The first point raised by MVMA and GM relates to the issue of whether the assessment of civil penalties for each day of violations of section 507(3) of the Act should run from the time of the alleged illegal conduct or from the end of the required hearing on the alleged violation. This issue was not addressed in the interim procedures. In the case of a refusal by a manufacturer to respond to a special order issued under section 505(b) of the Act, for example, the commenters would argue that civil penalties of up to the authorized $10,000 per day should not begin accruing until after the completion of a hearing, rather than from the date on which the response to the order was due. MVMA bases its argument on its interpretation of the relevant statutory language and on constitutional due process guarantees. Specifically, MVMA argues that, under the Act, no violation has occurred until there has been a complete adjudication.

The agency cannot accept these arguments. MVMA strains the meaning of the term "violation" by attempting to make the completion of an adjudication an element of the unlawful conduct. Section 507(3) specifies the conduct which is to be considered unlawful as "the failure of any person (A) to comply with any provision of this part applicable to such person. . . ." The requirement for a public hearing established in section 508(a)(2) is a prerequisite to the assessment of civil penalties, but if, after the completion of the hearing, the agency's view that a violation has occurred is vindicated, then penalties may properly be assessed for each day since the violation (i.e., unlawful conduct) first occurred. Any other reading of the statute would encourage those subject to the requirements of the Act to delay in complying with those requirements.

MVMA's argument is essentially identical to the one it made with respect to the agency's interim rule on Information Gathering Powers, 42 FR 64628, December 27, 1977, and rejected at the time a final rule on that subject was established. See 45 FR 29032. The preamble to that rule discusses cases decided under statutes with statutory language similar to Title V of the Act. That discussion concludes that penalties should accrue from the date of the actual unlawful conduct, and that legal remedies exist to prevent penalties from adding up during the course of a non-frivolous challenge to the enforcement action. However, to remove any ambiguity in the regulations, the time when civil penalties begin accruing has been clarified in the final procedures, as requested by MVMA.

MVMA also raises several objections about the provisions in the interim procedures for intervention. These objections are generally based on the concern that interveners might cause "unnecessary confusion and delay" and thereby adversely affect the rights of respondents. The Act permits "any interested person" to participate in enforcement proceedings, but does not specify the nature of that "participation" right.

A number of authorities apparently support limiting the extent of the participation in these enforcement proceedings to the "non-intervener" status established in the interim procedures. According to the Administrative Conference of the United States,

> Intervention or other participation in enforcement or license revocation proceedings should be permitted when a significant objective of the adjudication is to develop and test a new policy or remedy in a precise factual setting or when the prospective intervener is the de facto charging party. Public participation in enforcement proceedings, license revocations or other adjudications where the issue is whether the charged respondent has violated a settled law or policy should be permitted only after close scrutiny of the effect of intervention or other participation on existing parties.

Recommendations of the Administrative Conference of the United States 1 CFR 301.71-6. Support for this

view is contained in Cramton, "The Why, Where, and How of Broadened Public Participation in the Administrative Process," 60 Georgetown Law Journal 525 (1972) and Gellhorn, "Public Participation in Administrative Proceedings," 81 Yale Law Journal 159 (1972). The scope of participation should depend on "the nature of the issues, the intervener's interests, its ability to present relevant evidence and arguments, and the number, interests and capacities of the other parties." Administrative Conference, id.

The agency concurs with these authorities and believes that the rights accorded "non-interveners" under the interim procedures are sufficient for all public participants. The non-interveners were authorized to make a written or oral statement of position, file proposed findings of fact, conclusions of law and a post hearing brief, and file an appellate brief if an appeal is taken. Typical of the issues which are likely to be raised in an enforcement proceeding under the Act are questions relating to the agency's authority to compel the submission of information. Issues of this type would likely be resolved on the basis of written briefs and oral arguments by all parties in the proceeding, and all participants have the right to make this type of submission. Issues involving EPA test procedures and data are expected to be resolved before that agency, and results of hearings on those issues before EPA would be accepted by NHTSA. For hearings involving purely factual disputes, such as whether an automobile dealer properly displayed gas mileage booklets, it is unlikely that there will be any great interest in participation in any capacity, much less as a full party.

Therefore, the agency is limiting participation in enforcement proceedings by individuals and organizations other than the agency and the respondent to the rights given "participants" under the interim procedures. *Anyone* who desires to participate in these proceedings may do so in this manner.

MVMA also raises several issues relating to settlement of cases involving alleged violations of the requirements of Title V. Their first objection relates to the extent to which NHTSA may compromise or settle cases involving violations of fuel economy standards. MVMA interprets the regulations to prohibit settlements even where, after commencement of a proceeding, a clear error is discovered in the basis for the action. In such cases, the agency agrees that completion of the proceeding on the basis of erroneous information would be inappropriate. The regulations permit "confession of error" type settlements through an amended complaint. See section 511.13.

MVMA also suggests that criteria be added to section 511.26 of the regulations to provide guidance about the manner in which the agency would exercise its discretion to settle non-standard cases. MVMA suggests that such factors as the gravity of a violation and any good faith efforts to comply be considered. The agency agrees that these are relevant factors to be considered in settling such a case, and the regulations have been amended accordingly.

MVMA objects to NHTSA's characterization of the authority to compromise standards-enforcement cases as "discretionary," suggesting rather that when any of the situations specified in section 508(b)(3) exists (bankruptcy, strike, fire, etc.), an offset in the amount of the assessed civil penalty should be automatic. MVMA fails to explain Congress' use of discretionary, rather than mandatory, language in that provision, however. Therefore, the agency remains of the view that, when the public interest so requires, the agency may not accept an offer of settlement based on one of the enumerated criteria. In attempting to determine whether the public interest requires the agency to accept a particular offer of compromise, the agency needs, contrary to MVMA's assertion, information on any steps a manufacturer has taken to mitigate the effect of factors such as a fire or a strike, financial documents assessing the manufacturer's ability to pay civil penalties, and the basis for any FTC certification that payment of penalties would result in a "substantial lessening of competition." This information would be used by NHTSA to assess the good faith of the manufacturer in seeking the compromise and the probability that harm would result from payment of penalties. Similarly, the imposition of conditions on a settlement is specifically authorized by section 508(b)(3), and the agency has elected to require conditions (usually some not otherwise specifically required action to promote improved automotive fuel economy) in most cases. This is done to help assure that the settlement is in the public interest and that the manufacturer has in fact acted in good faith by taking all reasonable actions to increase the average

fuel economy of its fleet of automobiles. Also, section 511.26(e) is revised to clarify that the Presiding Officer is to transmit all settlement proposals to the Administrator.

MVMA argues that the interim procedures should be amended to require that the Administrator provide a discussion of the basis for any denial of a settlement offer. The regulations currently require such a discussion whenever a settlement is allowed. The agency agrees that such a requirement is appropriate to provide the public with an explanation of the basis for the agency's refusal to exercise its discretionary authority to reduce civil penalties.

MVMA raises two points with respect to the application of earned monetary credits to civil penalties assessed for violations of fuel economy standards. First, it is noted that the regulations fail to acknowledge the existence of the credit scheme established in section 508 of the Act, and it is recommended that the regulations be amended to do so. NHTSA has no objection to making such an addition to the current procedures.

MVMA and GM also argue that the reduction of civil penalty liabilities in cases where one of the events specified in section 508(b)(3)(B) occurs (fire, strike, act of God) should be made without corresponding reduction of a monetary credit which may exist for that manufacturer in another model year. The Act authorizes the Secretary of Transportation to reduce a civil penalty for a particular model year if that penalty was due in whole or part to one of the specified fortuitous events which affected that year's fleet of vehicles. Nothing in the statute requires that another year's earned credits would be affected by such a reduction, and the agency does not contemplate requiring that credits be used in such a situation.

MVMA's final major objection relates to the manner in which test related issues will be raised in enforcement hearings. That organization notes in its comments that the preamble to the interim procedures indicated that official notice might be taken of EPA fuel economy test results in some circumstances. It was not the agency's intention to imply that test related issues would not be challengeable by a manufacturer. Indeed, the agency recognizes that the main factual questions involved in a standards-enforcement case may involve the acceptance or rejection of manufacturer-supplied fuel economy data, and other issues such as the comparability of results of test procedures used for measuring fuel economy to results obtained under 1975 test procedures (see section 503(d) of the Act). However, the agency anticipates that issues involving aspects of the fuel economy program which are administered by EPA will be raised before that agency, not NHTSA. MVMA suggests that NHTSA adopt some form of compulsory joinder provision in the regulations, whereby EPA would be made a party in any hearing in which test related issues are implicated. However, NHTSA knows of no precedent for such a provision, and has doubt about the existence of any authority for one Federal agency to compel the participation of another agency in the former's proceedings.

Although the agency is not at this time making any changes in the regulations dealing with procedures for resolving test procedure related questions, it is considering seeking public comment on an amendment to these rules which would require that those issues be raised before EPA. EPA currently has a procedure for resolving disputes on these matters (see 40 CFR 600.009) which should satisfy the requirements of the Act for determination "on the record" of violations of fuel economy requirements. Further, that agency is best equipped by reason of its expertise to resolve these technical issues under the statutory division of responsibilities within the government. Ideally, test related issues would be resolved solely before the EPA, with the results of EPA's hearings being accepted by NHTSA as *res judicata*. This approach would avoid any duplication of effort resulting from hearings on the same issues before two different agencies.

Also suggested by MVMA are a number of technical amendments to the regulations, which are intended to make the language used more consistent with that used in the Federal Rules of Civil Procedure (FRCP) and the Federal Rules of Evidence. The main advantage of relying on the language used in these judicial rules is that reference can be made to a body of a case law construing that language where it is ambiguous, while interpreting new language might involve dealing with a series of cases of first impression. It was mainly for that reason that the agency relied in part on the Federal Rules of Civil Procedure as a model for certain provisions in the interim procedures. See 49 FR 47508.

First, MVMA suggests changing the criterion for permitting joinder of proceedings from the "similar issues" requirement of the interim procedures, to a requirement of a "common question of law or fact," as specified in Rule 42(a) of the FRCP. Also, MVMA suggests permitting joinder where to do so would "tend to avoid unnecessary costs or delay" as required under Rule 42(a), rather than "to such extent and upon such terms as may be deemed proper," as the interim procedures permitted. In addition, MVMA recommends the addition of a provision like that in Rule 42(b) which would permit separate hearings where doing so would promote economy or convenience or would avoid prejudice to a party. Since adopting these suggestions would help clarify the procedures, the final rule has been amended accordingly.

A number of changes to the interim procedures in the area of discovery are also suggested by MVMA. First, MVMA suggests that the discovery procedures be modeled more closely after Rule 26 of the FRCP, for reasons of ease of application (as discussed earlier) and fairness. The interim procedures provided that all relevant material is discoverable, with the only stated exception being documents accompanying the agency staff's recommendation as to whether a complaint should issue. The Rule 26 procedure would exclude attorney's work product, the mental impressions, conclusions, and opinions of a party's attorney, and would permit discovery of materials prepared in anticipation of litigation only on a showing of need and the inability to obtain the same material in some other manner. Considerations of fairness militate in favor of making this change. The factual portions of documents accompanying the agency staff's recommendations on a complaint would be made available to all parties, as part of the complaint, and the opinion portions of that material would be protected under Rule 26-type procedure. Further, the privileged status of attorney's work product is well established in both judicial and administrative contexts. Therefore, the final procedures adopt this recommendation.

MVMA also recommends that only those experts who may be called to testify should be subject to discovery. The agency cannot accept this suggestion. It may be that certain experts within a corporation may hold opinions which are highly relevant to a proceeding, but those experts may not be called as witnesses by the corporation. Without the opportunity for opposing parties to obtain information on the identity and views of these individuals through discovery, it would be impossible for those parties to determine whether the experts should be called as witnesses, and relevant information and qualified opinions could be lost. Therefore, the provision in the interim procedures is retained in the final procedures.

The interim procedures could be interpreted to require that the person who answered each individual written interrogatory must sign that answer and MVMA recommends clarifying this point to permit a single representative of a corporate party to sign. The agency is adopting this suggestion. MVMA also suggests that the 20 day period for responding to a request for production of documents be extended to 30 days. However, the interim procedures already permit the 20 day period to be extended, when necessary. Therefore, in the interest of expediting proceedings, this recommendation was not adopted in the final procedures. MVMA's recommendation that testimony of any party or its representatives be permitted as soon as an answer is filed has been adopted, to make that provision consistent with the rest of the discovery provisions in the regulation. The interim procedures vested substantial control over such testimony in the Presiding Officer, and this control is retained in the final procedures. The Presiding Officer can assure that parties do not abuse the right to have such testimony taken to create delay, or where written forms of discovery would be more appropriate. The interim procedures have also been amended to permit parties to preserve the testimony of any witness, not just the parties' own witnesses. However, the reference in the MVMA comments to perpetuation of testimony pursuant to Rule 27 of the FRCP is not applicable to the provision found in section 511.35(h). This provision is intended to permit the taking and preservation of testimony from a witness who is expected to be unable to attend the hearing, but not prior to the commencement of the proceeding as is permitted by Rule 27. Because administrative law judges will not ordinarily be appointed until after proceedings begin, it will be impracticable to obtain leave of the Presiding Officer to perpetuate testimony in anticipation of a complaint not yet issued. Moreover, adjudicative proceedings under the Act are unlikely to present issues of fact deter-

minable exclusively upon the testimony of unique witnesses who might be available to testify only at times before the commencement of proceedings. Therefore the agency does not perceive a need for proving a procedure for perpetuation of testimony fully analogous to that found in Rule 27 of the FRCP.

Also in accord with the decision to conform as much as practicable with the language of the FRCP where a similar procedure is intended, the prescribed uses of deposition testimony found in 511.35(i) are amended to parallel Rule 32 of the FRCP.

MVMA also argues that some of the sanctions specified in the interim procedures for failure to comply with a discovery order are too extreme, have no counterpart in the FRCP, and should be eliminated. The cited sanction, excluding all matter obtained in discovery or excluding the recalcitrant party, does in fact have a counterpart in the FRCP (see Rule 37(b)(1)(B) and (C) which permit prohibitions on introducing "designated matters in evidence" and "rendering a judgment by default against the disobedient party") and would only be applied where "just," as in the FRCP. Therefore, no change to the interim procedures is made with respect to this point. Nor has the agency adopted MVMA's suggestion that sanctions be imposed immediately or not at all. The significance of a failure to comply with a discovery order may not become fully apparent until well after the failure to comply.

Modifications to the procedure for motions to quash or limit subpoenas were also suggested by MVMA. MVMA suggests that provision be made for extending the time to respond to the subpoena or the motion to quash, that an appeal procedure be added, that denials of motions to quash be made on the record, and that the Presiding Officer be permitted to modify subpoenas. Section 511.15 of the interim procedures already provides for time extensions, when necessary. Interlocutory appeals are permitted on these matters where confidential information is involved or where compliance with the subpoena somehow involves a controlling question of law or policy. The time limit for the filing of an application for interlocutory appeal has been clarified to make it applicable to all such applications and not just those advancing one of the grounds set forth in section 511.24(b)(1). Appeals are also permitted after a final decision under the interim procedures. Allowing appeals in other cases would unnecessarily delay the proceeding. The agency has adopted suggestions by MVMA that reasons for denials of motions to quash be provided on the record and that "modifications" of a subpoena be authorized.

MVMA further suggests elimination of "confusion of issues" as grounds for excluding evidence. As MVMA notes, this factor appears in the Federal Rules of Evidence primarily to apply to jury trials, where jurors might be unable to deal with certain complex issues. This factor is deleted in the final procedures since it is not fully relevant and tends to duplicate the criteria of relevance, undue delay, and the needless presentation of cumulative evidence.

The final group of objections raised by MVMA involve the handling of *in camera* or confidential materials. First, it is argued that certain information beyond that protected under the Freedom of Information Act 5 U.S.C. 552, should be entitled to *in camera* treatment in an enforcement hearing. Among this type of material would be material which might be embarrassing or otherwise sensitive, but which would not qualify as a trade secret or fall within any of the other exempt classes of information in the Freedom of Information Act. The agency cannot accept this contention since section 505(d)(1) of the Cost Savings Act requires the agency to disclose any fuel economy related information to the public, except in the case of trade secret information.

The procedures have been clarified to permit interlocutory appeals of a ruling of the Presiding Officer denying *in camera* treatment for information claimed to be confidential. The interim procedures permitted an immediate appeal on rulings requiring the production of documents claimed to be confidential, but not explicitly in the similar situation involving a denial of *in camera* treatment. All such rulings are automatically stayed for 10 days, permitting the aggrieved party to appeal.

MVMA has suggested that advance determinations of confidentiality be made by the agency (i.e., a submitter of information would be permitted to withdraw that information if a request for *in camera* treatment is denied). The agency will address this question in detail in its forthcoming final rule on Confidential Business Information.

Until that rule is issued, the agency will abide by its proposed procedures which do not provide for advance determinations (due to concerns about consistency with the Freedom of Information Act). See 43 FR 22412 (May 25, 1978).

MVMA requests that criteria and procedures be established for denying requests for *in camera* treatment. The interim procedures specified that the criteria and procedures to be used are those for determining whether information is entitled to confidential treatment under the Freedom of Information Act, as noted above. Those criteria and procedures are spelled out in that Act, in the case law under that Act, and in the agency's proposed confidentiality regulations cited in the previous paragraph. Therefore, no change to the interim procedures is being made in this area.

MVMA also argues that reference must be made in the regulations to 44 U.S.C. 3508, which provides generally that when an agency receives confidential information from another government agency, employees of the receiving agency are fully liable for any unauthorized release of that information. In this regard, MVMA claims that the provisions of 44 U.S.C. 3508 govern and "take precedence over" any decision by the agency to release the information. If the implication of this comment is that NHTSA is bound by the determination of the agency that provides the information that the information is confidential, or that NHTSA's discretionary authority to release confidential information does not apply to information obtained from another agency, then NHTSA cannot agree that 44 U.S.C. 3508 compels that result. NHTSA agrees that the statutory provision in question applies to an unauthorized release of confidential information obtained from another agency, but no conflict between that provision and the current procedures is apparent. Therefore, no change to the regulation is required on this point.

At the request of MVMA, the interim procedures have been clarified to assure that the granting of motions for access to *in camera* materials will be done on the record. This was implicit in the regulation, since the granting of such a motion must be accompanied by a protective order preventing unnecessary disclosure of the information.

MVMA also recommends that sanctions be specified in the regulations for the unauthorized release by a party of *in camera* materials. Suggested sanctions include denial of the right to continue as a party of participant and the denial of access to other *in camera* materials. Section 511.76 of the interim procedures permits the exclusion of a party, participant, or one of their representatives in such a case. The agency agrees that it is appropriate to add the second sanction mentioned above to the regulations, and will do so in the final procedures. However, the agency fails to see how MVMA's recommendation that persons seeking access to confidential information be required to agree in writing and in advance to comply with the terms of a protective order will have any added impact on a party or other person who is unwilling to comply with the order.

MVMA's final comment notes that the agency should not lightly use its discretionary authority to release confidential information. To date, the agency has rarely used this authority under section 505(d)(1) of the Cost Savings Act, and has taken steps to minimize the impact of such a release on the submitter of the information when the authority has been used. This policy will continue.

A small number of further minor changes have been made to the regulations in the interest of reducing unnecessary burdens on parties or participants in proceedings and on the agency itself. First, the interim procedures imply that a full scale hearing is held each time a complaint is issued, whether the respondent wants the full hearing or not. The final procedures permit respondents to *request* a full hearing (and such requests will always be honored) or permits the respondent to make its case solely on written submissions or otherwise, if it desires. Also, some requirements as to the size of paper on which documents are printed, the size of margins, and the type of print to be used have been deleted. Finally, the requirement that a copy of the entire complaint in every enforcement case (including dealer-mileage guide cases) be printed in the *Federal Register* has been deleted in favor of a more limited requirement that a notice be published generally describing the proceeding and providing information on public participation in the proceeding.

The agency has determined that the establish-

ment of these procedures does not constitute a "major Federal Action significantly affecting the environment," and therefore, an environmental impact statement is not required. Nor should these procedures establish any additional costs beyond those imposed by the Cost Savings Act itself. Therefore, no Regulatory Analysis is required to be prepared under Executive Order 12221.

Issued on December 3, 1980.

Joan Claybrook
Administrator

45 FR 81574
December 11, 1980

PREAMBLE TO AN AMENDMENT TO PART 511—ADJUDICATIVE PROCEDURES; AUTOMOTIVE FUEL ECONOMY ENFORCEMENT

ACTION: Final rule; Technical amendment.

SUMMARY: Since the National Highway Traffic Safety Administration promulgated 49 DFR Part 511, its regulation governing adjudicative proceeding pursuant to section 508(a) of the Motor Vehicle Information Cost Savings Act (15 U.S.C. 2008(a)), there has been established within the Department of Transportation an Office of Hearings which has the authority to conduct proceedings under section 508. The purpose of this rule is to amend Part 511 solely to reflect the fact that the Office of Hearings in the Department of Transportation will now be responsible for the appointment of the Presiding Officer at such proceedings, and that the Docket Section of the Office of the Secretary of Transportation shall be responsible for performing the duties which Part 511 formerly assigned to the Executive Secretary of the National Highway Traffic Safety Administration, and for maintaining the docket of proceedings brought pursuant to section 508.

EFFECTIVE DATE: May 3, 1988.

SUPPLEMENTARY INFORMATION:

Section 508(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2008(a)) provides that there is a right to an agency hearing on the record prior to a determination that a manufacturer has violated a fuel economy standard or that any person has violated section 507(a)(3) of the Act. 15 U.S.C. 2007(a)(3). The procedures governing the conduct of an adjudicative hearing under section 508(a) are set forth at Part 511 of the regulations of the National Highway Traffic Safety Administration. 49 CFR Part 511.

When NHTSA adopted Part 511, there was no office within the Department of Transportation with responsibility for appointment of hearing officers to conduct adjudicative proceedings, and for carrying out administrative functions associated with such hearings. Accordingly, Part 511 provided that the presiding officer at adjudicative proceedings would be appointed by the Director of the Office of Administrative Law Judges, Office of Personnel Management. 49 CFR 511.3(9). The rule assigned the various administrative functions, such as the filing of pleadings and other documents, to the Executive Secretary of the National Highway Traffic Safety Administration, and provided that the docket for such proceedings would be maintained in NHTSA's docket section.

There is now within the Department of Transportation an Office of Hearings, which is authorized to conduct formal proceedings under the Motor Vehicle Information and Cost Savings Act. Therefore, it is no longer necessary to request appointment of a presiding officer for such a proceeding through the Office of Administrative Law Judges of the Office of Personnel Management. In addition, because the Office of Hearings will be responsible for appointing the presiding officer that office should also be responsible for the other administrative functions formerly vested in the Executive Secretary of NHTSA, and for maintaining the docket of the proceedings. Centralizing these functions in one office will best ensure the efficient conduct of these proceedings.

This technical amendment merely conforms NHTSA's regulation governing adjudicative proceedings to a change in the organization of the Department of Transportation which now permits the administration of such proceedings to be centralized in one office within the Department. It affects only the agency's internal procedures, and imposes no obligations or responsibilities on any party, nor does it alter any existing obligations. Accordingly, NHTSA finds for good cause that notice and opportunity for comment are unnecessary, and this technical amendment is effective on the date this notice is published.

The amendments to Part 511, set forth below, relate solely to procedures for the conduct of

proceedings that are governed by Sections 556 and 557 of Title 5, United States Code, and thus are not covered by Executive Order 12291 and the Department of Transportation's regulatory procedures. For the same reasons, NHTSA has determined that this technical amendment will not significantly affect the human environment, after consideration in accordance with the National Environmental Policy Act. Likewise, I hereby certify that this technical amendment will not have a significant impact on a substantial number of small entities, after making the evaluations required by the Regulatory Flexibility Act. Finally, NHTSA has analyzed this action in accordance with the principles the criteria contained in Exective Order 12612, and has determined that the final rule does not have sufficient preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 511

Administrative practice and procedure, Investigations, Penalties.

In consideration of the foregoing, 49 CFR Part 511 is amended as set forth below:

1. The authority citation for Part 511 is revised to read as follows:

Authority: 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

2. Section 511.3(a)(9) and (11) are revised, and (a)(13) and (14) are added to read as follows:

§ 511.3 Definitions.

* * * * *

(a) * * *

(9) The term "Presiding Officer" means the person who conducts an adjudicative hearing under this part, who shall be an administrative law judge qualified under title 5, U.S.C., section 3105 and assigned by the Chief Administrative Law Judge, Office of Hearing, United States Department of Transportation.

* * * * *

(11) The term "Office of Hearings" means the Officer of Hearing, Department of Transportation.

* * * * *

(13) The term "Chief Administrative Law Judge" means of the Chief Administrative Law Judge of the Office of Hearings, Department of Transportation.

(14) The term Docket sections means the Docket Section, Office of the Secretary of Transportation.

3. Section 511.14(a) is revised to read as follows:

§ 511.14 Form and filing of documents.

(a) *Filing.* Except as otherwise provided, all documents submitted to the Administrator or a Presiding Officer shall be filed with the Docket Section, Office of the Secretary, Department of Transportation, Room 4107, 400 Seventh Street, SW., Washington, D.C. 20590. Documents may be filed in person or by mail and shall be deemed filed on the day of filing or mailing.

* * * * *

4. Section 511.16(a) is revised to read as follows:

§511.16(a) Service.

(a) *Mandatory service.* Every document filed with the Office of Hearings shall be served upon all parties and participants to a proceeding, i.e., Complaint Counsel, respondent(s), and participants, and upon the Presiding Officer.

* * * * *

5. Section 511.17 is revised to read as follows:

§ 511.17 Public participation.

Participation Status. Any person interested in a proceeding commenced pursuant to § 511.11 who desires to participate in the proceeding, shall file with the Docket Section a notice of intention to participate in the proceeding and shall serve a copy of such notice on each party to the proceeding. A notice of intention to participate shall be filed not later than the commencement of the hearing. Untimely filings will not be accepted absent a determination by the Presiding Officer that the person making the request has made a substantial showing of good cause for failure to file on time. Any person who files a notice to participate in the proceedings as a nonparty shall be known as a "participant" and shall have the rights specified in § 511.41(d).

6. Section 511.26(h) is revised to read as follows:

§511.26 Settlement.

(h) *Rejection.* If the Administrator rejects an offer of settlement, the Administrator shall give written notice of that decision and the reasons therefor to the parties and the Presiding Officer. Promptly thereafter, the Presiding Officer shall issue an order notifying the parties of the resumption of the proceedings, including any modifications to the schedule resulting from the stay of the proceedings.

* * * * *

7. Section 511.31(h) is revised to read as follows:

§ 511.31 General provisions regarding discovery.

* * * * *

(h) *Service and filing of discovery.* All discovery requests and written responses, and all notices of the taking of testimony shall be filed with the Docket Section and served on all parties and the Presiding Officer.

* * * * *

8. Section 511.35(e)(2) is revised to read as follows:

§511.35 Testimony upon oral examination.

* * * * *

(e) Transcription and filing of testimony—

* * * * *

(2) *Certification and filing.* The official reporter shall certify on the transcript that the witness was duly sworn and that the transcript is a true record of the testimony given and corrections made by the witness. The official reporter shall then seal the transcript in an envelope endorsed with the title and docket number of the action and marked "Testimony of [name of witness]" and shall promptly file the transcript with the Docket Section. The Presiding Officer shall notify all parties of the filing of the transcript and the Docket Section shall furnish a copy of the transcript to any party or to the witness upon payment of reasonable charges therefor.

* * * * *

9. Section 511.38(b) is revised to read as follows:

§ 511.38 Subpoenas.

* * * * *

(b) *Form.* A subpoena shall identify the action with which it is connected; shall specify the person to whom it is addressed and the date, time and place for compliance with its provisions; and shall be issued by order of the Presiding Officer and signed by the Chief Administrative Law Judge or by the Presiding Officer. A subpoena *duces tecum* shall specify the books, papers, documents or other materials or data-compilations to the produced.

* * * * *

10. Section 511.42(e) is revised to read as follows:

§511.42 Powers and duties of Presiding Officer.

* * * * *

(e) *Disqualification of Presiding Officer.* (1) When a Presiding Officer deems himself or herself disqualified to preside in a particular proceeding, he or she shall withdraw by notice on the record and shall notify the Chief Administrative Law Judge of the withdrawal.

(2) Whenever, for any reason, any party shall deem the Presiding Officer to be disqualified to preside, or to continue to preside, in a particular proceeding, that party may file with the Chief Administrative Law Judge a motion to disqualify and remove, supported by affidavit(s) setting forth the alleged grounds for disqualification. A copy of the motion and supporting affidavit(s) shall be served by the Chief Administrative Law Judge on the Presiding Officer whose removal is sought. The Presiding Officer shall have ten (10) days from service to reply in writing. Such motion shall not stay the proceeding unless otherwise ordered by the Presiding Officer or the Administrator. If the Presiding Officer does not disqualify himself or herself, the Administrator will determine the validity of the grounds alleged, either directly or on the report of another Presiding Officer appointed to conduct a hearing for the purpose, and shall in the event of disqualification take appropriate action, by assigning another Presiding Officer or requesting assignment of another Administrative Law Judge through the Office of Hearings.

11. Section 511.48 is revised to read as follows:

* * * * *

§ 511.48 Official docket.

(a) The official docket in adjudicatory proceedings will be maintained in the Docket Section, Office of the Secretary , Room 4107, 400 Seventh Street S.W., Washington, D.C. 20590, and will be available for inspection during normal working hours (9:00 a.m.–5:00 p.m.) Monday through Friday.

(b) Fees for production or disclosure of records contained in the official docket shall be levied as prescribed in the Department of Transportation's regulations on Public Availability of Information (49 CFR Part 7),

12. Section 511.67 is revised to read as follows:

§511.67 Settlement order.

If, in accordance with this subpart, the Administrator allows a settlement of a case of violation of an average fuel economy standard, an order of settlement shall be issued, setting out the terms of the settlement, and containing a brief discussion of the factors underlying the exercise of

the Administrator's discretion in allowing the settlement, including a discussion of comments received under § 511.65. If the Administrator rejects a petition and the reasons for the rejection to the parties and the Presiding Officer.

13. Section 511.73(b) is revised to read as follows:

§ 511.73 Written appearances.

* * * * *

(b) Any person who has previously appeared in a proceeding may withdraw his or her appearance by filing a written notice of withdrawal of appearance with the Docket Section. The notice of withdrawal shall state the name, address, and telephone number (including area code) of the person withdrawing the appearance, for whom the appearance was made, and the effective date of the withdrawal of the appearance, and such notice of withdrawal shall be filed with five (5) days of the effective date of the withdrawal of the appearance.

14. Section 511.75(a) is revised to read as follows:

§ 511.75 Persons not attorneys.

(a) Any person who is not an attorney at law may be admitted to appear in an adjudicative proceeding if that person files proof to the satisfaction of the Presiding Officer that he or she possesses the necessary legal, technical or other qualifications to render valuable service in the proceeding and is otherwise competent to advise and assist in the presentation of matters in the proceedings. An application by a person not an attorney at law to appear in a proceeding shall be submitted in writing to the Docket Section, not later than thirty (30) days prior to the hearing in the proceedings. The applications to appear in the proceedings.

* * * * *

15. Section 511.78 (e)(1), (2)(ii), (3), (4) and (5) are revised to read as follow:

§ 511.78 Prohibited communications.

* * * * *

(e) Procedures for handling prohibited *ex parte* communication. (1) Prohibited written *ex parte* communication. To the extent possible, a prohibited written *ex parte* communication received by any NHTSA employee shall be forwarded to the Docket Section rather than to a decisionmaker. A prohibited written *ex parte* communication which reaches a decisionmaker shall be forwarded by the decisionmaker to the Docket Section. If the circumstances in which a prohibited *ex parte* written communication was made are not apparent from the communication itself, a statement describing those circumstances shall be forwarded with the communication.

(2) Prohibited oral *ex parte* communication. * * *

(ii) In the event of a prohibited oral *ex parte* communication, the decisionmaker shall forward to the Docket Section a dated statement containing such of the following information as is known to him/her:

(A) The title and docket number of the proceeding;

(B) The name and address of the person making the communication and his/her relationship (if any) to the parties to the proceeding;

(C) The date and time of the communication, its duration, and the circumstances (telephone call, personal interview, etc.) under which it was made;

(D) A brief statement of the substance of the matters discussed;

(E) Whether the person making the communication persisted in doing so after being advised that the communication was prohibited.

(3) All communications and statements forwarded to the Docket Section under this section shall be placed in the public file which shall be associated with, but not made a part of the record of the proceedings, to which the communication or statement pertains.

(4) Service on parties. The Administrator shall serve a copy of each communication and statement forwarded under this section on all parties to the proceedings. However, if the parties are numerous, or if other circumstances satisfy the Administrator that service of the communication or statement would be unduly burdensome, he or she may, in lieu of service, notify all parties in writing that the communication or statement has been made and filed and that its is available for inspection and copying.

(5) Service on maker. The Administrator shall forward to the person who made the prohibited *ex parte* communication a copy of each communication or statement filed under this section.

* * * * *

Issued on April 29, 1988.

Diane K. Steed,
Administrator

53 F.R. 15782
May 3, 1988

PREAMBLE TO AN AMENDMENT TO PART 511—ADJUDICATIVE PROCEDURES; AUTOMOTIVE FUEL ECONOMY ENFORCEMENT

ACTION: Final rule.

SUMMARY: This Notice incorporates a delegation of authority to the Deputy Administrator and, in the absence of the Administrator and the Deputy Administrator, to the Managing Director to exercise all authority lawfully vested in the Administrator and reserved to him or her, except where specifically limited by law, order, regulation or instruction. This Notice also makes technical revisions to the agency's organization and delegation rules, including the correction of legal citations, updating to reflect recent statutory enactments, and inclusion of materials which had been inadvertently omitted in previous printings of the Code of Federal Regulations.

EFFECTIVE DATE: July 12, 1988.

SUPPLEMENTARY INFORMATION:

Due to internal reorganization, the National Highway Traffic Safety Administration is amending its delegation of authority to allow the Deputy Administrator to exercise, in the Administrator's absence, those authorities previously reserved to the Administrator and to allow the Managing Director to exercise those authorities previously reserved to the Administrator in the absence of both the Administrator and the Deputy Administrator.

Additionally, because of internal agency reorganization, the position of Executive Secretary is retitled the Director of the Executive Secretariat and is assigned the function previously delegated to the Executive Secretary, with the exception of subpoena authority. This authority is transferred from the Director of the Executive Secretariat to the Chief Counsel.

The amendment set forth below relates solely to the organization and assignment of duties within the agency, and has no substantive regulatory effect. Thus, it is not covered by the notice and comment and effective date requirements of the Administrative Procedure Act or the requirements of Executive Order 12291 or the Department of Transportation's regulatory policies and procedures. Notice and public procedure are, therefore, not required, and the amendment may be made effective in less than thirty days after publication.

Section 511.38 is revised to read as follows:

(b) *Form.* A subpoena shall identify the action with which it is connected; shall specify the person to whom it is addressed and the date, time and place for compliance with its provisions; and shall be issued by order of the Presiding Officer and signed by the Chief Counsel, or by the Presiding Officer. A subpoena *duces tecum* shall specify the books, papers, documents, or other materials or data-compilations to be produced.

* * * * *

(d) *Issuance of a subpoena.* The Presiding Officer shall issue a subpoena by signing and dating, or ordering the Chief Counsel to sign and date, each copy in the lower right-hand corner of the document. The "duplicate" and "triplicate" copies of the subpoena shall be transmitted to the applicant for service in accordance with these Rules; the "original" copy shall be retained by or forwarded to the Chief Counsel for retention in the docket of the proceeding.

* * * * *

(f) *Return of service.* A person serving a subpoena shall promptly execute a return of service, stating the date, time and manner of service. If service is effected by mail, the signed return receipt shall accompany the return of service. In case of failure to make service, a statement of the reasons for the failure shall be made. The "triplicate" of the subpoena, bearing or accompanied by the return of service, shall be returned forthwith to the Chief Counsel after has been completed.

* * * * *

Issued on May 27, 1988.

Diane K. Steed,
Administrator

53 F.R. 26257
July 12, 1988

PART 511—Adjudicative Procedures

Subpart A—Scope of Rules; Nature of Adjudicative Proceedings, Definitions

Sec.

Subpart B—Pleadings; Form; Execution; Service of Documents

Subpart C—Prehearing Procedures; Motions: Interlocutory Appeals; Summary Judgment; Settlement

Subpart D—Discovery; Compulsory Process

Subpart E—Hearings

Subpart F—Decision

Subpart G—Settlement Procedure in Cases of Violation of Average Fuel Economy Standards

Subpart H—Appearances; Standards of Conduct

[Authority: 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.] **(53 F.R. 15782—May 3, 1988. Effective: May 3, 1988)**

Subpart A—Scope of Rules; Nature of Adjudicative Proceedings, Definitions

§ 511.1 Scope of the rules.

This part establishes rules of practice and procedure for adjudicative proceedings conducted pursuant to section 508(a)(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. Pub. L. 94-163, 89 Stat. 911, Sec. 2008(a)(2)), which are required by statute to be determined on the record after opportunity for a public hearing.

§ 511.2 Nature of adjudicative proceedings.

Adjudicative proceedings shall be conducted in accordance with title 5, United States Code, sections 551 through 559 and this part. It is the policy of the agency that adjudicative proceedings shall be conducted expeditiously and with due regard to the rights and interests of all persons affected, and to the public interest. Therefore, the presiding officer and all parties shall make every effort at each stage of a proceeding to avoid unnecessary delay.

§ 511.3 Definitions.

(a) As used in this part:

(1) The term "application" means an *ex parte* request by a party for an order that may be granted or denied without opportunity for response by any other part.

(2) The term "NHTSA" means the National Highway Safety Administration.

(3) The term "Administrator" means the Administrator of the National Highway Safety Administration.

(4) The term "Complaint Counsel" means prosecuting for the NHTSA.

(5) The term "motion" means a request by a party for a ruling or order that may be granted or denied only after opportunity for response by each affected party.

(6) The term "party" means the NHTSA, and any person named as a respondent in a proceeding governed by this part.

(7) The term "person" means any individual, partnership, corporation, association, public or private organization, or Federal, State or municipal governmental entity.

(8) The term "petition" means a written request, made by a person or a party and addressed to the Presiding Officer or the Administrator, that the addressee take some action.

(9) The term "Presiding Officer" means the person who conducts an adjudicative hearing under this part, who shall be an administrative law judge qualified under title 5, United States Code, section 3105 and assigned by the [Chief Administrative Law Judge, Office of Hearings, United States Department of Transportation.] **(53 F.R. 15782—May 3, 1988. Effective: May 3, 1988)**

(10) The term "Respondent" means any person against whom a complaint has been issued.

(11) [The term "Office of Hearings" means the Officer of Hearings, Department of Transportation.] **(53 F.R. 15782—May 3, 1988. Effective: May 3, 1988)**

(12) The term "staff" means the staff of the National Highway Traffic Safety Administration.

[(13) The term "Chief Administrative Law Judge" means the Chief Administrative Law Judge of the Office of Hearings, Department of Transportation.

(14) The term Docket sections means the Docket Section, Office of the Secretary of Transportation.] **(53 F.R. 15782—May 3, 1988. Effective: May 3, 1988)**

Subpart B—Pleadings; Form; Execution; Service of Documents

§ 511.11 Commencement of proceedings.

(a) *Notice of institution of an enforcement proceeding.* An adjudicative proceeding under this part is commenced by the issuance of a complaint by the NHTSA.

(b) *Form and content of complaint.* The complaint shall be signed by the Complaint Counsel and shall contain the following:

(1) Recital of the legal authority for instituting the proceeding, with specific designation of the statutory provisions involved in each allegation.

(2) Identification of each respondent.

(3) A clear and concise statement of the charges, sufficient to inform each respondent with reasonable definiteness of the factural basis of the allegations of violation. A list and summary of documentary evidence supporting the charges shall be attached.

(4) A statement of the civil penalty which the Complaint Counsel believes is in the public interest, or which is required by law. In the case of civil penalties assessed for violations of section 507(3) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2007(3)), the amount of such penalty shall be calculated from the time of the alleged violation. In the case of civil penalties assessed for violations of section 507(1) and (2) of that Act, any monetary credits available to offset those civil penalties shall be specified.

(5) The right of the respondent to a hearing on the alleged violations.

(c) *Notice to the Public.* Once a complaint is issued, notice of it shall be immediately submitted to the Federal Register for publication. The notice in the Federal Register shall briefly describe the nature of the proceeding and state that permits to participate in the proceeding must be filed no later than the first prehearing conference.

§ 511.12 Answer.

(a) *Time for filing.* A respondent shall have twenty (20) days after service of a complaint within which to file an answer.

(b) *Content of answer.* An answer shall conform to the following:

(1) *Request for hearing.* Respondent shall state whether it requests a full, adjudicatory hearing or whether it desires to proceed on the basis of written submissions. If a hearing is requested, respondent shall specify those issues on which a hearing is desired.

(2) *Contested allegations.* An answer in which the allegations of a complaint are contested shall contain:

(i) Specific admission or denial of each allegation in the complaint. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, respondent shall so state. Such a statement shall have the effect of a denial. Denials shall fairly meet the substance of the allegations denied. Allegations not thus answered shall be deemed to have been admitted.

(ii) A concise statement of the factual and/or legal defenses to each allegation of the complaint.

(3) *Admitted allegations.* If the respondent admits or fails to deny any factual allegation, he or she shall be deemed to have waived a hearing as to such allegation.

(c) *Default.* Failure of the respondent to file an answer within the time provided (or within an extended time, if provided), shall be deemed to constitute a waiver of the right to appear and contest the allegations set forth in the complaint and to authorize the Presiding Officer to make such findings of fact, as are reasonable under the circumstances.

§ 511.13 Amendments and supplemental pleadings.

Whenever determination of a controversy on the merits will be facilitated thereby, the Presiding Officer upon motion, may allow appropriate amendments and supplemental pleadings which do not unduly broaden the issues in the proceeding or cause undue delay.

§ 511.14 Form and filing of documents.

(a) *Filing.* [Except as otherwise provided, all documents submitted to the Administrator or a Presiding Officer shall be filed with the Docket Section, Office of the Secretary of Transportation, Room 4107, 400 Seventh Street, S.W., Washington, D.C. 20590. Documents may be filed in person or by mail and shall be deemed filed on the day of filing or mailing.] **(53 F.R. 15782—May 3, 1988. Effective: May 3, 1988)**

(b) *Caption.* Every document shall contain a caption setting forth the name of the action in connection with which it is filed, the docket number, and the title of the document.

(c) *Copies.* An original and nine (9) copies of all documents shall be filed. Documents may be reproduced by printing or any other process, provided that all copies filed are clear and legible.

(d) *Signature.* (1) The original of each document filed shall be signed by a representative of record for the party; or in the case of parties not represented, by the party; or by a partner, officer, or regular employee of any corporation, partnership, or association, who files an appearance on behalf of the party.

(2) The act of signing a document constitutes a representation by the signer that the signer has read it; that to the best of the signer's knowledge, information and belief, the statements made in it are true; and that it is not filed for purposes of delay.

§ 511.15 Time.

(a) *Computation.* In computing any period of time prescribed or allowed by the rules in this part, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less that 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this part, "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States.

(b) *Additional Time After Service by Mail.* Whenever a party is required or permitted to do an act within a prescribed period after service of a document and the document is served by mail, three (3) days shall be added to the prescribed period.

(c) *Extensions.* For good cause shown, the Presiding Officer may extend any time limit prescribed or allowed under this part or by order of the Administrator or the Presiding Officer, except those governing the filing of interlocutory appeals and appeals from Initial Decisions and those expressly requiring the Administrator's action. Except as otherwise provided by law, the Administrator, for good cause shown, may extend any time limit prescribed under this part, or by order of the Administrator or the Presiding Officer. A party or participant may petition the Presiding Officer or the Administrator, as appropriate, for an extension under this paragraph. Such a petition shall be filed prior to the occurrence of the time limit which is the subject of the petition.

§ 511.16 Service.

(a) *Mandatory service.* Every document filed with the [Office of Hearings] shall be served upon all parties and participants to a proceeding, i.e., Complaint Counsel, respondent(s), and participants, and upon the Presiding Officer. **(53 F.R. 15782—May 3, 1988. Effective: May 3, 1988)**

(b) *Service of complaint, ruling, order, decision, or subpena.* Service of a complaint, ruling, order, decision, or subpena may be effected as follows:

(1) *By registered or certified mail.* A copy of the document shall be addressed to the person, partnership, corporation or unincorporated association to be served at his or its residence or principal office or place of business; registered or certified; and mailed; or

(2) *By delivery to an individual.* A copy of the document may be delivered to the person to be served; or to a member of the partnership to be served; or to the president, secretary, or other executive officer, or a director of the corporation or unincorporated association to be served; or to an agent authorized by appointment or by law to receive service; or

(3) *By delivery to an address.* A copy of the document may be left at the principal office or place of business of the person, partnership, corporation, unincorporated association, or authorized agent with an officer, a managing or general agent; or it may be left with a person of suitable age and discretion residing therein, at the residence of the person or of a member of the partnership or of an executive officer, director, or agent of the corporation or unincorporated association to be served.

(c) *Service of documents with prescribed response periods.* When service of a document starts the running of a prescribed period of time for the submission of a responsive document or the occurrence of an event, the document shall be served as provided in paragraph (b) of this section.

(d) *Service of other documents.* All documents other than those specified in paragraph (c) of this section may be served as provided in paragraph (b) of this section, or by ordinary first-class mail, properly addressed, postage prepaid.

(e) *Service on a representative.* When a party has appeared by an attorney or other representative, service upon that attorney or other representative shall constitute service on the party.

(f) *Certificate of service.* The original of every document filed with the agency and required to be served upon all parties to a proceeding shall be accompanied by a certificate of service signed by the party making service, stating that such service has been made upon each party to the proceeding. Certificates of service may be in substantially the following form:

Dated at _____ this _____
day of _____, 19_____.
(Signature) _____
For _____

(g) *Date of Service.* The date of service of a document shall be the date on which the document is deposited in the United States mail or is delivered in person.

§ 511.17 Public participation.

Participant Status. Any person interested in a proceeding commenced pursuant to § 511.11 who desires to participate in the proceeding, shall file with the [Docket Section] a notice of intention to participate in the proceeding and shall serve a copy of such notice on each party to the proceeding. A notice of intention to participate shall be filed not later than the commencement of the hearing. Untimely filings will not be accepted absent a determination by the Presiding Officer that the person making the request has made a substantial showing of good cause for failure to file on time. Any person who files a notice to participate in the proceeding as a nonparty shall be known as a "participant" and shall have the rights specified in § 511.41(d). **(53 F.R. 15782—May 3, 1988. Effective: May 3, 1988)**

§ 511.18 Joinder of proceedings.

Two or more matters which have been scheduled for adjudicative proceedings, and which involve one or more common questions of law or fact, may be consolidated for the purpose of hearing, appeal or the Administrator's review. A motion for consolidation for purpose of hearing may be filed with the Presiding Officer by any party to such proceedings not later than thirty (30) days prior to the hearing. A motion for consolidation for the purpose of appeal may be filed by any party to such proceedings within 10 days after issuance of the Initial Decision. A motion to consolidate shall be served upon all parties to all proceedings whose joinder is contemplated. The proceedings may be consolidated where to do so would tend to avoid unnecessary costs or delay. Such consolidation may also be ordered upon the initiative of the Presiding Officer or the Administrator, as appropriate. The Presiding Officer may order separate hearings on any issue where to do so would promote economy or convenience or would avoid prejudice to a party.

Subpart C—Prehearing Procedures; Motions; Interlocutory Appeals; Summary Judgment; Settlement

§ 511.21 Prehearing conferences.

(a) *When held.* (1) A prehearing conference shall be held in person or by conference telephone call, except in unusual circumstances, approximately fifty (50) days after publication in the Federal Register of the complaint, upon ten (10) days notice to all parties and participants, to consider any or all the following:

(i) Motions for consolidation of proceedings;

(ii) Identification, simplification and clarification of the issues;

(iii) Necessity or desirability of amending the pleadings;

(iv) Stipulations and admissions of fact and of the content and authenticity of documents;

(v) Oppositions to notices of oral examination;

(vi) Motions for protective orders to limit or modify discovery;

(vii) Issuance of subpenas to compel the appearance of witnesses and the production of documents;

(viii) Limitation of the number of witnesses, particularly the avoidance of duplicate expert witnesses;

(ix) Matter of which official notice will be taken and matters which may be resolved by reliance upon findings of other Federal agencies; and

(x) Other matters which may expedite the conduct of the hearing.

§ 511.22 Prehearing briefs.

Not later ten (10) days prior to the hearing, the parties shall, except when ordered otherwise by the Presiding Officer in unusual circumstances, simultaneously serve and file prehearing briefs, which shall set forth (a) a statement of the facts

expected to be proved, and of the anticipated order of proof; (b) a statement of the issues and the legal argument in support of the party's contentions with respect to each issue; and (c) a table of authorities with a designation by asterisk of the principal authorities relied upon.

§ 511.23 Motions.

(a) *Presentations and dispositions.* During the time a proceeding is before a Presiding Officer, all motions, whether oral or written, except those filed under § 511.42(e), shall be addressed to the Presiding Officer, who shall rule upon them promptly after affording an opportunity for response.

(b) *Written motions.* All written motions shall state the particular order, ruling, or action desired and the grounds therefore. If a motion is supported by memoranda, affidavits or other documents, they shall be served and filed with the motion. All motions shall contain a proposed order setting forth the relief sought. All written motions shall be filed with the Executive Secretary and served on all parties, and all motions addressed to the Administrator shall be in writing.

(c) *Responses.* Within ten (10) days after service of any written motion or petition or within such longer or shorter time as may be designated by these Rules or by the Presiding Officer or the Administrator, the opposing party or parties shall file a written response to such motion. Where a motion would affect only a single party, or an identifiable group of parties, the Presiding Officer or Administrator may limit the response to the motion to the affected party or parties. Failure to respond to a written motion may, in the discretion of the Presiding Officer be deemed as consent to the granting of the relief sought in the motion. The moving party shall have no right to reply, except as permitted by the Presiding Officer or the Administrator.

(d) *Rulings on motions for dismissal.* When a motion to dismiss a complaint or motion for other relief is granted with the result that the proceeding before the Presiding Officer is terminated, the Presiding Officer shall issue an Initial Decision and Order thereon in accordance with the provisions of § 511.51. If such a motion is granted as to all issues alleged in the complaint in regard to some, but not all, the respondents, or is granted as to any part of the allegations in regard to any or all the respondents, the Presiding Officer shall enter an order on the record and consider the remaining issues in the Initial Decision. The Presiding Officer may elect to defer ruling on a motion to dismiss until the close of the case.

§ 511.24 Interlocutory appeals.

(a) *General.* Rulings of the Presiding Officer may not be appealed to the Administrator prior to the Initial Decision, except as provided herein.

(b) *Exceptions*—(1) *Interlocutory appeals to Administrator.* The Administrator may, in his or her discretion, entertain interlocutory appeals where a ruling of the Presiding Officer:

(i) Requires the production or disclosure of records claimed to be confidential;

(ii) Requires the testimony of a supervisory official of the agency other than one especially cognizant of the facts of the matter in adjudication;

(iii) Excludes an attorney from participation in a proceeding pursuant to § 511.42(b).

(2) *Procedures for interlocutory appeals.* Within ten (10) days of issuance of a ruling, any party may petition the Administrator to entertain an interlocutory appeal on a ruling in the categories enumerated above. The petition shall not exceed fifteen (15) pages. Any other party may file a response to the petition within ten (10) days of its service. The response shall not exceed fifteen (15) pages. The Administrator shall thereupon act upon the petition, or the Administrator shall request such further briefing or oral presentation as he may deem necessary.

(3) *Interlocutory appeals from all other rulings*—(i) *Grounds.* Interlocutory appeals from all other rulings by the Presiding Officer may proceed only upon motion to the Presiding Officer and a determination by the Presiding Officer in writing, with justification in support thereof, that the ruling involves a controlling question of law or policy as to which there is substantial ground for differences of opinion and that an immediate appeal from the ruling may materially advance the ultimate termination of the litigation, or that subsequent review will be an inadequate remedy.

(ii) *Form.* If the Presiding Officer determines, in accordance with paragraph (b)(3)(i) of this section that an interlocutory appeal may

proceed a petition for interlocutory appeal may be filed with and acted upon by the Administrator in accordance with paragraph (b)(2) of this section.

(c) *Proceedings not stayed.* A petition for interlocutory appeal under this part shall not stay the proceedings before the Presiding Officer unless the Presiding Officer shall so order, except that a ruling of the Presiding Officer requiring the production of records claimed to be confidential shall be automatically stayed for a period of (10) days following the issuance of such ruling to allow an affected party the opportunity to file a petition for an interlocutory appeal pursuant to § 511.24(b)(2). The filing of such a petition shall automatically extend the stay of such a ruling pending the Administrator's action on such petition.

§ 511.25 Summary decision and order.

(a) *Motion.* Any party may move, with a supporting memorandum, for a Summary Decision and Order in its favor upon all or any of the issues in controversy. Complaint Counsel may so move at any time after thirty (30) days following issuance of a complaint, and any other party may so move at any time after issuance of a complaint. Any such motion by any party shall be filed at least twenty (20) days before the date fixed for the adjudicatory hearing.

(b) *Response to motion.* Any other party may, within ten (10) days after service of the motion, file a response thereto with a supporting memorandum.

(c) *Grounds.* A Summary Decision and Order shall be granted if the pleadings and any testimony upon oral examination, answers to interrogatories, admissions, and/or affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a Summary Decision and Order as a matter of law.

(d) *Legal effect.* A Summary Decision and Order upon all the issues being adjudicated shall constitute the Initial Decision of the Presiding Officer, and may be appealed to the Administrator in accordance with § 511.53. A Summary Decision, interlocutory in character, may be rendered on fewer than all issues and may not be appealed prior to issuance of the Initial Decision, except in accordance with § 511.24.

(e) *Case not fully adjudicated on motion.* A Summary Decision and Order that does not dispose of the whole case shall include a statement of those material facts as to which there is no substantial controversy, and of those material facts that are actually and in good faith controverted. The Summary Order shall direct such further proceedings as are just.

§ 511.26 Settlement.

(a) *Applicability.* This section applies only to cases of alleged violations of section 507(3) of the Motor Vehicle Information and Cost Savings Act, Pub. L. 94-163, 89 Stat. 911 (15 U.S.C. Section 2007(3)). Settlement in other cases may be made only in accordance with Subpart G of this part.

(b) *Availability.* Any party shall have the opportunity to submit an offer of settlement to the Presiding Officer.

(c) *Form.* Offers of settlement shall be in the form of a consent agreement and order, shall be signed by the party submitting the offer or his representative, and may be signed by any other party. Each offer of settlement shall be accompanied by a motion to transmit to the Administrator the proposed agreement and order, outlining the substantive provisions of the agreement, and the reasons why it should be accepted.

(d) *Contents.* The proposed consent agreement and order which constitute the offer of settlement shall contain the following:

(1) An admission of all jurisdictional facts;

(2) An express waiver of further procedural steps, and of all rights to seek judicial review or otherwise to contest the validity of the order:

(3) A description of the alleged noncompliance, or violation;

(4) Provisions to the effect that the allegations of the complaint are resolved by the proposed consent agreement and order;

(5) A listing of the acts or practices from which the respondent shall refrain;

(6) A detailed statement of the corrective action(s) which the respondent shall execute and the civil penalty, if any, that respondent shall pay.

(e) *Transmittal.* The Presiding Officer shall transmit to the Administrator for decision all offers of settlement and accompanying memoranda that meet the requirements enumerated in paragraph

(d) of this section. The Presiding Officer may, but need not, recommend acceptance or rejection of such offers. Any party or participant, may object to a proposed consent agreement by filing a motion and supporting memorandum with the Administrator.

(f) *Stay of proceedings.* When an offer of settlement has been agreed to by the parties and has been transmitted to the Administrator, the proceedings shall be stayed until the Administrator has ruled on the offer. When an offer of settlement has been made and transmitted to the Administrator but has not been agreed to by all parties, the proceedings shall not be stayed pending the Administrator's decision on the offer.

(g) *Administrator's ruling.* The Administrator will rule upon all transmitted offers of settlement. If the Administrator accepts the offer, the Administrator shall issue an appropriate order. The order shall become effective upon issuance. In determining whether to accept an offer of settlement, the Administrator will consider the gravity of the alleged violation, and any good faith efforts by the respondent to comply with applicable requirements.

(h) *Rejection.* If the Administrator rejects an offer of settlement, the [Administrator] shall give written notice of that decision and the reasons therefor to the parties and the Presiding Officer. Promptly thereafter, the Presiding Officer shall issue an order notifying the parties of the resumption of the proceedings, including any modifications to the schedule resulting from the stay of the proceedings. **(53 F.R. 15782—May 3, 1988. Effective: May 3, 1988)**

(i) *Effect of rejected offer.* Rejected offers of settlement shall not be admissible in evidence over the objection of any signatory, nor shall the fact of the proposal of the offer be admissible in evidence.

Subpart D—Discovery; Compulsory Process

§ 511.31 General provisions governing discovery.

(a) *Applicabilty.* The discovery rules established in this subpart are applicable to the discovery of information among the parties to a proceeding. Parties seeking information from persons not parties may do so by subpena in accordance with § 511.38.

(b) *Discovery methods.* Parties may obtain discovery by one or more of the following methods: (1) Written interrogatories; (2) requests for production of documents or things; (3) requests for admissions; (4) testimony upon oral examination. Unless the Presiding Officer otherwise orders under paragraph (d) of this section, the frequency of use of these methods is not limited.

(c) *Scope of discovery.* The scope of discovery is as follows:

(1) *In general.* Parties may obtain discovery regarding any matter not privileged, which is relevant to the subject matter involved in the proceedings, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Exception.* Parties may not obtain discovery of documents which accompanied the staff's recommendation as to whether a complaint should issue or of documents or portions thereof which would be exempt from discovery under Rule 26(b)(3) of the Federal Rules of Civil Procedure.

(3) *Hearing preparation: Experts.* A party may obtain discovery of facts known and opinions held by experts, regardless of whether they are acquired or developed in anticipation of or for litigation. Such discovery may be had by any of the methods provided in paragraph (b) of this section.

(d) *Protective orders.* Upon motion by a party or person and for good cause shown, the Presiding Officer may make an order which justice requires to protect such party or person from annoyance, embarrassment, competitive disadvantage, oppression or undue burden or expense, including one or more of the following: (1) That the discovery shall not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time and/or place; (3) that the discovery shall be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters shall not be inquired into, or that the scope of discovery shall be limited to certain matters; (5) that discovery shall be conducted with no one present except persons designated by the Presiding

Officer; (6) that a trade secret or other confidential research, development, or commercial information shall not be disclosed or shall be disclosed only in a designated way or only to designated parties; and (7) that responses to discovery shall be placed *in camera* in accordance with § 511.45.

If a motion for a protective order is denied in whole or in part, the Presiding Officer may, on such terms or conditions as are just, order that any party provide or permit discovery.

(e) *Sequence and timing of discovery.* Discovery may commence at any time after filing of the answer. Unless otherwise provided in these Rules or by order of the Presiding Officer, methods of discovery may be used in any sequence and the fact that a party is conducting discovery shall not operate to delay any other party's discovery.

(f) *Supplementation of responses.* A party who has responded to a request for discovery shall supplement the response with information thereafter acquired.

(g) *Completion of discovery.* All discovery shall be completed as soon as practical but in no case longer than one hundred fifty (150) days after issuance of a complaint unless otherwise ordered by the Presiding Officer in exceptional circumstances and for good cause shown. All discovery shall be served by a date which affords the party from whom discovery is sought the full response period provided by these Rules.

(h) *Service and filing of discovery.* All discovery requests and written responses, and all notices of the taking of testimony, shall be filed with the [Docket Section] and served on all parties and the Presiding Officer. **(53 F.R. 15782—May 3, 1988. Effective: May 3, 1988)**

(i) *Control of discovery.* The use of these discovery procedures is subject to the control of the Presiding Officer, who may issue any just and appropriate order for the purpose of ensuring their timely completion.

§ 511.32 Written interrogatories to parties.

(a) *Availability; procedures for use.* Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of the Presiding Officer, be served upon any party after filing of the answer.

(b) *Procedures for response.* Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by a responsible representative of the respondent and the objections signed by the respresentative making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after service of the interrogatories. The Presiding Officer may allow a shorter or longer time for response. The party submitting the interrogatories may move for an order under § 511.36 with respect to any objection to or other failure to answer an interrogatory.

(c) *Scope of interrogatories.* Interrogatories may relate to any matters which can be inquired into under § 511.31(c)(1), and the answers may be used to the extent permitted under this part. An interrogatory otherwise proper is not objectionable merely because an answer to the interrogatory would involve an opinion or contention that relates to fact or to the application of law to fact, but the Presiding Officer may order that such an interrogatory need not be answered until a later time.

(d) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served, or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to the interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, complications, abstracts, or summaries.

§ 511.33 Production of documents and things.

(a) *Scope.* Any party may serve upon any other party a request (1) to produce and permit the party making the request, or someone acting on behalf of the party, to inspect and copy any designated documents (including writings, drawings, graphs,

charts, photographs, phono-records, and any other data-compilation from which information can be obtained, translated, if necessary, by the party in possession into reasonably usable form), or (2) to inspect and copy, test or sample tangible things which constitute or contain matters within the scope of § 511.31(c)(1) and which are in the possession, custody or control of the party upon whom the request is served.

(b) *Procedure for request.* The request may be served at any time after the filing of the answer without leave of the Presiding Officer. The request shall set forth the items to be inspected either by individual item or by category, and shall describe each item or category with reasonable particularity. The request shall specify a reasonable time, place and manner for making the inspection and performing the related acts.

(c) *Procedure for response.* The party upon whom the request is served shall serve a written response within twenty (20) days after service of the request. The Presiding Officer may allow a shorter or longer time for response. The response shall state, with respect to each item or category requested, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to only part of an item or category, that part shall be so specified. The party submitting the request may move for an order under § 511.36 with respect to any objection to or other failure to respond to the request or any part thereof, or to any failure to permit inspection as requested.

§ 511.34 Requests for admission.

(a) *Procedure for request.* A party may serve upon any other party a written request for the admission, for the purposes of the pending proceeding only, of the truth of any matters within the scope of § 511.31(c)(1) set forth in the request that relate to statements or opinions of fact or if the application of law to fact, including the genuineness of documents described in the request. Copies of documents shall be served with the request unless they have been, or are otherwise, furnished or made available for inspection and copying. The request may, without leave of the Presiding Officer, be served upon any party after filing of the answer. Each matter as to which an admission is requested shall be separately set forth.

(b) *Procedure for response.* The matter as to which an admission is requested is deemed admitted unless within thirty (30) days after service of the request, or within such shorter or longer time as the Presiding Officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or the party's representatives. If objection is made, the reasons therefore shall be stated.

The answer shall specifically admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission. When good faith requires that a party qualify an answer or deny only a part of the matter as to which an admission is requested, the party shall specify the portion that is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny, unless the party states that he or she has made reasonable inquiry and that the information known or readily available to him or her is insufficient to enable him or her to admit or deny. A party who considers that a matter as to which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request but may deny the matter or set forth reasons why the party cannot admit or deny it. The party who has requested an admission may move to determine the sufficiency of the answer or objection thereto in accordance with § 511.36. If the Presiding Officer determines that an answer does not comply with the requirements of this section, he or she may order that the matter be deemed admitted or that an amended answer be served.

(c) *Effect of admission.* Any matter admitted under this section is conclusively established unless the Presiding Officer on motion permits withdrawal or amendment of such admission. The Presiding Officer may permit withdrawal or amendment when the presentation of the merits of the action will be served thereby and the party that obtained the admission fails to satisfy the Presiding Officer that withdrawal or amendment will prejudice that party in maintaining an action or defense on the merits.

§ 511.35 Testimony upon oral examination.

(a) *When testimony may be taken.* At any time after the answer is filed under § 511.12, upon leave of the Presiding Officer and under such terms and conditions as the Presiding Officer may prescribe, any party may take the testimony of any other party, including the agents, employees, consultants or prospective witnesses of that party at a place convenient to the witness. The attendance of witnesses and the production of documents and things at the examination may be compelled by subpena as provided in § 511.38.

(b) *Notice of oral examination.*—(1) *Examination of a party.* A party desiring to examine another party to the proceeding shall, after obtaining leave from the Presiding Officer, serve written notice of the examination on all other parties and the Presiding Officer at least ten (10) days before the date of the examination. The notice shall state (i) the time and place for making the examination; (ii) the name and address of each person to be examined, if known, or if the name is not known, a general description sufficient to identify him; and (iii) the subject matter of the expected testimony. If a subpena *duces tecum* is to be served on the person to be examined, the designation of the materials to be produced, as set forth in the subpena, shall be attached to or included in the notice of examination.

(2) *Examination of a nonparty.* A party desiring to examine a person who is not a party to the proceeding shall make application for a subpena, in accordance with § 511.38, to compel the attendance, testimony and/or production of documents by such person who is not a party. The party desiring such examination shall serve written notice of the examination on all other parties to the proceeding, after issuance of the subpena by the Presiding Officer of a designated alternate.

(3) *Opposition to notice.* A person served with a notice of examination may, within 3 days of the date of service, oppose, in writing, the examination. The Presiding Officer shall rule on the notice and any opposition and may order the taking of all noticed examinations, upon a showing of good cause therefore. The Presiding Officer may, for good cause shown, enlarge or shorten the time for the taking of an examination.

(c) *Persons before whom examinations may be taken.* Examinations may be taken before any person authorized to administer oaths by the laws of the United States or of the place where the examination is held. No examination shall be taken before a person who is a relative or employee or attorney or representative of any party, or who is a relative or employee of such attorney or representative, or who is financially interested in the action.

(d) *Procedure.*—(1) *Examination.* Each witness shall be duly sworn, and all testimony shall be duly recorded. All parties or their representatives may be present and participate in the examination. Examination and cross-examination of witnesses may proceed as permitted at the hearing. Questions objected to shall be answered subject to the objections. Objections shall be in short form, and shall state the grounds relied upon. The questions propounded and the answers thereto, together with all objections made, shall be recorded by the official reporter before whom the examination is made. The original or a verified copy of all documents and things produced for inspection during the examination of the witness shall, upon a request of any party present, be marked for identification and annexed to the record of the examination.

(2) *Motion to terminate or limit examination.* At any time during the examination, upon motion of any party or of the witness, and upon showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the witness or party, the Presiding Officer may, upon motion, order the party conducting the examination to terminate the examination, or may limit the scope and manner of the examination as provided in § 511.31(d).

(3) *Participation by parties not present.* In lieu of attending an examination, any party may serve written questions in a sealed envelope on the party conducting the examination. That party shall transmit the envelope to the official reporter, who shall unseal it and propound the questions contained therein to the witness.

(e) *Transcription and filing of testimony.*—(1) *Transcription.* Upon request by any party, the testimony recorded at an examination shall be transcribed. When the testimony is fully transcribed, the transcript shall be submitted to the witness for examination and signing, and shall be read to or

by the witness, unless such examination and signature are waived by the witness. Any change in form or substance which the witness desires to make shall be entered upon the transcript of the official reporter with a statement of the reasons given by the witness for making them. The transcript shall then be signed by the witness, unless the parties by stipulation waive the signing, or the witness is ill or cannot be found or refuses to sign. If the transcript is not signed by the witness within thirty (30) days of its submission to him, the official reporter shall sign it and state on the record the fact of the waiver of signature or of the illness or absence of the witness or the fact of the refusal to sign, together with a statement of the reasons therefor. The testimony may then be used as fully as though signed, in accordance with paragraph (i) of this section.

(2) *Certification and filing.* The official reporter shall certify on the transcript that the witness was duly sworn and that the transcript is a true record of the testimony given and corrections made by the witness. The official reporter shall then seal the transcript in an envelope endorsed with the title and docket number of the action and marked "Testimony of (name of witness)" and shall promptly file the transcript with the [Docket Section]. The [Presiding Officer] shall notify all parties of the filing of the transcript and [Docket Section] shall furnish a copy of the transcript to any party or to the witness upon payment of reasonable charges therefor. **(53 F.R. 15782—May 3, 1988. Effective: May 3, 1988)**

(f) *Costs of examination.* The party who notices the examination shall pay for the examination. The party who requests transcription of the examination shall pay for the transcription.

(g) *Failure to attend or to serve subpena; expenses.* If a party who notices an examination fails to attend and proceed therewith and another party attends in person or by a representative pursuant to the notice, the Presiding Officer may order the party who gave the notice to pay the attending party the reasonable expenses incurred. If a party who notices an examination fails to serve a subpena upon the witness and as a result the witness does not attend, and if another party attends in person or by a representative because that party expects the examination to be made, the Presiding Officer may order the party who gave notice to pay the attending party the reasonable expenses incurred.

(h) *Examination to preserve testimony—* (1) *When available.* By leave of the Presiding Officer, a party may examine a witness for the purpose of perpetuating the testimony of that witness. A party who wishes to conduct such an examination shall obtain prior leave of the Presiding Officer by filing a motion. The motion shall include a showing of substantial reason to believe that the testimony could not be presented at the hearing. If the Presiding Officer is satisfied that the perpetuation of the testimony may prevent a failure of justice or is otherwise reasonably necessary, he or she shall order that the deposition be taken.

(2) *Procedure.* Notice of an examination to preserve testimony shall be served at least fifteen (15) days prior to the examination. The examination shall be taken in accordance with the provisions of paragraph (d) of this section. Any examination taken to preserve testimony shall be fully transcribed and filed in accordance with paragraph (e) of this section.

(i) *Use of testimony obtained under this section.* At the hearing or upon a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable Notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of a person who at the time of the taking of his testimony was an officer, director or managing agent of a party may be used against that party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Presiding Officer finds: (i) that the witness is dead; or (ii) that the witness is at a greater distance than 100 miles from the place or the hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or (iii) that the witness is unable to attend or testify because of age, illness, infirmity,

or imprisonment; or (iv) that the party offering the deposition has been unable to procure the attendance of the witness by subponea; or (v) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

§ 511.36 Motions to compel discovery.

If a party fails to respond to discovery, in whole or in part, the party seeking discovery may move within twenty (20) days for an order compelling an answer, or compelling inspection or production of documents, or otherwise compelling discovery. For purposes of this subsection, an evasive or incomplete response is to be treated as a failure to respond. If the motion is granted, the Presiding Officer shall issue an order compelling discovery. If the motion is denied in whole or in part, the Presiding Officer may make such protective order as it would have been empowered to make on a motion pursuant to § 511.31(d). When making oral examinations, the discovery party shall continue the examination to the extent possible with respect to other areas of inquiry before moving to compel discovery.

§ 511.37 Sanctions for failure to comply with order.

If a party fails to obey an order to provide or permit discovery, the Presiding Officer may take such action as is just, including but not limited to the following:

(a) Infer that the admission, testimony, document of other evidence would have been adverse to the party;

(b) Order that for the purposes of the proceeding, the matters regarding which the order was made or any other designated facts shall be taken to be established in accordance with the claim of the party obtaining the order;

(c) Order that the party withholding discovery not introduce into evidence or otherwise rely, in support of any claim or defense, upon the documents or other evidence withheld;

(d) Order that the party withholding discovery not introduce into evidence or otherwise use at the hearing, information obtained in discovery;

(e) Order that the party withholding discovery not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony documents, or other evidence would have shown;

(f) Order that a pleading, or part of a pleading, or a motion or other submission by the party, concerning which the order was issued, be stricken, or that decision on the pleadings be rendered against the party, or both; and

(g) Exclude the party or representative from proceedings, in accordance with § 511.42(b).

Any such action may be taken by order at any point in the proceedings.

§ 511.38 Subpenas.

(a) *Availability.* A subpoena shall be addressed to any party or any person not a party for the purpose of compelling attendance, testimony and production of documents at a hearing or oral examination.

(b) *Form.* A subpoena shall identify the action with which it is connected; shall specify the person to whom it is addressed and the date, time and place for compliance with its provisions; and shall be issued by order of the Presiding Officer and signed by the [Chief Counsel] or by the Presiding Officer. A subpoena *duces tecum* shall specify the books, papers, documents, or other materials or data-compilation to be produced. **(53 F.R. 26257—July 12, 1988. Effective: July 12, 1988)**

(c) *How obtained*—(1) *Content of application.* An application for the issuance of a subpoena stating reasons shall be submitted in triplicate to the Presiding Officer.

(2) *Procedure of application.* The original and two copies of the subpoena, marked "original," "duplicate" and "triplicate," shall accompany the application. The Presiding Officer shall rule upon an application for a subpoena *ex parte,* by issuing the subpoena or by issuing an order denying the application.

(d) *Issuance of a subpoena.* The Presiding Officer shall issue a subpoena by signing and dating, or ordering the [Chief Counsel] to sign and date, each copy in the lower right-hand corner of the document. The "duplicate" and "triplicate" copies of the subpoena shall be transmitted to the applicant for service in accordance with these Rules; the "original" copy shall be retained by or be forwarded to the [Chief Counsel] for retention in the docket of the proceeding. **(53 F.R. 26257—July 12, 1988. Effective: July 12, 1988)**

(e) *Service of a subpoena.* A subpoena may be served in person or by certified mail, return receipt requested, as provided in § 511.16(b). Service shall be made by delivery of the signed "duplicate" copy to the person named therein.

(f) *Return of service.* A person serving a subpoena shall promptly execute a return of service, stating the date, time and manner of service, if service is effected by mail, the signed return receipt shall accompany the return of service. In case of failure to make service, a statement of the reasons for the failure shall be made. The "triplicate" of the subpoena, bearing or accompanied by the return of service, shall be returned forthwith to the [Chief Counsel] after service has been completed. **(53 F.R. 26257—July 12, 1988. Effective: July 12, 1988)**

(g) *Motion to quash or limit subpoena.* Within five (5) days of receipt of a subpoena, the person against whom it is directed may file with the Presiding Officer a motion to quash, modify, or limit the subpoena, setting forth the reasons why the subpoena should be withdrawn or why it should be modified or limited in scope. Any such motion shall be answered within five (5) days of service, and shall be ruled on immediately thereafter. The order shall specify the date, if any, for compliance with the specifications of the subpoena and the reasons for the decision.

(h) *Consequences of failure to comply.* In the event of failure to comply with a subpoena, the Presiding Officer may take any of the actions enumerated in § 511.37 or may order any other appropriate relief to compensate for the withheld testimony, documents, or other materials. If in the opinion of the Presiding Officer such relief is insufficient, the Presiding Officer shall certify to the Administrator a request for judicial enforcement of the subpoena.

§ 511.39 Orders requiring witnesses to testify or provide other information and granting immunity.

(a) A party who desires the issuance of an order requiring a witness to testify or provide other information upon being granted immunity from prosecution under title 18, United States Code, section 6002, may make a motion to that effect. The motion shall be made and ruled on in accordance with § 511.22, and shall include a showing:

(1) That the testimony or other information sought from a witness or prospective witness may be necessary to the public interest; and

(2) That such individual has refused or is likely to refuse to testify or provide such information on the basis of that individual's privilege against self-incrimination.

(b) If the Presiding Officer determines that the witness' testimony appears necessary and that the privilege against self-incrimination may be invoked, he or she may certify to the Administrator a request that he or she obtain the approval of the Attorney General of the United States for the issuance of an order granting immunity.

(c) Upon application to and approval of the Attorney General of the United States, and after the witness has invoked the privilege against self-incrimination, the Presiding Officer shall issue the order granting immunity unless he or she determines that the privilege was improperly invoked.

(d) Failure of a witness to testify after a grant of immunity or after a denial of the issuance of an order granting immunity shall result in the imposition of appropriate sanctions as provided in § 511.37.

Subpart E—Hearings

§ 511.41 General rules.

(a) *Public hearings.* All hearings pursuant to this Part shall be public unless otherwise ordered by the Presiding Officer. Notice of the time and location of the hearing shall be served on each party and participant, and published in the *Federal Register*.

(b) *Expedition.* Hearings shall proceed with all reasonable speed, and insofar as practicable and with due regard to the convenience of the parties and shall continue without suspension until concluded, except in unusual circumstances.

(c) *Rights of parties.* Every party shall have the right of timely notice and all other rights essential to a fair hearing, including, but not limited to, the rights to present evidence, to conduct such cross-examination as may be necessary in the judgment of the Presiding Officer for a full and complete disclosure of the facts, and to be heard by objection, motion, brief, and argument.

(d) *Rights of participants.* Every participant shall have the right to make a written or oral statement of position, file proposed findings of fact, conclusions of law and a posthearing brief, in accordance with § 511.17(b).

(e) *Rights of witnesses.* Any person compelled to testify in a proceeding in response to a subpena may be accompanied, represented, and advised by counsel or other representative, and may obtain a transcript of his or her testimony at no cost.

§ 511.42 Powers and duties of Presiding Officer.

(a) *General.* A Presiding Officer shall have the duty to conduct full, fair, and impartial hearings, to take appropriate action to avoid unnecessary delay in the disposition of proceedings, and to maintain order. He or she shall have all powers necessary to that end, including the following powers:

(1) To administer oaths and affirmations;

(2) To compel discovery and to impose appropriate sanctions for failure to make discovery;

(3) To issue subpenas;

(4) To rule upon offers of proof and receive relevant and probative evidence;

(5) To regulate the course of the hearings and the conduct of the parties and their representatives therein;

(6) To hold conferences for simplification of the issues, settlement of the proceedings, or any other proper purposes;

(7) To consider and rule, orally or in writing, upon all procedural and order motions appropriate in an adjudicative proceeding;

(8) To issue initial decisions, rulings, and orders, as appropriate;

(9) To certify questions to the Administrator for determination; and

(10) To take any action authorized in this Part or in conformance with the provisions of title 5, United States Code, sections 551 through 559.

(b) *Exclusion of parties by Presiding Officer.* A Presiding Officer shall have the authority, for good cause stated on the record, to exclude from participation in a proceeding any party, participant, and/or representative who shall violate requirements of § 511.76. Any party, participant and/or representative so excluded may appeal to the Administrator in accordance with the provisions of § 511.23. If the representative of a party or participant is excluded, the hearing shall be suspended for a reasonable time so that the party or participant may obtain another representative.

(c) *Substitution of Presiding Officer.* In the event of the substitution of a new Presiding Officer for the one originally designated, any motion predicated upon such substitution shall be made within five (5) days of the substitution.

(d) *Interference.* In the performance of adjudicative functions, a Presiding Officer shall not be responsible to or subject to the supervision or direction of the Administrator or of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for NHTSA. All directions by the Administrator to a Presiding Officer concerning any adjudicative proceeding shall appear on and be made a part of the record.

(e) *Disqualification of Presiding Officer.* (1) When a Presiding Officer deems himself or herself disqualified to preside in a particular proceeding, he or she shall withdraw by notice on the record and shall notify the **[**Chief Administrative Law Judge of the withdrawal.**]** **(53 F.R. 15782—May 3, 1988. Effective: May 3, 1988)**

(2) Whenever, for any reason, any party shall deem the Presiding Officer to be disqualified to preside, or to continue to preside, in a particular proceeding, that party may file with the **[**Chief Administrative Law Judge**]** a motion to disqualify and remove, supported by affidavit(s) setting forth the alleged grounds for disqualification. A copy of the motion and supporting affidavit(s)

shall be served by the [Chief Administrative Law Judge] on the Presiding Officer whose removal is sought. The Presiding Officer shall have ten (10) days from service to reply in writing. Such motion shall not stay the proceeding unless otherwise ordered by the Presiding Officer or the Administrator. If the Presiding Officer does not disqualify himself or herself, the Administrator will determine the validity of the grounds alleged, either directly or on the report of another Presiding Officer appointed to conduct a hearing for that purpose, and shall in the event of disqualification take appropriate action, by assigning another Presiding Officer or requesting loan of another Administrative Law Judge through the [Office of Hearings]. **(53 F.R. 15782—May 3, 1988. Effective: May 3, 1988)**

§ 511.43 Evidence.

(a) *Applicability of Federal Rules of Evidence.* The Federal Rules of Evidence shall apply to proceedings held under this part only as a general guide. The Presiding Officer may admit any relevent and probative evidence.

(b) *Burden of proof.* (1) Complaint counsel shall have the burden of sustaining the allegations of any complaint.

(2) Any party who is the proponent of a legal and/or factual proposition shall have the burden of sustaining the proposition.

(c) *Presumptions.* A presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the hearing upon the party on whom it was originally cast.

(d) *Admissibility.* All relevant and reliable evidence is admissible, but may be excluded if its probative value is substantially outweighed by unfair prejudice or by considerations of undue delay, waste of time, immateriality, or needless presentation of cumulative evidence.

(e) *Official notice*—(1) *Definition.* Official notice means use by the Presiding Officer of extra-record facts and local conclusions drawn from those facts. An officially noticed fact or legal conclusion must be one not subject to reasonable dispute in that it is either (i) generally known within the jurisdiction of the Presiding Officer or (ii) known by the Presiding Officer in areas of his or her expertise; or (iii) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(2) *Method of taking official notice.* The Presiding Officer may at any time take official notice upon motion of any party or upon its own initiative. The record shall reflect the facts and conclusions which have been officially noticed.

(3) *Opportunity to challenge.* Any party may upon application in writing rebut officially noticed facts and conclusions by supplementing the record. The Presiding Officer shall determine the permissible extent of this challenge; that is, whether to limit the party to presentation of written materials, whether to allow presentation of testimony, whether to allow cross-examination, or whether to allow oral argument. The Presiding Officer shall grant or deny the application on the record.

(f) *Objections and exceptions.* Objections to evidence shall be timely interposed, shall appear on the record, and shall contain the grounds upon which they are based. Rulings on all objections, and the bases therefore, shall appear on the record. Formal exception to an adverse ruling is not required to preserve the question for appeal.

(g) *Offer of proof.* When an objection to proffered testimony or documentary evidence is sustained, the sponsoring party may make a specific offer, either in writing or orally, of what the party expects to prove by the testimony or the document. When an offer of proof is made, any other party may make a specific offer, either in writing or orally, of what the party expects to present to rebut or contradict the offer of proof. Written offers of proof or of rebuttal, adequately marked for identification, shall accompany the record and be available for consideration by any reviewing authority.

§ 511.44 Expert witnesses.

(a) *Definition.* An expert witness is one who, by reason of education, training, experience, or profession, has peculiar knowledge concerning the matter of science or skill to which his or her testimony relates and from which he or she may draw inferences based upon hypothetically stated facts or from facts involving scientific or technical knowledge.

(b) *Method of presenting testimony of expert witness.* Except as may be otherwise ordered by the Presiding Officer, a detailed written statement of the elements of the direct testimony of an expert witness shall be filed on the record and exchanged between the parties no later than 10 days preceding the commencement of the hearing. The statement must contain a full explanation of the methodology underlying any analysis, and a full disclosure of the basis of any opinion. The direct testimony of an expert witness shall not include points not contained in the written statement. A party may waive direct examination of an expert witness by indicating that the written statement be considered the testimony of the witness. In such a case, the written testimony shall be incorporated into the record and shall constitute the testimony of the witness.

(c) *Cross-examination and redirect examination of expert witness.* Cross-examination, redirect examination, and re-cross-examination of an expert witness will proceed in due course based upon the written testimony and any amplifying oral testimony.

(d) *Failure to file and/or to exchange written statement.* Failure to file and/or to exchange the written statement of an expert witness as provided in this section shall deprive the sponsoring party of the use of the expert witness and of the conclusions which that witness would have presented.

§ 511.45 In camera materials.

(a) *Definition. In camera* materials are documents, testimony, or other data which by order of the Presiding Officer or the Administrator, as appropriate under this Part, are kept confidential and excluded from the public record. Only materials exempt under the Freedom of Information Act may be kept confidential and excluded from the public record. Pursuant to 49 CFR Part 512, the Chief Counsel of the NHTSA is responsible for determining whether an alleged confidential business record is exempt from the Freedom of Information Act. The right of the Presiding Officer, the Administrator and reviewing courts to order disclosure of *in camera* materials is specifically reserved.

(b) In Camera *Treatment of documents and testimony.* The Presiding Officer or the Administrator, as appropriate under this part, shall have authority, when good cause is found on the record, to order documents or testimony offered in evidence, whether admitted or rejected, to be received and preserved *in camera.* The order shall specify the length of time for *in camera* treatment and shall include:

(1) A description of the documents and/or testimony;

(2) The reasons for granting *in camera* treatment for the specified length of time.

(c) *Access and disclosure to parties.* (1) The Administrator and Presiding Officer, and their immediate advisory staffs shall have complete access to all *in camera* materials. All other parties shall also have complete access to all *in camera* materials, except that these parties may seek access only in accordance with paragraph (c)(2) of this section when:

(i) The *in camera* materials consist of information obtained by the government from persons not parties to the proceeding; or

(ii) The *in camera* materials consist of information provided by one of the parties to the proceeding which is confidential as to the other parties to the proceeding.

(2) Any party desiring access to and/or disclosure of the *in camera* materials specified in paragraph (c)(1) (i) and (ii) of this section for the preparation and presentation of that party's case shall make a motion which sets forth the justification therefore. The Presiding Officer or the Administrator, as appropriate under this part, may grant such motion on the record for substantial good cause shown and shall enter a protective order prohibiting unnecessary disclosure and requiring other necessary safeguards. The Presiding Officer or the Administrator, as appropriate, may examine the *in camera* materials and excise portions thereof before disclosing the materials to the moving party.

(d) *Segregation of* in camera *materials. In camera* materials shall be segregated from the public record and protected from public view.

(e) *Public release of* in camera *materials. In Camera* materials constitute a part of the confidential records of the NHTSA and shall not be released to the public until the expiration of *in camera* treatment.

(f) *Reference to* in camera *materials.* In the submission of proposed findings, conclusions, briefs, or other documents, all parties shall refrain from disclosing specific details of *in camera* materials. Such refraining shall not preclude general references to such materials. To the extent that parties consider it necessary to include specific details of *in camera* materials, the references shall be incorporated into separate proposed findings, briefs, or other documents marked "CONFIDENTIAL, CONTAINS *IN CAMERA* MATERIAL," which shall be placed *in camera* and become part of the *in camera* record. These documents shall be served only on parties accorded access to the *in camera* materials in accordance with paragraph (c)(2) of this section.

§ 511.46 Proposed findings, conclusions, and order.

Within a reasonable time after the closing of the record and receipt of the transcript, all parties and participants may, simultaneously, file post-hearing briefs, including proposed findings of facts, conclusions of law and a proposed order, together with reasons therefore. The Presiding Officer shall establish a date certain for the filing of the briefs, which shall not exceed 45 days after the close of the record except in unusual circumstances. The briefs shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on. Replies shall be filed within fifteen (15) days of the date for the filing of briefs unless otherwise established by the Presiding Officer. The parties and participants may waive either or both submissions.

§ 511.47 Record.

(a) *Reporting and transcription.* Hearings shall be recorded and transcribed under the supervision of the Presiding Officer by a reporter appointed by the Administrator. The original transcript shall be a part of the record and the official transcript. Copies of transcripts are available from the reporter at a cost not to exceed the maximum rates fixed by contract between the NHTSA and the reporter.

(b) *Corrections.* Corrections of the official transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. The Presiding Officer may order corrections, either on his or her own motion or on motion of any party. The Presiding Officer shall determine the corrections to be made and so order. Corrections shall be interlineated or otherwise inserted in the official transcript so as not to obliterate the original text.

§ 511.48 Official docket.

[(a) The official docket in adjudicatory proceedings will be maintained in the Docket Section, Office of the Secretary , Room 4107, 400 Seventh Street S.W., Washington, D.C. 20590, and will be available for inspection during normal working hours (9:00 a . m . -
5:00 p.m.) Monday through Friday.

(b) Fees for production or disclosure of records contained in the official docket shall be levied as prescribed in the Department of Transportation's regulations on Public Availability of Information (49 CFR Part 7).]**(53 F.R. 15782—May 3, 1988. Effective: May 3, 1988)**

§ 511.49 Fees.

(a) *Witnesses.* Any person compelled to appear in person in response to a subpena or notice of oral examination shall be paid at least the same attendance and mileage fees as are paid witnesses in the courts of the United States, in accordance with Title 28, United States Code, Section 1821.

(b) *Responsibility.* The fees and mileage referred to in this section shall be paid by the party at whose instance witnesses appear.

Subpart F—Decision

§ 511.51 Initial decision.

(a) *When filed.* The Presiding Officer shall endeavor to file an Initial Decision with the Administrator within sixty (60) days of the close of the record, the filing of post-hearing briefs, or the filing of replies thereto, whichever is latest.

(b) *Content.* The Initial Decision shall be based upon a consideration of the entire record and it shall be supported by reliable, probative, and substantial evidence. It shall include:

(1) Findings and conclusions, as well as the reasons or bases therefore, upon the material questions of fact, material issues of law, or discretion presented on the record, and should, where practicable, be accompanied by specific page citations to the record and to legal and other materials relied upon.

(2) An appropriate order.

(c) *By whom made.* The Initial Decision shall be made and filed by the Presiding Officer who presided over the hearing, unless otherwise ordered by the Administrator.

(d) *Reopening of proceeding by presiding officer; termination of jurisdiction.* (1) At any time prior to or concomitant with the filing of the Initial Decision, the Presiding Officer may reopen the proceedings for the reception of further evidence.

(2) Except for the correction of clerical errors, the jurisdiction of the Presiding Officer is terminated upon the filing of the Initial Decision, unless and until the proceeding is remanded to the Presiding Officer by the Administrator.

§ 511.52 Adoption of initial decision.

The Initial Decision and Order shall become the Final Decision and Order of the Administrator forty (40) days after issuance unless an appeal is noted and perfected or unless review is ordered by the Administrator. Upon the expiration of the fortieth day, the Executive Secretary shall prepare, sign and enter an order adopting the Initial Decision and Order.

§ 511.53 Appeal from initial decision.

(a) *Who may file notice of intention.* Any party may appeal an Initial Decision to the Administrator provided that within ten (10) days after issuance of the Initial Decision such party files and serves a notice of intention to appeal.

(b) *Appeal brief.* The appeal shall be in the form of a brief, filed within forty (40) days after service of the Initial Decision, duly served upon all parties and participants. The appeal brief shall contain, in the order indicated, the following:

(1) A subject index of the matters in the brief, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto;

(2) A concise statement of the case;

(3) A specification of the position urged;

(4) The arguments, presenting clearly the points of fact and law relied upon in support of the position on each question, with specific page references to the record and the legal or other material relied upon; and

(5) A proposed form of order for the Administrator's consideration in lieu of the order contained in the Initial Decision.

(c) *Answering brief.* Within thirty (30) days after service of the appeal brief upon all parties and participants, any party may file an answering brief which shall also contain a subject index, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto. Such brief shall present clearly the points of fact and law relied upon in support of the position taken on each question, with specific page references to the record and legal or other material relied upon.

(d) *Participant's brief.* Within thirty (30) days after service of the appeal brief upon all parties and participants, any participant may file an appeal brief which should contain a subject index, with page references, and a table of authorities being relied upon. Such brief shall present clearly the position taken by the participant on each question raised by the appellant(s).

(e) *Cross appeal.* If a timely notice of appeal is filed by a party, any other party may file a notice of cross-appeal within ten (10) days of the date on which the first notice of appeal was filed. Cross-appeals shall be included in the answering brief and shall conform to the requirements for forms, content and filing specified in paragraph (c) of this section. If an appeal is noticed but not perfected, no cross-appeal shall be permitted and notice of cross-appeal shall be deemed void.

(f) *Reply brief.* A reply brief shall be limited to rebuttal of matters in answering briefs, including matters raised in cross-appeals. A reply brief shall be filed and within fourteen (14) days after service of an answering brief, or on the day preceding the oral argument, whichever comes first.

(g) *Oral argument.* The purpose of an oral argument is to emphasize and clarify the issues. Any party may request oral argument. The Administrator may order oral argument upon request or upon his or her own initiative. All oral arguments shall be reported and transcribed.

§ 511.54 Review of initial decision in absence of appeal.

The Administrator may, by order, review a case not otherwise appealed by a party. Thereupon the parties shall and participants may file briefs in accordance with § 511.53(b), (c), (d), (e), and (f) except that the Administrator may, in his or her discretion,

establish a different briefing schedule in his or her order. Any such order shall issue within forty (40) days of issuance of the Initial Decision. The order shall set forth the issues which the Administrator will review.

§ 511.55 Final decision on appeal or review.

(a) Upon appeal from or review of an Initial Decision, the Administrator shall consider such parts of the record as are cited or as may be necessary to resolve the issues presented and, in addition, shall, to the extent necessary or desirable, exercise all the powers which it could have exercised if he or she had made the Initial Decision.

(b) In rendering his or her decision, the Administrator shall adopt, modify, or set aside the findings, conclusions, and order contained in the Initial Decision, and shall include in his or her Final Decision a statement of the reasons or bases for his or her action. The Administrator shall issue an order reflecting his or her Final Decision.

§ 511.56 Reconsideration.

Within twenty (20) days after issuance of a Final Decision and Order, any party may file with the Administrator a petition for reconsideration of such decision or order, setting forth the relief desired and the grounds in support thereof. Any party desiring to oppose such a petition shall file an answer thereto within ten (10) days after service of the petition. The filing of a petition for reconsideration shall not stay the effective date of the Decision and Order or toll the running of any statutory time period affecting the decision or order unless specifically so ordered by the Administrator.

§ 511.57 Effective date of order.

(a) *Consent orders.* An order which has been issued following acceptance of an offer of settlement in accordance with § 511.26 becomes effective upon issuance.

(b) *Litigated orders.* All other orders become effective upon the expiration of the statutory period for court review specified in Section 508(c)(1) of the Motor Vehicle Information and Cost Savings Act, Title 15, United States Code Section 2008(c)(1), Pub. L. 94–163, 89 Stat. 911, or, if a petition for review has been filed, upon court affirmance of the Administrator's order.

Subpart G—Settlement Procedure in Cases of Violation of Average Fuel Economy Standards

§ 511.61 Purpose.

This subpart establishes the procedures and requirements necessary to obtain a settlement of a case of violation of section 507 (1) and (2) of the Motor Vehicle Information and Cost Savings Act, as amended, Pub. L. 94–163, 89 Stat. 911 (15 U.S.C. Section 2007(1)(2)). No settlement of such cases may be had except as in accordance with this subpart.

§ 511.62 Definitions.

"Average fuel economy standard" means an average fuel economy standard established by or pursuant to the Motor Vehicle Information and Cost Savings Act.

"Insolvency" means the inability to meet expenses when due.

"Settlement" means a compromise, modification, or remission of a civil penalty assessed under this Part for a violation of an average fuel economy standard.

§ 511.63 Criteria for settlement.

Settlement of a case of violation of an average fuel economy standard is discretionary with the Administrator. The Administrator will consider settlement only to the extent—

(a) Necessary to prevent the insolvency or bankruptcy of the person seeking settlement, or

(b) That the violation of the average fuel economy standard resulted, as shown by the person seeking settlement, from an act of God, a strike, or fire, or

(c) That modification of a civil penalty assessed under this part is necessary to prevent lessening of competition, as determined and as certified by the Federal Trade Commission under section 508(b)(4) of the Motor Vehicle Information and Cost Savings Act, Pub. L. 94–163, 89 Stat. 911 (15 U.S.C. sec. 2008(b)(4)).

§ Petitions for settlement; timing, contents.

(a) A petition seeking settlement under this subpart must be filed within 30 days after the issuance of a final order assessing a civil penalty for a violation of an average fuel economy standard.

(b)(1) A petition for settlement should be sufficient to allow the Administrator to determine that at least one of the criteria set out in § 511.63 is satisfied, and that the public interest would be served by settlement.

(2) A petition asserting that settlement is necessary to prevent bankruptcy or insolvency must include:

(i) Copies of all pertinent financial records, auditors reports, and documents that show that the imposition of a civil penalty would cause insolvency, or would cause a company to do an act of bankruptcy, and

(ii) A payment schedule that would allow the petitioner to pay a civil penalty without resulting in insolvency or an act of bankruptcy.

(3) A petition asserting that the violation of the average fuel economy standard was caused by an act of God, fire, or strike must describe corrective and ameliorative steps taken to mitigate the effects of the act of God, fire, or strike.

(4) A petition based on a certification by the Federal Trade Commission that modification of the civil penalty assessed is necessary to prevent a substantial lessening of competition must include a certified copy of:

(i) The application to the Federal Trade Commission for a certification under section 508(b)(4) of the Motor Vehicle Information and Cost Savings Act, Pub. L. 94-163, 89 Stat. 911 (15 U.S.C. Sec. 2008(b)(4)), and materials supporting the application.

(ii) The administrative record of any Federal Trade Commission proceeding held in regard to the application, and

(iii) The certification by the Federal Trade Commission.

(c) It is the policy of the National Highway Traffic Safety Administration that unconditional settlements of violations of average fuel economy standards are not in the public interest, and absent special and extraordinary circumstances, will not be allowed. All petitions for settlement shall contain a section proposing conditions for settlement. Conditions for settlement can be specific acts designed to lead to the reduction of automotive fuel consumption, which the petitioner is not otherwise required to perform pursuant to any statute, regulation, or administrative or judicial order, such as sponsoring public education programs, advertising, accelerating commercial application of technology, accelerating technology development programs, or making public the results of privately performed studies, surveys, or research activities.

§ 511.65 Public comment.

Notice and opportunity for comment are provided to the public in regard to settlements under this part. Subject to § 511.66, notice of receipt of a petition for settlement is published in the *Federal Register*, and a copy of such petitions and any supporting information is placed in a public docket. Any settlement agreed to by the Administrator shall be placed in the public docket for 30 days so that interested persons may comment thereon. No settlement is binding until the completion of that thirty day period.

§ 511.66 Confidential business information.

The Administrator shall have authority to segregate from the public docket and to protect from public view information in support of a petition for settlement which has been determined to be confidential business information. The provisions of 15 U.S.C. 2005(d) pertaining to discretionary release by the Administrator of and to limited disclosure of information determined to be confidential business information shall apply to this section.

§ 511.67 Settlement order.

If, in accordance with this subpart, the Administrator allows a settlement of a case of violation of an average fuel economy standard, an order of settlement shall be issued, setting out the terms of the settlement, and containing a brief discussion of the factors underlying the exercise of the Administrator's discretion in allowing the settlement, including a discussion of comments received under § 511.65. If the Administrator rejects a petition for settlement, the [Administrator] shall give written notice of the rejection and the reasons for the rejection to the parties and the Presiding Officer. **(53 F.R. 15782—May 3, 1988. Effective: May 3, 1988)**

Subpart H—Appearances; Standards of Conduct

§ 511.71 Who may make appearances.

A party or participant may appear in person, or by a duly authorized officer, partner, regular employee, or other agent of this party or participant, or by or with counsel or other duly qualified representative, in any proceeding under the part.

§ 511.72 Authority for representation.

Any individual acting in a representative capacity in any adjudicative proceeding may be required by the Presiding Officer or the Administrator to show his or her authority to act in such capacity. A regular employee of a party who appears on behalf of the party shall be required by the Presiding Officer or the Administrator to show his or her authority to so appear.

§ 511.73 Written appearances.

(a) Any person who appears in a proceeding shall file a written notice of appearance with the Executive Secretary or deliver a written notice of appearance to the reporter at the hearing, stating for whom the appearance is made and the name, address, and telephone number (including area code) of the person making the appearance and the date of the commencement of the appearance. The written appearance shall be made a part of the record.

(b) Any person who has previously appeared in a proceeding may withdraw his or her appearance by filing a written notice of withdrawal of appearance with the [Docket Section]. The notice of withdrawal of appearance shall state the name, address, and telephone number (including area code) of the person withdrawing the appearance, for whom the appearance was made, and the effective date of the withdrawal of the appearance, and such notice of withdrawal shall be filed within five (5) days of the effective date of the withdrawal of the appearance. **(53 F.R. 15782—May 3, 1988. Effective: May 3, 1988)**

§ 511.74 Attorneys.

An attorney at law who is admitted to practice before the Federal courts or before the highest court of any State, the District of Columbia, or any territory or Commonwealth of the United States, may practice before the NHTSA. An attorney's own representation that he or she is in good standing before any of such courts shall be sufficient proof thereof, unless otherwise ordered by the Presiding Officer or the Administrator.

§ 511.75 Persons not attorneys.

(a) Any person who is not an attorney at law may be admitted to appear in an adjudicative proceeding if that person files proof to the satisfaction of the Presiding Officer that he or she possesses the necessary legal, technical, or other qualifications to render valuable service in the proceeding and is otherwise competent to advise and assist [in the presentation of matters] in the proceedings. An application by a person not an attorney at law [. . .] to appear in a proceeding shall be submitted in writing to the [Docket Section], not later than thirty (30) days prior to the hearing in the proceedings. The application shall set forth in detail the applicant's qualifications to appear in the proceedings. **(53 F.R. 15782—May 3, 1988. Effective: May 3, 1988)**

(b) No person who is not an attorney at law and whose application has not been approved shall be permitted to appear in the Administration's proceedings. However, this provision shall not apply to any person who appears before the NHTSA on his or her own behalf or on behalf of any corporation, partnership, or association of which the person is a partner, officer, or regular employee.

§ 511.76 Qualifications and standards of conduct.

(a) The NHTSA expects all persons appearing in proceedings before it to act with integrity, with respect, and in an ethical manner. Business transacted before and with the NHTSA shall be in good faith.

(b) To maintain orderly proceedings, the Presiding Officer or the Administrator, as appropriate under this part, may exclude parties, participants, and their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violation of the prohibition against certain ex parte communications. The Presiding Officer may, in addition to the above sanctions, deny access to additional *in camera* materials when a party or participant publicly releases such materials without authorization.

(c) An excluded party, participant, or representative thereof may petition the Administrator to entertain an interlocutory appeal in accordance with § 511.24. If, after such appeal, the representative of a party or participant, is excluded, the hearing shall, at the request of the party or participant, be suspended for a reasonable time so that the party or participant may obtain another representative.

§ 511.77 Restrictions as to former members and employees.

The postemployee restrictions applicable to former Administrators and NHTSA employees, as set forth in 18 U.S.C. 207, shall govern the activities of former Administrators and NHTSA employees in matters connected with their former duties and responsibilities.

§ 511.78 Prohibited communications.

(a) *Applicability.* This section is applicable during the period commencing with the date of issuance of a complaint and ending upon final NHTSA action in the matter.

(b) *Definitions.* (1) "Decision-maker" means those NHTSA personnel who render decisions in adjudicative proceedings under this part, or who advise officials who render such decisions, including:

(i) The Administrator,

(ii) The Administrative Law Judges;

(2) "Ex parte communications" means:

(i) Any written communication other than a request for a status report on the proceeding made to a decisionmaker by any person other than a decisionmaker which is not served on all parties.

(ii) Any oral communication other than a request for a status report on the proceeding made to a decisionmaker by any person other than a decisionmaker without advance notice to the parties to the proceeding and opportunity for them to be persent.

(c) *Prohibited ex parte communications.* Any oral or written ex parte communication relative to the merits of a proceeding under this part is a prohibited ex parte communication, except as provided in paragraph (d) of this section.

(d) *Permissible ex parte communications.* The following communications shall not be prohibited under this section:

(1) Ex parte communications authorized by statute or by this part.

(2) Any staff communication concerning judicial review or judicial enforcement in any matter pending before or decided by the Administrator.

(e) *Procedures for handling prohibited ex parte communication.* (1) Prohibited written ex parte communication. To the extent possible, a prohibited written ex parte communication received by any NHTSA employee shall be forwarded to the [Docket Section] rather than to a decisionmaker. A prohibited written ex parte communication which reaches a decisionmaker shall be forwarded by the decisionmaker to the [Docket Section]. If the circumstances in which a prohibited ex parte written communication was made are not apparent from the communication itself, a statement describing those circumstances shall be forwarded with the communication. **(53 F.R. 15782—May 3, 1988. Effective: May 3, 1988)**

(2) Prohibited oral ex parte communication.

(i) If a prohibited oral ex parte communication is made to a decisionmaker, he or she shall advise the person making the communication that the communication is prohibited and shall terminate the discussion.

(ii) In the event of a prohibited oral ex parte communication, the decisionmaker shall forward to the [Docket Section] a dated statement containing such of the following information as is known to him/her: **(53 F.R. 15782—May 3, 1988. Effective: May 3, 1988)**

(A) The title and docket number of the proceeding;

(B) The name and address of the person making the communication and his/her relationship (if any) to the parties to the proceeding;

(C) The date and time of the communication, its duration, and the circumstances (telephone call, personal interview, etc.) under which it was made;

(D) A brief statement of the substance of the matters discussed;

(E) Whether the person making the communication persisted in doing so after being advised that the communication was prohibited.

(3) *Filing.* All communications and statements forwarded to the [Docket Section] under this section shall be placed in a public file which shall be associated with, but not made a part of, the record of the proceedings, to which the communication or statement pertains. **(53 F.R. 15782—May 3, 1988. Effective: May 3, 1988)**

(4) *Service on parties.* The [Administrator] shall serve a copy of each communication and statement forwarded under this section on all parties to the proceedings. However, if the parties are numerous, or if other circumstances satisfy the [Administrator] that service of the communication or statement would be unduly burdensome, he or she may, in lieu of service, notify all parties in writing that the communication or statement has been made and filed and that it is available for inspection and copying. **(53 F.R. 15782—May 3, 1988. Effective: May 3, 1988)**

(5) *Service on maker.* The [Administrator] shall forward to the person who made the prohibited ex parte communication a copy of each communication and/or statement filed under this section. **(53 F.R. 15782—May 3, 1988. Effective: May 3, 1988)**

(f) *Effect of ex parte communications.* No prohibited ex parte communication shall be considered as part of the record for decision unless introduced into evidence by a party to the proceedings.

(g) *Sanctions.* A party or participant who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions, including but not limited to, exclusion from the proceeding and adverse rulings on the issues which are the subject of the prohibited communication.

APPENDIX I—Final Prehearing Order

Case Caption

Final Prehearing Order

A prehearing conference was held in this matter pursuant to Rule 21 of the Administration's Rules of Practice for Adjudicative Proceedings, on the _____ day of _____, 19____, at _____ o'clock —M.

Counsel appeared as follows:

For the Administration staff:

For the Respondent(s):

Others:

1. NATURE OF ACTION AND JURISDICTION.

This is an action for _____

_____

and the jurisdiction of the Administration is involved under Section _____ of Title _____. U.S.C. The jurisdiction of the Administration is (not) disputed. The questions of jurisdiction was decided as follows:

2. STIPULATIONS AND STATEMENTS.

The following stipulations and statements were submitted, attached to, and made a part of this order:

(a) A comprehensive written stipulation or statement of all uncontested facts;

(b) A concise summary of the ultimate facts as claimed by each party. (Complaint Counsel must set forth the claimed facts, specifically; for example, if violation is claimed, Complaint Counsel must assert specifically the acts of violation complained of; each respondent must reply with equal clarity and detail.)

(c) Written stipulations or statements setting forth the qualifications of the expert witnesses to be called by each party;

(d) A written list or lists of the witnesses whom each party will call, a written list or lists of the additional witnesses whom each party *may* call, and a statement of the subject on which each witness will testify;

(e) An agreed statement of the contested issues of fact and of law, and/or separate statements by each party or any contested issues of fact and law not agreed to;

(f) A list of all depositions to be read into evidence and statements of any objections thereto;

(g) A list and brief description of any charts, graphs, models, schematic diagrams, and similar objects that will be used in opening statements or closing arguments, but will not be offered in evidence. If any other such objects are to be used by any party, they will be submitted to opposing counsel at least three days prior to hearing. If there is then any objection to their use, the dispute will be submitted to the Presiding Officer at least one day prior to hearing;

(h) Written waivers of claims or defenses which have been abandoned by the parties.

The foregoing were modified, at the pretrial conference as follows:

(To be completed at the conference itself. If none, recite "none")

3. COMPLAINT COUNSEL'S EVIDENCE.

3.1 The following exhibits were offered by Complaint Counsel, received in evidence, and marked as follows:

(Identification number and brief description of each exhibit)

The authenticity of these exhibits has been stipulated.

3.2 The following exhibits were offered by the Complaint Counsel and marked for identification. There was reserved to the respondent(s) and party intervenors, if any, the right to object to their receipt in evidence on the grounds stated:

(Identification number and brief description of each exhibit. State briefly ground of objection, e.g., competency, relevancy, materiality)

4. RESPONDENT'S EVIDENCE.

4.1 The following exhibits were offered by the respondent(s), received in evidence, and marked as herein indicated:

(Identification number and brief description of each exhibit)

The authenticity of these exhibits has been stipulated.

4.2 The following exhibits were offered by the respondent(s) and marked for identification. There was reserved to Complaint Counsel and party intervenors, if any, the right to object to their receipt in evidence on the grounds stated:

(Identification number and brief description of each exhibit. State briefly ground of objection, e.g., competency, relevancy, materiality)

5. ADDITIONAL ACTIONS.

The following additional action was taken:

(Amendments to pleadings, agreements of the parties, disposition of motions, separation of issues of liability and remedy, etc., if necessary)

6. LIMITATIONS AND RESERVATIONS.

6.1 Each of the parties has the right to further supplement the list of witnesses not later than ten (10) days prior to trial by furnishing opposing counsel with the name and address of the witness and general subject matter of his or her testimony and filing a supplement to this pretrial order. Thereafter additional witnesses may be added only after application to the Presiding Officer, for good cause shown.

6.2 Rebuttal witnesses not listed in the exhibits to this order may be called only if the necessity of their testimony could not reasonably be foreseen ten (10) days prior to trial. If it appears to counsel at any time before trial that such rebuttal witnesses will be called, notice will immediately be given to opposing counsel and the Presiding Officer.

6.3 The probable length of hearing is ____ days. The hearings will be commenced on the ____ day of _____, 19____, at _____ o'clock —M. at (location) _____.

6.4 Prehearing briefs will be filed not later than 5:00 p.m. on _____ (Insert date not later than ten (10) days prior to hearing.) All anticipated legal questions, including those relating to the admissibility of evidence, must be covered by prehearing briefs.

This prehearing order has been formulated after a conference at which counsel for the respective parties appeared. Reasonable opportunity has been afforded counsel for corrections or additions prior to signing. It will control the course of the hearing, and it may not be amended except by consent of the parties and the Presiding Officer, or by order of the Presiding Officer to prevent manifest injustice.

_____

(Presiding Officer's Name)
(Presiding Officer's Title)

APPROVED AS TO FORM AND SUBSTANCE

Date: _____.

_____

Complaint Counsel.

_____

Attorney for Respondent(s).

Note: Where intervenors appear pursuant to § 511.17 the prehearing order may be suitably modified; the inital page may be modified to reflect the intervention.

45 F.R. 81574
December 11, 1980

PREAMBLE TO AMENDMENT TO PART 512

Confidential Business Information
(Docket No. 78-10; Notice 3)

ACTION: Final rule.

SUMMARY: This notice establishes the procedures by which the National Highway Traffic Safety Administration (NHTSA) considers claims for the confidential treatment of business information. Proposed procedures were published May 25, 1978. This notice sets forth the procedures for asserting a claim for confidentiality and specifies the circumstances under which the agency may disclose information which is claimed to be confidential. The notice further establishes several presumptive class determinations relating to confidentiality. This notice clarifies and expedites the processing of confidentiality determinations and responds to the problems posed by the increasing number of confidentiality requests.

DATE: The regulation becomes effective April 9, 1981.

FOR FURTHER INFORMATION CONTACT:
Roger Tilton, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, (202-426-9511)

SUPPLEMENTARY INFORMATION: The NHTSA has determined that the increasing number of requests for confidentiality necessitate the publication of the procedures under which the agency will determine the confidentiality of business information. This regulation responds to that need by making public procedures for submitting requests for confidential treatment of business information. The regulation also details the content of the submissions that are required to substantiate a confidentiality request. This regulation imposes requirements upon the submitters of the information and upon the agency to respond to those requests in the time and manner established herein. Further, the regulation explains those limited instances in which confidential information will be released. Through this regulation, submitters of information will be better able to ensure that their confidentiality requests are properly substantiated, thus facilitating confidentiality determinations. This improvement of the existing handling of the requests will benefit both the agency and the submitter.

The notice proposing the confidential information regulation was published May 25, 1978 (43 FR 22412). In response to that notice, the agency received many comments from vehicle and equipment manufacturers, their representatives, and public interest groups.

General Comments

Several commenters objected to the provision in the confidentiality procedures requiring initial determinations relating to confidentiality to be made prior to an actual Freedom of Information Act (FOIA) request. These commenters alleged that the agency would be overburdened by the necessary review of material to ascertain its confidentiality when, in fact, the information might never be required to be released. Commenters pointed with approval to the confidentiality regulations of the Environmental Protection Agency (EPA) which allow the determination of confidentiality to be made at the time of an FOIA request (40 CFR 2.205). These same commenters also cited the Congressional Report of the Committee on Government Operations concerning FOIA requests (FOIA Report) (H. Rept. No. 95-1382) as discouraging advance determinations of confidentiality. In summation, it was suggested that the agency assume the confidentiality of information submitted to it, when a claim for confidentiality is concurrently submitted, until such time as release

of the information is requested or required for agency purposes.

The NHTSA disagrees with arguments indicating that the issuance of immediate determinations of confidentiality are burdensome and contrary to existing procedures in other agencies. In fact, the agency considers immediate determinations of confidentiality to be within accepted governmental practice and to be beneficial to both the submitter of the information and the agency. The commenters cited EPA regulations as indicative of a governmental reluctance toward the use of immediate determinations of confidentiality. However, the Securities and Exchange Commission (17 CFR 250.24b-2) and the Nuclear Regulatory Commission (10 CFR 2.790) both have procedures for the immediate determination of confidentiality. Therefore, government agencies have developed and are continuing to implement different approaches to the treatment of confidential information dependent upon the nature of the individual agency and its programs. The NHTSA considers the immediate determination approach to be, for the most part, the approach best suited to this agency given its function and need for information.

The submitter of confidential information will be aided by the policy of immediate determinations. A determination of confidentiality made upon receipt of information will automatically result in the protection of the confidential information. Confidential information will be clearly identified within the agency and will be accorded treatment designed to preserve its confidentiality. The agency believes that this should improve the ability of the NHTSA to maintain the confidentiality of information that merits such treatment. Without making an immediate determination, the agency might be deluged with information for which confidentiality determinations have been requested and which the submitter would have the NHTSA presume confidential. Such massive quantities of information are difficult to control and are more susceptible to accidental disclosure. The NHTSA is confident that the immediate determination procedure will reduce the amount of confidential information. With this more manageable amount of information, the agency can better ensure its protection.

The public is also benefited by immediate determinations of confidentiality. These determinations result in immediate public access to information that is not confidential. The public should not be denied access to information that is "presumed confidential," but which is in fact not confidential.

Commenters citing the FOIA Report have misinterpreted the recommendations of that report as it pertains to the immediate determination of confidential information. The Report indicates that it is the opinion of the Committee that immediate determinations of confidentiality might not be the most efficient way to handle confidential information. However, the FOIA Report at page 38 withholds comment on any recommendation with respect to this aspect of confidentiality procedures. In reviewing the proposed regulations of the FTC, the Committee indicated their intention to await the outcome of those new regulations before reaching a definitive recommendation with respect to the issue.

The FOIA Report should also be considered in its proper perspective. This Report is the preliminary thinking of the Congressional Committee. As such, the agency considers it a useful tool in the development of confidentiality regulations. However, this report is very preliminary and some of its recommendations could change before legislation, if any, can be produced affecting the status of confidential information. Therefore, the agency cannot rely entirely upon the Committee statements in this report for the development of confidentiality regulations and must exercise its own judgment given the statutory mandates under which it operates.

The allegations that immediate review will overload the agency with unnecessary work are unfounded. There are compelling reasons for making determinations upon receipt of information beyond those mentioned above. For the most part, information is submitted to the agency in connection with rulemaking or investigations, or is submitted under a reporting requirement. With respect to information furnished pursuant to rulemaking, the Administrative Procedure Act (5 U.S.C. 101 *et seq.*) requires that informal rulemaking be conducted in the notice and comment format. To provide adequate information upon which comments can be based, the agency must make public the information upon which a decision is made unless that information comes under some confidentiality provision. Accordingly, rulemaking is facilitated by making confidentiality determina-

tions upon receipt of the information. This procedure has been used in the past, and this regulation merely incorporates an ongoing procedure. As such, it will not increase the workload of the agency.

Information submitted pursuant to an investigation or through required reports to the agency also can have confidential determinations made upon submission without overtaxing the resources of the agency. Information gathered pursuant to either of these devices is usually made public at some point. Accordingly, a confidentiality determination will be required at that time. This regulation merely requires that the determination be made upon receipt of the information.

The instances when immediate determinations are to be made were carefully selected on the basis of the eventual likelihood that the information would customarily be made public if not determined to be confidential. The agency concluded that it is received. Further, immediate determinations result in early public access to information that is rightfully in the public domain. Information that is not likely to be made public in the future will not have an immediate determination made concerning its confidentiality (§512.6(d)). Accordingly, the agency concludes that the comments indicating that the NHTSA will be overburdened by confidentiality determinations are without merit and that the agency will, in fact, be making approximately the same number of determinations as are made under existing practices.

The Freedom of Information Clearinghouse stated that they supported the regulation but indicated that they considered it necessary to review information again when a FOIA request is submitted to ensure that information previously determined to be confidential still falls within the parameters defining confidential information. The agency agrees that it will be necessary to briefly review the information at the time a FOIA request is submitted, but this review should be made significantly easier by the earlier confidentiality determination and would merely require updating a previous determination.

Several commenters disagreed with the NHTSA's policy relating to the use of confidential information. Volkwagen indicated that the agency's statutes require the agency to protect confidential information more than this regulation contemplates. Other commenters recommended that the agency return confidential information when it is through with it and return all voluntarily submitted information if the agency determines that it is not confidential.

In response to Volkswagen's comments on the statutory protection of confidential information, the agency agrees that the statutes do provide protection for confidential business information. The agency has recognized that protection in this regulation and intends by this regulation to achieve that statutory mandate. The statutes also provide, however, for limited disclosure of confidential information when such disclosure is in the public interest. This regulation balances a submitter's interest in the confidentiality of its information with the public's need for the information. It should be remembered that the agency has historically had the right to make confidentiality determinations, and to release confidential information as allowed by the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) and Titles I and V of the Motor Vehicle and Cost Savings Act (15 U.S.C. 1901 *et seq.*) (the Acts). The agency has exercised both of these rights in the past.

The NHTSA has not routinely released confidential information. Release has occurred only when the public interest so demanded. This policy is unchanged by this regulation. The NHTSA fully intends to honor the confidentiality of appropriate information unless circumstances compel its disclosure. In such disclosure instances, all efforts will be made to make disclosure in a manner to minimize any adverse effects while still serving the public interest. The commenters who suggested the return of confidential information after its use and the return of voluntarily submitted confidential information base this approach on the practices of some other agencies. The NHTSA considers it inappropriate to return information upon which agency decisions may have been based even if the agency is otherwise finished with that information. Agency decisions are subject to challenge and change as time passes, and frequently it is necessary to have all of the information upon which the initial decision was based either to support that decision or to aid in the justification of its change.

The suggested return of voluntarily submitted information that is determined not to be confidential presents another question. The NHTSA

realizes that some agencies, the EPA is one, return such voluntarily submitted information after an adverse confidentiality determination. The agency notes, however, that the FOIA Report was skeptical about the advisability of this practice. That Report indicated that denial of FOIA requests for this information during presubmission review may be illegal. The NHTSA is concerned about the potential legal problems involved with presubmission review and concludes that this approach is not appropriate for the NHTSA.

Several commenters indicated that the agency would be hindered in obtaining voluntary information if it refuses to return it when the agency determines that it is not confidential. The NHTSA disagrees. Information is voluntarily submitted frequently because the submitter has something to gain through its submission. For example, a submitter might be requesting an exemption from a requirement or might be attempting to alter rulemaking in its favor by its submission. The agency has always received such information even though the NHTSA has never returned it. The existing procedure had a negligible effect upon the ability of the agency to secure voluntary information. Moreover, the ability of the agency to secure much information through compulsory process acts as a final encouragement to the voluntary submission of information. Accordingly, the agency disagrees with arguments indicating that voluntarily submitted information should be returned to the submitter and will continue to retain this information.

Volkswagen indicated that the agency should consider the issuance of this regulation with the promulgation of the regulation on compulsory process. Their major argument was that the compulsory process regulation imposes very short time limits on the production of information pursuant to a subpoena or special order. The problems with a short response time, they argued, would be further exacerbated by requiring elaborate substantiation of confidentiality requests.

The agency acknowledges that its compulsory process devices are usually issued with a limited response time. Time limits may sometimes be short because the agency has an immediate need for information. The NHTSA concludes that there is sufficient time, however, to substantiate a confidentiality request. The amount of information required for that substantiation is significant, but not overwhelming as some commenters have argued. The specific requirements for substantiating confidentiality requests are discussed later in this preamble. In establishing the reasonable time period for responding to compulsory process orders, the agency considers the amount of time necessary to substantiate confidentiality requests.

The Motor and Equipment Manufacturers Association (MEMA) commented that the agency had not done a sufficient analysis of the costs resulting from this regulation. The agency has considered the potential costs of the regulation and concluded that they are so minimal as not to warrant a full evaluation.

Several equipment manufacturers indicated that the regulation does not address the problems of the equipment manufacturer. They indicated, for example, that the regulation developed classes of information that are presumed confidential but that those classes applied only to vehicle manufacturers. It is true that the existing classes of presumed confidential information do not apply to equipment manufacturers. This does not mean that as time goes by that such classes will not be developed. It simply means that at this time the agency has insufficient information upon which to base specific classes applicable to equipment manufacturers. Equipment manufacturers, nonetheless, can avail themselves of the processes existing in the remainder of the rule for confidentiality determinations. Further, equipment manufacturers are free to suggest additional classes they regard to be appropriate.

In a final general comment, it was suggested that the agency wait until the outcome of the Supreme Court decision in *Chrysler Corp.* v. *Schlesinger*, 565 F.2d 1172 (3rd Cir. 1977), which was being argued this term. The Supreme Court decided the *Chrysler* case on April 18, 1979 *(Chrysler* v. *Brown)*. That decision has little impact upon the procedures established by the regulation, and to the extent it does affect this regulation, it confirms the agency's positions.

Information Supporting a Claim for Confidentiality

Several commenters complained generally about the amount of information that the agency requires to be filed in support of a request for confidential treatment of information. These commenters argued that the NHTSA's requirements

go beyond the regulations of other agencies that require support for confidentiality requests and go beyond existing case law with respect to proving the confidentiality of information.

Suggestions were made that the NHTSA pattern its regulation after that of the U.S. International Trade Commission (USITC) (19 CFR 201.6(b)(3)). That regulation provides for the substantiation of confidentiality by specifying the provision of three pieces of information: (1) description of the confidential information, (2) justification for confidential treatment, and (3) a written certification under oath that the information is not available to the public. Although this regulation is less detailed than the NHTSA's, it essentially requires similar submissions. The NHTSA's regulation merely states in more detail the information that is required to justify confidential treatment. The agency has incorporated into its regulation the latest court test for substantiating confidentiality. Although the USITC regulation does not specifically refer to this test, the NHTSA believes that it would be necessary for a submitter to make a similar showing to them in support of confidential treatment of information.

The Motor Vehicle Manufacturers Association (MVMA) alleged that the agency's regulation exceeded the requirement of existing judicial precedent that governs this area. It suggested that the information required by section 512.4(b) paragraphs (2), (3), and (4) requiring submitters to support the fact that they have not released information goes beyond the test in *National Parks and Conservation Association* v. *Morton*, 498 F.2d 765 (D.C. Cir. 1974). *National Parks* requires, in part, that confidential information be that which is not customarily released. MVMA alleges that this does not require NHTSA to mandate by regulation that a company check every possible source of publication of information claimed to be confidential.

Although quoted in *National Parks*, the "customarily not released to the public" language is not the only test imposed by the court in *National Parks*. That language is an excerpt of the Senate Report on the Freedom of Information Act (5 U.S.C. 552) (S. Rep. No. 813, 89th Cong. 1st. Sess. 9 (1965)). The courts have attempted to use and further refine this Congressional language. The *National Parks* case in particular illustrates the court's dissatisfaction with the "customarily not released" test when it stated that a finding that information is not customarily released would not alone justify confidential treatment. Rather, the court imposed a two-pronged test that measures the substantial competitive harm resulting from disclosure of information or the impairment of the Government's ability to obtain future information if similar information is released.

It is axiomatic that the "customarily not released" test in and of itself could never be conclusive of information's confidentiality absent other considerations. The fact that information is customarily not made public does not mean that the specific information for which confidentiality is requested has not been made public. If that information has in fact been made public, it does not merit confidential status under the *National Parks* test. Accordingly, some showing that information for which confidential treatment is requested has not been previously made public is a prerequisite to determining confidentiality.

Assuming the validity of the above requirements, the MVMA and others argue, nonetheless, that it is too burdensome, because it requires companies to investigate all possible instances where information may have been made public. They suggest that a submitter will be required to interview every employee to ensure that information has not been leaked.

The agency has imposed a reasonable burden upon a manufacturer to take some limited steps to check that its so-called confidential information has not been disclosed. As the preamble to the notice of proposed rulemaking indicated, it is not the intention of the agency that submitters ensure that information has never been accidentally disclosed. Rather, the agency demands that a submitter ensure that to its knowledge there have been no accidental or purposeful disclosures of the information. This requires only that a diligent effort be made by the submitter to take minimal steps ensuring that its information is actually confidential. The agency concludes that this is not a major burden upon a submitter of information.

With respect to the requirements of paragraphs (2) and (3) of section 512.4 (b), Wagner Electric Co. suggested that disclosures of information to parent companies or to wholly owned subsidiaries not fall within those groups to whom disclosures must be reported to the agency. The NHTSA disagrees with this position. The agency wants to know of such a disclosure, but a disclosure to a parent or

wholly owned subsidiary does not necessarily mean that the information has been made public, which might deny the information confidential treatment. A submitter can explain, under the provisions of paragraph (3), that disclosure to a parent or subsidiary does not compromise the confidential nature of the information.

General Motors (GM) indicated that it considered overly burdensome the requirement that it indicate what steps had been taken to assure the confidentiality of the submitted information in its possession (512.4(b) (2)). It argued that this requirement would require it to detail its plant security system or other security measures that could in turn jeopardize its future security.

The NHTSA has no interest in the specific internal security devices of any manufacturer's facilities. The NHTSA simply wants the manufacturer to briefly indicate, pursuant to paragraph (2), that proper precautions were taken to preserve the confidentiality of this information. The objective of this paragraph is to make sure that the submitter has treated this information differently from the ordinary information in its possession. If, on the other hand, the submitter has taken no measures to safeguard its own information, its claim for confidential treatment by the Government is somewhat diminished.

The MVMA asserted that the requirement of documenting every possible authorized and unauthorized disclosure of information would be burdensome. Such documentation, it argued, would require submitters to interview every person that might have access to the information to ascertain possible disclosures as well as monitor the press for possible unauthorized leaks.

The NHTSA does not consider it unreasonable to ask the submitter of information to list all of the recipients of information other than the submitter. In most instances, truly confidential information will not have been supplied to excessive numbers of individuals or entities beyond the submitter. The NHTSA concludes that information that is really confidential will be protected by the submitter. The agency is confident that any submitter with such information would know to whom, outside its organization, it has given that information. In fact, most submitters should have this information readily available. Any submitter that is unaware of outside organizations in possession of its confidential information may have to do more extensive research, but the need for such research itself may be indicative of meager internal controls of so-called confidential information and may imply that the information is really not confidential.

As to the allegations that submitters must monitor all trade newspapers to discover possible unauthorized disclosures, these are exaggerations of the effects of this rule. Paragraph (4) of Part 512.4(b) requires notification to the agency of *known* authorized and unauthorized public disclosures. Submitters are under no obligation to ensure that there have been no unauthorized releases of their information. Their duty is simply to report those instances of disclosure of which they are aware. The NHTSA believes that most unauthorized disclosures of confidential information that are subsequently reported in trade papers or newspapers are likely to be brought to the submitter's attention.

Several commenters complained about the requirement in paragraph (5) of section 512.4(b). That paragraph requires submitters of information to notify the agency of existing confidentiality determinations made by the NHTSA, other agencies, or the courts relating to the confidentiality of the information or similar information. Submitters of information complained that the NHTSA was in better position to canvass court decisions relating to confidentiality and to review all of the decisions of other agencies. They argued that it was overly burdensome for submitters to do all of this research.

These comments indicate a misunderstanding of the requirements of this section. The agency does not intend that the submitter of information provide the agency with the latest judicial and agency opinions regarding the confidentiality of similar information of other submitters. This paragraph simply requires the submitter of information to supply the NHTSA with determinations respecting the confidentiality of its own similar or identical information. A submitter of information should be aware of these determinations without need to do any research whatsoever. Accordingly, the burden of this requirement upon the submitter of information is minimal. To clarify the agency's intention with respect to this paragraph, the NHTSA is modifying the language somewhat to make it clear that a submitter is responsible only for determinations relating to its own information.

The Motor Vehicle Equipment Manufacturers

Association (MEMA) suggested that paragraph (8) was unnecessary. That paragraph requires information as to the effect of a disclosure of voluntarily submitted confidential information upon the ability of the NHTSA to obtain future voluntary information. The MEMA indicated that it could see no reason to raise this inquiry since it is the manufacturers' interests in confidentiality that will be harmed by disclosure not necessarily the agency's. The paragraph (8) requirement was included to provide information as to the potential harm that disclosure might impose upon the ability of the NHTSA to obtain information through voluntary means. This inquiry is one of the two pronged tests employed in *National Parks, supra.* and is frequently cited as being the appropriate test for confidentiality of voluntarily submitted information. Therefore, the agency does not agree with the MEMA's comments that this information is unnecessary.

Paragraph (9) requires a submitter of information to indicate the amount of time for which confidentiality is requested. The MEMA complained that in the instance of trade secrets no time limit is appropriate. The agency does not agree that trade secrets are always permanently confidential. Some trade secrets may become common knowledge within a certain amount of time. Nonetheless, paragraph (9) permits a submitter of information to request and justify an indefinite time period for maintaining the confidentiality of its information.

Many commenters suggested that the information submitted in support of their confidentiality requests would in turn be confidential and, if released, could cause them competitive harm. They suggested that submitters might fear to support their claims for confidentiality since the support information could in some instances be even more harmful, if disclosed, than would the disclosure of the originally submitted information. Commenters, therefore, argued that the agency should at least return any information submitted in support of a confidentiality request if that request is subsequently denied.

The agency intends by this regulation to establish a procedure where specious requests for confidentiality are discouraged while those requests that are meritorious can be handled efficiently. The agency concludes that a submitter of information who believes that disclosure of its information will result in competitive harm will support its request with necessary information. Information submitted in support of a claim of confidentiality can also be requested for confidential treatment. Consequently, the agency does not expect that this provision will discourage appropriate confidentiality requests. For the reasons stated earlier in this preamble, the agency disagrees with arguments favoring the return of information submitted to the NHTSA and will not undertake such an approach.

Paragraph (h) of Part 512.4 requires submitters to update their confidentiality requests if intervening events would change the confidentiality determination. Commenters objected to this requirement as being unnecessary and costly. For example, they argued that since decisions are made immediately with respect to confidentiality, updating the information is unnecessary.

Not all decisions respecting confidentiality are made immediately. As stated earlier, most confidential information that would otherwise subsequently be made public will have an immediate determination of confidentiality. However, information that is not customarily made public by the agency pursuant to one of the agency's established procedures will not have a confidentiality determination made with respect to it until such time as a FOIA request is received. For this reason, it is necessary that information submitted by manufacturers for which confidentiality is requested be updated when circumstances change that request. If, for example, a company voluntarily disclosed information in the interim before the agency determined confidentiality, the NHTSA should be made aware of this fact since the disclosure would make the confidentiality determination moot.

Updating of previous confidentiality requests also applies even after confidentiality has been granted. In certain instances, termination of confidentiality is conditioned upon the occurrence of a particular event. In such cases, the agency should be informed that the event has occurred so that the confidential status of the information can be discontinued. Moreover, there are times when information will become disclosed or other events will make its continued confidentiality unnecessary. In these instances, the agency should be informed of the disclosure in order to correct its determination. In conclusion, the agency does not agree that the updating provision is unnecessary.

The agency concludes that the updating provi-

sion will not be costly. The requirement merely states that a company shall inform the agency of any changes pertaining to the information. The updating responsibility is triggered when the submitter *knows* that the initial submission is incorrect or the information given in that submission has changed. It is not required that a submitter constantly monitor all information submitted pursuant to a confidentiality determination as suggested by GM. A submitter is only charged with the responsibility of an update when it *knows* that the information previously submitted was erroneous. If by accident or mistake, the submitter does not know or realize the initial error or changed circumstances, there is no duty upon it to make the amendment. Therefore, the agency concludes that this is a reasonable burden to place upon the submitter of information.

Commenters objected to paragraph (i) of Part 512.4 which states that a submitter may lose its claim of confidentiality through failure to comply with the requirements of paragraph (b). Paragraph (i) establishes times when a noncompliance *may* be deemed a waiver of the confidentiality claim and times when a noncompliance *will* waive the confidentiality request. The times when confidentiality will be lost are few: (1) failure to file the required certificate, (2) failure to request confidential treatment, and (3) failure to establish the necessity for confidentiality. These failures will result in the loss of confidential treatment for the information. In other instances where technical insufficiencies in the required submissions exist, the agency may deem a claim of confidentiality to have been waived. On the other hand, the agency may allow the submitter to perfect its submission.

The discretionary waiver aspect of paragraph (i) allows the agency the necessary latitude to deal with all possible circumstances. For example, if a submitter is knowingly delaying or otherwise interfering with the determination process by failure to supply complete information, and the agency needs that information immediately, the NHTSA must have the authority to deny the claim of confidentiality. To do otherwise would jeopardize the public welfare while permitting submitters to avoid the agency's regulations. In most instances, however, where a submitter merely neglects to include a minor part of the required material and the oversight is not deemed to be intentional, the agency would normally grant the submitter additional time to substantiate its claim. The agency will exercise reasonable discretion in determining whether a submitter's confidentiality request has been waived.

Commenters disagreed with the regulation in section 512.4(i) to the extent that it allows the use of criminal and civil penalties for failure to amend confidentiality requests when the initial information has changed or an error has been discovered in the initial filing. These commenters challenged the authority and the wisdom of invoking either of these penalties.

The NHTSA has the authority to enforce its regulations through civil penalties (15 U.S.C., 1917, 1948, 1989, and 2008). This authority is necessary to encourage adherence to the agency's regulations. The NHTSA will retain the civil penalty provision of this paragraph. However, the agency has considered the comments submitted to it and concludes that the imposition of criminal penalties is unnecessary in the enforcement of this requirement.

Determining Confidentiality

The Automobile Importers Association (AIA) complained that Part 512.5 was very complex and should be clarified. For example, the AIA indicated that the lengthy set of phrases connected by disjunctives and conjunctives was beyond easy comprehension. Further, the AIA indicated that the definition of "voluntarily submitted information" in this section should be amended. Currently, the section defines "voluntarily submitted information" as that information that could not be compelled by compulsory process. The AIA would have the agency define voluntarily submitted information as all information submitted to the agency voluntarily regardless of the fact the information could have been compelled by the NHTSA.

Responding first to the comment that the language is confusing, the agency has concluded that the language of this provision is somewhat unclear. Proposed paragraphs (1) through (4) state that information is accorded confidential treatment if it is a trade secret or commercial or financial information that has not been previously disclosed and whose disclosure would likely result in substantial competitive harm to the submitter. Proposed paragraph (5) establishes a somewhat different test for voluntarily submitted information that is a trade secret or confidential business

information. These two tests conform to the guidelines established by the *National Parks* case. The agency is amending this section by consolidating several of the paragraphs to clarify the tests for determining confidentiality.

The AIA also recommended that the agency adopt a different definition of "voluntarily submitted information." The purpose of proposed paragraph (a) (5) was to establish a test for preserving the confidentiality of information that the agency could not compel by compulsory process. If the agency were to release such information and such release were to discourage the submission of information that the agency could not otherwise obtain, then the NHTSA might be hindered in fulfilling its mandate. Accordingly, the agency needs to be sure that it does not discourage the flow of this information. The AIA suggestion would expand the category of voluntarily submitted information to include even that which could be produced by compulsory process but which a submitter has decided to submit voluntarily. The NHTSA disagrees with the AIA's suggestion. Since the NHTSA can compel much of the information currently submitted voluntarily, the real distinction in information submitted to the agency is whether or not it can be compelled. The agency continues to believe that information that can be compelled by it should not be subject to the same standards as that information which is freely given to the agency and which the agency could not compel.

The AIA objected to the requirements of section 512.6(d) that allow the NHTSA to delay confidentiality determinations for some information until 10 days after the receipt of a FOIA request. The AIA believed that this requirement would overly burden submitters of information since they would be required under Part 512.4(h) to update their confidentiality requests if changes occur even though in these instances confidentiality determinations would not be made upon receipt of the information, but upon the receipt of a FOIA request. Earlier in this preamble, the agency stated that the burden of updating information for which confidentiality was requested is reasonable and necessary, particularly when responding to FOIA requests. It would be improper under the FOIA for the agency to withhold information that should be made available. If information previously determined to be confidential subsequently loses its confidentiality, that information might be subject to release under FOIA. Accordingly, the agency must require that submitters update this information when necessary to ensure full compliance with existing laws relating to the release of information. With respect to the other time periods for determining confidentiality, the agency is increasing them from 10 to 30 days as a result of the increased volume of confidentiality requests.

The AIA complained that the provision in section 512.6(e) that permits the agency to extend the time periods applicable to making determinations under various sections of the regulation render those time limits meaningless. It suggested that the NHTSA only has to prove good cause to itself that an extension is warranted.

The purpose of this provision is to provide for those instances in which a determination cannot occur within the normally established time frame. It is the intention of the agency to conform to the time requirements imposed upon it unless unusual circumstances prohibit timely determinations. For example, in certain rulemaking actions manufacturers wait until the last day before submitting comments. If many comments arrived simultaneously with confidentiality requests, the agency might be unable to make all the determinations with the specified time limits. Therefore, the agency needs some discretion to extend time limits. Paragraph (e) places a burden upon the agency to establish "good cause" for an extension. These reasons must be set out in writing and provided to the submitter. Therefore, the submitter will have the opportunity of contesting the agency's "good cause" determination. As a further safeguard against abuse of the extension provision, the agency has indicated in this section that the extension as it applies to FOIA requests will be done in compliance with 5 U.S.C. 552. The NHTSA has determined that these procedures will preserve the necessary latitude required by the agency to deal with all possible contingencies while preventing routine abuse of the extension provision.

Several commenters objected to paragraph (f) of section 512.6 which specifies that the NHTSA will notify a submitter of the determination respecting its confidentiality request. The regulation indicates that this notification will provide, in the case of denials, that the information will be made public not less than 10 working days after the submitter of the information has received notice. The

provision further states that the 10-working day requirement can be modified if it is in the public interest that the information be made available earlier. Commenters objected to the 10-working day requirement some indicating that foreign submitters are particularly disadvantaged by such a short time period.

The time periods provided for the release of information are short for a number of reasons. First, in the cases of FOIA requests, the agency must respond to the request within a relatively short time frame. The agency cannot, as some commenters suggest, permit submitters of information extensive periods of time to react to the agency's determinations in FOIA cases. Second, information frequently will be needed for rulemaking or other agency needs that would otherwise be delayed by a lengthy interval between a confidentiality determination and release of the information. The agency also must have the authority to reduce the time periods even further if the circumstances indicate that the public interest demands the immediate release of this information. Even under emergency release conditions, however, a submitter will be given some notification of the pending release of its information even though such notice might be short. Within even an abbreviated time frame, a submitter would have the opportunity to seek whatever judicial remedy is available to it. Accordingly, the agency concludes that the time provisions of this section meet the needs of the agency for making information available in the shortest possible time while still permitting the submitter of the information to seek whatever recourse it chooses when its confidentiality request has been denied.

The AIA pointed out that nothing in paragraph (f) indicates that the notification of the determination will be made immediately. They were concerned that the NHTSA might make a determination in some instances and not notify a submitter for some time. To prevent this from occurring, the AIA suggested some modification in the language of the provision to ensure that the agency is required to give immediate notification of a determination. Since this has always been the intention of the NHTSA, the agency agrees with the modification suggested by the AIA and changes this provision accordingly.

General Motors stated that section 512.6(f) (2) was insufficient because, although it indicates that a submitter of information will receive notice of some sort, it does not indicate that the notice of denial will state the reasons for such a denial. The section states that the submitter will be notified in writing of the denial of its confidentiality request. The agency intends that this written notice will state the reasons for the denial. To clarify this, the NHTSA is modifying this section to indicate that a statement of the reasons for denial will be part of the written notice.

A few commenters were troubled by paragraph (g) of section 512.6. This paragraph allows submitters whose requests for confidentiality have been denied to petition for a reconsideration of that denial. Dunlop Tire and Rubber Co. indicated that a petition for reconsideration was a waste of effort since the same office would be making a determination of the reconsideration petition as had made the initial denial. Accordingly, Dunlop proposed that a submitter be permitted to go directly to court without recourse to the reconsideration process.

The NHTSA disagrees with the Dunlop position that reconsideration is a futile effort. A petition for reconsideration allows a submitter of information to further emphasize a portion of its request that it may feel has been insufficiently considered by the agency. The reconsideration process allows all parties the opportunity to discover and rectify possible errors without recourse to costly and time-consuming litigation. The agency notes that it has used petitions for reconsideration in the area of rulemaking for many years and those petitions have frequently resulted in amendments of agency rulemaking actions. Therefore, the NHTSA concludes that the reconsideration process is a meaningful check upon the agency's actions and will continue to allow it when making confidentiality determinations. However, the regulation states that a submitter may petition for reconsideration. A submitter is not required to file such a petition and may instead seek judicial review.

Volkswagen argued that the petition for reconsideration process was rendered meaningless since it was possible that the information for which confidentiality was claimed could be released pending a determination on the petition for reconsideration. The paragraph states that the Chief Counsel may postpone the release of information pending a decision on the petition for reconsideration. This implies, however, that release may not

be postponed in some cases. It is contemplated that in the majority of instances material will not be released until a final determination on the issue of confidentiality is made. Therefore, material generally will not be made public during the reconsideration process. In exigent circumstances, however, the agency does retain the discretion to release information if the public interest so dictates. Even in these unusual circumstances, a submitter of the information would be informed of the pending release of the information and would be able to then seek an immediate judicial intervention prior to the release of the information.

The AIA suggested that the agency adopt a review procedure for the denials of requests for confidentiality that would allow a submitter to petition someone in the Office of the Secretary of the Department of Transportation for a review of the confidentiality request. The NHTSA has established its own internal review of denials through the petition for reconsideration process. A submitter that is still dissatisfied with the agency's action can seek a judicial remedy. Although the Secretary of the Department has authority over agency functions, that office does not review routine agency decisionmaking and does not have sufficient resources to act as a review board for every agency action. The NHTSA notes that the need for Secretarial review of these decisions is not apparent. Accordingly, the agency declines to adopt AIA's suggested modification.

General Motors objected to section 512.7(a) (2) which indicates that a confidentiality determination remains in effect until, among other things, a change occurs in applicable law. GM suggested that this was impermissibly vague. It stated that some remote lower court might make an adverse ruling on an issue of confidentiality while the Supreme Court may have decided otherwise in another case. It feared the NHTSA would follow the rule of the lower court.

The agency disagrees with GM that this provision is impermissibly vague. A change in applicable law might include a statutory change or a change in judicial interpretation of existing statutes. However, as GM must well know, the Supreme Court is the ultimate authority with respect to judicial interpretation of statutes. Accordingly, the agency would not terminate a confidentiality determination when a lower court issued a decision that might be in conflict with existing pronouncements from the Supreme Court. The agency does not consider every lower court decision to indicate a change in the applicable law, but it does consider the pronouncements of major courts as indicative of changes in the status of the law and may review confidentiality determinations in the light of those pronouncements. In any event, if the agency responded to a change in law by determining to reverse a previous finding of confidentiality, it would provide notice of that determination and the reason therefor before releasing the information in question.

Disclosure of Confidential Information

Sections 512.8 and 512.10 of this regulation elicited many comments that were for the most part opposed to the release of information that has been determined to be confidential. Many commenters suggested that these two provisions be deleted entirely or, in the alternative, modified to limit severely the right of the agency to release confidential information. Commenters expressed the erroneous belief that these provisions would combine to undermine the confidentiality of information that is normally classified as confidential. The comments indicate a need for explanation of the agency's intentions, its statutory powers and limitations, and the judicial precedents that govern the area of discretionary release of information determined to be confidential.

In section 512.8, the agency established separate criteria for the release of different types of confidential information. These criteria are recitations of the various statutory sections which permit the agency to disclose such information. Section 113 of the National Traffic and Motor Vehicle Safety Act of 1966 (the Act) (15 U.S.C. 1401) states that "information received pursuant to Title I of the Act relating to trade secrets or other matters referred to in 18 U.S.C. 1905 shall be confidential but may be disclosed when relevant in any proceeding under this title." This statutory language is incorporated into section 512.8 (a) (1).

Section 158(a) (2) (B) of the Act (15 U.S.C. 1419) specifies that confidential information obtained under Part B of the Act may be released if "necessary to carry out the purposes of this title." This language is adopted in section 512.8(a) (2). Finally, section 512.8(a) (3) permits the release of confidential information obtained under Parts I and V of the Motor Vehicle and Cost Savings Act

(15 U.S.C. 1901 *et seq.*) if the information is relevant to any proceeding under the title under which the information was obtained. The authority for this release is found in 15 U.S.C. 1914 and 2005. Accordingly, comments to the agency that any release of confidential information is contrary to the agency's statutory authority are entirely without merit.

Commenters argued that regardless of any possible statutory authority granted to the agency in its various Acts to release confidential information, 18 U.S.C. 1905 states that information relating to trade secrets and other areas of business confidentiality cannot be released. This comment indicates a misunderstanding of section 1905. Section 1905 states that certain information should be confidential and not released. However, section 1905 further states that the information outlined in that section shall not be released "except as provided by law." Any release of confidential information made pursuant to the agency's validly enacted enabling Acts is a release provided by law and, therefore, permissible under section 1905. Therefore, the agency declines to delete the discretionary release provisions of the regulation that permit the release of information under the tests established by the Act and incorporated in Part 512.8.

Some commenters argued that although the release of confidential information might be permissible under existing legal authority, the agency should not release the information. They suggested that such release will jeopardize future cooperation between the agency and the industry. Further, they argued release will invite litigation increasing the adversarial relationship between the agency and the industry.

When considering the consequences of the release of confidential information, the submitters of that information should examine existing agency practice. The agency for years has been operating under the statutory provisions permitting release of confidential information. This regulation simply formalizes the release procedures used by the agency but does not increase the existing authority of the agency to release information. During the time that the agency has operated with this authority, some releases of confidential information have been made when the agency determined such releases to fall within the parameters prescribed by the applicable statutory authority. However, for the most part, confidential information has not been released. The NHTSA does not intend by this regulation to alter this practice. The agency realizes the importance to the competitive process of maintaining the confidentiality of business information. Accordingly, the agency will not release confidential information unless the release of such information meets all of the statutory requirements for release and is deemed to be in the public interest.

Commenters suggested that when the release of confidential information is necessary it should be made in the least offensive form. For example, they suggested that aggregate information or unidentified information might sometimes meet the need for public release. The agency agrees with these comments and will try to release as little information as is necessary and will attempt to do it in an inoffensive manner. The NHTSA believes that such an approach reflects existing judicial decisions such as *Pennzoil* v. *FPC*, 534 F.2d 627 (5th Cir. 1976) which indicated that agencies should examine alternative, less damaging methods of public disclosure.

Most commenters suggested that the 10-workingday discretionary release requirement was unnecessarily short. Many suggested longer time periods prior to release to permit the submitter time to take action to preserve the confidentiality of its information. Further, commenters objected to the provision that allows the administrator to waive the 10-day notice requirement if the public interest will be served by such waiver. At the least, they argued, a 10-day minimum is required. Some even suggested that any time period less than 10 days would violate due process.

The existing notice provision is in accordance with other notification provisions in this regulation. As stated earlier in this preamble, the agency has concluded that this time period provides an adequate opportunity for submitters of information to seek whatever recourse they feel may be necessary to preserve their rights. Accordingly, to prevent the possibility of delay in the release of information that the agency considers necessary to its functions, the NHTSA will not amend the 10-day notification provision.

With respect to the Administrator's discretion to waive the notification provision when the public interest demands, the agency concludes that this discretion is necessary. The exigencies of the

agency's regulatory activities may, on rare occasions, necessitate such waiver. For example, the Acts under which the agency operates grant the agency broad powers to protect the public safety. These powers include the right to act quickly to save lives. If the agency were to establish an inflexible minimum 10-day notice provision, it would be restricting its validly granted statutory authority. This would undesirably limit our ability to meet our responsibilities to the public as stated in the Acts, and in their legislative histories. Accordingly, the agency will not limit the Administrator's discretionary powers to respond to emergencies. Further, the agency notes that the courts and the FOIA Report substantiate the agency's position that minimum time limits must be flexible. The agency concludes that allegations of a due process violation when minimum time limits are not established are without merit and do not reflect current judicial thinking. The agency will always seek to provide 10-working days notification to the submitter of information. In those instances where this notice is not practicable the agency will provide sufficient time for the submitter to seek judicial recourse if it so desires.

The MVMA went so far as to suggest that prior to the release of confidential information the agency is required to have a formal adversarial hearing. For their support, they cited *Mathews* v. *Eldridge*, 424 U.S. 319 (1976). This case held only that some form of reasonable opportunity to be heard must be granted prior to the deprivation of a property right. The court, however, stated that full adversarial proceeding was unnecessary and that "[t]he judicial model of an evidentiary hearing is neither a required, nor even the most effective method of decisionmaking in all circumstances" (424 U.S. at 348). In fact, only in the rarest of circumstances have the courts required a full adversarial hearing prior to the termination of property rights. *Goldberg* v. *Kelly*, (397 U.S. 254 (1970)). In that case, the court required a hearing prior to the termination of welfare benefits since to do otherwise would impose an undue hardship upon the recipient which might, in fact, endanger the recipient's life. In many similar cases that are less life-threatening courts have not required formal pre-termination hearings. Certainly the release of confidential information does not pose the danger to life itself that warranted the *Goldberg* approach, and accordingly, its release does not require formal hearings. The NHTSA concludes that its provision allowing the opportunity to comment prior to any release provides ample opportunity to be heard in compliance with existing judicial determinations.

The MVMA further argued that if the agency intends to continue with its informal procedures as outlined above it should at least indicate that it will consider the comments received and a written determination as to why the release is being made and upon what grounds the public interest is served. As stated earlier, the reasons for the release will be supplied in the first notice to the submitter. Responding to the MVMA's concern that the comments received may not be considered, all timely submitted comments will be considered prior to release of the information.

Volkswagen and several other commenters suggested that the agency better define the term "public interest." They suggested that the agency adopt a definition similar to that of the EPA (40 CFR 2.205(g)) which permits the EPA to act expeditiously when it determines that it "would be helpful in alleviating a situation posing an imminent danger to public health or safety. . . "

The NHTSA considers that the existing wording of the regulation adequately details the necessary findings of the agency that permit the immediate disclosure of confidential information when it is in the public interest. The agency considers it unnecessary to further define by regulation what constitutes the public interest. Attempts to define terms such as public interest are usually unsuccessful, because these terms embrace very broad, diverse, and often-changing concepts. Public interest is something than can only be determined in the context of specific facts and their potential ramifications.

Although the agency will not define "public interest" in the regulation, submitters can be assured that the agency will release information only after making some showing that such release truly benefits the public. Existing case law clearly reflects the fact that certain findings must be made by an agency more than the mere recitation that the release of information is in the public interest. For example, in *Pennzoil* v. *FPC*, 534 F.2d 627 (5th Cir. 1976), the Court did not invalidate the public interest test, but stated that the FPC had not examined all of the relevant criteria that should go into the making of the

public interest determination. The court suggested that the agency consider whether: (1) the disclosure would aid the agency, (2) the disclosure would harm the public, and (3) there are alternatives to disclosure that will work equally well (i.e., disclosure of aggregated or summarized information). Agency discretion exercised pursuant to a general public interest authority has been upheld in many other instances. *Administrator, FAA et al.* v. *Robertson*, 422 U.S. 255 (1975); *Westinghouse Electric Corp.* v. *NRC*, 555 F.2d 82 (3rd Cir. 1977).

The AIA suggested that Part 512.8(b) should specify more than just the reasons for the need for release of confidential information. They suggested that the agency require more specific information to be stated in the Administrator's notice to the submitter. The agency realizes that releases of confidential information may be contested by the submitter. Accordingly, the NHTSA will ensure that the record of the decisionmaking process and reasons for the final determination are fully established to facilitate judicial review. However, for purposes of this regulation, the agency concludes that it is sufficient to indicate that the Administrator will clearly establish all of the reasons for releasing information.

Several commenters objected to the possible releases of information under section 512.10 of this regulation. As proposed, this section permitted the disclosure of confidential information (1) to the Congress or the Comptroller General, (2) pursuant to court order, (3) to the Office of Secretary of the Department of Transportation (DOT), (4) with the consent of the submitter, (5) to other Federal agencies in accordance with applicable law, and (6) to contractors if necessary.

The agency does not fully understand the theory on which the objectors to this provision base their claims. Generally, NHTSA does not have authority to withhold information of any sort from the Congress, review or oversight offices within the Executive branch, or the courts pursuant to a court order. Nor can the NHTSA deny information to the Secretary of the DOT, since the agency derives its authority from that official. Further, the agency is not at liberty to interfere with any other law that would expressly or impliedly require the agency to yield information to another Federal agency. The only provisions of this section that the agency can really affect are those relating to the release of information with the consent of the submitter, with which the agency assumes no one argues, and to the submission of information to contractors. In the latter case, the agency has indicated in the regulation that the contractors will be required to maintain the confidentiality of the information or be responsible to the parties for the consequences of its release. Therefore, in this section of the regulation, the agency has merely indicated the two instances when it will release information and has indicated that there will be safeguards for the information in those instances. The other parts of this section indicate those occasions when the NHTSA is obliged to disclose information pursuant to higher authorities. With respect to the release of information to higher authorities, the NPRM neglected to include the release of information to offices in the Executive branch that have review or oversight authority. The regulation has been amended to correct this omission, and has been reorganized for clarity.

The MEMA argued that any release of information under this section should only be made as required by law. As stated previously, that is mostly what this section does. Further, the MEMA suggested that the agency impose regulations that would safeguard the secrecy of the information in the hand of another agency or the Congress that is the recipient of the information.

The agency can not impose requirements upon the Congress or other administrative agencies. The NHTSA cannot require the Congress, for example, to promise to keep information confidential. It is assumed that the Congress or any other agency will treat confidential information with the care that it deserves. The agency, however, attempts to safeguard the information to the extent possible by ensuring that the requests for confidential information are valid and authorized and by indicating to the recipient at the time the information is released that it is confidential and should be treated accordingly. Further, the agency typically obtains a written agreement from a requesting agency that it will release the information only if required by law to do so and will consult with NHTSA regarding any FOIA requests that the requesting agency receives for the information. The agency has amended this section of the regulation to effect some of these practices.

Some commenters criticized the provision in the regulation that permits the agency to supply confidential information obtained pursuant to the

agency's compulsory process devices to other agencies that do not have such powers to compel information. These commenters indicated that they thought that such a transfer of information would be contrary to the rights of a submitter.

The NHTSA agrees that access by other agencies to such confidential information possessed by the agency should be limited. However, some access to confidential information by other agencies is legitimate and necessary. When the agency is expressly or impliedly required to provide information pursuant to applicable law, the NHTSA must supply the information. Other requests for information will be closely scrutinized by the NHTSA. The NHTSA will only release information that it has received through compulsory process to agencies that can compel the information directly from the submitter or that are otherwise authorized by law to obtain it. The agency concludes that such a transfer of information is in the best interest of the government and the submitter. Through this sharing of information, a submitter is spared the expense of compiling and submitting information that is already available to the government. However, agencies that are not expressly or impliedly authorized to obtain information from the NHTSA and that cannot obtain information from the submitter directly will not be able to obtain information from the NHTSA that the agency has received through compulsory process. If Congress had intended those agencies to have the right to such information, it would have given them the right to receive it from other agencies or the power to obtain it.

The MEMA requested that a submitter be given notice of the government's release of information pursuant to this section. The agency cannot always give advance notice of releases in these circumstances because to do so could put the agency in the position of interfering with a valid and exigent investigation by the Congress, with a court proceeding, or with other Executive branch review or oversight of agency actions. The Congress has the authority, for example, to demand some information immediately. Accordingly, the agency might not be able to provide advance notice to a submitter that its information is being disclosed. In a recent case, *EXXON et al.* v. *FTC*, 589 F.2d 582 (D.C. Cir. 1978) the court indicated that a mandatory advance notice of release of confidential information to Congress was not required unless the agency promised to give such a notice. The agency concludes that this recent decision confirms its position that releases of information in these instances that are required by law and which do not constitute the public disclosure of information are not the type of releases requiring advance notification.

The NHTSA has reviewed the existing law with respect to the disclosure of information to other government agencies and contractors and concludes that the question of whether advance notice of such disclosures is required remains unsettled. The agency believes that providing advance notice to submitters in these cases is not presently required by law nor always in the best interest of the agency, but will do so where appropriate. In the case of contractors, the agency notes that information will not be released to contractors if it would result in a conflict of interest for that contractor.

The AIA in a general comment about the release of confidential information expressed their concern that such a release might be considered a taking of private property for public use entitling the submitter of the information to compensation. They base this argument on the Constitution's Fifth Amendment protection of property rights from uncompensated public takings. In support of their argument, AIA cited two cases, *Continental Oil Company* v. *FPC*, 519 F.2d 31 (5th Cir. 1975), *cert den'd sub nom. Superior Oil* v. *FPC*, 425 U.S. 971 (1976); and *Westinghouse Electric Corp.* v. *Nuclear Regulatory Commission*, 555 F.2d 82 (3rd Cir. 1977), in which the issue of a compensable taking has been mentioned involving the release of confidential information. Unfortunately, neither of these judicial pronouncements have yet clarified this area of the law.

In *Continental Oil*, the court never reached the question of compensation, deciding the case on other issues. In *Westinghouse*, the court reached the issues of taking but determined that a taking could not occur where the information had been voluntarily given to the government. In dictum, the court indicated that a compelled production of confidential information which was subsequently released might result in a compensable taking. This issue was before the courts again in *Polaroid Corp.* v. *Costle* (Civil Action No. 78-113-S) in the U.S. District Court of the District of Massachusetts. However, that case was settled prior to reaching the merits of this issue. Therefore, there

is no legal precedent of which the NHTSA is aware indicating that such a release would constitute a taking, and the agency concludes that a taking will not occur as a result of such a release.

Miscellaneous Comments

A few commenters considered the affidavit requirement unnecessary. The MVMA alleged that it served no useful purpose and that its aim was to force people into compliance with the requirements. The MVMA further asserted that the requirement to state that the person has contacted those in authority to release confidential information and ascertained that the information had not been released necessitated the person's giving hearsay.

The above comments to this section are unwarranted by the relatively innocuous provisions of the affidavit. The affidavit simply requires a responsible official of the submitter of information to attest under oath to the accuracy of certain statements. First, the official attests to his authority. Second, the official attests to the confidentiality of the information. Since the submitter is asking the agency to make a confidentiality determination, it is proper to ask that the submitter attest to the fact that the information is confidential. Third, the authorized official must attest that he or she has contacted responsible officials who in the normal course of business may release information to determine whether the information has been released. This is the provision that the MVMA characterizes as requiring "useless hearsay." The purpose of this provision is not to prove conclusively that information was never released. This provision simply requires that the official attest to the fact that he or she has checked with the officials to discover any such disclosure. Since the provision goes to proving that the official checked with responsible personnel not to the truth of the statements of those personnel, it does not require hearsay. When the previous requirement is coupled with paragraph (4) of the affidavit, it is clear that the attesting official only attests to the fact that to the best of his knowledge information has not been released. In sum, the requirements of this provision are minimal and simply assure that the official has complied with the inquiry provisions of the regulation and has provided the agency with the information acquired through the inquiry.

The NHTSA received numerous comments suggesting additional classes of information that the industry would have the agency include within the classes of information presumed to be confidential. Almost every commenter suggested some classes for inclusion within the existing list. The effect of these comments, if adopted, would be to make almost every piece of information submitted to the agency presumptively confidential. Such an outcome would not serve the public interest nor would it comply with existing statutes granting the public access to governmental information.

The agency chose the existing classes because they were narrow enough to include only the information that the agency customarily finds confidential. The NHTSA concludes that such classes of information presumed to be confidential must be very limited and must not include information that is not normally considered confidential.

The NHTSA concludes that the existing list of classes of presumptively confidential information is sufficient for the present. The agency is experimenting with the class determination approach as a means to reduce the workload in making confidentiality determinations. At this time, however, the NHTSA does not have sufficient experience in the use of these classes to warrant an expansion of them. As soon as the agency becomes more familiar with this process, changes to the classes might be made increasing the information presumed to be confidential. This can only be done, however, after the agency evaluates the class determination procedure and further reviews the other types of information for which confidentiality is requested and which normally deserves confidential treatment. Accordingly, the agency declines to adopt the classes suggested by the manufacturers and other commenters at this time, but it will retain these comments for possible future inclusion within the regulation when experience indicates that such inclusion would be appropriate.

This regulation was reviewed under Executive Order 12044 and determined to be significant based upon the anticipated public comments on the proposed version of the regulation. However, voluntary implementation of the regulation during the past two years has demonstrated that initial concerns about having to submit significantly increased justification to support confidentiality requests and about increases in the release of confidential information have not been borne out.

Further discussion of these issues is provided above in this notice. No regulatory analysis or evaluation has been prepared for this notice since it imposes little or no additional cost on persons making confidentiality claims. The primary effect of the regulation is to codify existing agency practices in implementing statutory and case law regarding confidential information.

The principal author of this regulation is Roger Tilton of the Office of Chief Counsel.

In consideration of the foregoing, Title 49 of the Code of Federal Regulations is amended by the addition of a new Part 512, *Confidential Business Information.*

(Sec. 9, Pub. L. 89-670, 80 Stat. 931 (49 U.S.C. 1657); sec. 112, Pub. L. 89-563, 80 Stat. 725, amended Pub. L. 91-265, 84 Stat. 262 (15 U.S.C. 1401); sec. 119, Pub. 89-563, 86 Stat. 950 (15 U.S.C. 1914); sec. 204, Pub. 92-513, 86 Stat. 957; (15 U.S.C. 1944); sec. 408, Pub. L. 92-513 as added Pub. L. 94-364, 90 Stat. 985 (15 U.S.C. 1990d), sec. 505 Pub. L. 94-163, 89 Stat. 908 (15 U.S.C. 2005), delegation of authority at 49 CFR 1.50.)

Issued on December 30, 1980.

Joan Claybrook
Administrator

46 FR 2049
January 8, 1981

PREAMBLE TO AN AMENDMENT TO PART 512

Confidential Business Information
(Docket No. 78–10; Notice 10)
RIN 2127–AC95

ACTION: Final Rule.

SUMMARY: This notice revises and reissues the existing regulation contained in 49 CFR Part 512—Confidential Business Information. Revisions to the existing regulation are necessary to ensure efficient processing and proper protection of business information received by the National Highway Traffic Safety Administration (NHTSA). This action is intended to clarify certain provisions, to revise certain sections to conform to statutory and case law, to include additional class determinations and to add a presumptive class determination.

EFFECTIVE DATE: November 28, 1989. "Confidential Business Information," as a final rule on June 7, 1982, 47 FR 24587. This regulation has not been amended or revised since that time. The agency believes that the procedures for submitting confidential business information have generally worked well since 1982, but practical experience in processing this information has shown that some improvements and clarifications are advisable. The proposed modifications were published in the *Federal Register* on July 7, 1989 (54 FR 28696) (the NPRM).

Six organizations responded to the agency's solicitation for public comments. Although five minor revisions have been made in the final regulation in response to comments, the comments generally reflect approval of the proposed changes. NHTSA has also modified Appendices A and B and §512.5(b) to make clarifications in response to comments.

Discussion of Comments

The agency's proposals for which commenters expressed support or no opinion have not been included in the Discussion of Comments. The explanation of such proposals contained in the NPRM is incorporated by reference for the purposes of this Notice.

Impairment of Protectable Government Interests

The revision in §512.5 relating to the impairment of protectable government interests attracted the attention of Ford Motor Company. While basically agreeing with need for a change, Ford suggested expanding this section to include the concept that confidentiality should be granted if disclosure was likely to impair a "private interest." Ford proposed to accomplish this by inserting the words "or private" after "government" in §512.4(b)(3)(viii) and §512.5(c) in recognition of dicta in cases cited in the NPRM. The agency is reluctant to make this change in the absence of clear judicial decisions which determine that the disclosure of confidential information causes a private harm other than a substantial harm to the competitive position of the submitter. The addition of §512.5(c) and §512.4(b)(3)(viii) in the NPRM responds to a genuine need for protection of government interests that are not otherwise recognized, i.e., the impairment of program effectiveness or compliance. However, the agency believes that the regulation sufficiently covers private interests in §512.4(g) and §512.5(a), and therefore will not incorporate Ford's proposed amendment.

Submitter's Supporting Certification

Volkswagen of America, Inc., and Ford requested changes to the certification in Appendix A. Volkswagen wanted Appendix A to include both the form of the affidavit and the form of the certification if the agency was truly willing to accept either format. By expressing willingness in the NPRM to accept affidavits which contain the statements contained in the proposed Appendix A, the agency did not intend to formally create an optional format. NHTSA is satisfied with one format, but a certification in that format, that is also notarized, will not be rejected as insufficient.

Ford asserted that the qualifying words "to the best of my information, knowledge and belief," which were deleted from paragraph (6) of the certification, should be retained. Ford also questioned whether it was possible for a busy company executive to make the "personal inquiry" indicated in paragraph (3) of the certification without the use of such qualifying language. NHTSA agrees to correct this oversight by adding the words "information and belief," after "knowledge" in paragraph (4). The agency believes that this will adequately address Ford's concern for fairness to the declarant who may

use subordinates to aid him in his inquiries, and yet, not interfere with the statutory requirements of 28 USC §1746 and 18 USC §1001 concerning unsworn declarations to the government under penalty of perjury.

New Class Determinations

All of the commenters provided suggestions concerning the class determinations listed and proposed for listing in Appendix B. If the agency determines that public release of a particular class of information typically would result in substantial competitive harm and publishes that determination in Appendix B, a rebuttable presumption is created about the likelihood of such harm if information of that type were publicly released. This presumption has the effect of eliminating the requirement that the submitter initially demonstrate the elements contained in §512.4(b)(3)(vi).

The commenting automobile manufacturers generally supported the General Motors Corporation's petition for the agency to make a class determination about cost information. General Motors offered an amendment to its original draft limiting "cost" to "manufacturer's cost." Volkswagen suggested that the presumptive determination include "future actual as well as estimated cost." Ford asked that the agency craft a presumption that includes the kinds of cost data that the agency generally has withheld. Chrysler Motors Corporation asserted that no distinction should be made between general cost estimates, ranges of costs and specific actual cost data relating to a product because all could be damaging if disclosed.

However, these suggestions do not adequately address the concern of the agency that a highly inclusive presumption may erroneously encompass costs that under certain circumstances are not entitled to confidential protection. Public Citizen and the Freedom of Information Clearinghouse echoed this concern, stating that it is difficult to draft a determination relating to cost that is not overbroad. While the presumption would be rebuttable, NHTSA wants to avoid confusion, misunderstanding and wasteful effort considering claims involving, for example, meaninglessly overbroad estimates of future costs or cost elements which may have inadvertently been introduced into the public domain. NHTSA does not believe that it will suffer an impaired ability to obtain cost information without the presumption, as one commenter suggested, nor does it believe that the evidence on cost submissions is clear enough to permit the drafting of a sufficiently narrow provision at this time. The agency therefore has decided that a new class determination relating to costs is not advisable. General Motors' suggested class determination is, therefore, not adopted.

Three companies made comments on NHTSA's proposed amendments to paragraphs (2) and (3) of the current class determinations in Appendix B. General Motors and Volkswagen suggested that "model year" be clarified to mean the vehicle production period. Ford proposed that product plans be protected until the date on which the last of the specific models to which the product plans pertain is first offered for sale.

All of these comments demonstrate the necessity for clarification of the terminology "product plans" and "model year." The phrase "first offered for sale" is more precise than "the beginning of the model year" in paragraph (2). Also the concept of "production period" is better suited for explaining the presumption in paragraph (3). NHTSA believes that paragraphs (2) and (3) have been simplified and more correctly stated by the adoption of these changes.

In addition, Volkswagen wanted model plans protected to the end of the production period, not the beginning, because certain specific products or features are scheduled for introduction some time after such period begins. The agency does not agree with Volkswagen's suggestion to protect model plans until the end of the model production period. If there is a specific change that is scheduled to take place relating to a certain model vehicle after production of such model begins, it should be pointed out by the submitter when such change will be offered to the public. The specific change can then be protected until it is offered to the public, while the remainder of the information pertaining to that vehicle will be released when the vehicle is first offered to the public.

Miscellaneous Provisions

The amendment relating to voluntary submissions in §512.5 was the subject of comments from both Ford and General Motors. Ford suggested that this section be expanded to include the concept that confidentiality should be granted if disclosure was likely to impair the ability of NHTSA to obtain necessary similar information in the future, even though NHTSA could compel disclosure of such information. General Motors made the point that material that is ostensibly obtainable via compulsory process might be considered, in some instances, the equivalent of a voluntary submission. However, as was stated in the NPRM on page 28698 and by General Motors in its comments, whether future submissions of information could be compelled is only a factor to be considered in deciding if governmental access to information will be impaired by disclosure, but it is not necessarily dispositive. *Public Citizen Health Research Group v. FDA,* 704 F.2d 1280, 1291 n. 29 (D.C. Cir. 1983); *Washington Post Co. v. HHS,* 690 F.2d 252 (D.C. Cir. 1982). Moreover, the agency recognizes that courts have given great weight to agency determinations that the release of

information will not cause impairment. *General Electric Co. v. NRC,* 750 F.2d 1394, 1402 (7th Cir. 1984); *AT&T Information Systems v. GSA,* 627 F. Supp. 1396, 1401 (D.D.C. 1986), reversed and remanded on procedural grounds, 810 F.2d 1233 (D.C. Cir. 1987).

The changes proposed in the NPRM were intended to reflect more accurately the established case law but not to enumerate every factor to be considered when deciding whether information should be protected from disclosure. Furthermore, this regulation is intended to be procedural, and not substantive. Because of these factors, the agency believes that it is inappropriate to attempt to amend the regulation according to the ongoing judicial development of highly specific disclosure exceptions under the Freedom of Information Act. Consequently, the agency is satisfied that the regulation should provide broad categories and a flexible framework based upon well established judicial precedent. In order to respond to the concerns expressed by Ford and General Motors and to avoid future confusion about voluntary submissions of information as outlined in recent judicial decisions, the regulation has been modified to delete entirely the references to voluntary submissions in §512.5(b). The agency will, however, make no change to §512.4(b)(3)(vii) which permits the submitter to explain impairment when the information is submitted voluntarily. This modification of the proposal also accommodates precisely the issues raised by General Motors and Ford, reflects accurately the established case law and maintains a broad, flexible framework for submitters using the regulation.

Public Citizen and the Freedom of Information Clearinghouse expressed concern about the timing of NHTSA's confidentiality determinations. On this point, the NPRM did not propose any substantive changes from the original regulation. Nevertheless, these commenters suggested that the agency should decide on and publish a date certain by which confidentiality determinations will be made. Ten days were recommended to be a reasonable period of time. The commenters said that without further clarification, §512.6(b), which requires placing in the public file copies of documents from which information claimed to be confidential or privileged has been deleted pending resolution of such claim, is likely to mislead the public.

The agency does not agree that the procedures in §512.6(b) are misleading. All persons having an interest in files from which information has been redacted, may, and frequently do, make further inquiries about additional information pursuant to the Freedom of Information Act. In these situations, NHTSA's practical experience with the regulation has been excellent, as explained below, and the agency is satisfied that the public has pursued information under this statute in instances where more information was wanted. In such instances, as noted in §512.6(c), the agency must respond within the statutory time periods. It is also important to point out that because of practical manpower restraints, the agency would not always be able to meet a self-imposed deadline for redacted information about which there was no expressed public interest and also fulfill its obligations to persons requesting information under statutory deadlines. Moreover, the agency believes that the processing of voluminous files for which confidential treatment has been requested has been expeditious and orderly under the applicable provisions of the existing regulation. Accordingly, the agency declines to make the suggested changes.

Public Citizen and the Freedom of Information Clearinghouse also objected to the proposed change in §512.4(j) (currently §512.4(i)). In this section, the agency proposed to replace the provision requiring the denial of confidential claims when information is submitted without the certification required by §512.4(e) with a provision making it discretionary to deny or accept such claims. General Motors commented in support of the change, noting that the automatic denial of confidential treatment is "an unnecessarily harsh penalty for what may be an inadvertent omission."

The provisions of §512.4(e) mandate that the submitter's certification be included with every request to the agency for the confidential protection of information. The agency continues to believe that the certification is the best method by which a submitter can demonstrate compliance with the requirements of the Freedom of Information Act. Furthermore, NHTSA is prepared to deny claims which do not reasonably comply with §512.4(e). However, it is not justifiable for the agency to be compelled to deny a claim for confidential treatment which includes no certification but which is clearly exempt from disclosure pursuant to the Freedom of Information Act, 5 U.S.C. 552(b)(4). In circumstances where the agency is absolutely satisfied that a submitter has made a serious claim for confidential protection of information, the information has not been released to the public, and the information is properly protectable under Exemption 4, the agency should not require itself to disclose the information. The proposed modification realistically retains the certification requirement without creating the potentially improper technical conflict between the regulation's procedures and the demands of the Freedom of Information Act. For this reason, NHTSA believes that this comment lacks merit. Accordingly, the proposed change has been adopted.

General Motors questioned whether documents submitted under a claim of confidentiality would be

adequately protected until the Chief Counsel has made a determination and suggested that the regulation provide appropriate safeguards to prevent inadvertent disclosure of documents. NHTSA is satisfied that this concern is covered by the regulation in §512.6(h) which provides that no information will be released prior to the time that the Chief Counsel makes a decision under the regulation. Furthermore, the purpose of this rule is to establish procedures to consider claims of confidentiality and not to specify internal agency procedures for document protection. Consequently, no change is being made in the Final Rule.

Ford raised an issue relating to the whether §512.4(j)(1) should reference paragraph (a) or subparagraphs (a)(1), (a)(2) and (a)(3) of this section. The agency considered this suggestion, but believes that all of the subparagraphs of paragraph (a) are sufficiently inter-related to justify the reference to the entire paragraph. The agency believes that the submitter should be responsible for providing a correctly sanitized second copy of information in accordance with subparagraphs (a)(4) and (a)(5), or suffer the consequences of waiver arising out of an inadvertent disclosure. NHTSA cannot agree to be responsible for finding errors in such second copies, and believes that waiver of the claim is fair and is the proper result of such submitter error.

Finally, Ford suggested that in §512.9(a) the word "and" be replaced with "or" in the series "§§512.4, 512.6 and 512.7" because such sections would never be invoked simultaneously in claiming or determining confidentiality. The agency agrees with this comment and has adopted it in this Final Rule.

In consideration of the foregoing, 49 C.F.R. Part 512 is revised to read as follows:

PART 512—CONFIDENTIAL BUSINESS INFORMATION

Sec.

Authority: 49 U.S.C. 322; 5 U.S.C. 552; 15 U.S.C. 1401; 15 U.S.C. 1402; 15 U.S.C. 1407; 15 U.S.C. 1418; 15 U.S.C. 1914; 15 U.S.C. 1944; 15 U.S.C. 1990d; 15 U.S.C. 2005; 15 U.S.C. 2029; delegation of authority at 49 C.F.R. 1.50.

§512.1 Purpose and scope.

The purpose of this part is to establish the procedure by which NHTSA will consider claims that information submitted to the agency, or which the agency otherwise obtains, is confidential business information, as described in 5 U.S.C. 552(b)(4).

§512.2 Applicability.

(a) This part applies to all information which is submitted to NHTSA, or which NHTSA otherwise obtains, except as provided in paragraph (b) of this section.

(b) Information received as part of the procurement process is subject to the Federal Acquisition Regulation, 48 CFR, Chapter 1, as well as this part. In any case of conflict between the Federal Acquisition Regulation and this part, the provisions of the Federal Acquisition Regulation prevail.

§512.3 Definitions.

"Administrator" means the Administrator of the National Highway Traffic Safety Administration.

"Chief Counsel" means the Chief Counsel of the National Highway Traffic Safety Administration.

"Confidential business information" means information described in 5 U.S.C. 552(b)(4).

"NHTSA" means the National Highway Traffic Safety Administration.

"Substantial competitive harm" encompasses "significant competitive damage" under Title V of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2001 *et seq.*

§512.4 Asserting a claim for confidential treatment of information.

(a) Any person submitting information to NHTSA and requesting that the information be withheld from public disclosure as confidential business information shall:

(1) Stamp or mark "confidential," or some other term which clearly indicates the presence of information claimed to be confidential, on the top of each page containing information claimed to be confidential.

(2) On each page marked in accordance with paragraph (a)(1) of this section, mark each item of information which is claimed to be confidential with brackets "[ ]".

(3) If an entire page is claimed to be confidential, indicate clearly that the entire page is claimed to be confidential.

(4) Submit two copies of the documents containing

allegedly confidential information (except only one copy of blueprints) and one copy of the documents from which information claimed to be confidential has been deleted to the Office of Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, S.W., Washington, D.C. 20590. Include the name, address, and telephone number of a representative for receipt of a response from the Chief Counsel under this part.

(5) If a document containing information claimed to be confidential is submitted in connection with an investigation or proceeding, a rulemaking action, or pursuant to a reporting requirement, for which there is a public file or docket, simultaneously submit to the appropriate NHTSA official a copy of the document from which information claimed to be confidential has been deleted. This copy will be placed in the public file or docket pending the resolution of the claim for confidential treatment.

(b)(1) When submitting each item of information marked confidential in accordance with paragraph (a) of this section, the submitter shall also submit to the Office of the Chief Counsel information supporting the claim for confidential treatment in accordance with paragraph (b)(3) and paragraph (e) of this section.

(2) If submission of the supporting information is not possible at the time the allegedly confidential information is submitted, a request for an extension of time in which to submit the information, accompanied by an explanation describing the reason for the extension and the length of time needed, must be submitted. The Chief Counsel shall determine the length of the extension. The recipient of an extension shall submit the supporting information in accordance with the extension determination made by the Chief Counsel and subparagraph (3) of this section.

(3) The supporting information must show:

(i) That the information claimed to be confidential is a trade secret, or commercial or financial information that is privileged or confidential.

(ii) Measures taken by the submitter of the information to ensure that the information has not been disclosed or otherwise made available to any person, company, or organization other than the submitter of the information.

(iii) Insofar as is known by the submitter of the information, the extent to which the information has been disclosed, or otherwise become available, to persons other than the submitter of the information, and why such disclosure or availability does not compromise the confidential nature of the information.

(iv) Insofar as is known by the submitter of the information, the extent to which the information has appeared publicly, regardless of whether the submitter has authorized that appearance or confirmed the accuracy of the information. The submitter must include citations to such public appearances, and an explanation of why such appearances do not compromise the confidential nature of the information.

(v) Prior determinations of NHTSA or other Federal agencies or Federal courts relating to the confidentiality of the submitted information, or similar information possessed by the submitter including class determinations under this part. The submitter must include any written notice or decision connected with any such prior determination, or a citation to any such notice or decision, if published in the *Federal Register.*

(vi) Whether the submitter of the information asserts that disclosure would be likely to result in substantial competitive harm, what the harmful effects of disclosure would be, why the effects should be viewed as substantial, and the causal relationship between the effects and disclosure.

(vii) If information is voluntarily submitted, why disclosure by NHTSA would be likely to impair NHTSA's ability to obtain similar information in the future.

(viii) Whether the submitter of the information asserts that disclosure would be likely to impair other protectable government interests, what the effect of disclosure is likely to be and why disclosure is likely to impair such interests.

(ix) The period of time for which confidentiality is claimed (permanently or until a certain date or until the occurrence of a certain event) and why earlier disclosure would result in the harms set out in paragraph (b)(2)(vi), (vii) or (viii) of this section.

(c) If any element of the showing to support a claim for confidentiality required under paragraph (b)(3) of this section is presumptively established by a class determination, as issued pursuant to §512.10, affecting the information for which confidentiality is claimed, the submitter of information need not establish that element again.

(d) Information in support of a claim for confidentiality submitted to NHTSA under paragraph (b) of this section must consist of objective data to the maximum extent possible. To the extent that opinions are given in support of a claim for confidential treatment of information, the submitter of the information shall submit in writing to NHTSA the basis for the opinions, and the name, title and credentials showing the expertise of the person supplying the opinion.

(e) The submitter of information for which confidential treatment is requested shall submit to NHTSA with the request a certification in the form set out in Appendix A from the submitter or an agent of the submitter that a diligent inquiry has been made to determine that the information has not been disclosed, or otherwise appeared publicly,

except as indicated in accordance with paragraphs (b)(3)(iii) and (iv) of this section.

(f) A single submission of supporting information, in accordance with paragraph (b) of this section, may be used to support a claim for confidential treatment of more than one item of information claimed to be confidential. However, general or nonspecific assertions or analysis may be insufficient to form an adequate basis for the agency to find that information may be afforded confidential treatment, and may result in the denial of a claim for confidentiality.

(g) Where confidentiality is claimed for information obtained by the submitter from a third party, such as a supplier, the submitter of the information is responsible for obtaining all information and a certification from the third party necessary to comply with paragraphs (b), (d) and (e) of this section.

(h) Information received by NHTSA that is identified as confidential and whose claim for confidentiality is submitted in accordance with this section will be kept confidential until a determination of its confidentiality is made under section 512.6 of this part. Such information will not be publicly disclosed except in accordance with this part.

(i) A submitter of information shall promptly amend supporting information provided under paragraphs (b) or (e) of this section if the submitter obtains information upon the basis of which the submitter knows that the supporting information was incorrect when provided, or that the supporting information, though correct when provided, is no longer correct and the circumstances are such that a failure to amend the supporting information is in substance a knowing concealment.

(j) Noncompliance with this section may result in a denial of a claim for confidential treatment of information. Noncompliance with paragraph (i) of this section may subject a submitter of information to civil penalties.

(1) If the submitter fails to comply with paragraph (a) of this section at the time the information is submitted to NHTSA so that the agency is not aware of a claim for confidentiality, or the scope of a claim for confidentiality, the claim for confidentiality may be waived unless the agency is notified of the claim before the information is disclosed to the public. Placing the information in a public docket or file is disclosure to the public within the meaning of this part, and any claim for confidential treatment of information disclosed to the public may be precluded.

(2) If the submitter of the information does not provide all of the supporting information required in paragraphs (b)(3) and (e) of this section, or if the information is insufficient to establish that the information may be afforded confidential treatment under the substantive tests set out in §512.5, a request that such information be afforded confidential protection may be denied. The Chief Counsel may notify a submitter of information of inadequacies in the supporting information, and may allow the submitter additional time to supplement the showing, but is under no obligation to provide either notice or additional time to supplement the showing.

§512.5 Substantive standards for affording confidential treatment.

Information submitted to or otherwise obtained by NHTSA may be afforded confidential treatment if it is a trade secret, or commercial or financial information that is privileged or confidential. Information is considered to be confidential when:

(a) Disclosure of the information would be likely to result in substantial competitive harm to the submitter of the information; or

(b) Failure to afford the information confidential treatment would impair the ability of NHTSA to obtain similar information in the future; or

(c) Disclosure of the information would be likely to impair other protectable government interests.

§512.6 Determination of confidential treatment.

(a) The decision as to whether an item of information shall be afforded confidential treatment under this part is made by the Office of Chief Counsel.

(b) Copies of documents submitted to NHTSA under §512.4(a)(5), from which information claimed to be confidential or privileged has been deleted, are placed in the public file or docket pending the resolution of the claim for confidential treatment.

(c) When information claimed to be confidential or privileged is requested under the Freedom of Information Act, the determination of confidentiality is made within ten working days after NHTSA receives such a request, or within twenty working days in unusual circumstances as provided under 5 U.S.C. 552(a)(6).

(d) For information not requested pursuant to the Freedom of Information Act, the determination of confidentiality is made within a reasonable period of time at the discretion of the Chief Counsel.

(e) The time periods prescribed in paragraph (c) of this section may be extended by the Chief Counsel for good cause shown on the Chief Counsel's own motion, or on request from any person. An extension is made only in accordance with 5 U.S.C. 552, and is accompanied by a written statement setting out the reasons for the extension.

(f) If the Chief Counsel believes that information which a submitter of information asserts to be within a class of information set out in Appendix B is not within that class, the Chief Counsel:

(1) Notifies the submitter of the information that the information does not fall within the class as claimed, and briefly explains why the information does not fall within the class; and

(2) Renders a determination of confidentiality in accordance with paragraph (g) of this section.

(g) A person submitting information to NHTSA with a request that the information be withheld from public disclosure as confidential or privileged business information is given notice of the Chief Counsel's determination regarding the request as soon as the determination is made.

(1) If a request for confidentiality is granted, the submitter of the information is notified in writing of that determination and of any appropriate limitations.

(2) If a request for confidentiality is denied in whole or in part, the submitter of the information is notified in writing of that decision, and is informed that the information will be made available to the public not less than ten working days after the submitter of the information has received notice of the denial of the request for confidential treatment, if practicable, or some earlier date if the Chief Counsel determines in writing that the public interest requires that the information be made available to the public on such earlier date. The written notification of a denial specifies the reasons for denying the request.

(h) There will be no release of information processed pursuant to this section until the Chief Counsel advises the appropriate office(s) of NHTSA that the confidentiality decision is final according to this section, §512.7 or §512.9.

§512.7 Petitions for reconsideration upon denial of a request for confidential treatment.

(a) A submitter of information whose request for confidential treatment is denied may petition for reconsideration of that denial. Petitions for reconsideration must be addressed to and received by the Office of Chief Counsel prior to the date on which the information would otherwise be made available to the public. The determination by the Chief Counsel upon such petition for reconsideration shall be administratively final.

(b) If submission of a petition for reconsideration is not feasible by the date on which the information would otherwise be made available to the public, a request for an extension of time in which to submit a petition, accompanied by an explanation describing the reason for the request and the length of time needed, must be received by the Office of Chief Counsel by that date. The Chief Counsel determines whether to grant or deny the extension and the length of the extension.

(c) Upon receipt of a petition or request for an extension, the Chief Counsel shall postpone making the information available to the public in order to consider the petition, unless the Chief Counsel determines in writing that disclosure would be in the public interest.

(d) If a petition for reconsideration is granted, the petitioner is notified in writing of that determination and of any appropriate limitations.

(e) If a petition for reconsideration is denied in whole or in part or a request for an extension for additional time to submit a petition for reconsideration is denied, the petitioner is notified in writing of that denial, and is informed that the information will be made available to the public not less than ten working days after the petitioner has received notice of the denial of the petition, if practicable, or some earlier date if the Chief Counsel determines in writing that the public interest requires that the information be made available to the public on such earlier date. The written notification of a denial specifies the reasons for denying the petition.

§512.8 Modification of confidentiality determinations.

(a) A determination that information is confidential or privileged business information remains in effect in accordance with its terms, unless modified by a later determination based upon:

(1) Newly discovered or changed facts,

(2) A change in the applicable law,

(3) A class determination under §512.10, or

(4) A finding that the prior determination is clearly erroneous.

(b) If NHTSA believes that an earlier determination of confidentiality should be modified based on one or more of the factors listed in paragraphs (a)(1) through (a)(4) of this section, the submitter of the information is notified in writing that NHTSA has modified its earlier determination and of the reasons for that modification, and is informed that the information will be made available to the public in not less than ten working days from the date of receipt of notice under this paragraph. The submitter may seek reconsideration of the modification pursuant to §512.7.

§512.9 Release of confidential business information.

(a) Information that has been claimed or determined to be confidential business information under §§512.4, 512.6 or 512.7 may be disclosed to the public by the Administrator notwithstanding such determination or claim if disclosure would be in the public interest as follows:

(1) Information obtained under Part A, Subchapter I of the National Traffic and Motor Vehicle Safety Act, relating to the establishment, amendment, or modification of Federal motor vehicle safety standards, may be disclosed when relevant to a proceeding under that part.

(2) Information obtained under Part B, Subchapter I of the National Traffic and Motor Vehicle Safety

Act, relating to motor vehicle safety defects, and failures to comply with applicable motor vehicle safety standards, may be disclosed if the Administrator determines that disclosure is necessary to carry out the purposes of the Act.

(3) Information obtained under Title I, V or VI of the Motor Vehicle Information and Cost Savings Act may be disclosed when that information is relevant to a proceeding under the title under which the information was obtained.

(b) No information is disclosed under this section unless the submitter of the information is given written notice of the Administrator's intention to disclose information under this section. Written notice is normally given at least ten working days before the day of release, although the Administrator may provide shorter notice if the Administrator finds that such shorter notice is in the public interest. The notice under this paragraph includes a statement of the Administrator's reasons for determining to disclose the information, and affords the submitter of the information an opportunity to comment on the contemplated release of information. The Administrator may also give notice of the contemplated release of information to other persons, and may allow these persons the opportunity to comment. When a decision is made to release information pursuant to this section, the Administrator will consider ways to make the release with the least possible adverse effects to the submitter.

(c) Notwithstanding any other provision of this part, information which has been determined or claimed to be confidential business information, may be released:

(1) To Congress;

(2) Pursuant to an order of a court with valid jurisdiction;

(3) To the Office of the Secretary, United States Department of Transportation and other Executive branch offices or other Federal agencies in accordance with applicable laws;

(4) With the consent of the submitter of the information;

(5) To contractors, if necessary for the performance of a contract with the Administration. In such instances, the contract limits further release of the information to named employees of the contractor with a need to know and provides that unauthorized release constitutes a breach of the contract for which the contractor may be liable to third parties.

§512.10 Class determinations.

(a) The Chief Counsel may issue a class determination relating to confidentiality under this section if the Chief Counsel determines that one or more characteristics common to each item of information in that class will in most cases necessarily result in identical treatment of each item of information under this part, and that it is appropriate to treat all such items as a class for one or more purposes under this part. The Chief Counsel obtains the concurrence of the Office of the General Counsel, United States Department of Transportation, for any class determination that has the effect of raising the presumption that all information in that class is eligible for confidential treatment. Class determinations are published in the *Federal Register.*

(b) A class determination clearly identifies the class of information to which it pertains.

(c) A class determination may state that all of the information in the class:

(1) Is or is not governed by a particular section of this part, or by a particular set of substantive criteria under this part.

(2) Fails to satisfy one or more of the applicable substantive criteria, and is therefore ineligible for confidential treatment,

(3) Satisfies one or more of the applicable substantive criteria, and is therefore eligible for confidential treatment, or

(4) Satisfies one of the substantive criteria during a certain period of time, but will be ineligible for confidential treatment thereafter.

(d) Class determinations will have the effect of establishing rebuttable presumptions, and do not conclusively determine any of the factors set out in paragraph (c) of this section.

Appendix A to Part 512—Certificate in Support of Request for Confidentiality

Certificate in Support of Request for Confidentiality

I, _____, pursuant to the provisions of 49 C.F.R. 512, state as follows:

(1) I am (official) and I am authorized by (company) to execute documents on behalf of (company):

(2) The information contained in (pertinent document[s]) is confidential and proprietary data and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. §552(b)(4) (as incorporated by reference in and modified by the statute under which the information is being submitted.)

(3) I have personally inquired of the responsible (company) personnel who have authority in the normal course of business to release the information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside (company).

(4) Based upon such inquiries, to the best of my knowledge, information and belief the information for which (company) has claimed confidential treatment has never been released or become available outside (company) except as hereinafter specified:

(5) I make no representations beyond those con-

tained in this certificate and in particular I make no representations as to whether this information may become available outside (company) because of unauthorized or inadvertent disclosure except as stated in Paragraph 4; and

(6) I certify under penalty of perjury that the foregoing is true and correct. Executed on this the _____. (If executed outside of the United States of America: I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.)

(signature of official)

Appendix B to Part 512—Class Determinations.

The Administration has determined that the following types of information would presumptively be likely to result in substantial competitive harm if disclosed to the public:

(1) Blueprints and engineering drawings containing process of production data where the subject could not be manufactured without the blueprints or engineering drawings except after significant reverse engineering;

(2) Future specific model plans (to be protected only until the date on which the specific model to which the plan pertains is first offered for sale);

(3) Future vehicle production or sales figures for specific models (to be protected only until the termination of the production period for the model year vehicle to which the information pertains).

Appendix C to Part 512—OMB Clearance

The OMB Clearance number for this regulation is 2127–0025.

Issued on November 21, 1989.

Jeffrey R. Miller
Acting Administrator
National Highway Traffic Safety Administration

54 F.R. 48892
November 28, 1989

PART 512—CONFIDENTIAL BUSINESS INFORMATION

(Docket No. 78-10; Notice 3)

§ 512.1 Purpose and Scope.

The purpose of this part is to establish the procedure by which NHTSA will consider claims that information submitted to the agency, or which the agency otherwise obtains, is confidential business information, as described in 5 U.S.C. 552(b)(4).

§ 512.2 Applicability.

(a) This part applies to all information which is submitted to NHTSA, or which NHTSA otherwise obtains, except as provided in paragraph (b) of this section.

(b) Information received as part of the procurement process, is subject to the Federal Acquisition Regulations, 48 CFR, Chapter 1, as well as this part. In any case of conflict between the Federal Acquisition Regulations and this part, the provisions of the Federal Acquistion Regulations prevail.

§ 512.3 Definitions.

"Administrator" means the Administrator of the National Highway Traffic Safety Administration.

"Chief Counsel" means the Chief Counsel of the National Highway Traffic Safety Administration.

"Confidential business information" means information described in 5 U.S.C. 552(b)(4).

"NHTSA" means the National Highway Traffic Safety Administration.

[**"Substantial competitive harm" encompasses "significant competitive damage" under Title V of the Motor Vehicle Information and Cost Savings Act 15 U.S.C 2001 *et seq.* (54 F.R. 48892—November 28, 1989. Effective: November 28, 1989)**]

§ 512.4 Asserting a claim for confidential treatment of information.

(a) Any person submitting information to NHTSA and requesting that the information be withheld from public disclosure as confidential business information shall—

(1) Stamp or mark "confidential" or some other term which clearly indicates the presence of information claimed to be confidential, on the top of each page containing information claimed to be confidential.

(2) On each page marked in accordance with paragraph (a)(1) on this section, mark each item of information which is claimed to be confidential with brackets "[ ]".

(3) If an entire page is claimed to be confidential, indicate clearly that the entire page is claimed to be confidential.

(4) [Submit two copies of the documents containing allegedly confidential information (except only one copy of blueprints) and one copy of the documents from which information claimed to be confidential has been deleted to the Office of Chief Counsel, National Highway Traffic Safety Administration, Room 5219. 400 Seventh Street, S.W., Washington, D.C. 20590. Include the name, address, and telephone number of a representative for receipt of a response from the Chief Counsel under this part. **(54 F.R. 48892—November 28, 1989. Effective: November 28, 1989)**]

[(5) If a document containing information claimed to be confidential is submitted in connection with an investigation or proceeding, a rulemaking action, or pursuant to a reporting requirement, for which there is a public file or docket, simultaneously submit to the appropriate NHTSA official a copy of the document from which information claimed to be confidential has been deleted. This copy will be placed in the public file or docket pending the resolution of the claim for confidential treatment.

(b)(1) When submitting each item of information marked confidential in accordance with paragraph (a) of this section, the submitter shall also submit to the Office of the Chief Counsel information supporting the claim for confidential treatment in accordance with paragraph (b)(3) and paragraph (e) of this section.

(2) If submission of the supporting information is not possible at the time the allegedly confidential information is submitted, a request for an extension of time in which to submit the information, accompanied by an explanation describing the reason for

the extension and the length of time needed, must be submitted. The Chief Counsel shall determine the length of the extension. The recipient of an extension shall submit the supporting information in accordance with the extension determination made by the Chief Counsel and subparagraph (3) of this section.

(3) The supporting information must show:

(i) That the information claimed to be confidential is a trade secret, or commercial or financial information that is privileged or confidential.

(ii) Measures taken by the submitter of the information to ensure that the information has not been disclosed or otherwise made available to any person, company, or organization other than the submitter of the information.

(iii) Insofar as is known by the submitter of the information, the extent to which the information has been disclosed, or otherwise become available, to persons other than the submitter of the information, and why such disclosure or availability does not compromise the confidential nature of the information.

(iv) Insofar as is known by the submitter of the information, the extent to which the information has appeared publicly, regardless of whether the submitter has authorized that appearance or confirmed the accuracy of the information. The submitter must include citations to such public appearances, and an explanation of why such appearances do not compromise the confidential nature of the information.

(v) Prior determinations of NHTSA or other Federal agencies or Federal courts relating to the confidentiality of the submitted information, or similar information possessed by the submitter including class determinations under this part. The submitter must include any written notice or decision connected with any such prior determination, or a citation to any such notice or decision, if published in the *Federal Register*.

(vi) Whether the submitter of the information asserts that disclosure would be likely to result in substantial competitive harm, what the harmful effects of disclosure would be, why the effects should be viewed as substantial, and the causal relationship between the effects and disclosure.

(vii) If information is voluntarily submitted. why disclosure by NHTSA would be likely to impair NHTSA's ability to obtain similar information in the future.

(viii) Whether the submitter of the information asserts that disclosure would be likely to impair other protectable government interests, what the effect of disclosure is likely to be and why disclosure is likely to impair such interests.

(ix) The period of time for which confidentiality is claimed (permanently or until a certain date or until the occurrence of a certain event) and why earlier disclosure would result in the harms set out in paragraph (b)(2)(vi), (vii) or (viii) of this section.

(c) If any element of the showing to support a claim for confidentiality required under paragraph (b)(3) of this section is presumptively established by a class determination, as issued pursuant to § 512.10, affecting the information for which confidentiality is claimed, the submitter of information need not establish that element again.

(d) Information in support of a claim for confidentiality submitted to NHTSA under paragraph (b) of this section must consist of objective data to the maximum extent possible. To the extent that opinions are given in support of a claim for confidential treatment of information, the submitter of the information shall submit in writing to NHTSA the basis for the opinions, and the name, title and credentials showing the expertise of the person supplying the opinion.

(e) The submitter of information for which confidential treatment is requested shall submit to NHTSA with the request a certification in the form set out in Appendix A from the submitter or an agent of the submitter that a diligent inquiry has been made to determine that the information has not been disclosed, or otherwise appeared publicly, except as indicated in accordance with paragraphs (b)(3)(iii) and (iv) of this section.

(f) A single submission of supporting information, in accordance with paragraph (b) of this section, may be used to support a claim for confidential treatment of more than one item of information claimed to be confidential. However, general or nonspecific assertions or analysis may be insufficient to form an adequate basis for the agency to find that information may be afforded confidential treatment, and may result in the denial of a claim for confidentiality.

(g) Where confidentiality is claimed for information obtained by the submitter from a third party, such as a supplier, the submitter of the information is responsible for obtaining all information and a certification from the third party necessary to comply with paragraphs (b), (d) and (e) of this section.

(h) Information received by NHTSA that is identified as confidential and whose claim for confidentiality is submitted in accordance with this section will be kept confidential until a determination of its confidentiality is made under section 512.6 of this part. Such information will not be publicly disclosed except in accordance with this part.

(i) A submitter of information shall promptly amend supporting information provided under paragraphs (b) or (e) of this section if the submitter obtains information upon the basis of which the submitter knows that the supporting information was incorrect when provided, or that the supporting information, though correct when provided, is no longer correct and the circumstances are such that a failure to amend the supporting information is in substance a knowing concealment.

(j) Noncompliance with this section may result in a denial of a claim for confidential treatment of information. Noncompliance with paragraph (i) of this section may subject a submitter of information to civil penalties.

(1) If the submitter fails to comply with paragraph (a) of this section at the time the information is submitted to NHTSA so that the agency is not aware of a claim for confidentiality, or the scope of a claim for confidentiality, the claim for confidentiality may be waived unless the agency is notified of the claim before the information is disclosed to the public. Placing the information in a public docket or file is disclosure to the public within the meaning of this part, and any claim for confidential treatment of information disclosed to the public may be precluded.

(2) If the submitter of the information does not provide all of the supporting information required in paragraphs (b)(3) and (e) of this section. or if the information is insufficient to establish that the information may be afforded confidential treatment under the substantive tests set out in § 512.5, a request that such information be afforded confidential protection may be denied. The Chief Counsel may notify a submitter of information of inadequacies in the supporting information, and may allow the submitter additional time to supplement the showing, but is under no obligation to provide either notice or additional time to supplement the showing. **54 F.R. 48892—November 28, 1989. Effective: November 28, 1989)]**

§ 512.5 Substantive standards for affording confidential treatment.

[Information submitted to or otherwise obtained by NHTSA may be afforded confidential treatment if it is a trade secret, or commercial or financial information that is privileged or confidential. Information is considered to be confidential when:

(a) Disclosure of the information would be likely to result in substantial competitive harm to the submitter of the information; or

(b) Failure to afford the information confidential treatment would impair the ability of NHTSA to obtain similar information in the future; or

(c) Disclosure of the information would be likely to impair other protectable government interests. **(54 F.R. 48892—November 28, 1989. Effective: November 28, 1989)]**

§ 512.6 Determination of confidential treatment.

[(a) The decision as to whether an item of information shall be afforded confidential treatment under this part is made by the Office of Chief Counsel.

(b) Copies of documents submitted to NHTSA under § 512.4(a)(5) from which information claimed to be confidential or privileged has been deleted, are placed in the public file or docket pending the resolution of the claim for confidential treatment.

(c) When information claimed to be confidential or privileged is requested under the Freedom of Information Act, the determination of confidentiality is made within ten working days after NHTSA receives such a request, or within twenty working days in unusual circumstances as provided under 5 U.S.C. 552(a)(6).

(d) For information not requested pursuant to the Freedom of Information Act, the determination of confidentiality is made within a reasonable period of time at the discretion of the Chief Counsel.

(e) The time periods prescribed in paragraph (c) of this section may be extended by the Chief Counsel for good cause shown on the Chief Counsel's own motion, or on request from any person. An extension is made only in accordance with 5 U.S.C. 552, and is accompanied by a written statement setting out the reasons for the extension.

(f) If the Chief Counsel believes that information which a submitter of information asserts to be within a class of information set out in Appendix B is not within that class, the Chief Counsel:

(1) Notifies the submitter of the information that the information does not fall within the class as claimed, and briefly explains why the information does not fall within the class; and

(2) Renders a determination of confidentiality in accordance with paragraph (g) of this section.

(g) A person submitting information to NHTSA with a request that the information be withheld from public disclosure as confidential or privileged business information is given notice of the Chief Counsel's determination regarding the request as soon as the determination is made.

(1) If a request for confidentiality is granted, the submitter of the information is notified in writing of that determination and of any appropriate limitations.

(2) If a request for confidentiality is denied in whole or in part, the submitter of the information is notified in writing of that decision, and is informed that the information will be made available to the public not less than ten working days after the submitter of the information has received notice of the denial of the request for confidential treatment, if practicable, or some earlier date if the Chief Counsel determines in writing that the public interest requires that the information be made available to the public on such earlier date. The written notification of a denial specifies the reasons for denying the request.

(h) There will be no release of information processed pursuant to this section until the Chief Counsel advises the appropriate office(s) of NHTSA that the confidentiality decision is final according to this section, § 512.7 or § 512.9. **(54 F.R. 48892—November 28, 1989. Effective: November 28, 1989)]**

§ 512.7 [Petitions for reconsideration upon denial of a request for confidential treatment.

(a) A submitter of information whose request for confidential treatment is denied may petition for reconsideration of that denial. Petitions for reconsideration must be addressed to and received by the Office of Chief Counsel prior to the date on which the information would otherwise be made available to the public. The determination by the Chief Counsel upon such petition for reconsideration shall be administratively final.

(b) If submission of a petition for reconsideration is not feasible by the date on which the information would otherwise be made available to the public, a request for an extension of time in which to submit a petition, accompanied by an explanation describing the reason for the request and the length of time needed, must be received by the Office of Chief Counsel by that date. The Chief Counsel determines whether to grant or deny the extension and the length of the extension.

(c) Upon receipt of a petition or request for an extension, the Chief Counsel shall postpone making the information available to the public in order to consider the petition, unless the Chief Counsel determines in writing that disclosure would be in the public interest.

(d) If a petition for reconsideration is granted, the petitioner is notified in writing of that determination and of any appropriate limitations.

(e) If a petition for reconsideration is denied in whole or in part or a request for an extension for additional time to submit a petition for reconsideration is denied, the petitioner is notified in writing of that denial, and is informed that the information will be made available to the public not less than ten working days after the petitioner has received notice of the denial of the petition, if practicable, or some earlier date if the Chief Counsel determines in writing that the public interest requires that the information be made available to the public on such earlier date. The written notification of a denial specifies the reasons for denying the petition. **(54 F.R. 48892—November 28, 1989. Effective: November 28, 1989)]**

§ 512.8 [Modification of confidentiality determinations.

(a) A determination that information is confidential or privileged business information remains in effect in accordance with its terms. unless modified by a later determination based upon:

(1) Newly discovered or changed facts,

(2) A change in the applicable law,

(3) A class determination under § 512.10, or

(4) A finding that the prior determination is clearly erroneous.

(b) If NHTSA believes that an earlier determination of confidentiality should be modified based on one or more of the factors listed in paragraphs (a)(1) through (a)(4) of this section, the submitter of the information is notified in writing that NHTSA has modified its earlier determination and of the reasons for that modification, and is informed that the information will be made available to the public in not less than ten working days from the date of receipt of notice under this paragraph. The submitter may seek reconsideration of the modification pursuant to § 512.7. **54 F.R. 48892—November 28, 1989. Effective: November 28, 1989.)]**

§ 512.9 [Release of confidential business information.

(a) Information that has been claimed or determined to be confidential business information under § 512 4. 512 6 or 512.7 may be disclosed to the public by the Administrator notwithstanding such determination or claim if disclosure would be in the public interest as follows:

(1) Information obtained under Part A, Subchapter I of the National Traffic and Motor Vehicle Safety Act, relating to the establishment, amendment, or modification of Federal motor vehicle safety standards. may be disclosed when relevant to a proceeding under that part.

(2) Information obtained under Part B, Subchapter I of the National Traffic and Motor Vehicle Safety Act, relating to motor vehicle safety defects, and failures to comply with applicable motor vehicle safety standards, may be disclosed if the Administrator determines that disclosure is necessary to carry out the purposes of the Act.

(3) Information obtained under Title 1, V or VI of the Motor Vehicle Information and Cost Savings Act may be disclosed when that information is relevant to a proceeding under the title under which the information was obtained.

(b) No information is disclosed under this section unless the submitter of the information is given written notice of the Administrator's intention to disclose information under this section. Written notice is normally given at least ten working days before the day of release, although the Administrator may provide shorter notice if the Administrator finds that such shorter notice is in the public interest. The notice under this paragraph includes a statement of the Administrator s reasons for determining to disclose the information, and affords the submitter of the information an opportunity to comment on the contemplated release of information. The Administrator may also give notice of the contemplated release of information to other persons. and may allow these persons the opportunity to comment. When a decision is made to release information pursuant to this section, the Administrator will consider ways to make the release with the least possible adverse effects to the submitter.

(c) Notwithstanding any other provision of this part, information which has been determined or claimed to be confidential business information, may be released:

(1) To Congress;

(2) Pursuant to an order of a court with valid jurisdiction;

(3) To the Office of the Secretary, United States Department of Transportation and other Executive branch offices or other Federal agencies in accordance with applicable laws;

(4) With the consent of the submitter of the information;

(5) To contractors, if necessary for the performance of a contract with the Administration. In such instances, the contract limits further release of the information to named employees of the contractor with a need to know and provides that unauthorized release constitutes a breach of the contract for which the contractor may be liable to third parties. **(54 F.R. November 28,1989. Effective: November 28, 1989)]**

§ 512.10 [Class determinations.

(a) The Chief Counsel may issue a class determination relating to confidentiality under this section if the Chief Counsel determines that one or more characteristics common to each item of information in that class will in most cases necessarily result in identical treatment of each item of information under this part, and that it is appropriate to treat all such items as a class for one or more purposes under this part. The Chief Counsel obtains the concurrence of the Office of the General Counsel, United States Department of Transportation, for any class determination that has the effect of raising the presumption that all information in that class is eligible for confidential treatment. Class determinations are published in the *Federal Register*.

(b) A class determination clearly identifies the class of information to which it pertains.

(c) A class determination may state that all of the information in the class:

(1) Is or is not governed by a particular section of this part, or by a particular set of substantive criteria under this part.

(2) Fails to satisfy one or more of the applicable substantive criteria, and is therefore ineligible for confidential treatment,

(3) Satisfies one or more of the applicable substantive criteria, and is therefore eligible for confidential treatment, or

(4) Satisfies one of the substantive criteria during a certain period of time, but will be ineligible for confidential treatment thereafter.

(d) Class determinations will have the effect of establishing rebuttable presumptions, and do not conclusively determine any of the factors set out in paragraph (c) of this section. **(54 F.R. 48892—November 28, 1989. Effective: November 28, 1989)]**

APPENDIX A
Certificate in Support of Request for Confidentiality

I, _____, pursuant to the provicions of 49 C.F.R. 512 state as follows:

(1) I am (official) and I am authorized by (company) to execute documents on behalf of (company).

(2) The information contained in (*pertinent document(s)*) is confidential and proprietary data and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. 552(b)(4) [as incorporated by reference in a modified by § 505(d)(1) of Title 5 of Motor Vehicle Information and Cost Savings Act.]

(3) I have personally inquired of the responsible (company) personnel who have authority in the normal course of business to release the information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside (*company*.

(4) Based upon such inquires, to the best of my knowledge, informaton for which (company) has claimed confidential treatment has never beem release or become available outside (company) except as hereinafter specified.

(5) I make no representation beyond those contained in this certificate and in particular I make no representations as to whether this information may become available outside (company) because of unatuhorized or inadvertent disclosure except as stated in Paragraph 4; and

(6) [I certify under penalty of perjury that the foregoing is true and correct. Executed on this the _____. (If executed outside of the United States of America: I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.)

_____
(Official)

APPENDIX B
Class Determination

The Administration has determined that the following types of information would presumptively result in significant competitive damage or would presumptively be likely to result in substantial competitive harm if desclosed to the public—

[(1) Blueprints and engineering drawings containing process of production data where the subject could not be manufactured without the blueprints or engineering drawings except after significant reverse engineering;

(2) Future specific model plans (to be protected only until the date on which the specific model to which the plan pertains is first offered for sale);

(3) Future vehicle production or sales figures for specific models (to be protected only until the termination of the production period for the model year vehicle to which the information pertains). **(54 F.R. 48892—November 28, 1989. Effective 28, 1989.)]**

APPENDIX C
OMB Clearance

The OMB clearance number for this regulation is 2127-[0025].

PREAMBLE TO PART 520—PROCEDURES FOR CONSIDERING ENVIRONMENTAL IMPACTS

[Docket No. 73–32; Notice 2]

The purpose of this amendment to Title 49 of the Code of Federal Regulations is to add a new Part 520 establishing procedures for considering environmental impacts.

A notice of proposed procedures on this subject was published on December 21, 1973 (38 FR 35018). Two comments were received on the proposed procedures: one, from the United States Environmental Protection Agency, supported the proposal and considered it to be responsive to the National Environmental Policy Act of 1969 (NEPA) and the NEPA guidelines prepared by the Council on Environmental Quality; the second, from General Motors Corporation, had some objections which have been carefully considered in this issuance of final procedures. In view of some of GM's comments, the issuance of the Department of Transportation (DOT) Order 5610.1B, "Procedures for Considering Environmental Impacts," (39 FR 35234), and further consideration within the NHTSA, the final procedures have been slightly modified.

Definitions. In order to differentiate a written environmental analysis submitted to the agency by its grantees or contractors from that undertaken by the agency itself, the meaning of the term "environmental assessment" has been changed from an internal agency evaluation process to an evaluation process external to the agency, and the term "environmental review" has been added to denote the written environmental analysis undertaken by the agency.

Applicability. "Consolidation of statements," section 520.4(f), allowing actions which have substantially similar environmental impacts to be covered by a single impact statement or environmental review culminating in a negative declaration is included in this final issuance.

GM commented that the increase in costs illustration used as an example for the project amendments exception in section 520.4(d)(5) (herein renumbered as 520.4(e)(5)) is ambiguous and could also permit a circumvention of the initial environmental evaluation process. In response to this, the section has been revised to make it clear that only project amendments with no environmental consequences are excepted from the review process. The criteria for determining which project amendments are excepted is intended to match that for excepting minor agency actions (§ 520.4)e)(6)).

Section 520.4(d)(6) of the proposed procedures was erroneously included and is accordingly deleted.

Guidelines. The general guidelines have been reworded, upon GM's request, to clarify that an environmental impact statement or negative declaration is to be prepared for any of the three situations enumerated under this general category.

Section 520.5(b), *Specific guidelines*, has been modified to reflect GM's comments, revised DOT Order 5640.1, and further determinations within the NHTSA. Subparagraphs (7)–(12) have been added and the original subparagraph (7) has been renumbered as (13). The agency has determined that these additional classes of actions should be enumerated in order to better identify those typical areas of environmental concern the NHTSA's activities may impact.

Research activities. In accordance with section 4 of final DOT Order 5610.1B, proposed implementing instructions for assessing the environmental consequences of research activities will be prepared by the Assistant Secretary of Systems Development and Technology, with the concurrence of the NHTSA. Until these final proce-

dures are promulgated, however, the guidelines set forth on this subject in the proposed procedures will be followed.

Procedures. The procedures subpart includes a number of additions and modifications. With respect to certain actions enumerated in Subpart A which may have an environmental significance, the official responsible for the action will prepare reviews that are much more comprehensive than the assessments proposed by the previous notice. He will conclude his review with a brief written report, to be included in the proposed or ongoing action, in which he will either recommend that a draft environmental impact statement (DEIS) be prepared to determine the environmental impact involved, or declare that the action would not have a significant effect on the quality of the environment. A review report that concludes with a "negative declaration" is not required to go through the extensive comment and review process provided for the DEIS, but it will be retained by the agency and made available to the public upon request.

Once an Associate Administrator, the Chief Counsel, or a Regional Administrator (in consultation with his Governor's Representative) determines, that an agency action under his jurisdiction requires the preparation of a DEIS, he will transmit a "notice of intent" to prepare the DEIS to the appropriate Federal, State, and local agencies and publish the notice in the *Federal Register.* In addition, a schedule of procedures and review will be developed in each case to assure completion of the DEIS before the first significant point of decision in the program or project development process. Once the DEIS is circulated for review and comment, not less than 45 days in any case will be allowed for comment. A public hearing on a DEIS will be held when appropriate, and notice of the hearing will be issued in the *Federal Register* at least 30 days before the hearing. Final environmental impact statements (FEIS) will be prepared and distributed as soon as practicable after the expiration of the comment and hearing process.

In accordance with the final DOT order 5610.1B, a new section 520.34 has been added, establishing procedures for the review of environmental statements prepared by other agencies.

Four attachments having a direct bearing on the preparation of impact statements have been added to this issuance of the final rule and will be followed by this agency.

Effective date: November 4, 1975.

In consideration of the foregoing, a new Part 520, "Procedures for Considering Environmental Impacts," is added as § 520 of Title 49, Code of Federal Regulations. . . .

(Secs. 102(2)(A), 102(2)(C), Public Law 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 2(b), 4(f), Public Law 89–670, 80 Stat. 931 (49 U.S.C. 1651(b), 1653(f)); Executive Order 11514, 35 FR 4247; 40 CFR Part 1500; DOT Order 5610.1B, 39 FR 35234; delegations of authority at 49 CFR 1.45, 1.51.)

Issued on Nov. 4, 1975.

James B. Gregory
Administrator

40 F.R. 52395
November 10, 1975

PART 520—PROCEDURES FOR CONSIDERING ENVIRONMENTAL IMPACTS

SUBPART A—GENERAL

SUBPART B—PROCEDURES

SUBPART A—GENERAL

§ Purpose and scope.

(a) Section 102(2)(C) of the National Environmental Policy Act of 1969 (83 Stat. 853; 42 U.S.C. 4332(2)(C)), as implemented by Executive Order 11514 (3 CFR, 1966–1970 Comp., p. 902) and the Council on Environmental Quality's Guidelines of April 23, 1971 (36 F.R. 7724), requires that all agencies of the Federal Government prepare detailed environmental statements on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The purpose of the Act is to build into the agency decision-making process careful consideration of all environmental aspects of proposed actions.

(b) This part specifies National Highway Traffic Safety Administration (NHTSA) procedures for conducting environmental assessments and reviews, and for the preparation of environmental impact statements on proposals for legislation and other major agency actions significantly affecting the quality of the human environment.

§ 520.0 Policy.

The agency will strive to carry out the full intent and purpose of the National Environmental Policy Act of 1969 and related orders and statutes, and take positive steps to avoid any

action which could adversely affect the quality of the human environment.

§ 520.3 Definitions.

(a) "Environmental assessment" is a written analysis describing the environmental impact of a proposed or ongoing agency action, submitted to the agency either by its grantees or contractors, or by any person outside the agency as part of any program or project proposal within the scope of activities listed in § 520.4(b).

(b) "Environmental review" is a formal evaluation undertaken by the agency, culminating in a brief document (the environmental review report), to determine whether a proposed or ongoing NHTSA action may have a significant impact on the environment. The review document will be included in the proposed or ongoing agency action, and either support a negative declaration or recommend the preparation of a draft environmental impact statement.

(c) "Draft environmental impact statement" (DEIS) means a preliminary statement on the environmental impact of a proposed or ongoing NHTSA action which is circulated for comment and review within and outside NHTSA.

(d) "Final environmental impact statement" (FEIS) means a detailed statement which, pursuant to section 102(2)(C) of the National Environmental Policy Act, identifies and analyzes the anticipated environmental impact of a proposed or ongoing NHTSA action.

(e) "Negative declaration" means a statement prepared subsequent to an environmental review, which states that a proposed or ongoing NHTSA action will have no significant environmental impact and therefore does not require a draft or final environmental impact statement.

§ 520.4 Applicability.

(a) *Scope.* This part applies to all elements of NHTSA, including the Regional Offices.

(b) *Actions covered.* Except as provided in subparagraph (e) below, this part applies to the following agency actions and such actions and proposals as may be sponsored jointly with another agency:

(1) New and continuing programs and projects; budget proposals; legislative proposals by the agency; requests for appropriations; reports on legislation initiated elsewhere where the agency has primary responsibility for the subject matter involved; and any renewals or reapprovals of the foregoing;

(2) Research, development, and demonstration projects; formal approvals of work plans; and associated contracts;

(3) Rulemaking and regulatory actions, including Notices of Proposed Rulemaking (NPRM); requests for procurement (RFP); requests for grants (Annual Work Programs); and contracts;

(4) All grants, loans or other financial assistance for use in State and Community projects;

(5) Annual State Highway Safety Work Programs;

(6) Construction; leases; purchases; operation of Federal facilities; and

(7) Any other activity, project, or action likely to have a significant effect on the environment.

(c) *Continuing actions.* This part applies to any action enumerated in subsection (b) above, even though such action arise from a project or program initiated prior to enactment of the National Environmental Policy Act on January 1, 1970.

(d) *Environmental assessments.* Within the scope of activities listed in § 520.4(b), any person outside the agency submitting a program or project proposal may be requested to prepare an environmental assessement of such proposed action to be included in his submission to the agency.

(e) *Exceptions.*

(1) Assistance in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221, with no control by the NHTSA over the subsequent use of such funds;

(2) Personnel actions;

(3) Administrative procurements (e.g., general supplies) and contracts for personal services;

(4) Legislative proposals originating in another agency and relating to matters not

within NHTSA's primary areas of responsibility;

(5) Project amendments (e.g., increases in costs) which have no environmental significance; and

(6) Minor agency actions that are determined by the official responsible for the actions to be of such limited scope that they clearly will not have a significant effect on the quality of the human environment.

(f) *Consolidation of statements.* Proposed actions (and alternatives thereto) having substantially similar environmental impacts may be covered by a single environmental review and environmental impact statement or negative declaration.

§ 520.5 Guidelines for identifying major actions significantly affecting the environment.

(a) *General guidelines.* The phrase, "major Federal actions significantly affecting the quality of the human environment," as used in this part, shall be construed with a view to the overall, cumulative impact of the actions, other Federal projects or actions in the area, and any further contemplated or anticipated actions. Therefore, an environmental impact statement should be prepared in any of the following situations:

(1) Proposed actions which are localized in their impact but which have a potential for significantly affecting the environment;

(2) Any proposed action which is likely to be controversial on environmental grounds;

(3) Any proposed action which has unclear but potentially significant environmental consequences.

(b) *Specific guidelines.* While a precise definition of environmental significance that is valid in all contexts is not possible, any of the following actions should ordinarily be considered as significantly affecting the quality of the human environment:

(1) Any matter falling under section 4(f) of the Department of Transportation Act (49 U.S.C. 1653(f)) and section 138 of Federal-aid highway legislation (23 U.S.C. 138), requiring the use of any publicly owned land from a park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance;

(2) Any matter falling under section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470(f)), requiring consideration of the effect of the proposed action on any building included in the National Register of Historic Preservation to comment on such action;

(3) Any action that is likely to affect the preservation and enhancement of sites of historical, architectural, or archaeological significance;

(4) Any action that is likely to be highly controversial regarding relocation housing;

(5) Any action that (i) divides or disrupts an established community, disrupts orderly, planned development, or is inconsistent with plans or goals that have been adopted by the community in which the project is located; or (ii) causes significantly increased congestion;

(6) Any action that (i) involves inconsistency with any Federal, State, or local law or administrative determination relating to the environmental; (ii) has a significantly detrimental impact on air or water quality or on ambient noise levels for adjoining areas; (iii) involves a possibility of contamination of a public water supply system; or (iv) affects ground water, flooding, erosion, or sedimentation;

(7) Any action that may directly or indirectly result in a significant increase in noise levels, either within a motor vehicle's closed environment or upon nearby areas;

(8) Any action that may directly or indirectly result in a significant increase in the energy or fuel necessary to operate a motor vehicle, including but not limited to the following: (i) actions which may directly or indirectly result in a significant increase in the weight of a motor vehicle; and (ii) actions which may directly or indirectly result in a significant adverse affect upon the aerodymanic drag of a motor vehicle;

(9) Any action that may directly or indirectly result in a significant increase in the amount of harmful emissions resulting from the operation of a motor vehicle;

(10) Any action that may directly or indirectly result in a significant increase in either the use of or the exposure to toxic or hazardous materials in the manufacture, operation, or disposal of motor vehicles or motor vehicle equipment.

(11) Any action that may directly or indirectly result in a significant increase in the problem of solid waste, as in the disposal of motor vehicles or motor vehicle equipment;

(12) Any action that may directly or indirectly result in a significant depletion of scarce natural resources associated with the manufacture or operation of motor vehicles or motor vehicle equipment; and

(13) Any other action that causes significant environment impact by directly or indirectly affecting human beings through adverse impacts on the environment.

(c) *Research activities.*

(1) In accordance with DOT Order 5610.1B, the Assistant Secretary for Systems Development and Technology (TST) will prepare, with the concurrence of the NHTSA, proposed procedures for assessing the environmental consequences of research activities. Until final procedures are promulgated, the following factors are to be considered for periodic evaluation to determine when an environmental statement is required for such programs:

(i) The magnitude of Federal investment in the program;

(ii) The likelihood of widespread application of the technology;

(iii) The degree of environmental impact which would occur if the technology were widely applied; and

(iv) The extent to which continued investment in the new technology is likely to restrict future alternatives.

(2) The statement or environmental review culminating in a negative declaration must be written late enough in the development process to contain meaningful information, but early enough so that this information can practically serve as an input in the decision-making process. Where it is anticipated that an environmental impact statement may ultimately be required but its preparation is still premature, the office shall prepare a publicly available record briefly setting forth the reasons for its determination that a statement is not yet necessary. This record shall be updated at least quarterly, or as may be necessary when siginificant new information becomes available concerning the potential environmental impact of the program. In any case, a statement or environmental review culminating in a negative declaration must be prepared before research activities have reached a state of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives. Statements on technology research and development programs shall include an analysis not only of alternative forms of the same technology that might reduce any adverse environmental impacts but also of alternative technologies that would serve the same function as the technology under consideration. Efforts shall be made to involve other Federal agencies and interested groups with relevant expertise in the preparation of such statements because the impacts and alternatives to be considered are likely to be less well defined than in other types of statements.

Subpart B—Procedures

§ 520.21 Preparation of environmental reviews, negative declarations, and notices of intent.

(a) *General responsibilities.*

(1) *Associate Administrators and Chief Counsel.* Each Associate Administrator and the Chief Counsel is responsible for determining, in accordance with Subpart A, whether the projects and activities under his jurisdiction require an environmental review, and for preparing all such reviews, negative declarations, and notices of intent.

(2) *Regional Administrators.* Each Regional Administrator, in consultation with the Governor's Representative, is responsible for determining, in accordance with Subpart A, whether proposed State activities in his Region, as stated in Annual Work Programs, require an environmental review, and for the preparation of all such reviews, negative declarations, and notices of intent.

(3) *Associate Administrator for Planning and Evaluation.* The Associate Administrator for Planning and Evaluation may request in accordance with the requirements of this order, that the appropriate Associate Administrator or Regional Administrator prepare an environmental review or environmental impact statement for any proposed or continuing NHTSA action, or comment on any environmental statement prepared by other agencies.

(b) *Coordination.* Coordination with appropriate local, State and Federal agencies should be accomplished during the early stages by the responsible official to assist in identifying areas of significance and concern. Existing procedures, including those established under the Office of Management and Budget (OMB) Revised Circular A-95, should be used to the greatest extent practicable to accomplish this early coordination.

(c) *Applicants.*

(1) Each applicant for a grant, loan, or other financial assistance for use in State and community projects may be requested to submit, with the original application, an environmental assessment of the proposed project.

(2) Under OMB Revised Circular A-95, "Evaluation, Review, and Coordination of Federal Assistance Programs and Projects," and DOT 4600.4B, "Evaluation, Review and Coordination of DOT Assistance Programs and Projects," dated February 27, 1974, a grant applicant must notify the clearinghouse of its intention to apply for Federal program assistance. The notification must solicit comments on the project and its impacts from appropriate State and local agencies. Since it is the NHTSA's policy to assure that (i) interested parties and Federal, State, and local agencies receive early notification of the decision to prepare an environmental impact statement, and

(ii) their comments on the environmental effects of the proposed Federal action are solicited at an early stage in the preparation of the draft impact statement, this early notification requirement may be met by a grant applicant by sending the notification to interested parties and agencies at the same time it is sent to the clearinghouse.

(d) *Consultants.* Consultants may prepare background or preliminary material and assist in preparing a draft or final environmental statement for which the NHTSA takes responsibilty. Care should be exercised in selecting consultants, and in reviewing their work, to insure complete and objective consideration of all relevant project impacts and alternatives, particularly if the consultant may expect further contracts, based on the outcome of the environmental decision.

(e) *Environmental review report.* The environmental review shall culminate in a brief written report of the same title, which shall be included in the proposed or ongoing agency action, and which—

(1) Describes the proposed or ongoing NHTSA action, the environment affected, and the anticipated benefits;

(2) Evaluates the potential environmental impact, including those adverse impacts which cannot be avoided, should the proposal be implemented or the action continued;

(3) Assesses the alternatives to the proposed or ongoing action and their potential environmental impact.

(4) Evaluates the cumulative and long-term environmental effects of the proposed or ongoing action;

(5) Describes the irreversible and irretrievable commitments of resources involved in the proposal's implementation or the action's continuance;

(6) Identifies any known or potential conflicts with State, regional, or local plans and programs;

(7) Weighs and analyzes the anticipated benefits against the environmental and other costs of the proposed or ongoing action in a manner which reflects similar comparisons of reasonably available alternatives; and

(8) Concludes with a negative declaration or recommends the preparation of a DEIS.

(f) *Negative declarations.*

(1) If the responsible official judges that the environmental impact of a proposed or ongoing action under his jurisdiction will *not* significantly affect the quality of the human environment, the following declaration will be included in the environmental review report:

"It is the judgment of this agency, based on available information, that no significant environmental impact will result from execution of this action."

(2) A DEIS may be changed to a negative declaration if the public review process indicates that the proposal or ongoing action will not have a significant effect upon the environment.

(3) An index of all negative declarations and a copy of each environmental review report shall be retained by the responsible official under whose jurisdiction it was prepared and shall be made available for public inspection upon request.

(g) *Notice of intent to prepare a draft environmental impact statement.* If the responsible official under whose jurisdiction an environmental review is prepared determines that the proposed or ongoing action could have a potentially significant effect on the quality of the environment, he shall: coordinate with the Associate Administrator for Planning and Evaluation and the Chief Counsel, transmit to appropriate Federal, State and local agencies and have published in the *Federal Register* a notice of intent to prepare an environmental statement as soon as is practicable after the determination to prepare such a statement.

§ 520.22 Maintenance of a list of actions.

(a) The Associate Administrator for Planning and Evaluation shall be responsible for the preparation and maintenance of a list of actions for which draft or final environmental impact statements have been or are to be prepared. This list shall be on file with the Associate Administrator for Planning and Evaluation and shall be available for public inspection in the Docket Section upon request. A copy of the initial list and its updatings at the end of each calendar quarter shall be transmitted by the Associate Administrator for Planning and Evaluation to the Assistant Secretary of Transportation for Environmental and Safety (TES) and to CEQ.

(b) If a determination is made that an environmental statement is not necessary for a proposed action (1) which has been identified as normally requiring preparation of a statement, (2) which is similar to actions for which a significant number of statements have been prepared, (3) which the agency has previously announced would be the subject of a statement, or (4) for which the official responsible for such proposal has made a negative determination in response to a request from the CEQ, a record briefly setting forth the decision and the reasons for that determination shall be prepared by the responsible official. Such a record of negative determinations and any evaluations made pursuant to § 520.21 which conclude that preparation of a statement is not yet timely shall be prepared by the responsible official, submitted to the Associate Administrator for Planning and Evaluation, and made available by the Associate Administrator for Planning and Evaluation in the same manner as provided in paragraph (a) of this section for lists of statements under preparation.

§ 520.23 Preparation of draft environmental impact statements.

(a) *Planning stage.*

(1) When a DEIS is to be prepared, the responsible official shall promptly initiate its preparation and develop a schedule in consultation with the Associate Administrator for Planning and Evaluation, to assure completion prior to the first significant point of decision in the program or project development process.

(2) The environmental impacts of proposed activities should be initially assessed concurrently with the initial technical and economic studies.

(3) Section 102(2)(A) of NEPA requires each Federal agency to utilize a "systematic, interdisciplinary approach" to plans and progams affecting the environment. To assure that all environmental impacts are identified

and assessed, all relevant disciplines should be represented. If the necessary disciplines are not represented on the staff of the applicant or NHTSA, it is appropriate to use professional services available in other Federal, State or local agencies, universities, or consulting firms. The use of the interdisciplinary approach should not be limited to the environmental statement. This approach should also be used in the early planning stages to help assure a systematic evaluation of reasonable alternative courses of action and their potential social, economic, and environmental consequences.

(b) *Form and content requirements.* Attachment 1 of this order prescribes the form and content requirements to be followed for each draft and final environmental impact statement. The DEIS must fulfill and satisfy, to the fullest extent possible at the time it is prepared, the requirements established for final statements.

(c) *"Lead agency".* CEQ guidelines provide that when more than one Federal agency (1) directly sponsors an action, or is directly involved in an action through funding, licenses, or permits, or (2) is involved in a group of actions directly related to each other because of their functional interdependence and geographical proximity, consideration should be given to preparing one statement for all the Federal actions involved. Agencies in such cases should consider the designation of a single "lead agency" to assume supervisory responsibility for preparation of a joint statement. Where a lead agency prepares the statement, the other agencies involved should provide assistance with respect to their areas of jurisdiction and expertise. The statement should contain an evaluation of the full range of Federal actions involved, should reflect the views of all participating agencies, and should be prepared before major or irreversible actions have been taken by any of the participating agencies. Some relevant factors in determining an appropriate lead agency are: the time sequence in which the agencies become involved, the magnitude of their respective involvement, and their relative expertise with respect to the project's environmental effects.

Questions concerning "lead agency" decisions should be raised with CEQ through TES. For projects serving and primarily involving land owned by or under the jurisdiction of another Federal agency, that agency may be the appropriate lead agency.

(d) *Applicants.* Where the agency requests an applicant for financial assistance or other agency approval to submit an environmental assessment, the responsible official will (1) assist the applicant by outlining the information required, and (2) in all cases make his own evaluation of the environmental issues involved and take responsibiilty for the scope and content of draft and final environmental statements.

§ 520.24 Internal processing of draft environmental impact statements. Before circulating a DEIS for external review, the official responsible for the DEIS shall (1) receive the concurrence of the Associate Administrator for Planning and Evaluation and the Chief Counsel; and (2) prepare a memorandum for approval by the Administrator which shall—

(a) Set forth the basis on which is was determined that a potentially significant environmental effect exists;

(b) Attach the DEIS;

(c) Identify the Federal, State, and local agencies and private sources from which comments on the DEIS are proposed to be solicited (see Attachment 2); and

(d) Include a recommendation on whether a public hearing on the proposed action should be held.

§ 520.25 External review of draft environmental impact statements.

(a) *Requirements.* The official responsible for the DEIS shall—

(1) Transmit 5 copies of the DEIS to the CEQ and 2 copies to TES;

(2) Solicit comments from all Federal, State, and local agencies which have jurisdiction by law or special expertise with respect to the possible environmental impact involved, and from the public (see Attachment 2); and

(3) Inform the public and interested parties of the availability of the DEIS and provide copies as appropriate; and

(4) Allow a comment period of not less than 45 days from the Friday of the week following receipt of the draft impact statement by CEQ. Requests for extensions shall be granted whenever possible, and particularly when warranted by the magnitude and complexity of the statement or the extent of citizen interest.

(b) *Procedures.*

(1) *Federal and Federal-State agency review.*

(i) The DEIS shall be circulated for review to the Federal and Federal-State agencies with special expertise or jurisdiction by law with regard to the potential environmental impact involved. These agencies and their relevant areas of expertise are identified in Attachment 2.

(ii) For actions within the jurisdiction of the Environmental Protection Agency (air or water quality, solid wastes, pesticides, radiation standards, noise), the DEIS shall be sent to EPA.

(iii) For actions which would affect any property that is included in the National Register of Historic Preservation, the DEIS should be sent to the Advisory Council on Historic preservation and the State Liaison Office for Historic Preservation.

(2) *State and local review.* Where a review of the proposed action by State and local agencies authorized to develop and enforce environmental standards is relevant, comments are to be solicited directly from such agencies with known responsibilities in environmental matters, and shall be obtained as follows:

(i) Where review of direct Federal devevelopment projects, and of projects assisted under programs listed in Attachment D to revised OMB Circular A-95 (as implemented by DOT 4600.4B "Evaluation, Review and Coordination of DOT Assistance Programs and Projects", dated February 27, 1974), takes place prior to preparation of an environmental statement, comments of the reviewing agencies on the environmental effects of the proposed project are inputs to the environmental statement. These comments shall be attached to the draft statement when it is circulated for review and copies of the draft shall be sent to those who commented. A-95 clearinghouses or other agencies designated by the Governor may also secure comments on environmental statements. In all cases, copies of the draft environmental statements shall be sent to clearinghouses and to the applicant whose project is the subject of the statement.

(ii) Comments shall be directly obtained from appropriate State and local agencies, except where review is secured by agreement through A-95 clearinghouses, unless the Governor of the appropriate State has designated some other point for obtaining his review. Instructions for obtaining the views of such agencies are contained in the joint OMB-CEQ memorandum (see Attachment 4). Comments shall be solicited from municipalities and counties on all projects located therein.

(iii) State and local review of NHTSA procedures, regulations, and policies for administering Federal progams of assistance to State and local governments shall be obtained pursuant to procedures established by OMB Circular No. A-85.

(iv) Generally, environmental statements on legislative and budget proposals may be excluded from State and local review.

(3) *General public receive.*

At the time the DEIS is circulated to Federal, State, and local agencies, public availability of the DEIS for comment and review will be announced by the CEQ in the *Federal Register*. Copies of the DEIS should be sent to known interested parties, and press releases should be sent to local news media advising where the DEIS is available and how copies may be obtained. The Office of Public Affairs and Consumer Services shall maintain a list of groups, including conservation organizations and motor vehicle manufacturers, known to be interested in the agency's activities, and directly notify such groups of the availability of the DEIS or send them a copy as soon as it has been prepared.

(ii) A DEIS should be available to the public at least 30 days prior to the time of a public hearing on the DEIS.

(iii) Copies of the DEIS will be made available at the NHTSA Docket Section, Room 5108, 400 Seventh Street, S.W., Washington, D.C. 20590, and, where appropriate, NHTSA Regional Offices, at the offices of any applicants of grantees, at appropriate State, regional, and metropolitan clearing houses, and local public libraries, and furnished to public and private organizations and individuals with special expertise with respect to the potential environmental impact involved, and to those with an interest in the action who request an opportunity to comment. Copies to be made available to the public shall be provided without charge to the extent practicable, or at a fee which is not more than the actual cost of reproducing copies required to be sent to other Federal agencies, including the CEQ.

(iv) A copy of the DEIS should in all cases be sent to any applicant whose project is the subject of the statement.

(v) If a DEIS is changed to a negative declaration as a result of the public review process, all agencies and individuals that received copies and/or commented on the DEIS must be informed that a negative declaration was substituted for the DEIS and given a brief explanation of the reason for such substitution.

(c) *Utilization of Comments.*

Comments received on the draft statement, and inputs (in summary form, if appropriate) from the processes for citizen participation, shall accompany the environmental statement through the normal internal project or program review process.

§ 520.26 Public hearings.

(a) A public hearing on a proposed or ongoing action covered by a DEIS shall be held upon the determination by the official responsible for such action, in consultation with the Associate Administrator for Planning and Evaluation, that a public hearing would be appropriate and in the public interest. In deciding whether a public hearing is appropriate, the responsible official should consider—

(1) The magnitude of the proposal in terms of economic costs, the geographic area involved, and the uniqueness or size of the commitment of the resources involved.

(2) The degree of interest in the proposal, as evidenced by requests from the public and from Federal, State, and local authorities that a hearing be held;

(3) The likelihood that information will be presented at the hearing which will be of assistance to the agency in fulfilling its responsiblities under the NEPA;

(4) The extent to which public involvement already has been achieved through other means, such as earlier public hearings, meetings with citizen representatives, and/or written comments on the proposed action; and

(5) The extent of potential environmental impact.

(b) If it is determined that a public hearing is to be held in accordance with paragraph (a) of this section, the official responsible for the action shall both announce the hearing through newspaper articles, direct notification to interested parties, and clearinghouses, and cause a notice to be issued in the *Federal Register* at least 30 days prior to the time of such hearing—

(1) Identifying the subject matter of the hearing;

(2) Announcing the date, time, and place of the hearing and the procedures to be followed; and

(3) Announcing the availability of the DEIS and any other information, as appropriate, for public inspection at one or more locations in the area affected by the action.

§ 520.27 Legislative actions.

(a) A DEIS on both legislative proposals and reports for which NHTSA either develops the Departmental position or originates the legislation will be cleared with TES, filed with CEQ, and submitted to the Office of Management and Budget through the normal DOT and NHTSA legislative process.

(b) The preparation, circulation, and filing of the environmental statement shall be in accordance with OMB Bulletin 72-6, "Proposed Federal Actions Affecting the Environment."

(c) A DEIS and any comments that have been received should be available to the Congress and to the public for consideration in connection with the proposed legislation or report on proposed legislation. In cases where the scheduling of Congressional hearings on recommendations or reports on proposals for legislation which the Department has forwarded to the Congress does not allow adequate time for the completion of a FEIS, a DEIS may be furnished to the Congress and made available to the public pending transmittal of the comments as received and the final text.

§ 520.28 Preparation of final environmental impact statements.

(a) If the action is to go forward and the DEIS has not been changed to a negative declaration, as soon as practicable after the expiration of the comment period and hearing process, if any, the official responsible for the action shall prepare a final environmental impact statement (FEIS), taking into account all comments received and issues raised during such period and process.

(b) The FEIS shall conform to the guidelines for form and content in Attachment 1.

(c) The FEIS shall then be submitted to the Chief Counsel by the official responsible for the action, for determination of legal sufficiency.

§ 520.29 Internal review of final environmental impact statements.

(a) Upon completion of the review for legal sufficiency of the FEIS, the Chief Counsel shall transmit 2 copies of the FEIS to TES for concurrence. Unless other notification is provided within 2 weeks after receipt in TES, the statement will be considered concurred in by TES.

(b) After concurrence by TES, the FEIS will be transmitted by the Chief Counsel to the Administrator for approval.

(c) If an action requires the personal approval of the Secretary or Deputy Secretary pursuant to a request by them or by TES, TGC, or the NHTSA office originating the action, the final environmental statement shall be accompanied by a brief cover memorandum requesting the Secretary's or Deputy Secretary's approval of the action.

(1) The memorandum shall have signature lines for the concurrence of the Assistant Secretary for Environment, Safety, and Consumer Affairs, the General Counsel, and the Deputy Secretary, and for the approval of the Secretary or Deputy Secretary.

(2) TES, in conjunction with the Executive Secretary, is responsble for informing the Assistant Secretary for Congressional and Intergovernmental Affairs and the Office of Public Affairs of the Secretary's decisions so that they, in coordination with the operating administrations or other Secretarial Offices involved, may take the appropriate actions.

§ 520.30 Availability of final environmental impact statements.

(a) Pending final approval and filing with CEQ, a proposed FEIS may be made available to the public and Federal, State, or local agencies if it carries a notation that it is not approved and filed.

(b) After approval by the Administrator, the Associate Administrator for Planning and Evaluation will send 5 copies of the FEIS (together with comments) to the CEQ; individual copies with comments attached to the EPA and all Federal, State, and local agencies and members of the public who submitted comments on the DEIS or requested copies of the FEIS. If the length of the statement or the number of comments make this distribution requirement highly impractical, TES should be consulted to consider an alternative arrangement.

(c) Copies of the FEIS will be made available in the NHTSA Docket Section, Room 5109, 400 Seventh Street, S.W., Washington, D.C. 20590, and, where appropriate, NHTSA Regional Offices, at the offices of any applicants or grantees, and at appropriate State, regional, and metropolitan clearinghouses and, where the impact is localized, public libraries.

(d) The official responsible for the action shall, upon request, make available copies of the FEIS and substantive comments received on the DEIS without charge to the extent practicable, or at a fee which is not more than the actual cost or reproducing copies.

§ 520.31 Amendments or supplements. A draft or final environmental impact statement may be amended or supplemented. Supplements or amendments should be considered when substantial changes are made in the proposed or ongoing action that will introduce a new or changed environmental effect of significance to the quality of the environment, or significant new information becomes available concerning its environmental aspects. In such cases, the supplement or amendment shall be processed in consultation with TES with respect to the need for, or desirability of, recirculating the statement for the appropriate period. TES concurrence must be secured before issuance.

§ 520.32 Emergency action procedures. The CEQ Guidelines allow modification of requirements in case of a national emergency, a disaster or similar great urgency. The processing times may be reduced, or if the emergency situation warrants, preparation and processing of a DEIS, FEIS, or negative declaration may be abbreviated. Such procedural changes, however, should be requested only for those projects where the need for immediate action requires processing in other than the normal manner.

§ 520.33 Trimming of proposed NHTSA actions. To the maximum extent practicable, no administrative action (i.e., any proposed action to be taken by the agency other than agency proposals for legislation to Congress, budget proposals, or agency reports on legislation) subject to this part and covered by an environmental impact statement shall be taken sooner than 90 days after a DEIS has been circulated for comment, furnished to the CEQ, and made public. Neither shall such administrative action be taken sooner than 30 days after the FEIS (together with comments) has been filed with CEQ, and made available to commenting agencies and the public. If the FEIS is filed within 90 days after a DEIS has been circulated for comment, furnished to the CEQ and made public, the 30-day period and 90-day period may run concurrently to the extent that they overlap. The 90-day time period is measured from the date of publication in the *Federal Register* of the list of weekly filings of environmental impact statements with the CEQ, but the 30-day period is computed from the date of receipt by the CEQ.

§ 520.34 Comments on environmental statements prepared by other agencies.

(a) All requests for NHTSA's views on a DEIS or a proposed action undergoing environmental review by another agency will be transmitted to the Associate Administrator for Planning and Evaluation for action or referral to TES where appropriate. Offices within NHTSA may be requested by the Associate Administrator for Planning and Evaluation to supply any pertinent information and comments for a coordinated agency response.

(b) NHTSA's comments and the comments of any offices responding to a request by the Associate Administrator for Planning and Evaluation should be organized in a manner consistent with the structure of an environmental review set out in § 520.21(e). NHTSA programs that are environmentally related to the proposed action under review should be identified so interrelationships may receive due consideration.

(c) Copies of NHTSA's comments on environmental statements prepared by other agencies shall be distributed as follows:

(1) The original and 1 copy to the requesting agency;

(2) 1 copy to TES–70; and

(3) 5 copies to CEQ.

(d) Requests by the public for copies should be referred to the agency originating the statement.

ATTACHMENT 1

FORM AND CONTENT OF STATEMENT

1. Form. a. Each statement will be headed as follows:

DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

(Draft) Environmental Impact Statement Pursuant to section 102(2) (C), Pub. L. 91–190; 83 Stat. 853; 42 U.S.C. 4332(2) (C).

b. The heading specified above shall be modified to indicate that the statement also covers sections 4(f) of the DOT Act or 106 of the National Historic Preservation Act, when appropriate.

c. Each statement will, as a minimum, contain sections corresponding to paragraph 3 herein, supplemented as necessary to cover other matters provided in this Attachment.

d. The format for the summary to accompany draft and final environmental statements is as follows:

SUMMARY

(Check one) ( ) Draft ( ) Final

Department of Transportation, National Highway Traffic Safety Administration. Name, address, and telephone number of individual who can be contacted for additional information about the proposed action or the statement. (Note: DOT Order 2100.2 prescribed procedure for reporting public contacts in rulemaking.)

(1) Name of Action. (Check one) ( ) Administrative Action. ( ) Legislative Action.

(2) Brief description of action indicating what States (and counties) are particularly affected.

(3) Summary of environmental impact and adverse environmental effects.

(4) List alternatives considered.

(5) (a) (For draft statements) List all Federal, State, and local agencies from which comments have been requested.

(b) (For final statements) List all Federal, State, and local agencies and other sources from which written comments have been received.

(6) Dates the draft statement and the final statement, if issued, were made available to the Council on Environmental Quality and the public.

2. Guidance as to content of statement. The following paragraphs of this Attachment are intended to be considered, where relevant, as guidance regarding the content of environmental statements. This guidance is expected to be supplemented by research reports, guidance on methodology, and other material from the literature as may be pertinent to evaluation of relevant environmental factors.

3. General content. The following points are to be covered:

a. A description of the proposed Federal action (e.g., "The proposed Federal action is approval of a grant application to construct * * *"), a statement of its purpose, and a description of the environment affected, including information, summary technical data, and maps and diagrams where relevant, adequate to permit an assessment of potential environmental impact by commenting offices and the public.

(1) Highly technical and specialized analyses and data should generally be avoided in the body of the draft impact statement. Such materials should be appropriately summarized in the body of the environmental statement and attached as appendices or footnoted with adequate bibliographic references.

(2) The statement should succinctly describe the environment of the area affected as it exists prior to a proposed action, including other related Federal activities in the area, their interrelationships, and cumulative environmental impact. The amount of detail provided in such descriptions should be commensurate with the extent and expected impact of the action, and with the amount of information required at the particular level of decision making (planning, feasibility, design, etc.). In order to insure ac-

curate descriptions and environmental considerations, site visits should be made where appropriate.

(3) The statement should identify, as appropriate, population and growth characteristics of the affected area and any population and growth assumptions used to justify the project or program or to determine secondary population and growth impacts resulting from the proposed action and its alternatives (see paragraph 3c(2)). In discussing these population aspects, the statement should give consideration to using the rates of growth in the region of the project contained in the projection compiled for the Water Resources Council by the Bureau of Economic Analysis of the Department of Commerce and the Economic Research Service of the Department of Agriculture (the OBERS projection).

(4) The sources of data used to identify, quantify, or evaluate any or all environmental consequences must be expressly noted.

b. The relationship of the proposed action and how it may conform to or conflict with adopted or proposed land use plans, policies, controls, and goals and objectives as have been promulgated by affected communities. Where a conflict or inconsistency exists, the statement should describe the extent of reconciliation and the reasons for proceeding notwithstanding the absence of full reconciliation.

c. The probable impact of the proposed action on the environment. (1) This requires assessment of the positive and negative effects of the proposed action as it affects both national and international human environment. The attention given to different environmental factors will vary according to the nature, scale, and location of proposed actions. Among factors to be considered should be the potenial effect of the action on such aspects of the environment as those listed in Attachment 2, and in section 520.5(b), supra. Primary attention should be given in the statement to discussing those factors most evidently impacted by the proposed action.

(2) Secondary and other foreseeable effects, as well as primary consequences for the environment, should be included in the analysis. Secondary effects, such as the impact on fuel consumption, emissions, or noise levels of automobiles or in the use of toxic or scarce materials, may be more substantial than the primary effects of the original action.

d. Alternatives to the proposed action, including, where relevant, those not within the existing authority of the responsible preparing office. Section 102(2)(D) of NEPA requires the responsible agency to "study, develop, and describe appropriate alternatives to recommend courses concerning alternative uses of available resources.." A rigorous exploration and an objective evaluation of the environmental impacts of all reasonable alternative actions, particularly those that might enhance environmental quality or avoid some or all of the adverse environmental effects, are essential. Sufficient analysis of such alternatives and their environmental benefits, costs, and risks should accompany the proposed action through the review process in order not to foreclose prematurely options which might enhance environmental quality or have less detrimental effects. Examples of such alternatives include: the alternative of not taking action or of postponing action pending further study; alternatives requiring actions of a significantly different nature which would provide similar benefits with different environmental impacts, e.g., low capital intensive improvements, mass transit alternatives to highway construction; alternatives related to different locations or designs or details of the proposed action which would present different environmental impacts. In each case, the analysis should be sufficiently detailed to reveal comparative evaluation of the environmental benefits, costs, and risks of the proposed action and each reasonable alternative. Where an existing impact statement already contains such an analysis its treatment of alternatives may be incorporated, provided such treatment is current and relevant to the precise purpose of the proposed action.

e. Any probable adverse environmental effects which cannot be avoided (such as water or air pollution, noise, undesirable land use

patterns, or impacts on public parks and recreation areas, wildlife and waterfowl refuges, or on historic sites, damage to life systems, traffic congestion, threats to health, or other consequences adverse to the environmental goals set out in section 101(b) of NEPA). This should be a brief section summarizing in one place those effects discussed in paragraph 3c that are adverse and unavoidable under the proposed action. Included for purposes of contract should be a clear statement of how all adverse effects will be mitigated. Where mitigating steps are included in the statement, the responsible official shall see that they are carried out.

f. The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity. This section should contain a brief discussion of the extent to which the proposed action involves tradeoffs between short-term environmental gains at the expense of long-term losses, or vice versa, and a discussion of the extent to which the proposed action forecloses future options.

g. Any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented. This requires identification of unavoidable impacts and the extent to which the action irreversibly curtails the range of potential uses of the environment. "Resources" means not only the labor and materials devoted to an action but also the natural and cultural resources lost or destroyed.

h. An indication of what other interests and considerations of Federal policy are thought to offset the adverse environmental effects of the proposed action identified pursuant to subparagraphs (c) and (e) of this paragraph. The statement should also indicate the extent to which these stated countervailing benefits could be realized by following reasonable alternatives to the proposed action (as identified in subparagraph (d) of this paragraph) that would avoid some or all of the adverse environmental effects. In this connection if a cost-benefit analysis of the proposed action has been prepared, it, or a summary, should be attached to the environmental impact statement, and should clearly indicate the extent to which environmental costs have not been reflected in such analysis.

i. A discussion of problems and objections raised by other Federal agencies, State and local entities, and citizens in the review process, and the disposition of the issues involved and the reasons therefor. (This section shall be added to the final environmental statement at the end of the review process.)

(1) The draft and final statements should document issues raised through consultations with Federal, State, and local agencies with jurisdiction or special expertise and with citizens, of actions taken in response to comments, public hearings, and other citizens involvement proceedings.

(2) Any unresolved environmental issues and efforts to resolve them, through further consultations or otherwise, should be identified in the final statement. For instance, where an agency comments that the statement has inadequate analysis or that the agency has reservations concerning the impacts, or believes that the impacts are too adverse for approval, either the issue should be resolved or the final statement should reflect efforts to resolve the issue and set forth any action that will result.

(3) The statement should reflect that every effort was made to discover and discuss all major points of view on the environmental effects of the proposed action and alternatives in the draft statement. However, where opposing professional views and responsible opinion have been overlooked in the draft statement and are raised through the commenting process, the environmental effects of the action should be reviewed in light of those views. A meaningful reference should be made in the final statement to the existence of any responsible opposing view not adequately discussed in the draft statement indicating responses to the issues raised.

(4) All substantive comments received on the draft (or summaries of responses from the public which have been exceptionally

voluminious) should be attached to the final statement, whether or not such comment is thought to merit individual discussion in the text of the statement.

j. Draft statements should indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the statement, including any cost-benefit analyses prepared. In the case of documents not likely to be easily accessible (such as internal studies or reports), the statement should indicate how such information may be obtained. If such information is attached to the statement, care should be taken to insure that the statement remains an essentially self-contained instrument, capable of being understood by the reader without the need for undue cross reference.

4. Publicly owned parklands, recreational areas, wildlife and waterfowl refuges and historic sites. The following points are to be covered:

a. Description of "any publicly owned land from a public park, recreational area of wildlife and waterfowl refuge" or "any land from an historic site" affected or taken by the project. This includes its size, available activities, use, patronage, unique or irreplaceable qualities, relationship to other similarly used lands in the vicinity of the project, maps, plans, slides, photographs, and drawings showing a sufficient scale and detail the project. This also includes its impact on park, recreation, wildlife, or historic areas, and changes in vehicular or pedestrian access.

b. Statement of the "national, State or local significance" of the entire park, recreational area, refuge, or historic site "as determined by the Federal, State or local officials having jurisdiction thereof."

(1) In the absence of such a statement lands will be presumed to be significant. Any statement of "insignificance" by the official having jurisdiction is subject to review by the Department as to whether such statement is capricious.

(2) Where Federal lands are administered for multiple uses, the Federal official having jurisdiction over the lands shall determine whether the subject lands are in fact being used for park, recreation, wildlife, waterfowl, or historic purposes.

c. Similar data, as appropriate, for alternative designs and locations, including detailed cost estimates (with figures showing percentage differences in total project costs) and technical feasibility, and appropriate analyses of the alternatives, including any unique problems present and evidence that the cost or community disruptions resulting from alternative routes reach extra-ordinary magnitudes. This portion of the statement should demonstrate compliance with the Supreme Court's statement in the Overton park case, as follows:

[The] very existence of the statute indicates that protection of parkland was to be given paramount importance. The few green havens that are public parks were not to be lost unless there were truly unusual factors present in a particular case or the cost or community disruption resulting from alternative routes reached extraordinary magnitudes. If the statutes are to have any meaning, the Secretary cannot approve the destruction of parkland unless he finds that alternative routes present unique problems. 401 U.S. 402, 412 (1971).

d. If there is no feasible and prudent alternative, a description of all planning undertaken to minimize harm to the protected area and statement of actions taken or to be taken to implement this planning, including measures to maintain or enhance the natural beauty of the lands traversed.

(1) Measures to minimize harm may include replacement of land and facilities, providing land or facilities, provisions for functional replacement of the facility (see 49 CFR 25.267).

(2) Design measures to minimize harm; e.g., tunneling, cut and cover, cut and fill, treatment of embankments, planting, screening, maintenance of pedestrian or bicycle paths and noise mitigation measures all reflecting utilization of appropriate interdisciplinary design personnel.

e. Evidence of concurrence or description of efforts to obtain concurrence of Federal, State or local officials having jurisdiction over the

section 4(f) property regarding the action proposed and the measures planned to minimize harm.

f. If Federally-owned properties are involved in highway projects, the final statement shall include the action taken or an indication of the expected action after filing a map of the proposed use of the land or other appropriate documentation with the Secretary of the Department supervising the land (23 U.S.C. 317).

g. If land acquired with Federal grant money (Department of Housing and Urban Development open space or Bureau of Outdoor Recreation land and water conservation funds) is involved, the final statement shall include appropriate communications with the grantor agency.

h. TGC will determine application of section 4(f) to public interests in lands, such as easements, reversions, etc.

i. A specific finding by the Administrator that there is no feasible and prudent alternative and that the proposal includes all possible planning to minimize harm to the "4(f) area" involved.

5. Properties and sites of historic and cultural significance. The statement should document actions taken to preserve and enhance districts, sites, buildings, structures, and objects of historical, architectural, archeological, or cultural significance affected by the action.

a. Draft environmental statements should include identification, through consulting the National Register and applying the National Register Criteria (36 CFR Part 800), of properties that are included in or eligible for inclusion in the National Register of Historic Places that may be affected by the project. The National Register is published in its entirety each February in the Federal Register. Monthly additions and listings of eligible properties are published in the Federal Register the first Tuesday of each month. The Secretary of the Interior will advise, upon request, whether properties are eligible for the National Register.

b. If application of the Advisory Council on Historic Preservation's (ACHP) Criteria of Effect (36 CFR Part 800) indicates that the project will have an effect upon a property included in or eligible for inclusion in the National Register of Historic Places, the Draft environmental statement should document the effect. Evaluation of the effect should be made in consultation with the State Historic preservation Officer (SHPO) and in accordance with the ACHP's criteria of Adverse Effect (36 CFR Part 800).

c. Determinations of no adverse effect should be documented in the draft statement with evidence of the application of the ACHP's Criteria of Adverse Effect, the views of the appropriate State Historic Preservation Officer, and submission of the determination to the ACHP for review.

d. If the project will have an adverse effect upon a property included in or eligible for inclusion in the National Register of Historic Places, the final environmental statement should include either an executed Memorandum of Agreement or comments from the Council after consideration of the project at a meeting of the ACHP and an account of actions to be taken in response to the comments of the ACHP. Procedures for obtaining a Memorandum of Agreement and the comments of the Council are found in 36 CFR Part 800.

e. To determine whether the project will have an effect on properties of State or local historical, architectural, archaeological, or cultural significance not included in or eligible for inclusion in the National Register, the responsible official should consult with the State Historic Preservation Officer, with the local official having jurisdiction of the property, and where appropriate, with historical societies, museums, or academic institutions having expertise with regard to the property. Use of land from historic properties of Federal, State and local significance as determined by the official having jurisdiction thereof involves section 4(f) of the DOT Act and documentation should include information necessary to consider a 4(f) determination (see paragraph 4).

6. Impacts of the proposed action on the human environment involving community disrupinclude a description.

a. The statement should include a description of probable impact sufficient to enable an understanding of the extent of the environmental and social impact of the project alternatives and to consider whether relocation problems can be properly handled. This would include the following information obtainable by visual inspection of the proposed affected area and from secondary sources and community sources when available.

(1) An estimate of the households to be displaced including the family characteristics (e.g., minorities, and income levels, tenure, the elderly, large families).

(2) Impact on the human environment of an action which divides or disrupts an established community, including where pertinent, the effect of displacement on types of families and individuals affected, effect of streets cut off, separation of residences from community facilities, separation of residential areas.

(3) Impact on the neighborhood and housing to which relocation is likely to take place (e.g., lack of sufficient housing for large families, doublings up).

(4) An estimate of the businesses to be displaced, and the general effect of business dislocation on the economy of the community.

(5) A discussion of relocation housing in the area and the ability to provide adequate relocation housing for the types of families to be displaced. If the resources are insufficient to meet the estimated displacement needs, a description of the actions proposed to remedy this situation including, if necessary, use of housing of last resort.

(6) Results of consultation with local officials and community groups regarding the impacts to the community affected. Relocation agencies and staff and other social agencies can help to describe probable social impacts of this proposed action.

(7) Where necessary, special relocation advisory services to be provided the elderly, handicapped and illiterate regarding interpretations of benefits, assistance in selecting replacement housing and consultation with respect to acquiring, leasing, and occupying replacement housing.

b. This data should provide the preliminary basis for assurance of the availability of relocation housing as required by DOT 5620.1, Replacement Housing Policy, dated June 24, 1970, and 49 CFR 25.53.

7. Considerations relating to pedestrians and bicyclists. Where appropriate, the statement should discuss impacts on, and consideration to be given in the development of the project to pedestrian and bicycle access, movement and safety within the affected area, particularly in medium and high density commercial and residential areas.

8. Other social impacts. The general social groups specially benefitted or harmed by the proposed action should be identified in the statement including the following:

a. Particular effects of a proposal on the elderly, handicapped, non-drivers, transit dependent, or minorities should be described to the extent reasonably predictable.

b. How the proposal will facilitate or inhibit their access to jobs, educational facilities, religious institutions, health and welfare services, recreational facilities, social and cultural facilities, pedestrian movement facilities, and public transit services.

9. Standards as to noise, air, and water pollution. The statement shall reflect sufficient analysis of the effects of the proposed action on attainment and maintenance of any environmental standards established by law or administrative determination (e.g., noise, ambient air quality, water quality) including the following documentation:

a. With respect to water quality, there should be consultation with the agency responsible for the State water pollution control program as to conformity with standards and regulations regarding storm sewer discharge sedimentation control, and other non-point source discharges.

b. The comments or determinations of the offices charged with administration of the State's implementation plan for air quality as

to the consistency of the project with State plans for the implementation of ambient air quality standards.

c. Conformity to adopted noise standards, compatible if appropriate, with different land uses.

10. Energy supply and natural resources development. Where applicable, the statement should reflect consideration of whether the project or program will have any effect on either the production or consumption of energy and other natural resources, and discuss such effects if they are significant.

11. Flood hazard evaluation. When an alternative under consideration encroaches on a flood plain, the statement should include evidence that studies have been made and evidence of consultations with agencies with expertise have been carried out. Necessary measures to handle flood hazard problems should be described. In compliance with Executive Oder 11296, and Flood Hazard Guidelines for Federal Executive Agencies, promulgated by the Water Resources Council, or how such requirements can be met during project development.

12. Considerations relating to wetlands or coastal zones. Where wetlands or coastal zones are involved, the statement should include:

a. Information on location, types, and extent of wetlands areas which might be affected by the proposed action.

b. An assessment of the impacts resulting from both construction and operation of the project on the wetlands and associated wildlife, and measures to minimize adverse impacts.

c. A statement by the local representative of the Department of the Interior, and any other responsible officials with special expertise, setting forth his views on the impacts of the project on the wetlands, the worth of the particular wetlands areas involved to the community and to the Nation, and recommendations as to whether the proposed action should proceed, and, if applicable, along what alternative route.

d. Where applicable, a discussion of how the proposed project relates to the State coastal zone management program for the particular State in which the project is to take place.

13. Construction impacts. In general, adverse impacts during construction will be of less importance than long-term impacts of a proposal. Nonetheless, statements should appropriately address such matters as the following, identifying any special problem areas:

a. Noise impacts from construction and any specifications setting maximum noise levels.

b. Disposal of spoil and effect on borrow areas and disposal sites (include specifications where special problems are involved).

c. Measures to minimize effects on traffic and pedestrians.

14. Land use and urban growth. The statement should include, to the extent relevant and predictable:

a. The effect of the project on land use, development patterns, and urban growth.

b. Where significant land use and development impacts are anticipated, identify public facilities needed to serve the new development and any problems or issues which would arise in connection with these facilities, and the comments of agencies that would provide these facilities.

ATTACHMENT 2

AREAS OF ENVIRONMENTAL IMPACT AND FEDERAL AGENCIES AND FEDERAL-STATE AGENCIES[1] WITH JURISDICTION BY LAW OR SPECIAL EXPERTISE TO COMMENT THEREON[2]

AIR

Air Quality

Department of Agriculture—
- Forest Service (effects on vegetation)

Atomic Energy Commission (radioactive substances)

Department of Health, Education, and Welfare

Environmental Protection Agency

Department of the Interior—
- Bureau of Mines (fossil and gaseous fuel combustion)
- Bureau of Sport Fisheries and Wildlife (effect on wildlife)
- Bureau of Outdoor Recreation (effect on recreation)
- Bureau of Land Management (public lands)
- Bureau of Indian Affairs (Indian lands)

National Aeronautics and Space Administration (remote sensing, aircraft emissions)

Department of Transportation—
- Assistant Secretary for Systems Development and Technology (auto emissions)
- Coast Guard (vessel emissions)
- Federal Aviation Administration (aircraft emissions)

Weather Modification

Department of Agriculture—
- Forest Service

Department of Commerce
- National Oceanic and Atmospheric Administration

Department of Defense—
- Department of the Air Force

Department of the Interior
- Bureau of Reclamation

WATER RESOURCES COUNCIL

WATER

Water Quality

Department of Agriculture—
- Soil Conservation Service
- Forest Service

Atomic Energy Commission (radioactive substances)

Department of the Interior—
- Bureau of Reclamation
- Bureau of Land Management (public lands)
- Bureau of Indian Affairs (Indian lands)
- Bureau of Sport Fisheries and Wildlife
- Bureau of Outdoor Recreation
- Geological Survey
- Office of Saline Water

Environmental Protection Agency

Department of Health, Education, and Welfare

Department of Defense—
- Army Corps of Engineers
- Department of the Navy (ship pollution control)

National Aeronautics and Space Administration (remote sensing)

Department of Transportation—
- Coast Guard (oil spills, ship sanitation)

Department of Commerce—
- National Oceanic and Atmospheric Administration

Water Resources Council

River Basin Commissions (as geographically appropriate)

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[1] River Basin Commissions (Delaware, Great Lakes, Missouri, New England, Ohio, Pacific Northwest, Souris-Red-Rainy, Susquehanna, Upper Mississippi) and similar Federal-State agencies should be consulted on actions affecting the environment of their specific geographic jurisdictions.

[2] In all cases where a proposed action will have significant international environmental effects, the Department of State should be consulted, and should be sent a copy of any draft and final impact statement which covers such action.

Marine Pollution, Commercial Fishery Conservation, and Shellfish Sanitation

Department of Commerce—
National Oceanic and Atmospheric Administration

Department of Defense—
Army Corps of Engineers
Office of the Oceanographer of the Navy

Department of Health, Education, and Welfare

Department of the Interior—
Bureau of Sport Fisheries and Wildlife
Bureau of Outdoor Recreation
Bureau of Land Management (outer continental shelf)
Geological Survey (outer continental shelf)

Department of Transportation—
Coast Guard

Environmental Protection Agency

National Aeronautics and Space Administration (remote sensing)

Water Resources Council

River Basin Commissions (as geographically appropriate)

Waterway Regulation and Stream Modification

Department of Agriculture—
Soil Conservation Service

Department of Defense—
Bureau of Reclamation
Army Corps of Engineers

Department of the Interior—
Bureau of Sport Fisheries and Wildlife
Bureau of Outdoor Recreation
Geological Survey

Department of Transportation—
Coast Guard

Environmental Protection Agency

National Aeronautics and Space Administration (remote sensing)

Water Resources Council

River Basin Commissions (as geographically appropriate)

FISH AND WILDLIFE

Department of Agriculture
Forest Service
Soil Conservation Service

Department of Commerce—
National Oceanic and Atmospheric Administration (marine species)

Department of the Interior—
Bureau of Sport Fisheries and Wildlife
Bureau of Land Management
Bureau of Outdoor Recreation

Environmental Protection Agency

SOLID WASTE

Atomic Energy Commission (radioactive waste)

Department of Defense—
Army Corps of Engineers

Department of Health, Education, and Welfare

Department of the Interior—
Bureau of Mines (mineral waste, mine acid waste, municipal solid waste, recycling)
Bureau of Land Management (public lands)
Bureau of Indian Affairs (Indian lands)
Geological Survey (geologic and hydrologic effects
Office of Saline Water (demineralization)

Department of Transportation—
Coast Guard (ship sanitation)

Environmental Protection Agency

River Basin Commissions (as geographically appropriate)

Water Resources Council

NOISE

Department of Commerce—
National Bureau of Standards

Department of Health, Education, and Welfare

Department of Housing and Urban Development (land use and building materials aspects)

Department of Labor—
Occupational Safety and Health Administration

Department of Transportation—
Assistant Secretary for Systems Development and Technology

Environmental Protection Agency
Federal Aviation Administration, Office of Noise Abatement

National Aeronautics and Space Administration

RADIATION

Atomic Energy Commission

Department of Commerce—
National Bureau of Standards

Department of Health, Education, and Welfare

Department of the Interior—
Bureau of Mines (uranium mines)
Mining Enforcement and Safety Administration (uranium mines)

Environmental Protection Agency

HAZARDOUS SUBSTANCES

Toxic Materials

Atomic Energy Commission (radioactive substances)

Department of Agriculture—
Agricultural Research Service
Consumer and Marketing Service

Department of Commerce—
National Oceanic and Atmospheric Administration

Department of Defense

Department of Health, Education, and Welfare

Environmental Protection Agency

Food Additives and Contamination of Foodstuffs

Department of Agriculture—
Consumer and Marketing Service (meat and poultry products)

Department of Health, Education, and Welfare

Environmental Protection Agency

Pesticides

Department of Agriculture—
Agricultural Research Service (biological controls, food and fiber production)
Consumer and Marketing Service
Forest Service

Department of Commerce—
National Oceanic and Atmospheric Administration

Department of Health, Education, and Welfare

Department of the Interior—
Bureau of Sport Fisheries and Wildlife (fish and wildlife effects)
Bureau of Land Management (public lands)
Bureau of Indian Affairs (Indian lands)
Bureau of Reclamation (irrigated lands)

Environmental Protection Agency

Transportation and Handling of Hazardous Materials

Atomic Energy Commission (radioactive substances)

Department of Commerce—
Maritime Administration
National Oceanic and Atmospheric Administration (effects on marine life and the coastal zone)

Department of Defense—
Armed Services Explosive Safety Board
Army Corps of Engineers (navigable waterways)

Department of Transportation
Federal Highway Administration, Bureau of Motor Carrier Safety
Coast Guard
Federal Railroad Administration
Federal Aviation Administration
Assistant Secretary for Systems Development and Technology
Office of Hazardous Materials
Office of Pipeline Safety

Environmental Protection Agency

ENERGY SUPPLY AND NATURAL RESOURCES DEVELOPMENT

Electric Energy Development, Generation, and Transmission, and Use

Atomic Energy Commission (nuclear)

Department of Agriculture—
- Rural Electrification Administration (rural areas)

Department of Defense—
- Army Corps of Engineers (hydro)

Department of Health, Education, and Welfare (radiation effects)

Department of Housing and Urban Development (urban areas)

Department of the Interior—
- Bureau of Indian Affairs (Indian lands)
- Bureau of Land Management (public lands)
- Bureau of Reclamation
- Power Marketing Administrations
- Geological Survey
- Bureau of Sport Fisheries and Wildlife
- Bureau of Outdoor Recreation
- National Park Service

Environmental Protection Agency

Federal Power Commission (hydro, transmission, and supply)

River Basin Commissions (as geographically appropriate)

Tennessee Valley Authority

Water Resources Council

Petroleum Development, Extraction, Refining, Transport, and Use

Department of the Interior—
- Office of Oil and Gas
- Bureau of Mines
- Geological Survey
- Bureau of Land Management (public lands and outer continental shelf)
- Bureau of Indian Affairs (Indian lands)
- Bureau of Sport Fisheries and Wildlife (effects on fish and wildlife)
- Bureau of Outdoor Recreation
- National Park Service

Department of Transportation (Transport and Pipeline Safety)

Environmental Protection Agency

Interstate Commerce Commission

Natural Gas Development, Production, Transmission, and Use

Department of Housing and Urban Development (urban areas)

Department of the Interior—
- Office of Oil and Gas
- Geological Survey
- Bureau of Mines
- Bureau of Land Management (public lands)
- Bureau of Indian Affairs (Indian lands)
- Bureau of Sport Fisheries and Wildlife
- Bureau of Outdoor Recreation
- National Park Service

Department of Transportation (transport and safety)

Environmental Protection Agency

Federal Power Commission (production, transmission, and supply)

Interstate Commerce Commission

Coal and Minerals Development, Mining, Conversion, Processing, Transport, and Use

Appalachian Regional Commission

Department of Agriculture—
- Forest Service

Department of Commerce

Department of Interior—
- Office of Coal Research
- Mining Enforcement and Safety Administration
- Bureau of Mines
- Geological Survey
- Bureau of Indian Affairs (Indian lands)
- Bureau of Land Management (public lands)
- Bureau of Sport Fisheries and Wildlife
- Bureau of Outdoor Recreation
- National Park Service

Department of Labor—
- Occupational Safety and Health Administration

Department of Transportation

Environmental Protection Agency

Interstate Commerce Commission

Tennessee Valley Authority

Renewable Resource Development, Production, Management, Harvest, Transport, and Use

Department of Agriculture—
- Forest Service
- Soil Conservation Service

Department of Commerce

Department of Housing and Urban Development (building materials)

Department of the Interior—
- Geological Survey
- Bureau of Land Management (public lands)
- Bureau of Indian Affairs (Indian lands)
- Bureau of Sport Fisheries and Wildlife
- Bureau of Outdoor Recreation
- National Park Service

Department of Transportation

Environmental Protection Agency

Interstate Commerce Commission (freight rates)

Energy and Natural Resources Conservation

Department of Agriculture—
- Forest Service
- Soil Conservation Service

Department of Commerce—
- National Bureau of Standards (energy efficiency)

Department of Housing and Urban Development—
- Federal Housing Administration (housing standards)

Department of the Interior—
- Office of Energy Conservation
- Bureau of Mines
- Bureau of Reclamation
- Geological Survey
- Power Marketing Administration

Department of Transportation

Environmental Protection Agency

Federal Power Commission

General Services Administration (design and operation of buildings)

Tennessee Valley Authority

Federal Energy Administration

LAND USE AND MANAGEMENT

Land Use Changes, Planning and Regulation or Land Development

Department of Agriculture—
- Forest Service (forest lands)
- Agricultural Research Service (agricultural lands)

Department of Housing and Urban Development

Department of the Interior—
- Office of Land Use and Water Planning
- Bureau of Land Management (public lands)
- Bureau of Indian Affairs (Indian lands)
- Bureau of Sport Fisheries and Wildlife (wildlife refuges)
- Bureau of Outdoor Recreation (recreation lands)
- National Park Service (NPS units)

Department of Transportation

Environmental Protection Agency (pollution effects)

National Aeronautics and Space Administration (remote sensing)

River Basins Commissions (as geographically appropriate)

Public Land Management

Department of Agriculture—
- Forest Service (forests)

Department of Defense

Department of the Interior—
- Bureau of Land Management
- Bureau of Indian Affairs (Indian lands)
- Bureau of Sport Fisheries and Wildlife (wildlife refuges)
- Bureau of Outdoor Recreation (recreation lands)
- National Park Service (NPS units)

Federal Power Commission (project lands)

General Services Administration

National Aeronautics and Space Administration (remote sensing)

Tennessee Valley Authority (project lands)

Protection of Environmentally Critical Areas

Dunes, Unstable Soils, Steep Slopes, Aquifer Recharge Areas, etc.

Department of Agriculture—
- Agricultural Stabilization and Conservation Service
- Soil Conservation Service
- Forest Service

Department of Commerce—
- National Oceanic and Atmospheric Administration (coastal areas)

Department of Defense—
- Army Corps of Engineers

Department of Housing and Urban Development (urban and floodplain areas)

Department of the Interior—
- Office of Land Use and Water Planning
- Bureau of Outdoor Recreation
- Bureau of Reclamation
- Bureau of Sport Fisheries and Wildlife
- Bureau of Land Management
- Geological Survey

Environmental Protection Agency (pollution effects)

National Aeronautics and Space Administration (remote sensing)

River Basins Commissions (as geographically appropriate)

Water Resources Council

Land Use in Coastal Areas

Department of Agriculture—
- Forest Service
- Soil Conservation Service (soil stability, hydrology)

Department of Commerce—
- National Oceanic and Atmospheric Administration (impact on marine life and coastal zone management)

Department of Defense—
- Army Corps of Engineers (beaches, dredge and fill permits, Refuse Act permits)

Department of Housing and Urban Development (urban areas)

Department of the Interior—
- Office of Land Use and Water Planning
- Bureau of Sport Fisheries and Wildlife
- National Park Service
- Geological Survey
- Bureau of Outdoor Recreation
- Bureau of Land Management (public lands)

Department of Transportation—
- Coast Guard (bridges, navigation)

Environmental Protection Agency (pollution effects)

National Aeronautics and Space Administration (remote sensing)

Redevelopment and Construction in Built-Up Areas

Department of Commerce—
- Economic Development Administration (designated areas)

Department of Housing and Urban Development

Department of the Interior—
- Office of Land Use and Water Planning

Department of Transportation

Environmental Protection Agency

General Services Administration

Office of Economic Opportunity

Density and Congestion Mitigation

Department of Health, Education, and Welfare

Department of Housing and Urban Development

Department of the Interior—
- Office of Land Use and Water Planning
- Bureau of Outdoor Recreation

Department of Transportation

Environmental Protection Agency

Neighborhood Character and Continuity

Department of Health, Education, and Welfare

Department of Housing and Urban Development

National Endowment for the Arts

Office of Economic Opportunity

Impacts on Low-Income Populations

Department of Commerce—
- Economic Development Administration (designated areas)

Department of Health, Education, and Welfare

Department of Housing and Urban Development

Office of Economic Opportunity

Historic, Architectural, and Archeological Preservation

Advisory Council on Historic Preservation

Department of Housing and Urban Development

Department of the Interior—
- National Park Service
- Bureau of Land Management (public lands)
- Bureau of Indian Affairs (Indian lands)

General Services Administration

National Endowment for the Arts

Soil and Plant Conservation and Hydrology

Department of Agriculture—
- Soil Conservation Service
- Agriculture Service
- Forest Service

Department of Commerce—
- National Oceanic and Atmospheric Administration

Department of Defense—
- Army Corps of Engineers (dredging, aquatic plants)

Department of Health, Education, and Welfare

Department of the Interior
- Bureau of Land Management
- Bureau of Sport Fisheries and Wildlife
- Geological Survey
- Bureau of Reclamation

Environmental Protection Agency

National Aeronautics and Space Administration (remote sensing)

River Basin Commissions (as geographically appropriate)

Water Resources Council

Outdoor Recreation

Department of Agriculture
- Forest Service
- Soil Conservation Service

Department of Defense—
- Army Corps of Engineers

Department of Housing and Urban Development (urban areas)

Department of the Interior—
- Bureau of Land Management
- National Park Service
- Bureau of Outdoor Recreation
- Bureau of Sport Fisheries and Wildlife
- Bureau of Indian Affairs

Environmental Protection Agency

National Aeronautics and Space Administration (remote sensing)

River Basin Commissions (as geographically appropriate)

Water Resources Council

ATTACHMENT 3

OFFICES WITHIN FEDERAL AGENCIES AND FEDERAL-STATE AGENCIES FOR INFORMATION REGARDING THE AGENCIES' NEPA ACTIVITIES AND FOR RECEIVING OTHER AGENCIES' IMPACT STATEMENTS FOR WHICH COMMENTS ARE REQUESTED

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Office of Architectural and Environmental Preservation, Advisory Council on Historic Preservation, Suite 430, 1522 K Street N.W., Washington, D.C. 20005 254-3974.

Regional Administrator, I, U.S. Environmental Protection Agency, Room 2303, John F. Kennedy Federal Bldg., Boston, Mass. 02203 (617) 223-7210.

Regional Administrator, II, U.S. Environmental Protection Agency, Room 908, 26 Federal Plaza, New York, New York 10007 (212) 264-2525.

Regional Administrator, III, U.S. Environmental Protection Agency, Curtis Bldg., 6th & Walnut Sts., Philadelphia, Pa. 19106 (215) 597-9801.

Regional Administrator, IV, U.S. Environmental Protection Agency, 1421 Peachtree Street, N.E., Atlanta, Ga. 30309 (404) 526-5727.

Regional Administrator, V, U.S. Environmental Protection Agency, 1 N. Wacker Drive, Chicago, Illinois 60606 (312) 353-5250.

Regional Administrator, VI, U.S. Environmental Protection Agency, 1600 Patterson Street, Suite 1100, Dallas, Texas 75201 (214) 749-1962.

Regional Administrator, VII, U.S. Environmental Protection Agency, 1735 Baltimore Avenue, Kansas City, Missouri 64108 (816) 374-5493.

Regional Administrator, VIII, U.S. Environmental Protection Agency, Suite 900, Lincoln Tower, 1860 Lincoln Street, Denver, Colorado 80203 (303) 837-3895.

Regional Administrator, IX, U.S. Environmental Protection Agency, 100 California Street, San Francisco, California 94111 (415) 556-2320.

Regional Administrator, X, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101 (206) 442-1220.

ENVIRONMENTAL PROTECTION AGENCY[1]

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

New Jersey, New York, Puerto Rico, Virgin Islands

Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Illinois, Indiana, Michigan, Minnesota, Ohio Wisconsin

Arkansas, Louisiana, New Mexico, Texas, Oklahoma

Iowa, Kansas, Missouri, Nebraska

Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Arizona, California, Hawaii, Nevada, American Samoa, Guam, Trust Territories of Pacific Islands, Wake Island

Alaska, Idaho, Oregon, Washington

DEPARTMENT OF AGRICULTURE[2]

Office of the Secretary, Attn: Coordinator, Environmental Quality Activities, U.S. Department of Agriculture, Washington, D.C. 20250 447-3965.

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[1] Contact the Office of Federal Activities for environmental statements concerning legislation, regulations, national program proposals, or other major policy issues.

For all other EPA consultation, contact the Regional Administrator in whose area the proposed action (e.g., highway or water resource construction projects) will take place. The Regional Administrators will coordinate the EPA review. Addresses of the Regional Administrators, and the areas covered by their regions are as follows:

Director, Office of Federal Activities, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 755-0777.

[2] Requests for comments or information from individual units of the Department of Agriculture, e.g., Soil Conservation Service, Forest Service, etc. should be sent to the Office of the Secretary, Department of Agriculture, at the address given above.

APPALACHIAN REGIONAL COMMISSION

Office of the Alternate Federal Co-Chairman, Appalachian Regional Commission, 1666 Connecticut Avenue, N.W., Washington, D.C. 20235 967-4103.

DEPARTMENT OF THE ARMY (CORPS OF ENGINEERS)

Executive Director of Civil Works, Office of the Chief of Engineers, U.S. Army Corps of Engineers, Washington, D.C. 20314 693-7168.

ATOMIC ENERGY COMMISSION

For nonregulatory matters: Office of Assistant General Manager for Biomedical and Environmental Research and Safety Programs, Atomic Energy Commission, Washington, D.C. 20345 973-3208.

For regulatory matters: Office of the Assistant Director for Environmental Projects, Atomic Energy Commission, Washington, D.C. 20545 973-7531.

DEPARTMENT OF COMMERCE

Office of the Deputy Assistant Secretary for Environmental Affairs, U.S. Department of Commerce, Washington, D.C. 20230 967-4335.

DEPARTMENT OF DEFENSE

Office of the Assistant Secretary for Defense (Health and Environment), U.S. Department of Defense, Room 3E172, The Pentagon, Washington, D.C. 20301 697-2111.

DELAWARE RIVER BASIN COMMISSION

Office of the Secretary, Delaware River Basin Commission, Post Office Box 360, Trenton, N.J. 08603 (609) 883-9500.

FEDERAL POWER COMMISSION

Commission's Advisor on Environmental Quality, Federal Power Commission, 825 N. Capitol Street, N.E. Washington, D.C. 20426 386-6084.

GENERAL SERVICES ADMINISTRATION

Office of Environmental Affairs, Office of the Deputy Administrator for Special Projects, General Services Administration, Washington, D.C. 20405 343-4161.

GREAT LAKES BASIN COMMISSION

Office of the Chairman, Great Lakes Basin Commission, 3475 Plymouth Road, P.O. Box 999, Ann Arbor, Michigan 48105 (313) 769-7431.

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE[3]

For information with respect to HEW actions occurring within the jurisdiction of the Departments' Regional Directors, contact the appropriate Regional Environmental Officer:

Office of Environmental Affairs, Office of the Assistant Secretary for Administration and Management, Department of Health, Education and Welfare, Washington, D.C. 20202 963-4456.

Region I, Regional Environmental Officer, U.S. Department of Health, Education and Welfare, Room 2007B, John F. Kennedy Center, Boston, Massachusetts 02203 (617) 223-6837.

Region II, Regional Environmental Officer, U.S. Department of Health, Education and Welfare, Federal Building, 26 Federal Plaza, New York, New York 10007 (212) 264-1308.

Region III, Regional Environmental Officer, U.S. Department of Health, Education and Welfare, P.O. Box 13716, Philadelphia, Pennyslvania 19101 (215) 597-6498.

Region IV, Regional Environmental Officer, U.S. Department of Health, Education and Welfare, Room 404, 50 Seventh Street, N.E. Atlanta, Georgia 30323 (404) 526-5817.

Region V, Regional Environmental Officer, U.S. Department of Health, Education and Welfare, 433 West Van Buren Stret, Chicago, Illinois 60607 (312) 353-1644.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT[4]

Regional Administrator II, Environmental Clearance Officer, U.S. Department of Housing and Urban Development, 26 Federal Plaza, New York, New York 10007 (212) 264-8068.

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[3] Contact the Office of Environment Affairs for information on HEW's environmental statements concerning legislation, regulations, national program proposals or other major policy issues, and for all requests for HEW comment on impact statements of other agencies.

[4] Contact the Director with regard to environmental impacts of legislation, policy statements, program regulations and procedures, and precedent-making project decisions. For all other HUD consultation, contact the HUD Regional Administrator in whose jurisdiction the project lies, as follows:

Regional Administrator I, Environmental Clearance Officer, U.S. Department of Housing and Urban Develop-

Regional Administrator III, Environmental Clearance Officer, U.S. Department of Housing and Urban Development, Curtis Building, Sixth and Walnut Street, Philadelphia, Pennsylvania 19106 (215) 597-2560.

Regional Administrator IV, Environmental Clearance Officer, U.S. Department of Housing and Urban Development, Peachtree-Seventh Building, Atlanta, Georgia 30323 (404) 526-5585.

Regional Administrator V, Environmental Clearance Officer, U.S. Department of Housing and Urban Development, 360 North Michigan Avenue, Chicago, Illinois 60601 (312) 353-5680.

Director, Office of Community and Environmental Standards, Department of Housing and Urban Development, Room 7206, Washington, D.C. 20410 755-5980.

DEPARTMENT OF THE INTERIOR[5]

Director, Office of Environmental Project Review, Department of the Interior, Interior Building, Washington, D.C. 20240 343-3891.

INTERSTATE COMMERCE COMMISSION

Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423 343-6167.

DEPARTMENT OF LABOR

Assistant Secretary for Occupational Safety and Health, Department of Labor, Washington, D.C. 20210 961-3405.

MISSOURI RIVER BASINS COMMISSION

Office of the Chairman, Missouri River Basins Commission, 10050 Regency Circle, Omaha, Nebraska 68114 (402) 397-5714.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Office of the Comptroller, National Aeronautics and Space Administration, Washington, D.C. 20546 755-8440.

NATIONAL CAPITAL PLANNING COMMISSION

Office of Environmental Affairs, Office of the Executive Director, National Capital Planning Commission, Washington, D.C. 20576 382-7200.

NATIONAL ENDOWMENT FOR THE ARTS

Office of Architecture and Environmental Arts Program, National Endowment for the Arts, Washington, D.C. 20506 382-5765.

NEW ENGLAND RIVER BASINS COMMISSION

Office of the Chairman, New England River Basins Commission, 55 Court Street, Boston, Mass. 02108 (617) 223-6244.

Regional Administrator VI, Environmental Clearance Officer, U.S. Department of Housing and Urban Development, Federal Office Building, 819 Taylor Street, Fort Worth, Texas 76102 (817) 334-2867.

Regional Administrator VII, Environmental Clearance Officer, U.S. Department of Housing and Urban Development, 911 Walnut Street, Kansas City, Missouri 64106 (816) 374-2661.

Regional Administrator VIII, Environmental Clearance Officer, U.S. Department of Housing and Urban Development, Samsonite Building, 1051 South Broadway, Denver Colorado 80209 (303) 837-4061.

Regional Administrator IX, Environmental Clearance Officer, U.S. Department of Housing and Urban Development, 450 Golden Gate Avenue, Post Office Box 36003, San Francisco, California 94102 (415) 556-4752.

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ment, Room 405, John F. Kennedy Federal Building, Boston, Mass 02203 (617) 223-4066.

Region VI, Regional Environmental Officer, U.S. Department of Health, Education and Welfare, 1114 Commerce Street, Dallas, Texas 75202 (214) 749-2236.

Region VII, Regional Environmental Officer, U.S. Department of Health, Education and Welfare, 601 East 12th Street, Kansas City, Missouri 64106 (816) 374-3584.

Region VIII, Regional Environmental Officer, U.S. Department of Health, Education and Welfare, 9017 Federal Building, 19th and Stout Streets, Denver, Colorado 80202 (303) 837-4178.

Region IX, Regional Environmental Officer, U.S. Department of Health, Education and Welfare, 50 Fulton Street, San Francisco, California 94102 (415) 556-1970.

Region X, Regional Environmental Officer, U.S. Department of Health, Education and Welfare, Arcade Plaza Building, 1321 Second Street, Seattle, Washington 98101 (206) 442-0490.

[5] Requests for comments or information from individual units of the Department of the Interior should be sent to the Office of Environmental Project Review at the address given above.

Regional Administrator X, Environmental Clearance Officer, U.S. Department of Housing and Urban Development, Room 226, Arcade Plaza Building, Seattle, Washington 98101 (206) 583-5415.

OFFICE OF ECONOMIC OPPORTUNITY

Office of the Director, Office of Economic Opportunity, 1200 19th Street, N.W., Washington, D.C. 20506 254-6000.

OHIO RIVER BASIN COMMISSION

Office of the Chairman, Ohio River Basin Commission, 36 East 4th Street, Suite 208-20, Cincinnati, Ohio 45202 (513) 684-3831.

PACIFIC NORTHWEST RIVER BASINS COMMISSION

Office of the Chairman, Pacific Northwest River Basins Commission, 1 Columbia River, Vancouver, Washington 98660 (206) 695-3606.

SOURIS-RED-RAINY RIVER BASINS COMMISSION

Office of the Chairman, Souris-Red-Rainy River Basins Commission, Suite 6, Professional Building, Holiday Mall, Moorhead, Minnesota 56560 (701) 237-5227.

DEPARTMENT OF STATE

Office of the Special Assistant to the Secretary for Environmental Affairs, Department of State, Washington, D.C. 20520 632-7964.

SUSQUEHANNA RIVER BASIN COMMISSION

Office of the Executive Director, Susqhehanna River Basin Commission, 5012 Lenker Street, Mechanicsburg, Pa. 17055 (717) 737-0501.

TENNESSEE VALLEY AUTHORITY

Office of the Director of Environmental Research and Development, Tennessee Valley Authority, 720 Edney Building, Chattanooga, Tennessee 37401 (615) 755-2002.

DEPARTMENT OF TRANSPORTATION[6]

Director, Office of Environmental Quality, Office of the Assistant Secretary for Environment, Safety, and Consumer Affairs, Department of Transportation, Washington, D.C. 20590 426-4357.

For information regarding the Department of Transportation's other environmental statements, contact the national office for the appropriate administration:

U.S. Coast Guard

Office of Marine Environment and Systems, U.S. Coast Guard, 400 7th Street, S.W., Washington, D.C. 20590 426-2007.

Federal Aviation Administration

Office of Environmental Quality, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591 426-8406.

Federal Highway Administration

Office of Environmental Policy, Federal Highway Administration, 400 7th Street, S.W., Washington, D.C. 20590 426-0351.

Federal Railroad Administration

Office of Policy and Plans, Federal Railroad Administration, 400 7th Street, S.W., Washington, D.C. 20590 426-1567.

Urban Mass Transportation Administration

Office of Program Operations, Urban Mass Transportation Administration, 400 7th Street, S.W., Washington, D.C. 20590 426-4020.

For other administration's not listed above, contact the Office of Environmental Quality, Department of Transportation, at the address given above.

For comments on other agencies' environmental statements, contact the appropriate administration's regional office. If more than one administration within the Department of Transportation is to be requested to comment, contact the Secretarial Representative in the appropriate Regional Office for coordination of the Department's comments:

SECRETARIAL REPRESENTATIVE

Region I Secretarial Representative, U.S. Department of Transportation, Transportation Systems Center 55 Broadway, Cambridge, Massachusetts 02142 (617) 494-2709.

[6] Contact the Office of Environmental Quality, Department of Transportation, for information on DOT's environental statements concerning legislation, regulations, national program proposals, or other major policy issues.

Region II Secretarial Representative, U.S. Department of Transportation, 26 Federal Plaza, Room 1811, New York, New York 10007 (212) 264-2672.

Region III Secretarial Representative, U.S. Department of Transportation, Mall Building, Suite 1214, 325 Chestnut Street, Philadelphia, Pennsylvania 19106 (215) 597-0407.

Region IV Secretarial Representative, U.S. Department of Transportation, Suite 515, 1720 Peachtree Rd., N.W., Atlanta, Georgia 30309 (404) 526-3738.

Region V Secretarial Representative, U.S. Department of Transportation, 17th Floor, 300 S. Wacker Drive, Chicago, Illinois 60606 (312) 353-4000.

Region VI Secretarial Representative, U.S. Department of Transportation, 9-C-18 Federal Center, 1100 Commerce Street, Dallas, Texas 75202 (214) 749-1851.

Region VII Secretarial Representative, U.S. Department of Transportation, 601 E. 12th Street, Room 634, Kansas City, Missouri 64106 (816) 374-2761.

Region VIII Secretarial Representative, U.S. Department of Transportation, Prudential Plaza, Suite 1822, 1050 17th Street, Denver, Colorado 80225 (303) 837-3242.

Region IX Secretarial Representative, U.S. Department of Transportation, 450 Golden Gate Avenue, Box 36133, San Francisco, California 94102 (415) 556-5961.

Region X Secretarial Representative, U.S. Department of Transportation, 1321 Second Avenue, Room 507, Seattle, Washington 98101 (206) 442-0590.

FEDERAL AVIATION ADMINISTRATION

New England Region, Office of the Regional Director, Federal Aviation Administration, 154 Middlesex Street, Burlington, Massachusetts 01803 (617) 272-2350.

Eastern Region, Office of the Regional Director, Federal Aviation Administration, Federal Building, JFK International Airport, Jamaica, New York 11430 (212) 995-3333.

Southern Region, Office of the Regional Director, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320 (404) 526-7222.

Great Lakes Region, Office of the Regional Director, Federal Aviation Administration, 2300 East Devon, Des Plaines, Illinois 60018 (312) 694-4500.

Southwest Region, Office of the Regional Director, Federal Aviation Administration, P.O. Box 1689, Fort Worth Texas 76101 (817) 624-4911.

Central Region,Office of the Regional Director, Federal Aviation Administration, 601 E. 12th Street, Kansas City, Missouri 64106 (816) 374-5626.

Rocky Mountain Region, Office of the Regional Director, Federal Aviation Administration, Park Hill Station, P.O. Box 7213, Denver, Colorado 80207 (303) 837-3646.

Western Region, Office of the Regional Director, Federal Aviation Administration, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009 (213) 536-6427.

Northwest Region, Office of the Regional Director, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, Washington 98108 (206) 767-2780.

FEDERAL HIGHWAY ADMINISTRATION

Region 1, Regional Administrator, Federal Highway Administration, 4 Normanskill Boulevard, Delmar, New York 12054 (518) 472-6476.

Region 3, Regional Administrator, Federal Highway Administration, Room 1621, George H. Fallon Federal Office Building, 31 Hopkins Plaza, Baltimore, Maryland 21201 (301) 962-2361.

Region 4, Regional Administrator, Federal Highway Administration, Suite 200, 1720 Peachtee Road, N.W., Atlanta, Georgia 30309 (404) 526-5078.

Region 5, Regional Administrator, Federal Highway Administration, Dixie Highway, Homewood, Illinois 604030 (312) 799-6300.

Region 6, Regional Administrator, Federal Highway Administration, 819 Taylor Street, Fort Worth, Texas 76102 (817) 334-3232.

Region 7, Regional Administrator, Federal Highway Administration, P.O. Box 7186, Country Club Station, Kansas City, Missouri 64113 (816) 361-7563.

Region 8, Regional Administrator, Federal Highway Administration, Room 242, Building 40, Denver Federal Center, Denver, Colorado 80225.

Region 9, Regional Administrator, Federal Highway Administration, 450 Golden Gate Avenue, Box 36096, San Francisco, California 94102 (415) 556-3895.

Region 10, Regional Administrator, Federal Highway Administration, Room 412, Mohawk Building, 222 S.W. Morrison Street, Portland, Oregon 97204 (503) 221-2065.

URBAN MASS TRANSPORTATION ADMINISTRATION

Region I, Office of the UMTA Representative, Urban Mass Transportation Administration, Transportation Systems Center, Technology Building, Room 277, 55 Broadway, Boston, Massachusetts 02142 (617) 494-2055.

Region II, Office of the UMTA Representative, Urban Mass Transportation Administration, 26 Federal Plaza, Suite 1809, New York, New York 10007 (212) 264-8162.

Region III, Office of the UMTA Representative, Urban Mass Transportation Administration, Mall Building, Suite 1214, 325 Chestnut Street, Philadelphia, Pennyslvania 19106 (215) 597-0407.

Region IV, Office of the UMTA Representative, Urban Mass Transportation Administration, 1720 Peachtree Road, Northwest Suite 501, Atlanta, Georgia 30309 (404) 526-3948.

Region V, Office of the UMTA Representative, Urban Mass Transportation Administration, 300 South Wacker Drive, Suite 700, Chicago, Illinois 60606 (312) 353-6005.

Region VI, Office of the UMTA Representative, Urban Mass Transportation Administration, Federal Center, Suite 9E24, 1100 Commerce Street, Dallas, Texas 75202 (214) 749-7322.

Region VII, Office of the UMTA Representative, Urban Mass Transportation Administration, c/o FAA Management Systems Division, Room 1564D, 601 East 12th Street, Kansas City, Missouri 64106 (816) 374-5567.

Region VIII, Office of the UMTA Representative, Urban Mass Transportation Administration, Prudential Plaza, Suite 1822, 1050 17th Street, Denver, Colorado 80202 (303) 837-3242.

Region IX, Office of the UMTA Representative, Urban Mass Transportation Administration, 450 Golden Gate Avenue, Box 36125, San Francisco, California 94102 (415) 556-2884.

Region X, Office of the UMTA Representative, Urban Mass Transportation Administration, 1321 Second Avenue, Suite 5079, Seattle, Washington (206) 442-0590.

DEPARTMENT OF THE TREASURY

Office of Assistant Secretary for Administration, Department of the Treasury, Washington, D.C. 20220 964-5391.

UPPER MISSISSIPPI RIVER BASIN COMMISSION

Office of the Chairman, Upper Mississippi River Basin Commission, Federal Office Building, Fort Snelling, Twin Cities, Minnesota 55111 (612) 725-4690.

WATER RESOURCES COUNCIL

Office of the Associate Director, Water Resources Council, 2120 L Street, N.W., Suite 800, Washington, D.C. 20037 254-6442.

ATTACHMENT 4

STATE AND LOCAL AGENCY REVIEW OF IMPACT STATEMENTS

1. OBM Revised Circular No. A–95 through its system of clearinghouses provides a means for securing the views of State and local environmental agencies, which can assist in the preparation of impact statements. Under A–95, review of the proposed project in the case of federally assisted projects (Part I of A–95) generally takes place prior to the preparation of the impact statement. Therefore, comments on the environmental effects of the proposed project that are secured during this stage of the A–95 process represent inputs to the environmental impact statement.

2. In the case of direct Federal development (Part II of A–95), Federal agencies are required to consult with clearinghouse at the earliest practicable time in the planning of the project or activity. Where such consultation occurs prior to completion of the draft impact statement, comments relating to the environmental effects of the proposed action would also represent inputs to the environmental impact statement.

3. In either case, whatever comments are made on environmental effects of proposed Federal or federally assisted projects by clearinghouses, or by State and local environmental agencies through clearinghouses, in the course of the A–95 review should be attached to the draft impact statement when it is circulated for review. Copies of the statement should be sent to the agencies making such comments. Whether those agencies then elect to comment again on the basis of the draft impact statement is a matter to be left to the discretion of the commenting agency depending on its resources, the significance of the project and the extent to which its earlier comments were considered in preparing the draft statement.

4. The clearinghouses may also be used, by mutual agreement, for securing reviews of the draft environmental impact statement. However, the Federal agency may wish to deal directly with appropriate State or local agencies in the review of impact statements because the clearinghouses may be unwilling or unable to handle this phase of the process. In some cases, the Governor may have designated a specific agency, other than the clearinghouse, for securing reviews of impact statements. In any case, the clearinghouses should be sent copies of the impact statement.

5. To aid clearinghouses in coordinating State and local comments, draft statements should include copies of State and local agency comments made earlier under the A–95 process and should indicate on the summary sheet those other agencies from which comments have been requested, as specified in Attachment 1.

40 F.R. 52395
November 10, 1975

PREAMBLE TO PART 523—VEHICLE CLASSIFICATION

(Docket No. FE76–05; Notice 3)

Title V of the Motor Vehicle Information and Cost Savings Act (the Act) specifies that certain vehicles with a gross vehicle weight rating (GVWR) of not more than 6,000 pounds are automobiles, and, therefore, subject to the fuel economy provisions of the Act. This rule adds passenger cars with a GVWR of more than 6,000 pounds and less than 10,000 pounds to the automobile category. The rule also specifies which automobiles are passenger automobiles and which are nonpassenger automobiles. Separate fuel economy standards have been established under the Act for those automobile subcategories.

Effective Date: July 28, 1977.

For Further Information, Contact:

Douglas Pritchard
Office of Automotive Fuel Economy
National Highway Traffic Safety Administration
Department of Transportation
Washington, D.C. 20590
(202) 755 9384

Supplementary Information: The essential features of this rule were first outlined in the notice of proposed rulemaking issued by this agency on petitions for reduction of the average fuel economy standards for model year 1978–1980 passenger automobiles (41 FR 46878, October 26, 1976). A notice of proposed rulemaking (NPRM) dealing directly with classification appeared at 41 FR 55368 on December 20, 1976. The NPRM followed the outlines in the proposal for reduction petitions. The NPRM proposed classifying all passenger cars with a gross vehicle weight rating (GVWR) of less than 10,000 pounds as passenger automobiles. Pickup trucks, recreational vehicles, vans, general purpose vehicles, and other similar vehicles with a GVWR of not more than 6,000 pounds were classified as nonpassenger automobiles. All comments on that proposal have been considered and the most significant ones are discussed below.

Summary of major differences between proposed and final rules. The only significant change in the rule is in the method for measuring the interior volume of certain automobiles for the purpose of determining whether those automobiles have greater cargo-carrying volume than passenger-carrying volume. If they do, they are a type of nonpassenger automobile. The method proposed in the NPRM differed slightly from the method used by the Environmental Protection Agency (EPA) for determining comparable classes of passenger automobiles under its fuel economy labeling program. The final rule adopts the EPA method in all respects for passenger automobiles.

Scope of rule. Under this rule, the passenger automobile and nonpassenger automobile subcategories consist of the same types of vehicles proposed to be included in each category in the NPRM.. The only vehicles that are potentially subject to regulation under the Act and that are not classified as automobiles by this notice are pickup trucks, recreational vehicles, vans, and general purpose vehicles with a GVWR of more than 6,000 pounds and less than 10,000 pounds. The agency is contemplating initiating rulemaking late this summer to expand the nonpassenger automobile subcategory by raising the upper GVWR limit of the subcategory to at least 8,500 pounds. That proposal would make the expansion effective for the 1980 model year. Thus, the vehicles brought into the nonpassenger automobile subcategory by that proposal would become subject to average fuel economy standards beginning in that model year.

International Harvester commented that, although the preamble to the classification NPRM indicated that the nonpassenger automobile subcategory was intended to include only vehicles with a GVWR of not more than 6,000 pounds, the proposed rule itself could be interpreted as classifying vehicles which have a GVWR of more than 6,000 pounds and less than 10,000 pounds and have 4 of the 5 ground clearance characteristics specified in the rule as automobiles capable of off-highway operation. Since an automobile capable of off-highway operation is a type of nonpassenger automobile, this commenter believed that the rule would yield a result contrary to the stated intention of the preamble.

This is a misinterpretation of the rule. The provisions in the rule relating to passenger automobiles and nonpassenger automobiles, including automobiles capable of off-highway operation, have been drafted so that they set forth how any vehicle with a GVWR of less than 10,000 pounds be subcategorized if it were first categorized as an automobile. As noted above, this rule does not categorize as automobiles all vehicles that can potentially be so categorized. Under the statute, all such vehicles with a GVWR of not more than 6,000 pounds are automatically automobiles. Section 523.3(b) of this rule adds passenger cars with a GVWR greater than 6,000 pounds and less than 10,000 pounds to that category. The rule states how these automobiles are subcategorized. Yet to be included in the automobile category are pickup trucks, vans, recreational vehicles, general purpose vehicles and other similar vehicles with a GVWR greater than 6,000 pounds and less than 10,000 pounds. The rule states how these vehicles would be subcategorized when and if they are first categorized as automobiles. Thus, the crucial point to bear in mind is that a vehicle cannot fall within some subcategory of automobiles, such as automobiles capable of off-highway operation, unless it first falls within the automobile category. Since no vehicle which has a GVWR greater than 6,000 pounds and less than 10,000 pounds and has 4 or 5 of the 5 ground clearance characteristics is an automobile under this rule, no such vehicle can be an automobile capable of off-highway operation under this rule. Such vehicles may be what one might call vehicles capable of off-highway operation, but they are not yet automobiles capable of off-highway operation.

In a related comment the General Services Administration (GSA) stated that it did not understand why this agency had proposed to list a GVWR of more than 6,000 pounds as one criterion for classification of an automobile as an automobile capable of off-highway operation. The proposed and final rules include in the automobile category any vehicle that has a GVWR of less than 6,000 pounds and has 4 or 5 of the ground clearance characteristics specified in the rule. Any such automobile is an automobile capable of off-highway operation. GSA correctly interpreted the proposed rule as excluding, however, a vehicle from the automobile category if the vehicle has a GVWR greater than 6,000 pounds and less than 10,000 pounds and 4 or 5 of the 5 ground clearance characteristics. To clarify this exclusion, GSA suggested the deletion of having a GVWR of greater than 6,000 pounds as one criterion for classification of an automobile as one capable of off-highway operation.

The confusion discussed by International Harvester and GSA could be eliminated if having a GVWR of greater than 6,000 pounds and less than 10,000 pounds were not viewed as an indication of a capability of off-highway operation in the same vein as 4-wheel drive or ground clearance. Section 501(3) of the Act might have been more clearly understood if it had been drafted to provide that automobiles with a GVWR of not more than 6,000 pounds had to have 4-wheel drive and another feature related to off-highway capability to be classified as an automobile capable of off-highway operation, and that automobiles with a GVWR greater than 6,000 pounds and less than 10,000 pounds had to have only some feature, other than 4-wheel drive, related to off-highway capability to be so classified. Since that section was not so drafted and since the agency deems it desirable to follow statutory language in drafting its criteria in the regulation, the agency has decided to adopt the criteria for classification as automobiles capable of off-highway operation as proposed.

Subclassification of nonpassenger automobiles. Ford and International Harvester urged that the nonpassenger automobile subcategory be subdivided. International Harvester urged the creation of subcategories, one for automobiles capable of off-highway operation and another for all other nonpassenger automobiles. Ford also proposed a subcategory for automobiles capable of off-highway operation and urged that the remaining nonpassenger automobiles be divided into those with a GVWR of not more than 6,000 pounds and those with a GVWR greater than 6,000 pounds and less than 10,000 pounds. In its notice of proposed rulemaking (November 26, 1976, 41 FR 52087) on the average fuel economy standard for 1979 nonpassenger automobiles, the agency stated that it was not prepared to address fully the subclassification of nonpassenger automobiles. Based on comments by interested persons, a small subclass of nonpassenger automobiles was created for general purpose vehicles such as the AMC Jeep. The question of further subclassification of nonpassenger automobiles will be considered in connection with rulemaking to be initiated late this summer.

Definitions. The NPRM defined "axle clearance", one of the criteria for classifying automobiles as automobiles capable of off-highway operation, as follows:

> "Axle clearance" means the distance from the level surface on which an automobile is standing to the lowest point on the axle differential of the automobile.

International Harvester commented that this definition did not provide for the possibility that automobiles intended for off-highway operation might be equipped with independent suspension. To accommodate such automobiles, the company urged that the definition be rewritten to read as follows:

> "Axle clearance" means the distance from the level surface on which an automobile is standing to the lowest point on the axle differential or other component more than 18 inches inboard of the wheels in either the front or rear of the automobile.

The reason for this change would be that the differential on independently suspended automobiles could be higher than portions of the axles on those automobiles. In contrast, the lowest portion of the differential on nonindependently suspended automobiles is typically lower than all portions of the axles of those automobiles. Thus, use of the differential as the reference point for measuring axle clearance could overstate the obstacle clearance capabilities of independently suspended automobiles.

The NHTSA generally agrees with this observation, but is unaware of any standardized ground clearance criteria which would consider all the factors involved in ground clearance. For instance, the definition proposed by International Harvester does not address the width of the vehicle being measured or the size and shape of the obstacle being negotiated. These factors are also important in determining a vehicle's obstacle clearance capabilities.

Nevertheless, the important points to be noted are that the definition of axle clearance proposed in the NPRM is a measure of ground clearance recognized by the Society of Automotive Engineers and presently reported by the Motor Vehicle Manufacturers Association and the individual manufacturers and that use of the proposed definition adequately serves its purpose and does not disadvantage any vehicle, regardless of its axle configuration or suspension system. Accordingly, in the interests of avoiding unnecessary complexity in this rule, the definition proposed in the NPRM is adopted. If a need arises in the future to amend this definition, the NHTSA will initiate rulemaking.

A number of comments were addressed to the interior volume measurement technique used in determining whether an automobile had greater cargo-carrying volume than passenger-carrying volume and thus was a nonpassenger automobile. The NPRM proposed to use a technique that differed slightly from that used by the EPA in its fuel economy labeling regulation (40 CFR 600.315; November 10, 1976, 41 FR 49752) with respect to station wagons and hatchbacks. International Harvester, Ford Motor Company, and Volkswagen of America all stated that this agency should use the EPA measurement technique to avoid the possibility of requiring the manufacturers to measure the interior volume of certain automobiles in two different ways. None of the three companies commented on whether

different techniques were necessary. Ford commented also that publication of two different interior volume measurements for the same automobile would unnecessarily confuse consumers. Conversely, General Motors stated that the measurement techniques used by the two agencies need not be identical.

In the NPRM, this agency stated that use of a single measuring technique that differed slightly from the techniques used by the EPA for various types of automobiles appeared to be necessary. The EPA has one technique for station wagons and a slightly different one for hatchbacks. There is no EPA technique for vans.

After consideration of the comments and a reevaluation of the problem of differentiating between certain passenger automobiles and nonpassenger automobiles, this agency has decided to use the EPA measuring techniques for station wagons and hatchbacks. The differences between the technique proposed in the NPRM and the techniques used by the EPA are minor and do not result in different classification of any automobiles as passenger automobiles or nonpassenger automobiles. Since the results of the different techniques are the same, there appears to be no reason for burdening the manufacturers with the possibility of having to measure the interior space of the same automobile in two different manners. Further, use of the same techniques will avoid the possibility of consumers being confused by some advertisements about interior space based on one technique and other advertisements based on the other technique.

The adoption of the EPA techniques for measuring interior volume of station wagons and hatchbacks meets a number of concerns that various manufacturers had raised about the proposed techniques for measuring the interior space of station wagons. Ford and Chrysler commented that the proposed technique was not suited to 3-seated wagons whose third seat was side or rear facing. The adopted EPA technique measures the third seat area with the seat down in the cargo-carrying position.

Chrysler noted that the proposed definition of "passenger-carrying volume" did not clearly provide dimensions for measuring the volumes of third seats. This could be a problem in passenger vans. The reference in the proposed definition to "rear seats" was intended to encompass all seats behind the front seat. The definition has been amended to provide that the dimensions for second seats be used for any seats to the rear of the second seats also.

Ford urged that certain changes be made in the EPA technique for measuring interior width and front seat leg room and that under-floor (hidden) storage space be included in determining station wagon cargo volume. These comments should be addressed to the EPA, which has the responsibility under the Act for these techniques.

The measurement technique proposed in the NPRM is adopted for use with respect to all automobiles, e.g., vans, for which the EPA does not specify a measurement technique. This provision is necessary so that a measurement technique will be specified for every type of automobile.

Automobiles. Several commenters stated certain vehicles with off-highway capability were not automobiles and thus were not subject to average fuel economy standards under the Act. AMC contended that its Jeep CJ is designed, manufactured, and marketed primarily for off-highway operation. AMC stated that Jeeps are "built with low and medium speed capability and accommodate many off-road work-performing equipment accessories". AMC concluded that the Jeep cannot be an automobile since it is not, in that company's view, "manufactured primarily for use on the public streets, roads, and highways." Ford made a similar argument. It stated that vehicles having all of the following features are not manufactured primarily for highway use: (1) 4-wheel drive, (2) high ground clearance as evidenced by certain approach, breakover, and departure angles and by certain running and axle clearances, (3) engine oil systems capable of operation on inclines having up to a 60 percent grade, (4) relatively high axle ratios and heavy duty axle and suspension components, and (5) relatively high frontal area. The GSA took no position on the treatment of vehicles capable of off-highway operation but noted what appeared to it as an inconsistency between a statement on p. 90 in the House report on the Act regarding

vehicles manufactured primarily for off-road use and the portion of the proposed rule relating to automobiles capable of off-highway operation.

NHTSA cannot accept the claims of AMC and Ford that vehicles with the characteristics set out above are not subject to fuel economy standards because their off-road characteristics place them outside the scope of Title V. These arguments have already been considered by the NHTSA and rejected in the preamble to the rule establishing average fuel economy standards for nonpassenger automobiles produced during the 1979 model year; 42 FR 13807, March 14, 1977. The discussion that follows is a shortened version of that earlier discussion. This discussion also demonstrates that the inconsistency perceived by GSA does not exist.

The characteristics identified by the commenters are merely characteristics of vehicles which are capable of off-highway operation. There was no claim that the vehicles had characteristics that made them incapable of highway use. More importantly, neither manufacturer claimed that the vehicles were not intended or expected to spend a substantial portion of their operating lives on the public streets, roads, or highways. Therefore, NHTSA believes that Congress intended these vehicles to be automobiles within the meaning of Section 501 of Title V, and subject to fuel economy standards as nonpassenger automobiles.

This rule and section 501(1) of the Act define an automobile as "any 4-wheeled vehicle propelled by fuel which is manufactured primarily for use on public streets, roads, and highways . . ." The manufacturers' claims rest on an interpretation of the word "primarily" as meaning "chiefly" in the above-quoted definition of "automobile".

It is a common principle of statutory construction that the words of a statute are to be given their ordinary, everyday meanings, unless there is evidence on the face of the statute that the ordinary, everyday meaning is not applicable and that application of the ordinary, everyday meaning would frustrate the legislative intent. *Malat v. Riddel*, 383 U.S. 569, 571–572 (1966). However, the word "primarily" has two ordinary, everyday meanings in legal usage—"chiefly" and "substantially". *See Board of Governors of the Federal Reserve System v. Agnew*, 329 U.S. 441, 446 (1947); 33A Words and Phrases 206 *et seq.* Hence, the NHTSA must determine which of these two meanings the Congress intended to be applicable in the definition of "automobile".

The NHTSA interprets the word "primarily" as used in the definition of automobile to mean "substantially" for the reasons set forth below. Thus, even if a vehicle is manufactured chiefly for off-highway use, if highway use is a substantial use of the vehicle, it is manufactured primarily for both highway and off-highway use, and is therefore an automobile subject to Title V.

Congress clearly intended that vehicles capable of off-highway operation be subject to fuel economy standards as nonpassenger automobiles; S. Rep. No. 516, 94th Cong., 1st Sess. 153 (1975). Thus, a manufacturer must show more than an off-highway capability in order to establish that a vehicle is beyond the scope of Title V.

The phrase "manufactured primarily for use on the public streets, roads, and highways" is also found in the definitions of "motor vehicle" in Section 102(1) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391(1)) and Section 2(15) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901(15)). "Automobile" under Title V, and "motor vehicle" under both the Vehicle Safety Act and the Cost Savings Act, do not completely overlap (for instance, "automobiles" are limited to four-wheeled vehicles, while "motor vehicles" are not so limited). However, with respect to a vehicle's identity as an on-road or an off-road vehicle, the terms "motor vehicle" and "automobile" seem to refer to the same vehicles. From the experience with regulating these vehicles under the Motor Vehicle Safety Act and the Cost Savings Act, it is clear that the vehicles referred to by AMC and Ford are on-road vehicles with a capability for off-highway operation.

After more than a decade of regulation under the Vehicle Safety Act, both Ford and AMC have acted consistently with the view that vehicles referred to here are "motor vehicles". Indeed, AMC admits that the vehicles are designed to meet the Federal safety standards applicable to motor vehicles. Moreover, the legislative history of the Cost Savings Act specifically con-

templates that Jeeps are subject to that Act. S. Rept. No. 92–413, 92d Cong., 1st Sess., at 20. Congress must be assumed to have been aware of this long, unchallenged regulatory practice which covered the vehicles at issue here when drafting the language found in Section 501 of Title V.

There is nothing in the legislative history of Title V which indicates that the intent of Congress was that the Title have a narrower scope than that given by the NHTSA's interpretation in the NPRM. In its comment to the NPRM, Ford quotes the following passage on p. 90 of the House report on Title V in support of its claim that vehicles with all the features suiting it for off-road use which Ford discussed were not manufactured primarily for on-road use:

> The effect of the definitional scheme of the bill is to exclude entirely vehicles not manufactured primarily for highway use (e.g., agricultural and construction equipment, *and vehicles manufactured primarily for off-road rather than highway use.* (Emphasis supplied by Ford.)

Although this language gives some examples of the kinds of vehicles which Congress intended not to be subject to fuel economy standards under the Title, e.g., agricultural equipment and construction equipment, those vehicles are not characterized by the features which are claimed by the manufacturers to establish that a vehicle was not manufactured primarily for highway use. Furthermore, the language which Ford underscored by no means referred necessarily to the vehicles which Ford seeks to have excluded from the Title. Other vehicles, such as racing cars, fork-lifts, and runway fire apparatus, are some vehicles which are not manufactured primarily for highway use. A fuller discussion of the relevant legislative history is set forth below in the section on passenger and nonpassenger automobiles.

Finally, the purpose of the Title dictates that its provisions, especially regarding the scope of its applicability, be given a liberal construction. Congress enacted Title V in response to the energy shortage. In light of the importance of energy conservation to the Nation's economic health and standard of living, NHTSA believes that Congress intended the Title to have broad application, and that any interpretation of the Title that would have the effect of excluding an entire class of vehicles from regulation under the Title must be firmly based in the language of the Title or its legislative history. Neither AMC nor Ford has shown a clear expression of Congressional intent that the vehicles with the characteristics they described, making them suitable for off-road operation, should be exempt from fuel economy standards established under the Title. Indeed, as has been demonstrated, the intent of Congress would have those vehicles subject to the Title.

Passenger automobiles and nonpassenger automobiles. This rule separates vehicles classed as automobiles into two subcategories—"passenger automobiles" and "nonpassenger automobiles". The definition of "passenger automobile" in this rule is taken directly from Section 501(2) of the Act. The "nonpassenger automobile" category is a residual subcategory, consisting of all automobiles which are not passenger automobiles. Chrysler and General Motors commented that the separation of automobiles into passenger automobiles and nonpassenger automobiles is proper under the Act, and that the NPRM placed all vehicle types in the proper category.

The types of automobiles to be included in these subcategories depend upon the interpretation given to "primarily" in the definition of "passenger automobile". An explanation of this agency's interpretation should serve to eliminate any remnants of the ambiguity which GSA perceived in the NPRM regarding the automobiles capable of off-highway operation. If "primarily" were interpreted to mean "substantially", as it is in the definition of "automobile" discussed supra, then almost every automobile would be a passenger automobile, since a substantial function of almost all automobiles is to transport at least two persons. The only nonpassenger automobiles under this interpretation would be those specifically excluded by the definition of passenger automobile; i.e., automobiles capable of off-highway operation and automobiles manufactured primarily for use in the transportation of more than 10 individuals. If, on the other hand, "primarily" is interpreted to mean "chiefly" or "predominantly", then all automobiles not manufactured chiefly for use in the transportation of

individuals would be nonpassenger automobiles, as well as the two types of automobiles excluded from the passenger automobile category by definition.

The NHTSA interprets the word "primarily" in the definition of "passenger automobile" to mean "chiefly". Based on the discussion below of that definition and its legislative history, Congress clearly intended that "passenger automobile" include only those vehicles traditionally regarded as passenger cars, i.e., vehicles whose major design features, including body style, reflect the purpose of carrying passengers. Examples of the design features which singly or in combination indicate that an automobile is not a passenger automobile are an open bed for carrying cargo, heavy duty suspension, and greater cargo-carrying than passenger-carrying volume.

As discussed in the above section entitled *Automobiles*, the use of "primarily" in the definition of "automobile" must be considered against a legislative backdrop of other statutes using the identical phrase, and the remedial purposes of the Act justifying a broad interpretation of those definitions which delineate the scope of its applicability. However, the use of "primarily" in the definition of "passenger automobile" brings other considerations into play. First, the remedial purposes of the Act do not require a broad interpretation of the definition "passenger automobile". Section 502(b) of the Act requires the NHTSA to set average fuel economy standards for nonpassenger automobiles at the maximum feasible level. Accordingly, the fuel efficiency of these vehicles will be improved regardless of whether they are classified as passenger or nonpassenger automobiles.

Second, interpreting "passenger automobile" as this rule does permits the NHTSA to make the passenger automobile and nonpassenger automobile categories under the Act parallel the vehicle classification scheme established under the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1381 *et seq.* ("passenger car", "multipurpose passenger vehicle", and "truck"), and very similar to the scheme established under the Clean Air Act, 42 U.S.C. 1857 *et seq.* ("light duty vehicle" and "light duty truck"). Similar classification of vehicles for all three regulatory purposes will serve to minimize the possibility of inconsistent regulatory requirements. Additionally, the manufacturers can quickly determine the class of their automobiles for fuel economy purposes by examining the classification of these vehicles under existing regulatory schemes.

Third, placing pickup trucks and vans in the passenger automobile category would be contrary to the intent of Congress, as discussed below.

In the House of Representatives, the automobile fuel economy provisions of H.R. 7014 were derived almost verbatim from the Sharp floor amendment to H.R. 6860. That amendment contained the following sections:

> Section 301(a)(3) The term "passenger automobile" means any automobile which has as its primary intended function the transportation of not more than ten individuals.
>
> Section 301(a)(4) The term "light-duty truck and multipurpose passenger vehicle" means any automobile which is not a passenger automobile.

By calling the category of automobiles other than passenger automobiles "light-duty trucks and multipurpose passenger vehicles", the bill did not draw on new, amorphous concepts, but, instead, chose terms with existing definitions under other Acts. Under the Clean Air Act, the EPA defined the term "light duty truck" at that time as "any motor vehicle rated at 6,000 pounds GVW or less, which is designed primarily for purposes of transportation of property or is a derivative of such a vehicle, or is available with special features enabling off-street or off-highway operation and use"; 40 CFR § 85.202(a)(5). Under the Vehicle Safety Act, the NHTSA at the time of the adoption of the Sharp amendment defined a "multipurpose passenger vehicle" as "a motor vehicle with motive power, except a trailer, designed to carry 10 persons or less which is constructed either on a truck chassis or with special features for occasional off-road operation"; 49 CFR § 571.3. In the Cost Savings Act, Congress itself defined "multipurpose passenger vehicle" in the same way as the NHTSA had in the above quoted regulation; 15 U.S.C. 1901(2).

Vehicles similar to AMC's Jeeps had been regarded by both the EPA and the NHTSA as automobiles with special features enabling off-highway use. The EPA had classified pickup trucks and cargo vans as light duty trucks, because EPA determined that these types of vehicles were designed primarily to transport property. Passenger vans and recreational vehicles, such as campers, had also been classed with light duty trucks, since these types of vehicles were derivatives of cargo vans and pickup trucks. The NHTSA made the same classification under the Vehicle Safety Act based on the fact that these vehicles were constructed on a truck chassis. Station wagons, on the other hand, have never been classified as light duty trucks by the EPA. The EPA determined that station wagons, which are built on passenger car chassis with passenger car-type springs and suspension systems, are designed primarily to transport people, with a subsidiary ability to transport property. The NHTSA reached the same result, since station wagons are built on a passenger car chassis. By using existing terms with existing applications, Congress gave a clear indication of the types of automobiles that were intended to be treated separately from passenger automobiles. If the word "primarily" in the definition of "passenger automobile" is interpreted to mean "chiefly", those types of automobiles would be treated separately from passenger automobiles. It seems clear that the House intended H.R. 6860 to be so interpreted.

The class "light duty trucks and multipurpose passenger vehicles" was deleted from H.R. 7014 when reported from Committee. However, the Committee Report states:

> "Part A to Title V of H.R. 7014 as reported is (with one exception) substantively identical to Part I of Title III of H.R. 6860 as passed by the House." H.R. Rep. 94–340 at 87.

The exception noted in the report referred to the procedure for modifying the average fuel economy standards for passenger automobiles, which does not affect this discussion. The above statement in the House Report indicates that the substitution of an untitled residual category of automobiles for the "light duty truck and multipurpose passenger vehicle" category was not intended to broaden the scope of the passenger automobile so as to include vehicles designed principally for use in the transportation of property, or derivatives thereof. Hence, the House intended the word "primarily" in the definition of "passenger automobile" in H.R. 7014 to mean "chiefly".

The bill originally passed by the Senate dealing with automobile fuel economy standards was S. 1883. That bill set up two categories of vehicles, automobiles and light duty trucks, to which average fuel economy standards were applicable.

The "automobile" category in S. 1883 was identical to the "passenger automobile" category in the Act. The other category of vehicles, "light duty trucks", was defined exactly as the EPA defined it. The Senate thus manifested its intent to treat vehicles which had been classed as light duty trucks by EPA, specifically, vans, pickup trucks, general purpose vehicles, campers, and other similar vehicles, separately from the vehicles classified as "automobiles" under this bill, such as sedans, coupes, and station wagons. The language of S. 1883 was incorporated verbatim into the Senate version of S. 622.

Thus, both houses of Congress had expressed an intent that vehicles classed by EPA as light duty trucks be subject to average fuel economy standards separate from the standards imposed on passenger cars. Both houses presumably understood which types of vehicles had been classed as light duty trucks by EPA. There was, therefore, nothing for the conference to resolve on this point, since the House and Senate bills were in agreement. The adoption of the House language no more suggests a change from the Senate bill than the language in the House bill suggested a change from the Sharp amendment.

The conference report accompanying S. 622, the bill which became the Act, explains the classification of automobiles thusly:

> "Automobiles are divided into two broad categories for purposes of prescribing fuel economy standards: passenger automobiles, and automobiles which are not passenger automobiles (e.g., certain light duty trucks, recreational vehicles, and other multipurpose

vehicles). Automobiles capable of off-highway operation . . . are specifically designated for inclusion in the latter category." S. Rep. No. 94–516, H.R. Rep. No. 94–700 (94th Cong., 1st Sess.) at 153.

This discussion gives no indication that the types of vehicles intended to be nonpassenger automobiles changed. Indeed, the types of vehicles intended by both houses of Congress to be nonpassenger automobiles are listed as examples of the kinds of vehicles which are not passenger automobiles under the Act. The NHTSA must interpret the word "primarily" in the definition of "passenger automobile" in the way that will effectuate the legislative intent. In light of the clear indications given by Congress about the types of vehicles intended to be nonpassenger automobiles, "primarily" must be interpreted to mean "chiefly".

Under this interpretation, there are four types of nonpassenger automobiles. The first, and most obvious, type of nonpassenger automobile is an automobile designed primarily to transport more than 10 persons. An example is a van with more than 10 seating positions. This type of automobile is excluded from the passenger automobile category by the Act.

The second type of automobile classed as a nonpassenger automobile by this rule is an automobile designed primarily, i.e., chiefly, for purposes of transportation of property. Section 523.5(a)(3) and (4) of the rule lists two different ways of determining when an automobile is designed primarily for use in the transportation of property. An automobile which can transport property on an open bed is not manufactured chiefly to transport individuals, since well over half of the available space on those automobiles consists of the cargo bed, which is exclusively cargo-carrying area. Further, this type of automobile is designed to carry heavy loads.

Automobiles classed as nonpassenger automobiles by this feature are pickup trucks and some passenger car derivatives with open cargo beds, such as the Chevrolet El Camino and the Ford Ranchero. El Caminos and Rancheros have been permanently altered so that they have much less passenger-carrying capacity and much more property-carrying capacity than the passenger cars from which they are derived. The similarity of these vehicles to pickup trucks built on a truck chassis is indicated by their classification in the EPA/FEA 1977 Gas Mileage Guide as "standard pickup trucks". These considerations appear to the NHTSA to indicate that these vehicles are manufactured chiefly for use in the transportation of property, so the classification of these vehicles proposed in the NPRM is adopted in this rule.

Ford commented that it agreed that its Ranchero should be classified as a nonpassenger automobile. However, Ford urged that the Ranchero should continue to be tested under the passenger automobile test procedures, rather than the nonpassenger automobile procedures. EPA, in consultation with the NHTSA, agrees with Ford that the additional testing would be unnecessary, and so the Ranchero will be tested as a passenger automobile. This determination will appear in a rule specifying nonpassenger automobile fuel economy test procedures to be published by EPA in August.

An automobile which provides greater cargo-carrying than passenger-carrying volume is also an automobile 'designed primarily for purposes of transportation of property. Since more of the space inside the vehicle has been dedicated to transporting cargo, and such vehicles are typically designed to carry heavy loads, this agency concludes that the chief consideration in designing the vehicle was the ability to transport property. Automobiles that are classed as nonpassenger automobiles on the basis of this feature include cargo vans and multistop vehicles.

The third type of nonpassenger automobile under this rule is a derivative of an automobile designed primarily for the transportation of property. Section 523.5(a)(2) and (5) addresses this type of nonpassenger automobile. An automobile in which the cargo-carrying area has been converted to provide temporary living quarters is typically a derivative of a cargo van or pickup truck. Automobiles that are classified as nonpassenger automobiles on the basis of this feature include campers.

The other common derivative of an automobile designed primarily for the transportation of property is the passenger van. In essence, it is a

cargo van in which readily removable seats have been installed in the cargo-carrying area. This derivative can be easily converted back into an automobile with greater cargo-carrying than passenger-carrying volume, i.e., a cargo van, by removing these seats with means installed by the manufacturer for that purpose or with simple tools, such as a screwdriver or a wrench.

Although station wagons built on passenger car chassis have a convertibility feature, fold-down rear seats, this characteristic is not sufficient to exclude them from the passenger automobile category. Like the passenger van with removable seats, the station wagon with its seats folded down is easily converted back into the basic interior arrangement. Indeed, the conversion is easier since no tools are required. However, it is not the convertibility factor alone which results in passenger vans being classified as nonpassenger automobiles. It is that factor together with the derivative nature of those vans. Neither passenger vans nor station wagons have been permanently altered from the parent vehicles, as the El Camino/Ranchero vehicles have. Therefore, since a passenger van is designed with the same chassis, springs, and suspension system as a cargo van, it is treated in the same way as a cargo van. A station wagon is designed with the same chassis, springs, and suspension system as a sedan, and so is placed in the same category as a sedan.

The fourth and final type of nonpassenger automobile under this rule is an automobile capable of off-highway operation.

Ford and International Harvester commented that the 5 ground clearance measurements proposed in the NPRM would adequately serve to distinguish automobiles capable of off-highway operation from other automobiles. The GSA commented that all of these measurements relate solely to vertical obstacle negotiation potential, and suggested that NHTSA consider other factors, such as slope-climbing potential, vegetation override potential, and swimming potential, which would also make an automobile capable of off-highway operation. The NHTSA considered incorporating some of these other factors in the NPRM, but discovered that every vehicle with a GVWR under 6,000 pounds which had one of these other features also had four of the five characteristics listed in the rule. Therefore, in the interest of avoiding unnecessary complexity, NHTSA has decided to list only the five characteristics given in the NPRM. If a need arises in the future to establish additional criteria, the NHTSA will initiate rulemaking.

Vehicles with a GVWR between 6,000 and 10,000 pounds. The Act classifies as an automobile any 4-wheeled vehicle propelled by fuel which is manufactured primarily for use on public streets, roads, and highways (except any vehicle operated exclusively on a rail or rails) which has a GVWR of not more than 6,000 pounds. Such a vehicle with a GVWR between 6,000 and 10,000 pounds may be classified as an automobile if the Administrator makes two findings. First, the Administrator must determine that average fuel economy standards are feasible for that type of vehicle. Second, the Administrator must also determine that either average fuel economy standards for this type of vehicle will result in significant energy conservation or that this type of vehicle is used for substantially the same purposes as a vehicle type with a GVWR of not more than 6,000 pounds.

The NPRM set forth the Administrator's proposed determination that average fuel economy standards are feasible for passenger cars with a GVWR between 6,000 and 10,000 pounds, and that these cars are used for substantially the same purposes as passenger cars with a GVWR of not more than 6,000 pounds. Chrysler, Ford, and General Motors commented that this determination was appropriate.

International Harvester expressed no view on the merits of the determination, but suggested that the determination should be made in a separate notice. Since a proposed determination has been published and comments received thereon, it would be unnecessarily burdensome and seemingly purposeless to request commenters to address the same proposal again. Moreover, delaying publication of a determination which can be made final now would serve no useful purpose.

The Automobile Club of Southern California urged that station wagons with a GVWR of greater than 6,000 pounds be classified as nonpassenger automobiles. The basis for this suggested disparate treatment is that station wagons can carry more passengers or more cargo than other passenger cars. It was noted that when the large wagon is carrying nine passengers, the passenger miles per gallon can be the same as that of an automobile with a higher fuel economy carrying fewer passengers. When carrying cargo, the wagon is, according to the Automobile Club, serving the same purposes as other nonpassenger automobiles. Notwithstanding these observations, they would also be applicable to station wagons with a GVWR of not more than 6,000 pounds. Therefore, this agency does not perceive sufficient basis in the Automobile Club's comments for changing its treatment of station wagons with a GVWR greater than 6,000 pounds.

In light of the foregoing, Title 49, Code of Federal Regulations, is amended by adding a new Part 523, Vehicle Classification, to read as set forth below.

The program official and attorney principally responsible for the development of this rule are Douglas Pritchard and Stephen Kratzke, respectively.

Issued in Washington, D.C., on July 21, 1977.

Joan Claybrook
Administrator, National Highway
Traffic Safety Administration

42 F.R. 38362
July 28, 1977

PREAMBLE TO PART 523—VEHICLE CLASSIFICATION

(Docket No. FE–77–05; Notice 4)

This notice establishes average fuel economy standards for light trucks (pickup trucks and vans, generally) manufactured in model years 1980 and 1981. This notice also extends the applicability of light truck fuel economy standards and labeling requirements to vehicles with gross vehicle weight ratings (GVWR) from 6,001 to 8,500 pounds beginning in model year 1980. The issuance of these standards is required by section 502(b) of the Motor Vehicle Information and Cost Savings Act, as amended ("the Act"). The standards are intended to result in the savings of approximately 8 billion more gallons of gasoline over the life of the light trucks manufactured in these 2 years than would be saved if the standards were set at the estimated model year 1979 fuel economy levels for these vehicles. *Date:* These standards will apply in model years 1980 and 1981.

For further information contact:

Mr. George L. Parker, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 202–472–6902.

Supplementary information:

I. Background Information

Title V of the Act provides for the establishment of average fuel economy standards for various types of automobiles. Under section 501(1) of the Act, the term "automobile" is defined to include "any 4-wheel vehicle propelled by fuel which is manufactured primarily for use on public streets, roads, and highways. . . ." and which either has a gross vehicle weight rating of 6000 pounds or less or which is rated between 6000 and 10,000 pounds and meets certain additional requirements (described below), as determined by the Secretary of Transportation. Automobiles manufactured primarily for use in the transportation of not more than 10 individuals are defined as "passenger automobiles" under section 501(2), and are subject to fuel economy standards established in or pursuant to section 502(a). The residual category comprised of all automobiles other than passenger automobiles is subject to fuel economy standards established pursuant to section 502(b) of the Act. They include most pickup trucks, vans, and light utility vehicles. Automobiles in this rapidly growing residual category were previously called "non-passenger automobiles" in rulemaking to establish fuel economy standards, but will henceforth be called "light trucks," to more closely reflect the common terminology used to describe the affected vehicles. This change is strictly one of name; it has no substantive significance.

Section 502(b) of the Act provides that fuel economy standards for light trucks must be established by the Secretary of Transportation beginning with the 1979 model year and for each model year thereafter. Authority to conduct the automotive fuel economy program was delegated by the Secretary of Transportation to the Administrator of the National Highway Traffic Safety Administration (NHTSA) in 41 F.R. 25015, June 22, 1976. The standards are *average* fuel economy standards. As long as the average fuel economy of the entire fleet of automobiles subject to a standard meet or exceed the standard, the fuel economy of some individual vehicles may be below the standard. Standards are required to be set at the "maximum feasible average fuel economy level" for each year, considering technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the Nation to conserve energy. See section 501(e). On March 14, 1977, standards for light trucks manufactured

in model year 1979 were published in 42 F.R. 13807. This notice establishes standards for light trucks manufactured in model years 1980 and 1981.

The starting point for this rulemaking proceeding was the information gathered during the rulemaking for model year 1979 conducted between March 1976 and March 1977. In March 1977, the agency issued a 29-page questionnaire (DN–001) to the major light truck manufacturers to obtain information relating to the light trucks currently produced by those companies and their capabilities to improve the average fuel economy of their light truck fleet for 1980 and 1981. During June 1977, the agency met with each of the domestic respondents to discuss their responses to the questionnaire. Because the responses to the questionnaire did not adequately discuss all of the manufacturer's capabilities for improving fuel economy, the agency sent special orders in August 1977 to the light truck manufactures to obtain additional information regarding those capabilities. These were followed in September with special orders to component manufactures and material suppliers to obtain their views and data regarding various technological methods for improving fuel economy.

On December 15, 1977, in 42 F.R. 63184, a notice of proposed rulemaking (NPRM) was published. It was based on the extensive material submitted in response to the information-gathering initiatives discussed in the preceding paragraph and on other information available to the agency. In addition to proposing standards for the 1980 and 1981 model years, the notice also proopsed extending the applicability of the light truck fuel economy standards for the first time to certain vehicles with GVWRs between 6,001 and 8,500 pounds.

It should be noted that a truck's GVWR is the weight of the vehicle when loaded to maximum rated capacity. The curb weight of a light truck is typically much less than its GVWR. For example, a pickup truck with a GVWR of 5,600 pounds can weigh about 3,600 pounds, almost 1,200 pounds *less* than a full-size sedan. DN–067, App. V, Ex. D (Ford). A large van with a GVWR of 9,500 pounds (which would not be subject to these standards) can weigh slightly less than that same 4,800 pound full-size sedan. Id.

In addition, the NPRM generally discussed the problems of captive imports, i.e., those produced outside the United States and Canada and imported by a domestic company for sale here, and set forth in detail two out of a wide range of possible alternative schedules for imposing a requirement that a company's "captive import" light trucks not be counted together with that company's domestic light trucks in the calculation of its average fuel economy for standards compliance purposes. The notice also proposed requiring fuel economy labeling of light trucks with GVWR's between 6,001 and 8,500 pounds beginning with the 1979 model year. Currently, consumers are not consistently provided with any reliable information regarding the fuel economy of these vehicles.

The NPRM also announced a public hearing to be held in Washington, D.C., on January 16 and 17, 1978, and invited applications for financail assistance from individuals or organizations which desired to participate in the rulemaking but which were financially unable to do so. Four applications by public interest groups for assistance were granted.

Concurrent with the issuance of the NPRM, the agency released three documents which discussed the basis for and impacts of the proposed standards. The first document, titled "Rulemaking Support Paper for the 1980 and 1981 Model Year Nonpassenger Automobile Fuel Economy Standards" (hereafter called the PSP), described the technical and economic basis for the proposed standards. The second document, titled "Preliminary Impact Assessment of the Nonpassenger Automobile Fuel Economy Standards for Model Years 1980 and 1981" (hereafter called the PIA), further discussed the economic impacts of the proposed standards on the manufacturers and on customers and certain alternatives to the proposal. The third document was a draft environmental impact statement.

The January 16–17 public hearing was not one required by statute, but was held to provide interested parties an additional opportunity to present their views on the proposal. The NHTSA Administrator and Deputy Administrator pre-

sided over the hearing. Thirty-one organizations or officials, including all the major domestic light truck manufacturers, several parts and materials suppliers, four Congressmen, labor union representatives, and several community organizations and public interest groups testified at the hearing. Representatives of the Environmental Protection Agency (EPA) and the Department of Energy (DOE) participated on the panel of officials which queried the witnesses.

A similarly wide range of individuals and organizations, including most of the hearing participants, provided written comments on the proposal. The NPRM established a deadline of January 30, 1978, for the submission of written comments on the proposal. A limited extension of this deadline was granted in 43 F.R. 3600 (January 26, 1978) for submission of supplemental material. However, in keeping with the agency's policy of considering later submissions to the extent practicable (DN–38, –41, –43) additional material provided by participants up to the time of final drafting of this notice was also considered.

Material contained in the RSP and the PIA, together with written submissions from interested persons, hearing statements, special order responses, and other relevant material were all considered in developing the standards promulgated in this notice. More detailed information on the technical and economic bases for these standards are contained in the Supplement to the Rulemaking Support Paper (hereafter called RSPS) and Final Impact Assessment (FIA). Copies of these documents will be available soon from the Office of Automotive Fuel Economy Standards, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590.

II. Principal Changes Made in the Final Rule

As a result of new information generated by the vehicle manufacturers and others and submitted in response to the NPRM, substantial changes to the proposed regulations have been made. The most common comment was that the proposed standards were too stringent and would result in reduced production and employment. These comments were generally based upon information from the light truck manufacturers that was not available to the agency until after the issuance of its proposal. The standards have been established at levels significantly above the projected model year 1979 levels, but substantially below the proposed levels. Also, the agency has established a separate class for "captive import" light trucks beginning with the 1980 model year to prevent the standards from encouraging the increased importation of these vehicles and exportation of domestic jobs. A separate class with a lower fuel economy standard is also established for light trucks manufactured by companies which do not produce passenger automobiles and thus have limited access to passenger automobile engine and emission control technology. This latter class was adopted to take into account the difficulties of International Harvester Corporation in meeting fuel economy standards. Finally, the proposed requirement that light trucks with GVWRs of 6,001–8,500 pounds have fuel economy labels beginning with the 1979 model year was delayed at the request of EPA until the 1980 model year.

III. Comments on the NPRM and NHTSA's Assessment

a. Informal rulemaking process

The response of many commenters to the NPRM suggest it would be useful to recite several aspects of the theory of informal rulemaking, i.e., the process by which the fuel economy standards are developed. Informal rulemaking is essentially like the legislative process in which there is extensive, continuous gathering of information and adjustment of proposals. Many commenters appeared to regard the NPRM more as the culmination of the agency fact gathering process than as a further step in that process. The agency attempted to make the tentative nature of the proposal and the need for additional information as plain as possible. The agency itemized a variety of issues on which further comment and data were desired. It was expressly noted that such additional information could substantially affect the level of the final standards. (42 F.R. 63195.)

b. SCOPE AND APPLICABILITY OF THE STANDARD

Some commenters suggested that there was no forewarning that light trucks above 6000 pounds GVWR might be regulated in model years 1980–81. Neither the statute nor events support this contention. Given the well-known urgent need to conserve energy and the equally well-known bases for finding under section 501(1) of the Act that fuel economy standards should be extended for these vehicles, such extension should have been anticipated since the passage of the Act for these reasons alone. There were, moreover, far more direct reasons for anticipating the extension. The notice of proposed rulemaking (41 F.R. 52087, at 52088; November 26, 1976) for 1979 light truck fuel economy standards stated that the agency was considering regulating these higher rated light trucks beginning in model year 1980. The agency's March 1977 questionnaire made this intention clearer still by requesting information for these vehicles. Any remaining doubt was removed by the agency deputy administrator's prepared statement for a July 1977 Congressional hearing on fuel economy legislation. He announced that the agency would issue standards covering 1980–81 light trucks with GVWRs up to 8,500 pounds.

International Harvester Corporation (IH) argued that NHTSA lacks the authority to establish fuel economy standards for light trucks in the 6,001–8,500 pound GVWR range. DN–097, p. 2. This extension of the "automobile" category was proposed primarily because of the potential energy savings. The GVWR ratings of many light trucks have been raised over the past six years, resulting in the number of light trucks in the 6,001–8,500 pound range increasing from approximately a one-third share of total 0–8,500 pound GVWR sales to approximately a two-thirds share in 1977 and continuing into 1978. This trend was due in part to the fact that more stringent emission standards have been applied to vehicles with GVWRs up to 6,000 pounds, with the attendant need for catalytic converters and unleaded gas, DN–055, p. II–11. Ford Motor Company (Ford) endorses the extension of fuel economy standards up to the 8,500 pound GVWR level (DN–067, p. 15), and General Motors Corporation (GM) found the 8,500 pound GVWR level to be an appropriate limit for fuel economy standards and "a reasonable cut off between the commercial and mixed personal/commercial use vehicles." DN–096, p. 7.

International Harvester disputed NHTSA's tentative conclusions that significant energy savings are achievement for the 6,001–8,500 pound GVWR light trucks, and that those light trucks are used substantially for the same purposes as the 0–6,000 pound GVWR fleet. Under the statute, the extension of the "automobile" category could be based on either of these findings. NHTSA reaffirms both of those findings. As noted in the preceding paragraph, there are currently almost twice as many light trucks being sold in the 6,001–8,500 pound GVWR range as in the 0–6,000 pound GVWR range. The agency's technical assessment (as set forth in the supplement to the agency's Rulemaking Support Paper) demonstrated that the over-6,000 pound GVWR trucks had as much fuel economy improvement potential as did the 0–6,000 pound GVWR light trucks on a per-vehicle basis. Congress found the fuel saving potential associated with the 0–6,000 pound GVWR light trucks so significant that it *required* that those vehicles be subject to fuel economy standards. Since the fuel saving potential of the latter vehicles is "significant," then the fuel saving potential for the 6,001–8,500 pound GVWR vehicles is significant too, a fortiori.

The matter is clearer still when it is considered that, as the NPRM noted, a 10 percent improvement in the fuel economy of the 6,001–8,500 pound GVWR light trucks would save about 1.4 billion gallons of gasoline per year over the lifetime of one model year's production, a savings closely approximating that resulting from the 1979 standard for 0–6,000 pound GVWR light trucks.

With respect to the question of the usage of all these light trucks, it is instructive to note the personal and recreational uses for which the trucks are frequently advertised. The Center for Auto Safety reviewed various periodicals going back to 1960 and concluded that the emphasis in light truck advertising has shifted from commercial capabilities to the sale of trucks as passenger car substitutes. DN–095, p. 12. This advertising trend is consistent with information submitted by the manufacturers which indicates

a mixture of commercial and personal usage for light trucks up to 8,500 pounds GVWR. DN–096, App. A, Figure A.1 (GM); DN–067, App. V. p. 5 (Ford); DN–120, App. M (Chrysler). See also DN–156 (Recreation Vehicle Industry Association).

The Public Interest Campaign argued that limiting the extension of the light truck category to 8500 pound GVWR may not end the problem created when manufacturers increase the GVWR of their vehicles to avoid the applicability of standards. DN–160, p. 22. This problem is inherent whenever a regulatory line is drawn. It is likely that some light trucks which currently have GVWR's just below 8,500 pounds will in the future be rated by their manufacturers just above that point. However, the agency does not expect any circumvention of this type to be as prevalent as the shift in GVWR across the previous 6,000 pound dividing line. This expectation is based on the fact that relatively few light trucks are currently sold in the 8,000–8,500 pound GVWR range, compared to the number rated just below 6,000 pounds prior to the imposition of emission standards up to that level. Further, vehicles rated much above 7,000 pounds are equipped with heavy duty suspensions and other components which make them unattractive for personal uses Thus, greater owner sacrifices would be required to shift over the 8,500 pound GVWR line than was the case for a shift over the 6,000 pound GVWR line. However, if the agency's projection in this regard proves to be incorrect, the light truck category could be further expanded to avoid circumvention of the fuel economy standards.

American Motors Corporation (AM) requested that light trucks sold to the Government for military use be exempted from the fuel economy standard. AM argues that such vehicles are not designed for use primarily on roadways, and are therefore not "automobiles" as that term is defined in section 501(1) of the Act. The Act contains no specific provision for exemption of military vehicles. The vehicles in question, the M–151 Jeep, are subject to emission standards under the Clean Air Act, despite the existence of such an exemption provision in that statute, 42 U.S.C. 1857f–2(b)(1). The existence of this emission data provides a potential source of fuel economy data to determine compliance with fuel economy standards. The sales of these vehicles have historically not constituted a large enough portion of AM's light truck sales to substantially affect that company's fuel economy average. All information currently available to the agency indicates that the use of these vehicles differs in no significant respect from the use of nonmilitary Jeeps, which have previously been determined to be subject to fuel economy standards. 42 F.R. 38364, July 28, 1974. Therefore, based on this information, the military Jeeps are subject to fuel economy standards. In any event, the agency would be very cautious in projecting changes to those vehicles which might impair their functional attributes. The agency would consider any further submissions by AM or any other interested party relating to the extent to which the uses of these military Jeeps differ from the uses for which publicly marketed Jeeps are manufactured.

Two possible changes in the proposed classification scheme for light trucks were suggested in the comments. Ford argued that manufacturers be given the option of complying with a combined standard applying to all light trucks or with the proposed separate 2-wheel drive and 4-wheel drive standards. The combined standard would be set at a level between the 2-wheel drive and 4-wheel drive standards, with the exact level depending on the relative sales levels of those two classes of light trucks for a particular manufacturer. DN–067, p. 13. Chrysler and Toyota supported this option. DN–120, p. 7; DN–088, p. 7. International Harvester argued for a separate classification and standard for 4-wheel drive light trucks with GVWRs between 6,001 and 8,500 pounds, and 2-wheel drive light trucks which are derived from those vehicles. All of IH's light trucks would fall in that class. The Public Interest Economics Foundation made a similar proposal. DN–173, p. 5.

With respect to the Ford proposal, the three largest domestic light truck manufacturers and Toyota have all argued at some point in this proceeding for a single standard applicable to all light trucks. DN–001–02, p. 4 (Ford); DN–001–05, p. 9 (Chrysler); DN–096, p. 4 (GM); DN–088, p. 7 (Toyota). The main advantage of a single, all-inclusive standard is that it pro-

vides the greatest flexibility for a manufacturer with a broad product line to select among possible methods for achieving a given level of fuel economy improvement. For example, where separate classes exist, a manufacturer is required to make certain improvements to vehicles in each class in order to comply with the separate standards. On the other hand, if a single, all inclusive standard were established, a manufacturer would have the option of concentrating its available resources on making major improvements (such as a total vehicle redesign) to certain classes of vehicles. See 42 F.R. 63186.

However, the smaller manufacturers with more limited product lines may be disadvantaged under a single-standard approach, since the larger manufacturers may be able to avoid making changes to their vehicles in the same classes as the smaller manufacturers' vehicles, through the judicious use of the previously described flexibility. The smaller manufacturers would have to undertake product changes to their vehicles. This would increase the price of the small manufacturers' vehicles compared to the price of the similar vehicles of the large manufacturer. DN–098, p. 2 (AM). For example, AM and IH both manufacture primarily 4-wheel drive vehicles. Under a single-standard approach, the larger manufacturers could focus their fuel economy improvement efforts on their 2-wheel drive vehicles, an option unavailable to AM or IH. AM and IH would have to change their 4-wheel drive vehicles, possibly placing those vehicles at a competitive disadvantage vis-a-vis the 4-wheel drive vehicles of the larger manufacturers.

Although recognizing that the Ford proposal has some merit, the agency is extremely concerned that the classification of automobiles for fuel economy standards purposes not have a major anti-competitive effect. AM and IH rely extensively on the sale of 4-wheel drive vehicles to generate profits, to a much greater extent than do the larger companies. The agency observes that an optional combined standard could permit the companies with full product lines to obtain price and possibly performance advantages over AM and IH for comparable 4-wheel drive vehicles, through the mechanism described in the preceding paragraph. These competitive factors did not present as serious a problem in the agency's 1979 light truck rulemaking, where standards were set at levels more in line with manufacturer's planned fuel economy levels. Therefore, in consideration of these advantages and the effect of the small manufacturers on level of the combined standard, the agency is not adopting the Ford proposal.

Nor can the agency accept IH's proposal, which might tend to exacerbate the trend toward higher GVWRs that has occurred over the past five years and which was due at least in part to different Federal standards above and below the 6,000 pound GVWR dividing line. However, the agency recognizes that IH has unique problems given its limited sales volume, restricted product line, and the fact that its engines are derivatives of medium duty truck (above 10,000 pounds GVWR) engines. Further, IH has not had experience with state-of-the-art emission control technology, which the other manufacturers have obtained in the passenger automobile market.

Therefore, NHTSA is establishing a separate class and fuel economy standard pursuant to section 502(b) of the Act for all light trucks manufactured by a manufacturer whose light truck fleet is powered by basic engines which are not used in passenger automobiles. This separate class is established for only two model years' duration. The agency concludes that IH should be able to achieve levels of fuel efficiency in line with the other manufacturers by the 1982 model year either through purchasing engines from outside sources or by making improvements to current engines. This resolution of the separate classification question satisfies the concerns expressed by IH in recommending a separate standard for 4-wheel drive vehicles with GVWRs over 6,000 pounds, without perpetuating the incenttive for increasing light truck GVWRs above the 6,000 pound level or maintaining GVWRs at those levels.

An issue on which the agency requested comment in the NPRM (42 F.R. 63187) is whether a manufacturer's "captive import" light trucks should be permitted to be counted together with its domestic light trucks in the calculation of that manufacturer's fuel economy average for compliance purposes, or whether those trucks should be treated separately as are captive im-

port passenger automobiles under passenger automobile fuel economy standards. The former approach would encourage importation of foreign produced, captive import light trucks and the exportation of domestic jobs. The latter approach would prevent the standards from encouraging domestic manufacturers from taking these steps. The agency discussed in detail two of the many possible resolutions of the issue in the NPRM. One suggestion was to provide for separate treatment of captive imports beginning with the 1980 model year. The other suggestion permitted manufacturers to include captive imports for 1980 and 1981 (with separate treatment beginning with the 1982 model year) in their calculation of domestic fuel economy averages, but to limit the number of includable captive imports to 6 percent of the total number of light trucks manufactured in each class for each model year.

The first suggestion was supported by the United Auto Workers (DN–093); General Motors (DN–096, p. 15, Section III); and the Center for Auto Safety (DN–056, p. 115). The UAW (DN–056, p. 587) and the Center for Auto Safety base their suggestions on the belief that separate treatment of captive imports would encourage the earliest possible domestic production of these smaller, more fuel efficient trucks. On the other hand, Chrysler, Ford, and Toyo Kogyo argue that the Act provides no legal authority for requiring separate treatment of captive imports, and that such a requirement would promote neither domestic employment nor maximum fuel conservation (DN–120, p. 14 (Chrysler); DN–149, App. VIII, Tab. B (Ford); DN–103, p. 2 (Toyo Kogyo).) Alternatively, Chrysler argues that a requirement for separate treatment of captive imports should be delayed until such time as sales levels justify and lead-time permits their domestic production. DN–056, p. 373.

NHTSA believes that a requirement for the separate treatment of captive import light trucks would produce desirable results from the point of view of promoting energy conservation, preserving competition within the automobile industry, and promoting domestic employment. The agency also disagrees with the arguments that it lacks adequate authority to impose such a requirement. After reviewing the comments of the various participants in the rulemaking proceeding, NHTSA finds no substantial reason to delay any longer the effective date for a requirement of separate compliance of captive import light trucks. Therefore, the regulations promulgated herein establish such a requirement beginning with the 1980 model year.

The importation of captive import trucks posed a threat to domestic employment similar to that posed by the importation of captive import passenger automobiles. The agency's authority to require that captive import light trucks comply separately with fuel economy standards is the authority to establish "separate standards for different classes" of light trucks in section 502(b) of the Act. Ford and Chrysler argue that this classification authority is restricted to classes based on attributes of a vehicle, such as size or intended use. However, these arguments overlook the broad meaning of "class" as defined in various dictionaries. Further, nothing in section 502(b) establishes the sort of limitation argued for by Ford and Chrysler. In fact, the Act's legislative history shows that a broad reading of the term is intended. The Conference Report (S. Rep. 94–516, 94th Cong., 1st Sess., at p. 155) states, in discussing the classification authority, that separate classes "could be based on functional classifications *or other factors*." (Emphasis added).

Ford and Chrysler also argued that the definitions of "manufacture" and "manufacturer" in section 501 of the Act include both domestically produced and imported automobiles, and therefore conclude that a fuel economy standard must apply to both categories or classes of vehicles. In fact, these definitions establish only that both of these classes of automobiles are to be regulated. They do not establish how the vehicles are to be classified for that purpose. They could be placed in the same or separate classes.

Ford also claimed that language on page 91 of the House Report, which contemplates the establishment of "similar" procedures for treating captive import light trucks as those specified for captive import passenger automobiles under section 503(b)(1) of the Act, requires that some transition period be established between model years when captive imports are fully includable

and fully excluded from domestic fuel economy average calculations. However, a "similar" requirement need not be *identical* in every respect. The separate classification was not immediately applied, but delayed one year to 1980. The manufacturers have been on notice for a substantial period of time that a requirement of this general nature was being seriously considered by the agency, permitting them to make their plans accordingly. 42 F.R. 13810–11; March 14, 1977.

Ford also pointed out that if a separate class were established for captive import light trucks, that class would be required to have a standard set at the maximum feasible level for that class. Ford argued that the agency had failed to set the standard for the captive import class at that level in the NPRM. However, NHTSA concludes that the maximum feasible average fuel economy level for the captive import class is the same as for the residual class of all other light trucks. That reference point is the same one suggested in the NPRM for captive import light trucks. Captive import light trucks currently have higher fuel economy in general than domestically manufactured light trucks, due to the fact that the captive imports are typically more compact in size. However, if the captive imports were subject to a more stringent fuel economy standard than all other light trucks, virtually identical vehicles (such as the Ford Courier, a captive import, and the Mazda pickup truck, which is imported by Toyo Kogyo of Japan) would be subject to different fuel economy standards. In that case, the captive import vehicle might be required to make fuel economy improvements (at some cost) which a similar vehicle imported by a foreign company might not have to make. Thus, the captive imports would be placed at a competitive disadvantage, due to the extra cost resulting from efforts to comply with fuel economy standards. In that case, where similar vehicles sell for different prices, it would be expected that the sales of the captive import vehicles would suffer, resulting in less energy conservation than would otherwise be the case. Therefore, the agency concludes that imposing a more stringent standard for captive import light trucks than is applicable to all other light trucks would be inconsistent with the "economic practicability" consideration in section 502(e) of the Act.

Finally, Ford argues that a separate standard for captive imports does not promote the general purposes of the Act. The primary purpose of the Act is energy conservation. However, section 503(b), the "runway plant" provision, unambiguously establishes that Congress regarded domestic employment as a paramount consideration with respect to captive imports. The agency concludes that the separate standard for captive imports will promote energy savings since it will encourage greater efforts to improve the fuel economy of domestically produced light trucks and in the longer run will encourage use of an additional method (domestic production of small light trucks) for complying with fuel economy standards at the option of the manufacturer. Vigorous efforts to sell these domestic compact trucks would produce a market shift and concomitant energy savings. As measured by relative degree of marketing effort, the attitude of the major domestic producers toward smaller trucks has not been markedly positive. It is likely that it will take every available method or incentive to change this view and thus promote both energy savings and domestic employment. See DN–056, p. 346 (Chrysler) and p. 355–6 (remarks by NHTSA Administrator Claybrook). With a provision for the separate compliance of captive import light trucks, NHTSA will be able to base its fuel economy standards in future model years on the projected domestic production of these smaller trucks, providing a further incentive for switching from foreign to domestic production. As noted above, a second purpose of the statute is the promotion of domestic employment. Congressional Record H 5383, 5386 (daily ed., June 12, 1975). To the extent the captive import requirement provides an additional incentive to shift to domestic production of vehicles which are currently produced abroad and imported, domestic employment will benefit. Therefore, the agency concludes that this requirement promotes the general purposes of the statute.

It is important to note that the separate class for captive import light trucks does not prohibit the importation of such vehicles. It simply keeps the fuel economy program from inducing manu-

facturers to increase their importation of those vehicles instead of producing those small vehicles domestically or making improvements to their larger domestic vehicles. Assuring that those improvements are made was one of the express purposes of the sponsor of the "runway plant" amendment, Congressional Record H 5386 (daily ed., June 12, 1975). In view of the domestic manufacturers' investment in captive import light trucks, the profitability of those vehicles and competition from foreign manufacturers of similar vehicles, the agency anticipates that the domestic companies will continue to market their captive imports. If the foreign manufacturers improve the fuel economy of their compact light trucks, the domestic manufacturers will presumably make similar improvements to remain competitive.

b. FUEL ECONOMY PROJECTION METHODOLOGY

One of the problems which confronted the agency in developing the proposed standards was the absence of fuel economy test data for the light trucks in the 6,001–8,500 pound GVWR range. These trucks will be tested for emissions in a manner which yields fuel economy data for the first time beginning with the 1979 model year. Initial test data for these vehciles are just now becoming available. Therefore, the agency utilized a regression equation which relates vehicle characteristics such as engine displacement, test weight, and drivetrain ratios to measured fuel economy for passenger automobiles and light trucks. The regression equation was used to extrapolate and interpolate from actual test data to develop baseline fuel economy projections for vehicles which have not yet been tested, adjusting for differences in relevant vehicle characteristics. DN–055; DN–152. Many of the manufacturers objected to the use of this equation, but none offered a method before the issuance of the NPRM which the agency could demonstrate to be superior to the one it had developed.

Since the issuance of the NPRM, some of the manufacturers have begun testing prototype 1979 model year vehicles in the 6,001–8,500 pound GVWR class and have submitted their test results to NHTSA. This data would clearly be the best evidence of the actual fuel economy ratings these vehicles will achieve in 1979, assuming that this early testing of development vehicles accurately reflects the fuel economy ratings those vehicles will achieve in final testing for that year. However, this may well not be the case, given that major improvements in fuel economy typically occur between early development testing and final emission certification and fuel economy testing. DN–259 (GM). The use of the regression equation would take this phenomenon into account, in that extrapolations and interpolation are made from final test data, not from early development vehicles. For this reason, GM, which concluded that the agency was "not too far off" in its baseline assessment, recommended that the agency wait until the 1979 certification data become available, and then modify the projected baseline where necessary. DN–056, p. 77. Ford, on the other hand, claims that development data for its 1978 vehicles closely approximated final certification values. DN–067, App. IV, Ex. A, p. 2. Ford's conclusion, however, relates to a model year in which emission standards were carried over from several prior years, by which time calibrations would be expected to more closely approach full optimiztion. This is not the case for the 1979 model year, when new emission standards and several test procedure amendments will apply for the first time to these light trucks. Therefore, Ford's 1978 experience is not a valid indicator for 1979.

Despite Ford's protests that the agency's methodology is inaccurate in projecting its fuel economy for 1980–81 and that its test data should be used instead to develop a baseline, NHTSA cannot conclude that Ford's procedure is superior. In fact, the agency has taken Ford's pre-1979 data and attempted to reconcile it with NHTSA's projections for Ford, and has concluded that the results yielded by the two procedures can be fully reconciled (in terms of projecting the same level of average fuel economy for the light truck fleet). See RSP-S.

Only in the cases of GM and IH has the agency been unable to reconcile completely the baseline information submitted by the manufacturers with NHTSA's projection. In these two cases, NHTSA has based its fuel economy projections on those manufacturers' supplied baselines. In the case of IH, the discrepancy is likely due to

the difference in engine efficiency between that company's engines and those of the other manufacturers (see section III.c.3 of this notice). In all other cases, the agency has used its originally projected baseline as set forth in the NPRM, with minor adjustments discussed in the RSPS-S.

C. METHODS FOR IMPROVING FUEL ECONOMY

The proposed standards were based on the use of technology which is either currently being used on some vehicles or which is under development with commercial use planned by at least some manufacturers in the 1980–81 time frame. The technological changes are, in general, minor, evolutionary changes which individually produce small benefits, but which when taken together can add up to a substantial fuel economy improvement. Although the manufacturers generally agreed with NHTSA as to which methods for improving fuel economy are feasible for the 1980–81 model years (cf. DN–067, p. 4 (Ford)), there was not general agreement as to the magnitude of the fuel economy benefit achieveable through the use of each item or the extent to which the items could be used given the leadtime remaining until the 1980 and 1981 model years. The manufacturers' specific objections and NHTSA's response are set forth in the sections immediately following.

1. *Weight reduction.* The agency projected weight reductions ranging from approximately 69 pounds to over 600 pounds for portions of the individual manufacturer's fleets, averaging nearly 400 pounds per vehicle by 1981, compared to a 1977 base. 42 F.R. 63189. Between 200 and 300 pounds of this weight reduction was due to the use of aluminum, plastics, and high strength steel in certain specified light trucks, as substitutes for current materials. The remainder of the weight reduction was due to the introduction of new, more efficiently designed truck models which were either planned or being considered by certain manufacturers. Under current fuel economy test procedures, the benefit of this weight reduction would be realized only to the extent the reduction is great enough to place a particular vehicle in a lower "inertia weight class." Beginning with the 1980 model year, the width of these inertia weight class bands will generally be halved, thereby providing a greater incentive for manufacturers to reduce the weight of their vehicles. However, the new "test weight" class changes may result in some vehicles being tested at higher simulated weights than under the old procedure, and other vehicles being tested at lower weights. DN–096, p. 11 (GM). It appears that the manufacturers have carefully targeted the weights of their current vehicles to take maximum advantage of the current inertia weight classes, so that the test procedure change will result in a trend toward lower measured fuel economy. This anomaly was taken into account in the methodology used to develop the proposed standards.

The agency projected the introduction of new, redesigned light trucks only where the manufacturers indicated, in response to a special order (DN–010) issued under section 505(b)(1) of the Act, that a new model was either planned by the manufacturer or at a development stage where introduction was judged feasible by NHTSA in the 1980–81 period. This conservative approach to new model introduction was taken by the agency despite the fact that additional new models would be expected for much of the domestic light truck fleet in the 1980–81 time frame if historical vehicle redesign cycles were followed (DN–001–02, Att. 1, p. 1 (Ford)), and despite the fact that the manufacturers have been on notice since December 1975 that they would be required to make maximum feasible improvements in their light trucks beginning with the 1979 model year, at least for their trucks in the 0–6,000 pound GVWR range. See section 502(b) of the Act. However, none of the manufacturers apparently plan to offer a new truck model in the 1980–81 time which is designed to achieve maximum feasible weight reduction.

Some of the manufacturers have projected feasible weight reductions of a magnitude very close to those projected by NHTSA. See, e.g., DN–097–A, p. 6 (IH); D–010–02, p. 8 (AM). Many of the manufacturers' projections of weight reduction potential for 1980 and 1981 have increased significantly during the course of the rulemaking, indicating that leadtime may still not limit this potential to currently planned weight levels as claimed by the manufacturers. DN–001–06, p. 7 (IH); DN–120, App. D, p. 2 (Chrysler); DN–001–01, p. 26 (GM 50 to 100 pounds for

1980) and DN–096, p. 11 (160 pounds). Ford's weight reduction projections have also varied considerably, and have become increasingly pessimistic. For example, Ford's projected average inertia weight for 1979 model year 2-wheel drive light trucks increased 123 pounds in five months, and the similar 1980 figure increased by nearly 300 pounds, between Ford's responses to NHTSA's August 10 special order (DN–010–02, App. F) and its comments on the NPRM (DN–067, App. IV, Ex. J, p. 2). See also DN–149 Volume II, Addendum II, p. 10, where Ford cites the "evolutionary" nature of its product planning in explaining how its projected average test weight increased as much as 188 pounds over 5 months. Part of these changes is due to changes in fuel economy test procedures, according to Ford. Ford now claims that its new, lightweight pickup truck, which will be introduced in the 1980 model year and will have a lower test weight than the current pickup truck by 263–396 pounds, will result in only a 1 percent fleet-wide fuel economy benefit. Id. p. 1.

In order to obtain independent verification of the weight reduction achievable through material substitution, the agency issued special orders to various aluminum, steel, and plastics suppliers. DN–018. These companies indicated that weight reductions in excess of those projected by NHTSA will be technologically feasible in the early 1980's, in some cases as much as 900 pounds total. See, e.g., DN–018–44 (Kaiser Aluminum Co.) and DN–018–60 (ALCOA).

The agency concluded on the basis of all this information that although the ultimate weight reduction potential for current light trucks is greater than that initially projected by NHTSA, reductions feasible in the near term (particularly the 1980 model year) are more limited. Further, it appears that in most cases, the weight reductions projected by the manufacturers differed from NHTSA's projections primarly due to discrepancies in estimated baseline inertia weights and in the effect of the inclusion of optional equipment on test vehicles. With respect to the latter points, NHTSA has deferred to the manfacturers' presumably better knowledge of their current light truck fleets. The agency has also not projected the redesign of some vehicle components when a complete vehicle redesign is planned by the manufacturer in 1982 or 1983. Therefore, NHTSA has generally adopted manufacturers' projected weight reduction plans in the standard-setting analysis. However, NHSTA has projected, based on statements by GM, that GM could offer a redesigned pickup truck for the 1981 model year (as a mid-model year entry) resulting in an additional fleet average 250 pounds weight reduction for 2-wheel drive vehicles in that model year. NHTSA has retained its initial weight reduction projection for Chrysler, in the absence of any information which indicates that that projection is not feasible. NHTSA has made relatively minor upward adjustments to Ford's 1981 2-wheel drive weight reduction projection, and adopted Ford's other projections. However, NHTSA has been unable to completely reconcile all of Ford's various weight reduction projections, and remains skeptical, in view of the substantial weight reduction potential, that Ford's 4-year program will result in only the relatively small weight reduction benefit it apparently projects for its new pickup truck line.

2. *Aerodynamic improvements.* The proposed fuel economy standards were based on improvements in vehicle aerodynamic characteristics only where a manufacturer planned to introduce a new vehicle. In those cases, a 4 percent fuel economy improvement was projected. 42 F.R. 63189. Information submitted by the manufacturers indicates that the agency's projections in this area were pessimistic. On the basis of Ford's planned redesign of its pickup trucks for 1980, it appears that fuel economy can be improved up to 5 to 6 percent through reductions in vehicle frontal area and aerodynamic drag coefficient. Some of the manufacturers indicated that aerodynamic improvements could be achieved without undertaking a complete vehicle redesign, through minor body modifications such as the addition of air dams and the use of smaller mirrors. DN–001–01, p. 48, DN–096, App. B, p. 27 (GM); DN–120, App. G (Chrysler). Therefore the agency adopted the fuel economy improvement achieved for Ford's new pickup truck, and projects a fuel economy improvement of 2.3 percent for GM and approximately 1 percent for Chrysler in the 1980 and 1981 model years for minor aerodynamic improvements. (See RSP–

S.) No improvements are projected for the other manufacturers.

3. *Engine efficiency improvements.* In the NPRM, the agency projected that engine efficiency improvements on the order of 8 percent were feasible for all manufacturers other than AM, with AM capable of an improvement of 11 percent because of its currently less efficient engines. 42 F.R. 63190. Among the methods for obtaining this improvement are improved fuel metering, redesigned combustion chambers, increased expansion ratio and compression ratio, reduced internal friction, intake system and valve timing optimization, electronic spark advance, and improved exhaust gas recirculation. The percent fuel economy improvements projected for each manufacturer were based on responses to a detailed technical questionnaire (DN–001) sent to each manufacturer, and in particular a detailed response by Chrysler Corp. (DN–001–05). Subsequent engine mapping studies of typical light truck engines support the agency's original projections. Chrysler indicated efficiency improvements in the areas listed above would result in improvements at least of the magnitude projected in the NPRM. Improvements of this magnitude were also projected by IH (DN–001–06, p. 24) and were in fact experienced in the past when engines were optimized. DN–149, Add. 2, sect. II.

However, at the January 16–17 public hearing, Chrysler indicated that it could not support engine efficiency improvements of the magnitude which NHTSA concluded Chrysler had projected as being feasible for 1980 in its questionnaire response. Several reasons were given by Chrysler at the hearing for this apparent change of position, including that the Chrysler questionnaire response information was merely "a gleam in the eyes of the engineers" and did not have "the highest level of corporate approval." DN–056, pp. 370–1. Subsequently, Chrysler advanced another theory for the apparent discrepancy between their questionnaire response and their position at the public hearing, i.e., that it misinterpreted certain language in the questionnaire. Chrysler argues that, in their interpretation, technology is "applied" not when it is used on production vehicles as NHTSA intended that term in its questionnaire to be interpreted, but when technology advances one stage in the research and development process. DN–120, App. Q, p. 7. In effect, Chrysler now argues that not all of the technology in question will be available for the 1980 or 1981 model years. Chrysler also reduced some of its prior projections of expected fuel economy improvements attributable to technology.

Subsequent information submitted by the other manufacturers indicated that much of the technology projected to be used in the NPRM was either not feasible for 1980 or 1981, already being used and thus not a means available for future improvement, or part of the advanced emission control technology which would permit the attainment of more stringent 1979 emission standards with minimum reduction in fuel economy, but would produce no net fuel economy benefit. DN–067, App. IV, Ex. A, p. 2 (Ford). GM indicated that no improvement in fuel economy is expected from the use of electronic engine controls, since mechanical systems can be (and to some extent already have been) optimized to provide similar results. DN–146–A, pp. 47–53. An analysis by the Department's Transportation Systems Center refutes this claim. DN–283.

Several items of technology (other than improved exhaust gas recirculation or optimized engine calibrations) will be available for engine efficiency improvements. GM indicates that it will be making certain minor carburetor improvements for 1980. DN–096, p. 11. In 1979, Ford will be implementing certain engine efficiency improvements, such as increased compression ratio, for all light trucks with GVWRs between 6,001 and 8,500 pounds. DN–067, App. IV, Ex. A, p. 2. This benefit is accounted for by the use of the agency's regression equation, since trucks in the 0–6,000 pound GVWR category already have these improvements and those were extrapolated for the 6,001–8,500 pound GVWR trucks. However, two Ford engine families have not yet been optimized through combustion chamber revisions, but could be for 1980. Id. at p. 4. Ford also states that it will begin using some electronic engine controls beginning with the 1978 model year, but has no plan to use these controls on trucks until 1981, and then only in

California. Id. at 13–14. NHTSA sees no reason why these electronics could not be more widely applied in light trucks by Ford, especially since Chrysler may begin using some of these electronic controls as early as 1980 in trucks. DN–120, App. J. Chrysler also plans improved intake manifolds for two of its engines for 1980. Id. AM indicates that improvements of up to 5.5 percent are feasible (DN–098, p. 1) and stated at the hearing that improvements up to 8 percent might be feasible. DN–056, p. 468. IH originally projected substantial fuel economy improvements for the use of electronics, heat inlet charge, and combustion chamber and intake manifold redesign (the latter for the 1979 model year). DN–001–06, p. 24. IH's later submissions were less optimistic on this point. The potential for engine efficiency improvements by IH is highlighted by data submitted by that company (Id. App. G) which indicate that its four cylinder engines obtain the same or even slightly worse fuel economy than its V–8, about 13 mpg. The agency's analysis indicates that the IH V–8 engine too could be improved since it obtains about 1 mpg less than a comparable engine from Chrysler, Ford, or GM.

The agency concludes that fuel economy improvements up to the levels originally proposed are technologically feasible, but probably cannot be fully implemented in the 1980–81 period, because of competing demands (due to stringent emission standards) from passenger automobiles. Rather, the agency projects that manufacturers will be able to optimize emission control systems during this period to eliminate any fuel economy penalty resulting from changes in emission standards. In the case of GM and Chrysler, more extensive improvements are already planned, thus avoiding the leadtime problem. Therefore, the agency has incorporated those companies' projections of a net 2.4 percent (1.4 percent for 4-wheel drive light trucks) fuel economy improvement for Chrysler in 1981 and 1.2 percent for GM in 1980, beyond the optimization of the emission system. For the other manufacturers, no net improvement is projected (beyond emission control system optimization).

4. *Engine accessory efficiency improvements.* The agency originally projected that accessory efficiency and accessory drive improvements amounting to 2 percent could be achieved. 42 F.R. 63189. The achievability of a 2-percent fuel economy improvement through the use of improved accessory drives was not generally challenged by the manufacturers. See, e.g., DN–001–05, Table 4 (Chrysler); DN–067, App. IV, Ex. E (Ford). However, questions were raised as to whether the leadtime is sufficient to implement these improvements by the 1980–81 model years. Id., Ford. The agency agrees that leadtime may not be adequate to implement new accessory drives by 1981, unless already planned. A number of accessory efficiency improvements appear feasible for the 1980–81 period, however, such as improved water pumps and power steering pumps, reduced alternator loads, installing viscous fan clutches, the use of flex fans, and the optimization of accessory drive ratios. See, e.g., DN–096, App. B, p. 27 (GM). These efficiency improvements are projected by NHTSA to obtain a fuel economy improvement of approximately 1 percent by 1981.

5. *Diesel engines.* None of the manufacturers took major exception to the agency's projections with respect to the use of diesel engines. The agency's position on this matter was that until the unknown potentially adverse health effects associated with widespread use of diesel engines are better quantified, the maximum feasible use of these engines will not be projected. The agency took the posture of acknowledging the existence of any plans on the part of manufacturers to use diesels but did not base standards on further dieselization beyond that currently planned.

Citizens for Clean Air argues that the agency should not rely on the projected use of diesel engines to any extent until the issue of adverse health affects is resolved. DN–056, p. 563. Conversely, the Public Interest Campaign argued that the agency lacks authority to base fuel economy standards on less than maximum feasible use of diesels. DN–160, p. 6. That organization argues that it is for EPA, not NHTSA, to determine whether any health problems are associated with the use of diesel engines, and if a problem does exist, to set an appropriate emission standard.

The agency recognizes the danger in basing administrative standards on extra-statutory considerations. See, e.g., *Union Electric Company* v. *Train*, 427 U.S. 246, 257 (1976). However, NHTSA feels that there is at least a possibility that EPA may determine that certain currently unregulated emissions from diesel powered vehicles must be regulated, and that control of these emissions to the required level may either be impossible or may be achievable only with a fuel economy penalty so substantial that the diesel engine offers no net fuel economy benefit. NHTSA, EPA, and DOE are jointly studying these issues.

NHTSA deems it inappropriate to encourage the manufacturers to make investments in tooling for diesel engines when the use of those engines may not be tolerated in the future. Therefore, the final fuel economy standards for 1980–81 will not be based on any projected use of diesel engines, even when they are currently offered or planned. This will permit reduction of any current manufacturer plans to offer diesels if a health problem is found. This should not be viewed as a determination by the agency that unavoidable adverse health effects would result from widespread dieselization.

6. *Variable displacement engine technology.* NHTSA projected limited use of variable or dual displacement engine technology (based on the Eaton valve selector system) for the 1980 and 1981 model years. This technology would permit engines to operate on a portion of their cylinders during light load operating modes such as idle and cruising at constant speed.

The agency projected that a 10 percent fuel economy benefit would be achievable by vehicles using this technology. DN–056, p. 419 (Eaton); DN–001–05, Table IV (Chrysler); DN–001–06, p. 24 (IH). Ford indicated plans to use this technology as early as the 1978 model year (DN–001–02, Att. 14, p. 2) and IH stated that use was expected by the 1981 model year (IH, id).

Since the issuance of the NPRM, the prospects for use of this technology have apparently deteriorated considerably. Ford planned to use this system on its 300 CID, six cylinder engine, despite warnings from the system's developer that that particular engine was the worst possible candidate for dual displacement. DN–056, p. 406 (Eaton). As Eaton had warned, rough running and lack of reserve power made the system unworkable in the six cylinder engine, resulting in the termination of that particular program. DN–067, Supp. App. IV, Ex. C (Ford). Ford now plans to implement the technology first on eight cylinder passenger cars, despite the fact that any drivability problems associated with the technology would be more likely tolerated by truck owners than by passenger car owners. Id. GM (DN–096, App. B, p. 30) and Chrysler (DN–120, App. F.) have also experienced a variety of problems with the technology, although GM still targets usage of variable displacement engines for the 1981 model year (DN–146–A, p. 143).

In view of the uncertain future of this particular item of technology, NHTSA is not basing the 1980–81 fuel economy standards on the projected use of variable displacement engine technology. Rather, it is recognized that technical problems remain to be solved, and if those problems can be solved, the use of variable displacement engines will provide the manufacturers with some degree of flexibility in meeting the standards.

7. *Turbochargers.* The agency did not base its proposed standards on the projected use of turbochargers. Turbochargers, when used with spark ignition engines, do not directly improve fuel economy, but rather increase engine horsepower, thereby permitting the substitution of smaller displacement engines in a given application. When used with diesel engines, turbochargers apparently result in additional benefits, including direct improvements in engine fuel efficiency and reduced particulate emissions. (DN–146–A, p. 143). The reasons for not basing the proposed standards on the use of turbochargers were primarily that in order to take optimal advantage of turbocharging, shifts in small engine production capacity would be necessary, and the smaller engines should be initially designed with turbocharging in mind. See 42 F.R. 63190. Leadtime was judged insufficient to accomplish this.

Although the agency's projected 10 percent fuel economy benefit from turbocharging was supported by participants in the rulemaking proceeding, so were the reasons supporting the need for substantial leadtime for any high production volume turbocharging program. DN–067, App. IV, Ex. D (Ford), DN–056, p. 715 (Schwitzer); DN–096, p. 32 (GM—with respect to leadtime issue). Therefore, the agency is not basing the 1980–81 fuel economy standards on the projected use of turbochargers, in conjunction with smaller displacement engines. However, at least one manufacturer apparently plans to use a limited number of turbochargers on light trucks in the 1980–81 time frame, and it is possible that others will as well. Therefore, turbochargers, along with variable displacement and diesel engines, are options that may be available to at least some of the manufacturers to provide the flexibility of additional methods for meeting the fuel economy standards.

8. *Automatic transmission improvements.* The agency projected that a 3.5 percent fuel economy improvement could be achieved for the portion of the fleet which uses automatic transmissions through the addition of lockup clutches to those transmissions. In addition, based on the indicated plans of Ford, it was projected that limited use of that manufacturer's integral overdrive automatic transmission could occur as early as the 1980 model year, producing a 10 percent benefit where applied. The 3.5 percent benefit from the use of the lockup clutch was based primarily on information from Chrysler. DN–001–05, Table IV. GM and Ford also supported the magnitude of that improvement. DN–096, App. B, p. 23 (GM); DN–067, App. IV, Ex. G (Ford).

An additional area of automatic transmission improvement is minor transmission efficiency improvements through the use of larger torque converters. Ford attributes a 0.5 percent fuel economy increase to these improvements (id.) and GM projects 2 percent, although that benefit is not fully additive to the 3.5 percent benefit for the use of the lockup clutch.

By the time of the January 16–17 public hearing, some of the manufacturers had reduced their preproposal projections of planned usage and expected fuel economy benefit from the various automatic transmission improvements. Ford indicated that no integral overdrive transmissions would be available for 1980 model year light trucks, since it claimed that all those transmissions would be necessary for passenger car application. DN–067, App. IV, Ex. G, p. 2. No detailed information to support this claim was provided. Chrysler, which had originally claimed that the benefit associated with lockup clutch is 3.5 percent, and had raised that estimate on one occasion, subsequently claimed that the benefits were reduced to 3 percent, because of a reported need to mitigate drivability problems. DN–120, App. B, p. 1. Ford also claimed that it is unreasonable to expect it to implement the lockup clutch for 1980 and 1981, given that it is in the process of implementing the integral overdrive transmission, albeit over an extended period of years. Id., App. G, p. 2. With regard to the latter point, it should be noted that the other companies are also developing advanced transmissions similar to the Ford integral overdrive, but are planning on implementing the lockup clutch as an interim measure.

The agency concludes that by implementing lockup clutches, minor transmission efficiency improvements, and advanced transmissions like the integral overdrive to the maximum feasible extent, fuel economy improvements of 3.5 percent for the automatic transmission portion of the fleets of GM and Chrysler in 1980, and of AM and IH in 1981, are feasible. In the case of Ford, a transmission efficiency improvement of 0.5 percent is projected for 1980. For 1981, the agency has adopted Ford's projection that its FIOD transmission will be available for approximately 18 percent of its light trucks. However, NHTSA finds no basis for concluding that the fuel economy benefit of that transmission will be less than the originally projected 10 percent, in the absence of any tests by Ford. In addition, NHTSA projects that Ford could offer a lockup clutch or other equivalent improvement on the remainder of its automatic transmission-equipped light trucks, in the absence of any any plan by Ford to make a complete switch to FIODs in the foreseeable future.

9. *Improved manual transmissions.* The agency projected the substitution of overdrive or wide ratio manual transmissions or manual transmissions with additional driven gears for current (primarily 3-speed) manual transmissions beginning with the 1980 model year. These transmissions have generally been available as options at extra cost on passenger automobiles for several years. A 5 percent fuel economy benefit was projected for these transmissions. GM supported this figure (DN–096, App. B, p. 24). Chrysler projected a 4 percent improvement (DN–120, App. L, p. 5), and Ford found the 5 percent figure to be at the upper end of the expected range. DN–067, App. IV, Ex. G. However, objections were raised as to the extent of the projected usage of these transmissions.

Beginning with the 1981 model year, GM apparently plans to make these more fuel efficient transmissions standard equipment on their light trucks. DN–146–A, p. 126. With GM taking this action, the other manufacturers would likely follow suit for competitive reasons, to the extent production capacity permits. Indications are that, at least by the 1981 model year, additional production capacity for improved manual transmissions will be available for Ford and Chrysler. DN–067, App. IV, Ex. G, p. 8 (Ford—additional capacity available for 1981); DN–056, p. 345 (Chrysler—current constraint on increased usage is marketing, not production capacity, and increased marketing efforts will be undertaken in the future). With respect to AM and IH, transmissions are supplier items, so that marketability is likely to be the only possible major constraint to the change to improved manual transmissions. Therefore, the agency has adopted the manufacturers' projections for the usage levels of these improved transmissions in 1980, and has revised upward by a moderate amount the projections of the companies with respect to the 1981 usage, where feasible. See RSP–S. The initially projected 5 percent fuel economy benefit per affected vehicle was retained from the NPRM.

10. *Improved 4-wheel drive transfer cases.* Another item of technology which was not included in the projections on which the proposed standards were based is the use of "part-time" 4-wheel drive, where "full-time" 4-wheel drive transfer cases are currently used. These new transfer cases, which permit reduction of frictional losses by minimizing the number of transfer case components which are moving in the 2-wheel drive mode, should result in fuel economy improvements of 4 to 8 percent for those 4-wheel drive light trucks which currently use full-time 4-wheel drive. DN–184, Table B–1a (GM); DN–120, Att. B, p. 27 (Chrysler). Part of AM's and Ford's 4-wheel drive fleet also uses full-time 4-wheel drive currently, and NHTSA concludes that both could use this new transfer case. Therefore, fuel economy improvements projections have been included in the analysis for the final standards.

11. *Improved crankcase, rear axle, and transmission lubricants.* The agency projected fuel economy improvements of 2 percent for 1980 and 6 percent for 1981 through the use of a variety of improved lubricants. The principal lubricants expected to be available to achieve these benefits are lower viscosity real axle lubricants (1 percent benefit) and friction modified motor oils such as those currently offered by Exxon and Arco in the aftermarket (5 percent benefit).

The vehicle manufacturers raised three major objections to the agency's projections in this area. First, it was argued that on the basis of the vehicle manufacturers' tests of these improved lubricants, the fuel economy benefits attributed to the lubricants were overstated. Second, the manufacturers noted that EPA approval of some of these lubricants (friction modified or synthetic base motor oils) would be necessary to use these lubricants in fuel economy testing, and that approval had previously been withheld. Third, it was argued that extensive durability tests of these lubricants would be necessary before they could be used as factory fill lubricants and recommended for use thereafter.

With respect to the first point, Exxon and Arco both supported the agency's 5 percent projection for friction modified motor oils. DN–056, p. 157 (Exxon—5½ percent on the EPA test); Id., p. 516 (Arco—4.85 percent, based on road tests of 147 vehicles). Arco indicated that an additional 2 percent benefit (or a total of 7 percent for motor oils alone) was expected in less than 2 years, when that company expects to offer a lower viscosity version of its friction modified oil. Id., p. 534. Many other oil companies will be offer-

ing lubricants of this general type in the near future. DN–113. GM projected fuel economy improvements of 3–6 percent from improved crankcase and axle lubricants (up to 4 percent with friction modified crankcase oils) but claimed that these improvements would not be feasible until the 1982 model year or later. DN–096, pp. 10–11.

GM, Ford, and Chrysler all submitted data showing lesser fuel economy improvements than shown by the oil companies. GM submitted data on the fuel economy benefit associated with low viscosity engine lubricants (DN–184, p. 2), which showed a lower fuel economy benefit than would be expected through the use of friction modified oils. DN–056, p. 516 (Arco). GM also submitted data on tests (generally 2–3 tests each) of various unspecified lubricants compared to an unspecified base oil, and found fuel economy improvements of up to 3.8 percent. Chrysler conducted a series of test on both the Arco and Exxon lubricants, and found fuel economy improvements of up to approximately 3 percent. DN–120, Att. B, p. 21. Most of these tests were conducted with reference to a 10W30 base oil (the Arco and Exxon lubricants are both 10W40), thereby possibly reducing the benefit which would be achieved had viscosity been held constant in the testing. Further, there appears to be no reason why 10W30 versions of these improved lubricants could not be made available for use by the manufacturers by 1980, which should result in fuel economy improvements in line with the Exxon and Arco data, which compared 10W40 oils. DN–056, p. 536, DN–185 (Arco). In addition, Chrysler's tests were conducted at low mileage, and showed a trend toward greater fuel economy improvement at higher mileage. Exxon indicated that the fuel economy benefit achieved by their lubricant would appear primarily after 2,000 miles, beyond the mileage at which Chrysler's tests were conducted. DN–056, p. 171. Taking these factors into account, Chrysler's data are not inconsistent with that of the oil companies.

Ford's test program for friction modified lubricants also showed low fuel economy improvements. DN–067, App. IV., Ex. K, p. 9. Tests were conducted on the Exxon oil and another blend (not Arco), and the base oil for comparison purposes was 10W30, creating the same problem of comparability as the Chrysler tests. The Ford data consisted of tripicate tests of four vehicles using each type of lubricant.

With respect to improved rear axle and transmission lubricants, tests of Mobil's synthetic axle lubricant support an improvement of 1 percent. DN–109, DN–056, p. 695–6. GM projects an improvement of 0.7 percent for lower viscosity axle lubricants. DN–096, App. B, p. 8. Ford's tests of lower viscosity axle lubricants showed no fuel economy benefit, and it has not tested friction modified axle lubricants yet. DN–149, App. IV, Ex. K, p. 13. Ford claims that SAE papers on the subject indicate that no fuel economy improvement, rather than a 1 percent improvement, would show up on the current fuel economy test from the use of friction modified axle lubricants, but NHTSA finds nothing in the cited paper to support Ford's reading. Chrysler also found "no significant improvement" when switching to lower viscosity axle lubricant. DN–120, App. H, p. 3.

Ford projects that manual transmission vehicles will begin using lower viscosity automatic transmission fluid as a lubricant. DN–149, App. IV, Ex. K, p. 17. NHTSA's analysis indicates that such a change could, because of the similarity to using improved axle lubricants, result in a fuel economy improvement of 1 percent by 1981.

As to the second point, EPA has not previously approved the use of the improved crankcase lubricants in fuel economy and emission testing because of its valid concern that the lubricants may not be used in actual service by consumers. If the lubricants were used in EPA testing but not in actual service, the EPA tests results would be unrepresentative of actual driving experience, overstating actual fuel economy and thereby possibly misleading consumers. EPA is also concerned that some lubricant additives may reduce emission control system durability. Therefore, EPA has indicated that it would not approve the use of friction modified and synthetic engine lubricants until it received reasonable assurances that the lubricants would likely be used by consumers. Possible methods for demonstrating this likelihood are competitive retail prices, widespread commercial availability, and the existence

of a generic definition for these lubricants so that the vehicle manufacturers can identify them and encourage their use. DN–120, App. H, Att. B.

EPA has recently taken the position that friction modified and synthetic engine lubricants could be used in durability testing for 1980 model year emission certification. DN–195. Further, it appears very likely that remaining impediments to that use of these lubricants in fuel economy testing will be removed in time to permit full use of these lubricants as factory-fill for the 1980 model year. One previous impediment, the lack of a procedure to define these oils generically, is expected to be removed by December of this year, when the American Society for Testing Materials (ASTM) is scheduled to complete development of such a procedure. DN–056, p. 175.

The general availability of these lubricants in time for the 1980 model year, another requirement for their permitted use in fuel economy testing, also seems assured, given the expanding activity of the oil companies in this field. DN–056, p. 523, DN–112, 113. Current selling prices of many of these lubricants appear to be adequate to satisfy EPA's concern that it be likely that consumers will in fact use these lubricants. These latter two requirements are necessary to provide an assurance that the lubricants will be used as replacement lubricants, not just for fuel economy testing. Therefore, it is quite likely that these lubricants can be used by the 1980 model year in fuel economy testing. See also DN–160, p. 7 (Public Interest Campaign). However, neither this agency nor EPA can predict with complete certainty when approval of those lubricants will become possible.

With respect to the vehicle manufacturers' third objection, the agency concludes that the manufacturers should be able to complete all necessary durability testing of these friction modified lubricants by the 1980 model year. DN–096, p. 10 (GM). Judging from the data submitted by the manufacturers, the agency believes that testing of these lubricants has already progressed significantly. The oil companies which produce these improved lubricants have already conducted substantial testing of the lubricants before they were first marketed. DN–056, p. 175–6 (Exxon). In fact, the oil companies argue that one of the major advantages of using the friction modified lubricants is that engine wear is reduced. Id., p. 535 (Arco). Since these oils also meet American Petroleum Institute Criteria for SE grade lubricants, engine durability should be improved. The oil companies found no reason to expect any adverse impacts from switching to these oils, which are of the same viscosity, come from the same base stock, and have most of the same additives as current factory fill oils. Id., p. 175 (Exxon). In fact, it appears that a less extensive durability program would be necessary in switching to friction modified oils than in switching to a lower viscosity oil, which GM indicates could be done by 1980. See also id., p. 296 (Ford). Ford apparently was willing to use these lubricants as early as the 1978 model year. DN–149, App. IV, Ex. K, p. 2. In fact, GM's oil durability test requirements which were provided to NHTSA recently refer only to tests for lower viscosity engine oils, not friction modified oils. DN–184, p. 4.

Therefore, the agency projects that a total fuel economy benefit of at least 3 percent is achievable through the use of improved lubricants (crankcase and axle). To assure ample time for the approval of these lubricants for use in vehicle fuel economy testing by EPA, NHTSA will not project their use prior to the 1981 model year. It should be noted that it is possible that, by that model year, further improvements in crankcase lubricants may result in additional fuel economy improvements, considering the agency's conservative projection of the currently achievable benefit. Also, the use of improved manual transmission lubricants may expand in 1981. This could provide a further safety margin for the manufacturers. However, since the eventual approval of these lubricants is beyond the agency's control, alternative fuel economy standards for the 1981 model year will be established. In the unlikely event that EPA has not yet approved the use of these improved lubricants by January 1, 1980, a lower fuel economy standard, excluding the projected use of the lubricants, will be in effect. If, as the agency expects, this approval is given by then, a higher (by 0.5 mpg) standard will apply. NHTSA expects that the manufac-

turers will still have a strong incentive to seek the expeditious approval of those lubricants, in order to use the lubricants in passenger automobiles as well as for light trucks.

12. *Reduced rolling resistance.* The agency projected that a fuel economy improvement of 4.5 percent would be achieveable by the 1980 model year through the use of current or advanced radial tires on all light trucks, rather than the bias ply and bias belted tires currently used. This improvement was based on measured differences (using the tire companies' own test procedures) in tire rolling resistance between radial and bias tires and the known relationship between rolling resistance and fuel economy for passenger automobiles. See, e.g., DN–018–28, Table I (Goodyear); DN–018–49, p. 1 (Firestone); DN–018–46, p. 2 (Uniroyal). Further significant reductions in tire rolling resistance through increased tire inflation pressure and other means were anticipated for the near future. DN–018–28, p. 4 (Goodyear); DN–018–46, p. 2 (Uniroyal); DN–018–49, p. 2 (Firestone). Goodyear indicated that there is a possibility that their new elliptic tire, for which they project a fuel economy benefit of up to 6 percent compared to current radial tires, could be available for use on a portion of those light trucks which use passenger car type tires (primarily those under 6,400 pounds (GVWR) by the 1980 model year. DN–145; DN–146–A, p. 106–7. GM indicated that the same benefits achievable with the elliptic tire would be achievable with more conventional tires by increasing inflation pressure. Id.

After the issuance of the NPRM, it became increasingly clear that the fuel economy benefits associated solely with a switch to current radial tires would not equal 5 percent. A number of participants in the proceeding indicated that radial tires were inappropriate for use on off-road vehicles, due to the greater vulnerability of radial tires to sidewall damage. DN–056, p. 190 (Goodyear); DN–097, p. 5 (IH); DN–098, p. 1 (AM); DN–096, p. 9 (GM). In addition, problems exist in measuring the radial-bias tire fuel economy differential on current EPA fuel economy test procedures. Current test procedures apparently accurately simulate the characteristics of radial tires but overestimate the fuel economy characteristics of bias tires. DN–067, App. IV, Ex. F (Ford); DN–018–49 (Firestone); DN–145 (Goodyear). The light tire manufacturers generally projected fuel economy improvements in the range of 2 percent for the portion of their fleets which use passenger car type tires, assuming that the optional "coast-down" test procedure could be used to measure the fuel economy benefit of switching to radial tires. DN–120, App. C (Chrysler—2½ percent); DN–906, p. 9 (GM—1½ percent); DN–067, App. IV, Ex. F (Ford); DN–088, p. 4 (Toyota).

In view of this new information submitted after the issuance of the NPRM, the agency has re-analyzed the potential for fuel economy improvements from switching to radial tires. On the basis of this detailed analysis of the tires currently used by the manufacturers on light trucks and current recommended inflation pressures, the agency now projects that fuel economy improvements ranging from 1.6 to 2.5 percent can be achieved for approximately 80 percent of the light truck fleet (excluding off-road applications) by switching to radial tires and by making minor inflation pressure increases. See RSP-S. It should be noted that to the extent new tire concepts such as the elliptic tire become available for use in light trucks in the 1980–81 period, the manufacturers will have additional flexibility in meeting the fuel economy standards. It is possible that the agency's originally projected fuel economy benefit will be achieved with these advanced tire concepts.

13. *Engine displacement or drive ratio reductions.* The agency projected that reductions in average engine displacement or drive ratios (gear ratios or axle ratios) or both could be implemented by the 1980 model year for each manufacturer. Specifically, it was projected that the product of engine displacement multiplied by total drivetrain ratio (CID x N/V) could be reduced 10 percent from 1977 levels for each manufacturer, in addition to reductions made in conjunction with weight reduction, to maintain constant vehicle performance. Drive ratio changes can be accomplished with relatively short lead time. Such reductions were projected to result in fuel economy improvements of approximately 4 percent. Reductions in engine displacement or drive ratio tend to diminish a

vehicle's acceleration and grade-climbing ability, thereby limiting the extent to which these reductions can be implemented without impairing the vehicle's functional capabilities.

It should be noted that these reductions are projections of reductions in average engine displacement or drivetrain ratio, and not every vehicle would be expected to achieve such a reduction. For example, vehicles incorporating overdrive transmissions would not be expected to fully implement such reductions and other vehicles would be expected to achieve reductions greater than 10 percent. The 10 percent figure was based on an analysis by the Department of Transportation which indicated that much larger reductions, i.e., as high as 30 percent, could be achieved without violating any of the minimum performance criteria specified by the manufacturers. DN–036, App. B. The agency used a 10 percent reduction instead of the 30 percent reduction projected in the document based on the agency's judgment that major reductions in acceleration performance occurring over a relatively short period of time might result in consumer dissatisfaction and possibly reduced sales, notwithstanding the ability of the vehicles to satisfy minimum performance requirements.

The manufacturers and many other participants in the rulemaking expressed concern as to whether the proposed standards could be achieved while still maintaining acceptable levels of light truck performance and utility. However, no participant advanced any specific vehicle performance criteria different from those previously analyzed by the agency, and no specific information was presented which contradicted the original conclusion as to the feasibility of a 10 percent reduction in engine displacement or drivetrain ratio or both. In fact, it appears that all of the manufacturers except Chrysler and IH have presented information which indicates that the 10 percent reduction is feasible and in some cases currently planned. DN–096, App. B, p. 25 (GM); DN–149, App. IV, Ex. I (Ford); DN–010–02, p. 10 (AM). Chrysler is apparently investigating certain specific approaches for reducing engine displacement or drive ratio. DN–120, Att. B, p. 25. Further, it appears that even with a 10 percent reduction in CID x N/V, Chrysler's average performance level for a given test weight would be higher than those of many of the other manufacturers. See RSP-S.

An example of the difference between the arguments made at the January 16–17 hearing or in written comments and the actual manufacturer plans and capabilities relating to this issue is the position taken by Ford. At various times in the rulemaking, Ford stated on one hand that it could not reduce average engine displacement because of production capacity constraints (DN–149, App. IV, Ex. I, p. 2) and because such reductions might be fatal to their truck's functional capacities, but on the other hand that reductions in CID alone of more than 10 percent were planned. DN–010–02, App. F; DN–149, App. IV, Ex. I, p. 1. Ford similarly raised numerous objections to NHTSA's projections of feasible reductions in N/V ratio (DN–149, App. IV, Ex. 1), despite the fact that significant reductions of that parameter are also planned by Ford. DN–149, App. IV, Ex. I, p. 1. Thus, Ford objected strenuously to the feasibility of NHTSA's projections of CID x N/V reductions, despite the fact that it plans to make even greater reductions than those projected by the agency. With respect to the issue of whether these reductions will improve fuel economy by the amount projected by NHTSA, Ford's own test data for 1979 light trucks supports improvements of at least the level projected. See RSP–S.

Therefore, the reductions in engine displacement or drivetrain ratio projected initially by the agency have been retained, except where the manufacturers' plans exceed those projections. In the latter cases, the final projections were based on the manufacturers' plans. However, the agency projects a more limited 7 percent reduction for Chrysler in 1980. The agency projects that Chrysler may need an additional year to phase-in maximum reductions, given its limited current plans to make these changes and its past reliance on high performance levels as a marketing technique.

14. *Mix shifts.* For the 1980–81 model years, the agency projected negligible shifts in the 1977 product mix of the manufacturers beyond those projected by the manufacturers, or, looked at another way, the agency projected that the manufacturers would take such actions as necessary to assure that product sales would not shift to-

ward the higher test weight classes. The one exception to this statement is that the agency projected the sale of a limited number of "mini-vans" and other new truck concepts by General Motors in the 1980–81 model years. GM now indicates that sales of the mini-van, at least in a light truck configuration, are not planned. DN–056, p. 51–3. Because of the limited variety of market class offerings currently available in the light truck market, as compared to passenger automobiles, mix shifts could occur in the future primarily through new product offerings. New offerings which are not currently planned are not feasible in the limited time left before the 1980 and 1981 model years.

However, the agency projects that one limited type of mix shift is feasible for the 1980 model year. Because of recent changes in the fuel economy and emissions test procedures by EPA, optional equipment must be included on test vehicles if it is projected to be sold on 33 percent of the vehicles in a particular "car line." Under the previous test procedures, optional equipment was included only if it was projected to be sold on 33 percent of the vehicles in a particular "engine family." An "engine family" is, generally, a combination of basic engine and emission control systems, independent of the vehicle in which the engine is placed. This test procedure revision would be expected to have a random impact on the manufacturers, with no trend toward either higher or lower test weights. However, it appears that the manufacturers have carefully targeted the availability of optional equipment to take maximum advantage of the option rule (e.g., restricting options on some engine families to 30 percent usage), so that the change to the "car line" test will initially increase average test weights. However, given time between the test procedure change and the 1980 model year, there is no reason to believe that the manufacturers will not be able to reallocate their option offerings among engine families (e.g., restricted option sales to 30 percent for some car lines which currently have option sales levels of just 33 percent) to offset the effect of the rule change. In fact, it appears that such efforts are already planned. DN–146–A, p. 26–8. No net reduction in the total number of options sold for all light trucks need result from such actions.

d. ECONOMY PRACTICABILITY

Relatively few objections were raised with respect to the costs attributed by the agency to various technological improvements. None of the comments suggested that the cost of implementing the technologies upon which the proposed standards were based would exceed the bounds of economic practicability. However, the manufacturers and others did argue that compliance with standards at the levels of the proposal, with to those commenters implied taking steps beyond implementing the projected technologies, would be economically impracticable. With respect to the latter issue, the difference between the agency's position and that of the manufacturers resulted from differences in the projected fuel economy benefit achievable with the various technological improvements and the extent to which these improvements could be implemented by a particular model year, and from the consequent assumption by the manufacturers that compliance measures beyond those specified in the proposal would be necessary. These differences have been discussed in section III.c above, and the final standards are established at levels closer to what the manufacturers projected than the proposed standards.

The increase in capital expenditures necessary for individual manufacturers to comply with the 1980 and 1981 standards is not large, either absolutely or relatively. Almost no increase in capital investment will be necessary for the manufacturers to achieve the standards instead of their lower recommended levels of average fuel economy. Typically, the difference between the standards and the recommended levels consisted of low capital measures such as performance reductions and lubricants. The capital investment necessary to make up this difference is not the full investment attributable to the standard. A portion, but not all, of the capital investment necessary to achieve the manufacturer's recommended levels is also attributable to the standards. The reason for not attributing all of this latter investment to the standards is that the agency anticipates that the need to remain competitive with other manufacturers and the mar-

ketability of increased fuel economy would have led the manufacturers to voluntarily make fuel economy improvements even if there were no fuel economy standards. The legislative record for the fuel economy provisions of the Act is replete with statements supporting the reasonableness of anticipating that result. Even if the entire capital investment for raising average fuel economy to the level of the standards were attributed to the standards, the increase in business-as-usual capital expenditures would be negligible, on the order of 3 percent. That small figure may be an overstatement because it is based on the pessimistic assumption that none of the capital investments could be offset through normal business expenditures.

With respect to the issue of the specific types of analysis which should be undertaken in a determination of economic practicability, GM and Ford argued that NHTSA should consider the impact of fuel economy standards on the economy as a whole, not just the industry itself. DN–067, App. V, p. 1 (Ford); DN–096, App. D, p. 1, DN–056, p. 93 (GM). NHTSA recognizes the need to consider such factors as the impacts of standards on employment in the auto industry and its suppliers, inflation, vehicle sales, and the trade balance, and the agency did so in its impact assessment. DN–067, App. V, p. 1 (Ford). These matters are, of course, interrelated, in that product changes which are not accepted by some consumers will reduce industry sales, at least in the short term, with resulting deceases in employment and industry profitability. However, the agency believes that limited visible or otherwise preceptible product changes that may be necessary to comply with these standards will be accepted by consumers.

Several of the manufacturers urged that the economic practicability of the fuel economy standards be determined in the context of the other Federal vehicle standards which the manufacturers must meet. The assumption of these commenters appeared to be that it would be sufficient in making such an analysis simply to know the expenditures necessitated by the various Federal vehicle regulatory programs. The shortcomings of such an analysis are obvious. A definitive analysis of the sort urged by these commenters implies the availability of extensive information regarding all of the manufacturers' resources and demands on those resources. None of these commenters provided or offered to provide such information.

Ford argues that greater emphasis should be placed on cost-benefit analysis in determining economic practicability. Id. Ford states that greater reliance should be placed on the language of section 325(a) of title III of the Act, relating to appliance energy efficiency and not automotive fuel efficiency. That section clearly envisions substantial reliance on cost-benefit analysis in setting standards. However, section 325 also goes to great lengths to differentiate between the concepts of "feasibility" and whether standards are "economically justified," with cost-benefit analysis being tied to the latter concept only. Since the language in section 502 of the Act is expressed in terms of "feasibility" and "practicability," the agency remains of the view that Congress intended that these terms be interpreted consistently in different sections of the same statute. See 42 F.R. 33537. Nevertheless, the agency notes that the benefits of the technology projected by NHTSA to be used in meeting the 1980–81 fuel economy standards would meet a cost-benefit test. This result could change depending on the retail price increases which the various manufacturers elect to impose, and depending on whether the manufacturers elect to purchase technology from outside sources or produce it themselves. See FIA.

No slowdown in the growth of the light truck market should occur as a result of these standards. Of all the projected methods for improving fuel economy, only engine displacement or drive ratio reductions and the use of diesel engines have the potential to be viewed by consumers as having adverse impacts on the utility of light trucks despite their contributions to increased fuel economy. In both cases, NHTSA projected changes no more stringent than those already contemplated by the manufacturers. The unplanned production of new, downsized trucks is not projected due to leadtime constraints and is not necessary to meet the standards promulgated herein. The other projected changes will hardly be preceived by vehicle owners, except with respect to slight initial vehicle price changes and significant fuel economy improvements.

The possibility of adverse sales and employment impacts resulting from retail price increases can be roughly projected through the use of economic models. Since the retail price increases associated with this rule are expected to be small, absolutely as well as compared to the fuel savings, compliance with these standards should not result in any significant sales or employment effects. See Final Impact Assessment. Similarly, the vehicle and price changes should not lead to retention by owners of older vehicles instead of buying the new more efficient ones.

GM argues that the fuel savings associated with the proposed standards are small in comparison to the risks associated with compliance with those standards. DN–096, App. D. GM's comment about risks clearly applies to standards set at the proposed levels. Since the final standards have been reduced as a result of new information received since the proposal and are near the levels recommended by the manufacturers, they presumably do not present the risks mentioned by GM. Because of changes in the baseline pursuant to manufacturers' comments, however, the savings are similar to those for the proposed standards. Those methods of improving fuel economy which involve possible marketing risk, such as engine displacement reductions, have been established at levels equal to GM's own projections. With respect to the magnitude of the potential energy savings associated with these standards, the light truck fuel economy standards should not be considered in a vacuum, but rather must be viewed in the context of the entire national energy conservation program. If each element of that program were to be cut back or eliminated on the grounds that the savings achievable with that element is small in comparison to the total energy problem, then the overall program could not be successful.

Ford objected to the exclusion of the cost for their new pickup truck line in the agency's economic analysis. This cost was not included in the agency's Preliminary Economic Impact Assessment because the new truck series was not an extraordinary cost associated with these fuel economy standards. The introduction of these new models is consistent with Ford's historic redesign cycle, and would have occurred at approximately the planned time regardless of the existence of standards. DN–001–02, Att. 1, p. 1. Ford began work on the new truck prior to the enactment of the Act, and Ford stated that the fuel economy standards were only one factor considered in the design. DN–056, p. 225. Further, it is apparent from the other factors specified by Ford that the standards were not the only reason for making fuel economy improvements. The fact that the fuel economy standards were one of the concerns in planning that truck does not necessarily imply that additional costs were associated with that concern. Ford submitted no information which would indicate that the cost of introducing a new light truck for general marketing, competitive, and compliance purposes is any greater than the cost of introducing a new light truck for marketing and competitive purposes alone. Therefore, no costs associated with this new light truck, other than those for the technological improvements discussed in this notice (e.g., improved lubricants, radial tires, etc.) have been attributed to this rulemaking.

Ford also argued that the cost of electronic engine controls and three-way catalysts is so high that their use is unjustifiable for light trucks in 1980–81. DN–067, App. IV, Ex. A, p. 15. The agency has never suggested that three-way catalysts be used on all light trucks for 1980–81. With respect to the use of electronic engine controls for spark advance, air-to-fuel ratio, and exhaust gas recirculation rate, Ford submmited only "retail price equivalents" for the cost of those items, which includes an unspecified mark-up. Information currently available to the agency from suppliers of electronic components indicates that the cost of these items on a high volume, per unit basis would not justify retail price increases to the level specified by Ford ($128). It is impossible for the agency to analyze Ford's objection as to the cost for variable displacement engine technology, which Ford also provides in terms of a retail price equivalent. Id, App. V, p. 13. Ford's objection to the agency's projected cost for engine displacement and/or drive ratio reductions (Id, App. V, p. 12) is based on Ford's assumption that it would have to introduce a new line of engines beyond its current plans. That assumption is unfounded. See section III.c.13 of this notice. Ford's objection to the cost of

weight reduction is also based on its assumption that product changes beyond those projected by NHTSA would be necessary to achieve the fuel economy benefit specified by the agency. As discussed in section III.c.1 of this notice, the agency's revised weight reduction projection for Ford is based on the agency's best estimate of the benefit achievable from Ford's planned new truck line and other actions such as option restrictions which have no associated cost.

Chrysler (DN–120, App. N) and IH (DN–097–A, App. J) objected to the costs used by the agency for weight reduction by material substitution. Although Chrysler provided no basis for its estimate of a 35¢ per pound cost penalty for weight reduction by material substitution, and IH failed to provide any detailed information (such as breakdowns of material and fabrication costs) in support of its claimed costs for various component substitutions, from other information it appears that the agency's cost projections for some components were too low. Alcoa (DN–018–60) provided detailed cost information for aluminum components, and other material suppliers provided similar information for various plastic and high strength steel items. Therefore, the cost estimate for weight reduction by material substitution has been adjusted in accordance with this newly supplied information. See Final Impact Assessment.

Chrysler also objected to the cost associated with diesel engines. Since the agency has not projected any use of diesel engines, the cost of dieselization is not attributable to these fuel economy standards, and is therefore not included in the agency's analysis. However, Chrysler correctly points out that the agency's cost estimate for diesel engines was based on the cost resulting from conversion of a current engine production facility to produce a dieselized version of an existing engine, and high volume sales of that engine. Docket FE–76–01–GR–003, Document 3, App. B. This scenario accurately reflects the dieselization program of only GM among the domestic manufacturers, at the present time. If a manufacturer were to purchase engines from an outside source, the cost of dieselization to the consumer would be much higher. DN–120, App. N. Chrysler and IH both plan to continue purchasing diesel engines, at least for the near future.

Perhaps the most frequent comment in the entire rulemaking involved the concern expressed by the light truck industry, Congressmen, community groups, and others that the proposed standards would result in substantial unemployment. Based on the post-proposal statements of the manufacturers, many commenters assumed that the agency had given insufficient consideration to the possible employment impacts of its proposal. This is manifestly not so. The agency sought, based on the information available to it, to propose standards that could be met without any significant employment impact. The analysis of that information indicated that no unplanned major design changes, new engines or new models would be necessary to meet the proposed standards.

In their post-proposal comments, the light truck manufacturers submitted new information which contradicted or clarified previous submissions or which filled previous information gaps. The new information showed that some technology would not yield the degree of fuel economy improvement indicated by the pre-proposal information and that some technology could not be used to the extent previously indicated by agency analysis. Some manufacturers noted that the technological projections underlying the proposal would not yield the proposed levels of average fuel economy and imputed to the agency an intent to require the manufacturers to make technological changes not feasible within the available leadtime or to make drastic reductions in product offerings. Neither the proposal nor its supporting documents were based on such an intent.

As noted above, the agency sought to propose standards that would not adversely affect employment. The agency continues to embrace that goal.

With respect to the issue raised by Ford and others, NHTSA has made adjustments to the proposed fuel economy standards in light of information submitted after the issuance of the NPRM in December. On the basis of all this information, NHTSA concludes that the fuel economy standards established herein can be met

without elimination of any current product offerings, and without any necessary loss in employment. By making the various relatively minor technological improvements discussed in this notice, NHTSA projects that each manufacturer can achieve the final standards. The impact on employment of making these vehicle improvements may well be positive. DN–160, pp. 16–18 (Public Interest Campaign), and FIA. The final standards are set at levels significantly lower than the proposed standards, due to the post-proposal submissions, comments, and data from a wide range of participants in the proceeding. Such revisions are entirely consistent with the informal rulemaking process, in which an agency makes a proposal based on the best information it then has available, solicits additional information from all interested individuals and organizations, and then establishes a final rule based on all available information, including changes based on comments on the proposal. See 5 U.S.C. 553, "International Harvester v. Ruckleshaus," 478 F. 2d 615, 632.

Chrysler responded to the proposal by announcing that it was delaying the conversion of its Jefferson Avenue assembly plant in Detroit from the production of full-size passenger cars to van production. DN–120, p. 13. Chrysler stated further that issuance of final standards at the proposed level would lead to a closing of the plant permanently. Subsequently, the company indicated that the plant would definitely remain open if the standards were established at a much lower level specified by Chrysler. However, Chrysler declined to state the maximum level of standards which could be set without that company's deciding to close the plant. Therefore, the agency issued a special order under section 505(b) of the Act to Chrysler to obtain information related to Chrysler's statements, e.g., information about current and future van sales and production capacity. DN–191. Chrysler did not respond, or provided incomplete answers to several crucial questions and requests for documents in the special order, particularly those items bearing on the relationship of the proposed standards and decision to delay the conversion. DN–191, 191–A.

The final standards established by this notice should not cause or pose the possibility of plant closings. They reflect the agency's consideration of all of the post-proposal information submitted by the manufacturers regarding the fuel economy improvements to be gained from particular technologies and the extent to which those technologies can be implemented in 1980–81. Significant changes have been made to the agency's original projections concerning these matters. There is ample leadtime for modest departures required from the manufacturer's plans for 1980 and the only slightly less modest extra effort necessary for 1981.

e. THE EFFECT OF OTHER FEDERAL MOTOR VEHICLE STANDARDS

A number of changes in Federal emission standards and associated test procedures will occur between 1977 (the base year for our calculations) and 1980–81. The major change is the tightening of the light truck emission standards from 2 grams per mile of hydrocarbons (HC), 20 grams per mile of carbonmonoxide (CO), and 3.1 grams per mile of oxides of nitrogen (NOx) for 0–6,000 pound GVWR trucks only to levels of 1.7/18/2.3, respectively, for 1979 model year light trucks with GVWRs up to 8,500 pounds. The manufacturers claimed fuel economy penalties ranging from 3 to 5 percent largely associated with the change in the NOx standard, with changes in the other two standards apparently having much less effect. In the 1979 fuel economy standard rulemaking, the same issue arose, and the agency took the position that none of the manufacturers had demonstrated the existence of an unavoidable penalty. 42 FR 13813–4. Only Chrysler and Ford have since submitted additional data or arguments to support their claims of penalties.

Chrysler's argument for a 3 percent penalty is based upon a comparison of 1978 data from the California light truck fleet subject to standards of 0.9/17/2.0 and the "49-state" fleet subject to Federal standards. NHTSA finds a number of serious errors in this comparison. First, the California 1978 standards are more stringent than the 1979 Federal standards. Chrysler assumes that the differences between these two sets of standards can be accounted for by making the assumption that the fuel economy penalty resulting from more stringent emission standards

is linearly related to the change in the NOx standard. Chrysler offers no basis for this assumed relationship, and NHTSA knows of no reason why such a relationship should exist, particularly when more advanced control technology may be available for compliance with the more stringent standard. Second, Chrysler compared these standards based on 1978 technology, while NHTSA methodology requires a comparison based on 1977 versus 1980–81 emission control technology. Therefore, under Chrysler's procedure, the fuel economy of vehicles subject to Federal emission standards has the advantage of one additional year of technology development, while the fuel economy of California vehicles is understated because it does not reflect, as it should, the technological development that will occur between 1977 and 1980–81. Thus, the measured penalty was inappropriately increased. In this rulemaking, NHTSA must determine the fuel economy achievable in 1980–81 based on the technology available and the emission standards applicable in those years, compared to the fuel economy that was achievable in model year 1977 with 1977 emission standards and control technology. Thus, Chrysler's analysis failed to account for advances in technology between 1977 and 1980–81. Third, and perhaps most significant, California experience has in general not been a valid indicator of 49-state experience with respect to emission standards effects. The reason for the past unrepresentativeness of California experience is that manufacturers cannot devote the same level of effort toward optimizing emission control systems and engine calibrations to minimize the effect of more stringent emission standards when those standards are applicable only to a small minority (perhaps 10 percent) of their fleet as it does when they are applicable to 90 percent of their fleet. Therefore, lower fuel economy would be expected if a particular set of (California) emissions standards applied to a minority of the fleet, and compliance was achieved by modifying a portion of the fleet which was originally designed to meet less stringent (Federal) standards. Therefore, the agency is unpersuaded by Chrysler's argument.

Ford attempted to demonstrate the existence of an emission standard-related fuel economy penalty by two methods. First, it used an analytical method, called "engine mapping", which is designed to show the theoretical relationship between fuel economy and NOx emissions at various emission standard levels. This approach showed that a penalty of approximately 1 percent is theoretically achievable through optimal use of proposed technology. DN–067, App. VI, p. 2. Second, Ford submitted test data from 16 development vehicles which were calibrated to meet 1979 standards, and compared those results to 1978 emission certification data for identical vehicles (in terms of engine, transmission, inertia weight, and axle ratio). Under that procedure, a fuel economy penalty of 4 percent was measured. Id., p. 5. NHTSA has a number of difficulties in accepting the results of either of these procedures and applying them to this rulemaking.

First, Ford's tests were conducted on development vehicles at initial calibration settings. Substantial improvements are feasible after the first testing of development vehicles, on a continuing basis through 1980 and 1981. Ford's analysis ignores this effect by comparing 1979 development data against data for 1978 vehicles, which have been subject to the same emission standards for several years, with ample opportunity to more closely approach full optimization. Ford denies the existence of such an improvement effect between initial development testing and final emission certification, but bases its argument on its experience in the 1978 model year, a year in which the emission standards did not change, and for which calibrations would be expected to more closely approach full optimization.

Second, Ford's engine mapping procedure does not measure the relevant fuel economy differential for the purposes of NHTSA projections. Ford's procedure attempts to measure fuel economy when meeting 1979 emission standards using 1979 emission control technology, and compares that value to fuel economy achievable using 1979 technology to meet 1977 model year standards. DN–149, App. VI. This procedure is patterned after that specified in section 502(d) of the Act. NHTSA, on the other hand, under section 502(e)(3) of the Act, must not only assess the effect of the change in emission standards between 1977 and 1979 (and on to 1980

and 1981, where standards will remain the same) but also consider the offsetting effect of differences between the technology and calibrations actually used in 1977 and the technology and calibrations which will be available for use in 1980–81. Thus, Ford's engine mapping analysis failed to consider advances in emission control technology between 1977 and 1979, and further advances achievable through 1980 and 1981. Instead, technology and calibration optimization were assumed by Ford to be fixed at a particular level. However, improvements in emission control technology have in fact occurred in this 1977–79 period. DN–067, App. IV, Ex. A, Att. 1. The small magnitude of the theoretical penalty claimed by Ford (1 percent) and the fact that advances in technology were not considered in developing that penalty indicates that the actual 1977–79 combined effect of emission standards changes and technology advances may well be an improvement in fuel economy, not a loss.

Third, it has been demonstrated that when passenger automobile NOx emission standards were made more stringent in 1977 (from 3.1 to 2.0 gram per mile), engine efficiency improvement more than offset any adverse impacts of the new emission standard, when various extraneous factors affecting fuel economy were disaggregated. SAE paper 760795. EPA expects that this historical effect should also be applicable in the case of comparable reductions in the light truck NOx emission standard. DN–255, pp. 1–2.

Therefore, NHTSA reaffirms its position that the 1979 change in Federal emission standards has not been demonstrated to cause an adverse impact on average fuel economy for light trucks.

Ford also argued that the agency has not adequately accounted for the effect of California emission standards, which are more stringent than Federal standards. DN–067, App. VI, p. 9. Ford claims that the effect of these standards is 0.1 mpg, or less than 1 percent. As EPA points out, Ford's analysis is based upon a comparison of 1978 California and 49-State vehicles, and does not accurately reflect the types of technology which will be used in 1980–81 to comply with California standards. Ford indicates that it will be using electronic engine controls in conjunction with three-way catalysts to meet these more stringent California standards in 1981. DN–149, App. IV Supp., Ex. A, p. 5. (Ford). In fact, Ford has already begun using this type of technology on its 1978 California passenger cars. Vehicles using this technology are projected by Ford to achieve the same fuel economy as a 49-State vehicle in the same model year. NHTSA projects that, given current efforts to develop these advanced emission control systems for passenger car use, a sufficient number of these systems could be applied to 1980–81 model year California light trucks to eliminate the almost negligibly small effect of the California standards.

Several manufacturers have also claimed that EPA's recently issued advisory circular on changes to the transmission shift schedule for fuel economy and emission testing of manual transmission vehicles will result in a fuel economy penalty. DN–097, p. 4 (IH); DN–096, App. B, p. 25 (GM); DN–067, App. VI, p. 15 (Ford). Previously, the manufacturers have been permitted to shift manual transmission vehicles in fuel economy and emission testing according to the shift schedule specified in the owner's manual. According to EPA, some manufacturers have taken advantage of this provision by specifying shift schedules in the owner's manuals for certain vehicles which are not representative of typical driving. These new shift schedules have recommended shifting at extremely low engine speeds, or in some cases skipping gears in the shift pattern, resulting in artificially high fuel economy and low emissions. DN–255, Advisory Circular Number 72, January 19, 1978. Under the new requirements, three alternative shift patterns are permitted, either shifting at 66, 65, and 57 percent of rated engine speed into second, third, and fourth gears, respectively, or shifting at 15, 25, and 40 miles per hour into second, third, and fourth gears, respectively, or some other shift pattern which the manufacturer demonstrates to be representative of actual driving experience. Id. In the first two alternatives, skipping gears while shifting up (e.g., first directly to third or fourth) is not permitted.

The manufacturers have not yet had the opportunity to fully evaluate the effect of the change in the EPA test procedure on fuel economy.

DN–149, App. VI, p. 16 (Ford); DN–146–A, pp. 127–8 (GM). Early submissions by the manufacturers evaluated the impact of a requirement of shifting at 66 percent of rated engine speed for all gears, not the final EPA requirement. DN–096, App. B, Table B–7 (GM); DN–067, App. VI, p. 16 (Ford). Therefore, there is insufficient data to justify NHTSA's making an adjustment to the standards now. Although the test procedure change was intended to have the effect of reducing the measured fuel economy of some vehicles, and make the measured fuel economy more representative of on-the-road fuel economy, the manufacturers have as yet not quantified the magnitude of this effect. To justify any reduction, the agency would be required to determine the number of test vehicles which were shifted in an unrepresentative manner in 1977, the specific shift schedule permitted under the new requirements which would provide the most favorable results for individual manufacturers, and the fuel economy impact for individual vehicles of the change from 1977 shift patterns to this most favorable new pattern. This adjustment factor would be expected to vary from manufacturer to manufacturer, depending on the extent to which unrepresentative shift schedules were specified in 1977. Therefore, the agency will make no adjustment to the standards to account for this effect in the current rulemaking, but will accept petitions from individual manufacturers which attempt to justify a reduction in the standards because of the test procedure change.

Ford also argued that changes in test procedures for measuring evaporative emissions from vehicle fuel tanks would cause a fuel economy penalty. This new procedure, called the SHED test, attempts to more accurately quantify the total amount of hydrocarbons which escape from the vehicle, other than as exhaust emissions. Ford's argument for a penalty of 0.08 mile per gallon is that the new test procedure will measure more escaped vapors than the old one, thus requiring the manufacturers to use more efficient evaporative emission control systems. These more efficient systems would, according to Ford, result in more hydrocarbon vapors being retained in the evaporative cannister and fed through the carburetor. However, Ford assumes that none of these vapors would be combusted and do work, but instead would be sent straight out the exhaust system. This additional hydrocarbon exhaust would be measured on the fuel economy test as fuel consumed, however, according to Ford. DN–149, App. VI, Ex. B. NHTSA cannot accept this analysis for two reasons. First, there is no reason to believe that all the extra gasoline vapors retained in the gas tank and sent through the carburetor would escape combustion. If some portion of this extra gasoline vapor is combusted and does work in moving the vehicle, then a benefit in measured fuel economy should result. Second, EPA indicates that improved evaporative emission control systems are available which make efficient use of the extra fuel which is retained in the cannister rather than vented to the atmosphere. Id. Therefore, NHTSA concludes that Ford has not demonstrated that a fuel economy penalty exists due to its current evaporative emission control system, and that no penalty need exist if a more efficient design were adopted.

f. THE NEED OF THE NATION TO CONSERVE ENERGY

No detailed comments were received on this consideration in establishing the "maximum feasible average fuel economy level," other than that made by GM and addressed in section III.d of this notice. The agency believes that the need of the nation to conserve energy continues to be very substantial. See also DN–160, p. 20 (Public Interest Campaign).

g. BASIS FOR DETERMINING THE "MAXIMUM FEASIBLE AVERAGE FUEL ECONOMY" LEVEL

Many participants in the proceeding argued that the agency had established fuel economy standards at levels above those achievable by one or more of the manufacturers, and that such a procedure exceeds the agency's statutory authority. DN–097, p. 8 (IH); DN–096, p. 12 (GM); DN–149, App. VIII, Att. A (Ford); DN–120, p. 9 (Chrysler); DN–056–05 (Congressman John Dingell). On the other hand, the Center for Auto Safety argued that standards cannot be based on the "least capable manufacturer," citing supportive language in the Conference Report on the Act and the various provisions in the Act for compromise or elimination of civil penalties

in case of a failure to meet fuel economy standards. DN–155. See also DN–160, p. 8 (Public Interest Campaign).

It should be noted at the outset that the agency did not propose standards at levels which it concluded could not be met by one or more of the manufacturers. Rather, the agency postulated certain technological improvements, calculated the resulting fuel economy for the various manufacturers, and then discussed certain additional measures which could be undertaken by certain manufacturers to achieve the higher level of fuel economy at which the standards were set. 42 F.R. 63193. While it is true that the agency discussed the ability of some of the manufacturers to pay civil penalties in case of noncompliance, the payment of such penalties was viewed as an alternative (albeit an undesirable one) which some manufacturers might adopt rather than making all feasible fuel economy improvements. The manufacturers uniformly stated at the January 16–17 public hearing and in their written submissions that they would not opt for payment of civil penalties rather than making feasible fuel economy improvements, and the agency applauds this policy.

As will be discussed in section V of this notice, the final 1980–81 fuel economy standards are established at levels which NHTSA projects to be technologically feasible and economically practicable for all the manufacturers. Therefore, NHTSA need not address the comments relating to this issue.

IV. Other Miscellaneous Comments on the NPRM

AMC and Chrysler argued that fuel economy labeling of light trucks in the 6001–8500 pound GVWR range should not be required in the 1979 model year, as was proposed in the NPRM. AM argues first that requiring the fuel economy testing necessary to develop data for labeling would impose an unacceptable burden on them and on EPA. DN–098, p. 7. Both AM (id.) and Chrysler (DN–120, Att. B, p. 31) argue further that requiring labeling in 1979 will further impair the credibility of the fuel economy data as a valid representation of on-the-road driving experience. Chrysler bases its argument on the fact that EPA's current labeling procedures for light trucks do not distinguish between vehicles which might be expected to fall into different "car lines" (e.g., Ford F–100 and F–200 series pickup trucks) since they are marketed as different models. Instead, EPA has in the past included all of a manufacturer's pickup trucks in a single car line, potentially creating a situation where a wide variety of vehicles with greatly different fuel economy ratings would have the same fuel economy rating on the labels.

NHTSA is of the view that defining "car line" in a manner more consistent with the way that term is used for passenger automobiles (i.e., defining vehicles marketed as different models to be different car lines, such as the F–100 and F–200) would solve much of this difficulty. However, to require fuel economy labeling for the 1979 model year, this problem would have to be resolved almost immediately. EPA has informed this agency earlier this month that it may not be able to resolve this problem in time to make the amendments effective for the 1979 model year. Therefore, the fuel economy labeling requirement will not be made applicable until the 1980 model year.

NHTSA concluded that the fuel economy labeling provision for 1979 was especially important in part because such a requirement would result in the generation of fuel economy data for vehicles with GVWRs between 6,001 and 8,500 pounds, in addition to the benefit to consumers of having this information. The Agency's effort to compensate for the current absence of that data was one of the manufacturers' primary objections to NHTSA's standard-setting methodology in this rulemaking. NHTSA deems it important to have this information as soon as possible to develop a fuel economy baseline based on test data for the light truck standards for model years after 1981. Therefore, NHTSA is requesting by this notice that each of the manufacturers provide by April 15 information on the extent to which they will provide NHTSA with fuel economy data (city and highway driving cycle) for their 1979 6,001–8,500 pound GVWR light trucks, and the time by which this testing could be accomplished. In view of the importance which the manufacturers understandably attach to baselines based on test data, the agency assumes that such data will be readily forthcom-

ing from the manufacturers. To facilitate issuance of the notice of proposed rulemaking for 1982 and thereafter, these tests should be available by sometime this fall. Voluntary provision of this data by the manufacturers would obviate the need for NHTSA to exercise its authority under section 505(c)(1) of the Act to establish a rule which requires this testing on an expedited basis. Such a rule, if necessary, would likely require the testing by the end of this fall of the light truck configurations identified in 40 CFR 600.506(c).

NHTSA invited comment on the extent to and manner in which monetary credits could be transferred between the 1979 and 1980 model years, given the change in NHTSA's light truck classification scheme between 1979 and 1980. For 1979, light trucks are classified as either a single group or two groups, one consisting of "4-wheel drive general utility vehicles," and the other of "all other light trucks." For 1980, this classification will be changed, with 2-wheel drive and 4-wheel drive classes being established. However, section 508(a)(3)(B) of the Act prohibits applying credits generated by light trucks in one class to civil penalties incurred by light trucks in a different class. The Center for Auto Safety concludes that this requirement means that when the classification system is changed between model years, no carryover monetary credits can be applied unless the revised classes included identical vehicles for a particular manufacturer. DN–155. Ford, on the other hand, argues that manufacturers should not be penalized by the change in the classification scheme, so that credits earned by one class could be applied to penalties incurred by any other class which overlaps the first, at the manufacturer's option, between the 1979 and 1980 model years. DN–149, App. VIII, Att. C. No other participant in the proceeding addressed the issue in detail. Although NHTSA believes that all manufacturers can meet the 1980 standards, this issue may be of importance to some manufacturers in the 1980 model year. NHTSA wishes to give this issue further consideration and invites interested individuals and organizations to submit further comments on the question to NHTSA.

IH objected to the limited time available for comment on the proposed standards. DN–097, p. 2. The originally specified comment period of 45 days (42 FR 63184) was extended on a limited basis for 10 days (DN–38–A, 43 FR 3600, January 26, 1978), at the request of IH among others (DN–038), and IH took advantage of that extension. DN–97–A. Further, the agency let it be known that it would consider late submissions to the extent practicable, given the need to issue the final standards as soon as possible. All comments received before issuance of the final rule were considered. DN–038–A. In fact, the agency has affirmatively sought out additional information relating to IH's capabilities to make fuel economy improvements to its light trucks after the close of the extended comment period. In addition, it appears that the comment period for the light truck manufacturers effectively began some five weeks prior to the publication of the NPRM, when the Department of Commerce (without authorization by this agency) provided copies of a draft NPRM to the manufacturers, which provided the substance of the agency's proposal. DN–191, question 10. Therefore, IH effectively had much more than the 90-day comment period it requested.

AM claimed that the agency violated section 502(b) of the Act by failing to promulgate the 1980 model year standard at least 18 months prior to the start of that model year. Section 501(12) defines "model year" to be "a manufacturer's annual production period (as defined by the EPA Administrator) which includes January 1" of the specified calendar year. If no annual production period exists, then the model year coincides with the calendar year. Id. AM states that its 1980 annual production period begins in July, 1979, and that the "18-month rule" therefore requires the issuance of the 1980 standard in January, 1978.

EPA has yet to determine a single model year for purposes of section 502(b) of the Act. Indeed, annual production periods appear to run from as early as that specified by AM to the beginning of a calendar year for many of the foreign companies. NHTSA has endeavored to provide approximately 18 months notice to the domestic manufacturers by the expeditious completion of this rulemaking. It is the agency's view that issuance of these by mid-March satisfies all statutory requirements.

Several of the manufacturers and other participants in the rulemaking proceeding argued that the percentage increase for the proposed standards over 1979 levels was not consistent with the one mile per gallon increments Congress established for passenger automobile standards in 1978–80. It should first be noted that the final standards have been set at levels which require a lesser relative improvement over 1979 levels than did the proposal. However, the fact that Congress in 1975, with less and much older information than NHTSA currently has available, set standards for a different type of vehicle at particular levels has little bearing on the question of what is the maximum feasible average fuel economy level for light trucks. If major improvements in fuel economy are economically and technologically feasible in a short time, then NHTSA is statutorily required to set standards at levels commensurate with those capabilities.

Several of the commenters made the related suggestion that to require a large percentage improvement in average fuel economy was presumptively inappropriate. The percentage change in fuel economy standards is, by itself, an unreliable indicator of the time and effort necessary to meet the standards. This should be obvious from the fact that some substantial fuel economy improvements can be made quickly with little or no additional capital investment while some fairly minor improvements may take much longer and require significant additional investment. Only by examining the technological changes underlying the differences in fuel economy standards for different model years can any meaningful judgment be made about the reasonableness and stringency of the standards.

V. Calculation of the 1980 and 1981 Standards

As discussed in section III.b of this notice, the basic methodology on which the final standards are based is unchanged from the proposal. Revisions have been made as noted above to the projected benefit achievable with the various items of technology. When these revisions are jected to be capable of achieving the following taken into account, the manufacturers are pro- levels of average fuel economy for their light trucks:

	1980		1981	
	2-WD	4-WD	2-WD	4-WD
AM	23.6	15.1	24.1	16.2
Chrysler	16.4	14.4	18.0	15.8
Ford	16.6	14.6	18.7	16.3
GM	16.8	14.1	18.7	15.7
IH	14.1	14.0	15.2	15.3
Nissan	24.4		25.2	
Toyo Kogyo	32.0		33.0	
Toyota	25.8	17.5	26.6	18.4
Volkswagen	18.0		19.5	

(1981 projections would be reduced by 0.5 mpg if improved lubricants cannot be used in fuel economy testing.)

As can be seen from the above information, Chrysler has the lowest projected fuel economy for 2-wheel-drive light trucks, and GM the lowest for 4-wheel drive. IH would be subject to a separate standard, as previously discussed.

Because the agency's fuel economy projections for the major manufacturers fall within a relatively narrow range, and because insufficient leadtime exists for the manufacturers to make major improvements beyond those described in this notice, the agency finds it appropriate to establish the 1980 and 1981 standards at levels no higher than those projected for the manufacturer with the lowest fuel economy level. In view of this limited leadtime, the agency is making a slight downward adjustment to some of the levels projected for the "least capable" manufacturers to provide a safety margin for compliance and to create some additional flexibility for the manufacturers in meeting the standards. The maximum feasible average fuel economy levels, and therefore the fuel economy standards, are established as follows:

	2-wheel-drive	4-wheel-drive	Limited product line light truck
1980	16.0	14.0	14.0
1981	* 16.0	* 15.5	* 15.0

* The 1981 model year standards are 0.5 mpg lower than the values specified above if approval of improved lubricants for fuel economy testing is not granted by the EPA by January 1, 1980.

VI. Standards for 1982 and Later Model Years

As discussed in section III of this notice, the limited leadtime available before the 1980 model year and slightly limited leadtime before 1981 model year have significantly restricted the extent to which the agency can project fuel economy improvements for the manufacturers. For example, no completely new vehicles or engines were projected by NHTSA unless those items were already planned by manufacturers. Therefore, the agency will issue in early 1979 a notice of proposed rulemaking to establish fuel economy standards for the 1982–1984 and possible 1985 model years. The much greater leadtime for these model years will, in turn, enable the agency to project major improvements in fuel economy beyond those set forth in this notice.

In virtually every technology category discussed in section III of this notice, significant potential exists for additional fuel economy improvements. For example, the agency projected weight reductions of approximately 200 pounds for the 1980–81 model years. Information available from material suppliers indicates that weight reductions of up to 900 pounds are currently feasible through substitution of lighter weight materials. If such material substitutions were undertaken in conjunction with a complete vehicle redesign (including some downsizing), it is possible that the average weight of light trucks could be reduced by a further 1,000 pounds, compared to current levels. Weight reduction of this magnitude could improve fuel economy by approximately 20 percent. Domestic production of small pickup trucks could be begun.

Additional lubricant improvements of as high as 5 percent were described above. Advanced tires could provide an additional 3 percent fuel economy improvement beyond 1981 levels. Turbocharged versions of smaller displacement engines could maintain vehicle performance while improving fuel economy by 10 percent. It is possible that further development work on variable displacement engine technology will solve current problems experienced by the truck manufacturers, resulting in a fuel economy improvement of 10 percent. Widespread use of advanced automatic transmissions similar to the FIOD should result in a fuel economy improvement of 6.5 percent, beyond 1981 levels. Aerodynamic improvements should result in fuel economy improvements of at least 4 percent when current light trucks are redesigned in the 1982–5 period. A major area for potential fuel economy improvement is the use of diesel engines. Diesel engines have traditionally been used in medium and heavy duty trucks, and it is reasonable to expect that light truck purchasers would accept diesels in view of the fuel economy improvement of at least 25 percent associated with their use. Turbocharged diesel engines, which have appeared on larger trucks in the past, offer even greater improvements, while reducing particulate emissions and improving acceleration capabilities. However, questions relating to the effects on health and potential for control of diesel emissions must be resolved before NHTSA will base fuel economy standards on the use of diesel engines. Use of other engine types, such as the Ford PROCO (programmed combustion) engine, may also be feasible in the 1982–85 time frame.

VII. Impact of Standards on Petroleum Consumption

The standards presented in section V of this notice are projected to result in the savings of about 8 billion gallons of gasoline over the life of the light trucks produced in the 1980 and 1981 model years. Even gasoline savings of this magnitude will not eliminate the nation's dependence on foreign petroleum and the associated trade deficit. However, these standards constitute a significant part of the overall energy conservation program which can gradually reduce this dependence. See Final Impact Assessment.

The impact of our national dependence on imported petroleum has become a matter of increasing concern over the past several months. The national trade deficit was over $26 billion for 1977, while the cost of imported petroleum was almost $45 billion in that same year. The national cost of oil imports has been increasing at a rate of over 30 percent per year since 1975. Petroleum now constitutes about one-third of all imports. The impact of this large trade deficit on domestic inflation is substantial. Although the light truck standards will not solve this prob-

lem by themselves, they could reduce total petroleum imports by $1 billion in 1985 and $2 billion in 1990. NHTSA deems this a significant benefit for the nation, and an important step in attempting to reduce the overall import problem.

VIII. Economic Impact of Standards

The economic impact of these standards was evaluated. This evaluation concludes that retail price increases in the range of sixty dollars total are expected from the actions necessary to achieve compliance with fuel economy standards for 1980 and 1981. This relatively small increase compares to a lifetime operating cost reduction of about 600 dollars per vehicle, due to the reduction in gasoline consumption for these light trucks. It is projected by NHTSA that light truck sales and related employment in the light truck industry will be at higher levels in 1980–81 than currently exist in the absence of some unrelated and curren tlyunforeseen downard turn in the national economy. The largest factor in this trend toward higher sales and employment is the underlying increasing consumer demand for these vehicles. It is projected that improving the fuel economy of light trucks will have a small effect in improving sales levels, since good fuel economy is a desirable vehicle attribute. Slightly higher retail prices resulting from the fuel economy standards might tend to slightly offset this trend toward higher sales. However, the effects of improved fuel economy and slightly higher retail prices are small in comparison to the underlying sales trend. Therefore, NHTSA concludes that the manufacturers' efforts to comply with fuel economy standards will at worst cause no loss in sales or employment, and may result in slight gains.

IX. Environmental Impact of the Standards

The environmental impact of the standards was also evaluated, in accordance with section 102 of the National Environmental Policy Act, 42 U.S.C. 4332. Copies of the agency's final environmental impact statement are available from the Office of Automotive Fuel Economy, at the address set forth at the beginning of this notice. That document sets forth the basis for the agency's conclusion that the standards will result in no significant adverse impacts on the environment. In fact, the major environmental impact of the standards, reduction in petroleum consumption, should reduce current adverse impacts resulting from high levels of petroleum exploration, drilling, transportation and refining. One type of technology which improves fuel economy but which may have adverse environmental effects is the use of diesel engines. Because of possible adverse environmental effects associated with the use of diesel engines, the agency set standards at levels which could be met without the use of those engines.

Authority: Sec. 9, Pub. L. 89–670, 80 Stat. 981 (49 U.S.C. 1657); sec. 301, Pub. L. 94–163, 89 Stat. 901 (15 U.S.C. 2002); delegation of authority at 41 FR 25015, June 22, 1976.

The program official and lawyer principally responsible for the development of this proposed regulation are George L. Parker and Roger C. Fairchild, respectively.

Issued on March 15, 1978.

Joan Claybrook
Administrator

43 F.R. 11995–12013
March 23, 1978

PREAMBLE TO AMENDMENT TO PART 523—VEHICLE CLASSIFICATION

(Docket No. FE 77–05; Notice 7)

Action: Technical amendment.

Summary: This notice amends the definition of the term "automobile" as it appears in the agency's fuel economy vehicle classification regulations. The amendment is intended to clarify the applicability of the light truck fuel economy standards for model year 1980 and thereafter.

Effective date: This amendment is effective January 15, 1979.

For further information contact:

Francis J. Turpin, Office of Automotive Fuel Economy Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202) 472–6902).

Supplementary information: Section 501(1) of the Motor Vehicle Information and Cost Savings Act ("the Act"), 15 U.S.C. 2001(1), defines the term "automobile" for purposes of establishing the applicability of automotive fuel economy standards and other fuel economy-related requirements. That definition includes within the scope of that term any "4-wheeled vehicle propelled by fuel which is manufactured primarily for use on public streets, roads, and highways (except for any vehicle operated exclusively on a rail or rails), and which is rated at 6000 pounds gross vehicle weight or less." That section also authorizes the Secretary of Transportation to expand the "automobile" category and thereby regulate additional vehicles if certain findings are made. These findings relate to the feasibility of standards for such vehicles, the energy savings potential associated with regulating the vehicles, and the usage of the vehicles.

On March 23, 1978, in 43 FR 11995, the National Highway Traffic Safety Administration (NHTSA) published the required findings with respect to certain vehicles (called "light trucks") with gross vehicle weight ratings between 6001 and 8500 pounds. The vehicles in the 6001 to 8500 pound GVWR range which were excluded from the expanded automobile category were a relatively small number of vehicles with either curb weights in excess of 6000 pounds or with frontal areas of more than 46 square feet (principally step-vans), or both. These vehicles were excluded because of design features which would largely preclude personal use thus making regulation as heavy duty vehicles proper (41 FR 56316).

The Environmental Protection Agency (EPA), which conducts fuel economy testing under the Act, has recently informed NHTSA of an error encountered in measuring the frontal area of some of the step-vans. It appears that in order to exclude the intended larger-frontal area vehicles, the regulatory dividing line must be reduced from 46 to 45 square feet. The number of vehicles affected by this change is extremely small in relation to the number of light trucks in the 6001 to 8500 pound GVWR range. Therefore, NHTSA is amending the appropriate regulatory language to correct this error.

Since this amendment is in the nature of a technical correction and affects such a small number of vehicles, it is determined that a notice of proposed rulemaking is unnecessary and contrary to the public interest, within the meaning of 5 U.S.C. 553(b). Therefore, this notice will be issued as a final rule.

NHTSA has also determined that this document does not contain a significant regulation requiring a regulatory analysis under Executive Order 12044. Further, this action does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.).

This amendment is effective immediately, since its effect is to relieve a restriction. See 5 U.S.C. 553(d)(1).

In consideration of the foregoing, 49 CFR, Chapter V, is amended . . . .

AUTHORITY: Sec. 9, Pub. L. 89-670, 80 Stat. 931 (49 U.S.C. 1657); sec. 301, Pub. L. 94-163, 89 Stat. 901 (15 U.S.C. 2002); delegation of authority at 41 FR 25015, June 22, 1976, and 43 FR 8525, March 2, 1978.

Issued on January 15, 1979.

Michael M. Finkelstein
Associate Administrator
for Rulemaking

44 F.R. 4492–4493
January 15, 1979

PART 523—VEHICLE CLASSIFICATION

AUTHORITY: Sec. 301, Pub. L. 94–163, 80 Stat. 901 (15 U.S.C. 2001).

§ 523.1 Scope.

This part establishes categories of vehicles that are subject to Title V of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2001 *et. seq.*

§ 523.2 Definitions.

"Approach angle" means the smallest angle, in a plan side view of an automobile, formed by the level surface on which the automobile is standing and a line tangent to the front tire static loaded radius arc and touching the underside of the automobile forward of the front tire.

"Axle clearance" means the vertical distance from the level surface on which an automobile is standing to the lowest point on the axle differential of the automobile.

"Basic vehicle frontal area" is used as defined in 40 CFR § 86.079–2.

"Breakover angle" means the supplement of the largest angle, in the plan side view of an automobile, that can be formed by two lines tangent to the front and rear static loaded radii arcs and intersecting at a point on the underside of the automobile.

"Cargo-carrying volume" means the luggage capacity or cargo volume index, as appropriate, and as those terms are defined in 40 CFR 600.315, in the case of automobiles to which either of those terms apply. With respect to automobiles to which neither of those terms apply, "cargo-carrying volume" means the total volume in cubic feet rounded to the nearest 0.1 cubic feet of either an automobile's enclosed nonseating space that is intended primarily for carrying cargo and is not accessible from the passenger compartment, or the space intended primarily for carrying cargo bounded in the front by a vertical plane that is perpendicular to the longitudinal centerline of the automobile and passes through the rearmost point on the rearmost seat and elsewhere by the automobile's interior surfaces.

"Curb weight" is defined the same as "vehicle curb weight" in 40 CFR Part 86.

"Departure angle" means the smallest angle, in a plan side view of an automobile, formed by the level surface on which the automobile is standing and a line tangent to the rear tire static loaded radius arc and touching the underside of the automobile rearward of the rear tire.

"Gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle.

"Passenger-carrying volume" means the sum of the front seat volume and, if any, rear seat volume, as defined in 40 CFR 600.315, in the case of automobiles to which that term applies. With respect to automobiles to which that term does not apply, "passenger-carrying volume" means the sum in cubic feet, rounded to the nearest 0.1 cubic feet, of the volume of a vehicle's front seat and seats to the rear of the front seat, as applicable, calculated as follows with the head room, shoulder room, and leg room dimensions determined in accordance with the procedures

outlined in Society of Automotive Engineers Recommended Practice J1100a, Motor Vehicle Dimensions (Report of Human Factors Engineering Committee, Society of Automotive Engineers, approved September 1973 and last revised September 1975.)

(a) For front seat volume, divide 1,728 into the product of the following SAE dimensions, measured in inches to the nearest 0.1 inches, and round the quotient to the nearest 0.001 cubic feet.

(1) H61—Effective head room—front.

(2) W3—Shoulder room—front.

(3) L34—Maximum effective leg room—accelerator.

(b) For the volume of seats to the rear of the front seat, divide 1,728 into the product of the following SAE dimensions, measured in inches to the nearest 0.1 inches, and round the quotient to the nearest 0.001 cubic feet.

(1) H63—Effective head room—second.

(2) W4—Shoulder room—second.

(3) L51—Minimum effective leg room—second.

"Running clearance" means the distance from the surface on which an automobile is standing to the lowest point on the automobile, excluding unsprung weight.

"Static loaded radius arc" means a portion of a circle whose center is the center of a standard tire-rim combination of an automobile and whose radius is the distance from that center to the level surface on which the automobile is standing, measured with the automobile at curb weight, the wheel parallel to the vehicle's longitudinal centerline, and the tire inflated to the manufacturer's recommended pressure.

"Temporary living quarters" means a space in the interior of an automobile in which people may temporarily live and which includes sleeping surfaces, such as beds, and household conveniences, such as a sink, stove, refrigerator, or toilet.

§ 523.3 Automobile.

(a) An automobile is any 4-wheeled vehicle propelled by fuel which is manufactured primarily for use on public streets, roads, and highways (except any vehicle operated exclusively on a rail or rails), and that either—

(1) Is rated at 6,000 pounds gross vehicle weight or less; or

(2) Which—

(i) Is rated more than 6,000 pounds gross vehicle weight, but less than 10,000 pounds gross vehicle weight,

(ii) Is a type of vehicle for which the Administrator determines, under paragraph (b) of this section, average fuel economy standards are feasible, and

(iii) (A) Is a type of vehicle for which the Administrator determines, under paragraph (b) of this section, average fuel economy standards will result in significant energy conservation, or

(B) Is a type of vehicle which the Administrator determines, under paragraph (b) of this section, is substantially used for the same purposes as vehicles described in paragraph (a) (1) of this section.

(b) The following vehicles rated at more than 6,000 pounds and less than 10,000 pounds gross vehicle weight are determined to be automobiles:

(1) Vehicles which would satisfy the criteria in § 523.4 (relating to passenger automobiles) but for their gross vehicle weight rating.

(2) Vehicles which would satisfy the criteria in § 523.5 (relating to light trucks) but for their gross vehicle weight rating, and which

(i) Have a basic vehicle frontal area of 45 square feet or less.

(ii) Have a curb weight of 6,000 pounds or less.

(iii) Have a gross vehicle weight rating of 8,500 pounds or less, and

(iv) Are manufactured during the 1980 model year or thereafter.

§ 523.4 Passenger automobile.

A passenger automobile is any automobile (other than an automobile capable of off-highway operation) manufactured primarily for use in the transportation of not more than 10 individuals.

§ 523.5 Light truck.

(a) A light truck is an automobile other than a passenger automobile which is either designed for off-highway operation, as described in paragraph (b) of this section, or designed to perform at least one of the following functions:

(1) Transport more than 10 persons;

(2) Provide temporary living quarters;

(3) Transport property on an open bed;

(4) Provide greater cargo-carrying than passenger-carrying volume; or

(5) Permit expanded use of the automobile for cargo-carrying purposes or other nonpassenger-carrying purposes through removal of seats by means installed for that purpose by the automobile's manufacturer or with simple tools, such as screwdrivers and wrenches, so as to create a flat, floor level surface extending from the forwardmost point of installation of those seats to the rear of the automobile's interior.

(b) An automobile capable of off-highway operation is an automobile—

(1) (i) That has 4-wheel drive; or

(ii) Is rated at more than 6,000 pounds gross vehicle weight; and

(2) That has at least four of the following characteristics (see Figure 1) calculated when the automobile is at curb weight, on a level surface, with the front wheels parallel to the automobile's longitudinal centerline, and the tires inflated to the manufacturer's recommended pressure—

(i) Approach angle of not less than 28 degrees.

(ii) Breakover angle of not less than 14 degrees.

(iii) Departure angle of not less than 20 degrees.

(iv) Running clearance of not less than 8 inches.

(v) Front and rear axle clearances of not less than 7 inches each.

42 F.R. 38362
July 28, 1977

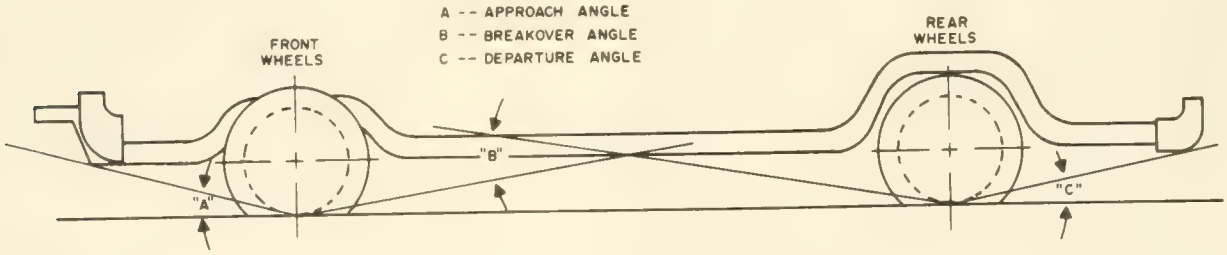

Fig. I

PREAMBLE TO PART 525—EXEMPTIONS FROM AVERAGE FUEL ECONOMY STANDARDS

(Docket No. FE 76–04; Notice 2)

This notice establishes the format and content requirements for petitions which may be filed by low volume manufacturers of passenger automobiles requesting exemption from average fuel economy standards pursuant to section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended. The notice also establishes the timing requirements for the filing of such petitions, and describes the procedures that the agency will follow in acting on petitions.

Effective Date: July 28, 1977.

For Further Information, Contact:

Douglas F. Pritchard
Office of Automotive Fuel Economy
National Highway Traffic Safety Administration
Department of Transportation
Washington, D.C. 20590
(202) 755–9384

Supplementary Information:

Section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended (the Act), provides that a low volume manufacturer of passenger automobiles may be exempted from the average fuel economy standards for passenger automobiles established by or under Section 502(a) if those standards are more stringent than the maximum feasible average fuel economy for the low volume manufacturer, and if the Administrator of the National Highway Traffic Safety Administration (NHTSA) establishes an alternative standard for the low volume manufacturer. A low volume manufacturer under the Act is one who manufactures less than 10,000 passenger automobiles in the model year for which the exemption is sought (the affected model year), *and* who produced less than 10,000 passenger automobiles in the second model year preceding the affected model year. This final rule adds a new Part 525 to NHTSA regulations, and establishes the timing, content, and format requirements of petitions for exemption, and sets forth the procedure that the agency will follow in acting on petitions.

This final rule was preceded by a notice of proposed rulemaking (NPRM), 41 FR 53827, December 9, 1976. The proposed rule provided that petitions for exemptions for model year 1980 and subsequent model years must be submitted to the agency not later than 24 months before the beginning of the affected model year. Petitions for exemption for model year 1978 must be submitted not less than three months before the beginning of that model year, and petitions for model year 1979 must be submitted not later than 12 months before the beginning of that model year. The petition would have to include information showing that the petitioner was a low volume manufacturer, and data, views, and arguments that show that the petitioner's maximum feasible average fuel economy for the affected model year is less than the level of the otherwise applicable fuel economy standard. The proposed rule sets out specific items of information relating to the petitioner's claimed maximum feasible average fuel economy which all petitions must include.

The NPRM further proposed that the NHTSA would publish in the Federal Register notice of receipt of a petition for an exemption, and would place the nonconfidential portions of the petitions in the public docket. After considering the petition and other information available to it, the NHTSA would publish a notice of proposed rulemaking announcing its proposed decision on the petition, and soliciting comments on the proposed decision. After opportunity for comment, and a consideration of any comments that might

outlined in Society of Automotive Engineers Recommended Practice J1100a, Motor Vehicle Dimensions (Report of Human Factors Engineering Committee, Society of Automotive Engineers, approved September 1973 and last revised September 1975.)

(a) For front seat volume, divide 1,728 into the product of the following SAE dimensions, measured in inches to the nearest 0.1 inches, and round the quotient to the nearest 0.001 cubic feet.

(1) H61—Effective head room—front.

(2) W3—Shoulder room—front.

(3) L34—Maximum effective leg room—accelerator.

(b) For the volume of seats to the rear of the front seat, divide 1,728 into the product of the following SAE dimensions, measured in inches to the nearest 0.1 inches, and round the quotient to the nearest 0.001 cubic feet.

(1) H63—Effective head room—second.

(2) W4—Shoulder room—second.

(3) L51—Minimum effective leg room—second.

"Running clearance" means the distance from the surface on which an automobile is standing to the lowest point on the automobile, excluding unsprung weight.

"Static loaded radius arc" means a portion of a circle whose center is the center of a standard tire-rim combination of an automobile and whose radius is the distance from that center to the level surface on which the automobile is standing, measured with the automobile at curb weight, the wheel parallel to the vehicle's longitudinal centerline, and the tire inflated to the manufacturer's recommended pressure.

"Temporary living quarters" means a space in the interior of an automobile in which people may temporarily live and which includes sleeping surfaces, such as beds, and household conveniences, such as a sink, stove, refrigerator, or toilet.

§ 523.3 Automobile.

(a) An automobile is any 4-wheeled vehicle propelled by fuel which is manufactured primarily for use on public streets, roads, and highways (except any vehicle operated exclusively on a rail or rails), and that either—

(1) Is rated at 6,000 pounds gross vehicle weight or less; or

(2) Which—

(i) Is rated more than 6,000 pounds gross vehicle weight, but less than 10,000 pounds gross vehicle weight,

(ii) Is a type of vehicle for which the Administrator determines, under paragraph (b) of this section, average fuel economy standards are feasible, and

(iii) (A) Is a type of vehicle for which the Administrator determines, under paragraph (b) of this section, average fuel economy standards will result in significant energy conservation, or

(B) Is a type of vehicle which the Administrator determines, under paragraph (b) of this section, is substantially used for the same purposes as vehicles described in paragraph (a) (1) of this section.

(b) The following vehicles rated at more than 6,000 pounds and less than 10,000 pounds gross vehicle weight are determined to be automobiles:

(1) Vehicles which would satisfy the criteria in § 523.4 (relating to passenger automobiles) but for their gross vehicle weight rating.

(2) Vehicles which would satisfy the criteria in § 523.5 (relating to light trucks) but for their gross vehicle weight rating, and which

(i) Have a basic vehicle frontal area of 45 square feet or less.

(ii) Have a curb weight of 6,000 pounds or less.

(iii) Have a gross vehicle weight rating of 8,500 pounds or less, and

(iv) Are manufactured during the 1980 model year or thereafter.

§ 523.4 Passenger automobile.

A passenger automobile is any automobile (other than an automobile capable of off-highway operation) manufactured primarily for use in the transportation of not more than 10 individuals.

§ 523.5 Light truck.

(a) A light truck is an automobile other than a passenger automobile which is either designed for off-highway operation, as described in paragraph (b) of this section, or designed to perform at least one of the following functions:

(1) Transport more than 10 persons;

(2) Provide temporary living quarters;

(3) Transport property on an open bed;

(4) Provide greater cargo-carrying than passenger-carrying volume; or

(5) Permit expanded use of the automobile for cargo-carrying purposes or other nonpassenger-carrying purposes through removal of seats by means installed for that purpose by the automobile's manufacturer or with simple tools, such as screwdrivers and wrenches, so as to create a flat, floor level surface extending from the forward-most point of installation of those seats to the rear of the automobile's interior.

(b) An automobile capable of off-highway operation is an automobile—

(1) (i) That has 4-wheel drive; or

(ii) Is rated at more than 6,000 pounds gross vehicle weight; and

(2) That has at least four of the following characteristics (see Figure 1) calculated when the automobile is at curb weight, on a level surface, with the front wheels parallel to the automobile's longitudinal centerline, and the tires inflated to the manufacturer's recommended pressure—

(i) Approach angle of not less than 28 degrees.

(ii) Breakover angle of not less than 14 degrees.

(iii) Departure angle of not less than 20 degrees.

(iv) Running clearance of not less than 8 inches.

(v) Front and rear axle clearances of not less than 7 inches each.

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July 28, 1977

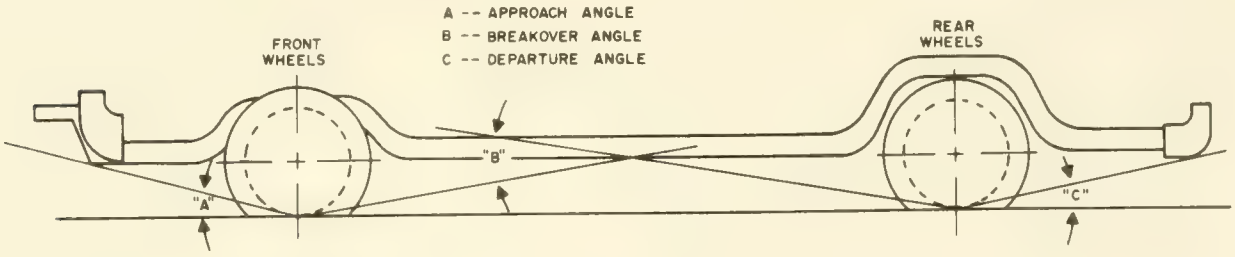

Fig. I

would have insufficient data upon which to base a projection of average fuel economy.

The objection of Checker and Avanti to the two year requirement raises a difficult problem for the agency. The agency realizes that the low volume manufacturers which purchase engines for use in their vehicles must depend on their engine suppliers for much information relating to the engine, especially the effects of the engine on fuel economy. Moreover, since General Motors, the engine supplier for both Checker and Avanti, has been continually developing engines with improved fuel economy, it is likely that the fuel economy effects of any particular size engine will change over time. Therefore, even a low volume manufacturer that traditionally buys the same size engine and plans to continue doing so will not necessarily know what effect a future engine of that size will have on fuel economy. Also, the manufacturer of the engine may be reluctant to tell the low volume manufacturer what the likely fuel economy effects of a particular engine will be on the grounds that the information is unknown, or is a trade secret. Without data relating to the fuel economy of the engine, the low volume manufacturer will have difficulty projecting the future fuel economy of its automobiles.

Nevertheless, the agency wishes to avoid the situation in which it must accept the low volume manufacturers' planned fuel economy as the maximum feasible level of average fuel economy because there is insufficient leadtime to make fuel economy improvements that the petitioner could have made with more leadtime. Such situations are likely to arise if the agency waits until just before the beginning of the affected model year to reach a decision on a petition for exemption, as it must do if petitions are accepted up until shortly before the affected model year. Further, the agency wants to make its decision on a petition for exemption and alternative standard as early as possible so that the low volume manufacturer will have a firm fuel economy target, and enough leadtime to make whatever product or marketing changes which may be necessary to meet the alternative standard, if the exemption is granted, or the general standard if the exemption is not granted.

The agency has decided to retain the two year requirement. Retention of this requirement is more consistent with the basic energy conservation purposes of the Act since it permits the setting of standards that will require greater fuel economy improvements by the exempted manufacturers. The agency believes also that it is essential that the low volume manufacturers know the fuel economy standard which they will have to meet well in advance of the beginning of the affected model year so that they may make any necessary changes in their product plans with a maximum of efficiency and a minimum of expense and disruption. Allowing petitions for exemption to be filed six or seven months before the beginning of the affected model year would barely leave the agency time to reach a decision before the manufacturer must begin production, and would leave the manufacturer little time to make any changes that may be necessary in light of the decision on the petition.

Moreover, the agency believes that the lack of engine data problem raised by Checker and Avanti is not insurmountable. Although Checker and Avanti have been unable to get the most current engine performance data, neither company has experienced significant difficulty in obtaining an engine which they desired. Thus, the low volume manufacturers know to a high degree of certainty what engines will be available for their use. With this knowledge, the low volume manufacturers should be able to make reasonable projections of the range of fuel economy which they can expect to achieve. For example, if a low volume manufacturer uses a 350 cubic inch displacement engine in the year of application (two years before the beginning of the affected model year) and knows that it will be able to use a 350 cubic inch engine in the affected model year, the low volume manufacturer can assume no improvement in fuel economy from the engine, and can project fuel economy for the affected model year from other aspects of the vehicle, such as weight reduction or lowering the axle ratio. The low volume manufacturer can also project fuel economy improvement from using a smaller engine in the affected model year, such as a 305 cubic inch engine.

In addition, the agency believes that the low volume manufacturer may be able to project increases in fuel economy associated with particular improvements in an engine. Both Avanti and Checker indicated to the agency that General Motors has always been extremely helpful to them in their product planning to allow them to accommodate the General Motors engines. As the fuel economy performance of the engines becomes a more significant aspect of the product planning of the low volume manufacturers, they may find that General Motors will be willing to assist them by supplying advance engine information relating to fuel economy. In addition, the agency, through reporting requirements applicable to General Motors, or other engine suppliers, or through subpoena, could obtain information about the fuel economy effects of a particular engine. The agency would use this information to evaluate the maximum feasible average fuel economy of the low volume manufacturer. In light of these considerations, the agency has determined that the public interest in energy conservation, as well as the interest of the low volume manufacturers, will be best served by requiring petitions for exemption for model years beyond 1980 to be filed not later than two years before the beginning of the affected model year.

Notwithstanding the foregoing, the agency has determined to provide for situations where new information obtained within two years of the beginning of the affected model year can be brought to the agency's attention, and possibly modify the decision on a petition for an exemption. Therefore, section 525.11 of the final rule allows a low volume manufacturer which has had a petition denied to reapply, anytime before the beginning of the affected model year, on the basis of information that was unavailable despite due diligence, at the time of the original application. This change is intended to ensure that no low volume manufacturer is deprived of an opportunity to make a complete showing of his maximum feasible average fuel economy by the requirement that petitions for exemptions for model year beyond 1979 be filed not later than two years before the beginning of the affected model year.

With respect to petitions for exemption for model year 1978, the agency has decided to delete the requirement that petitions be submitted not later than three months before the beginning of that model year. Under the final rule, petitions may be submitted at any time before the beginning of the model year. This change was made since less than three months remain before model year 1978. The two low volume manufacturers that have thus far indicated an interest in petitioning for an exemption have previously been advised that if they wish to submit petitions, they could do so by following the format and content requirements of the proposed rule.

The agency has made the following technical and clarifying changes to the rule.

The phrase "content and format requirements for petitions for exemptions" is substituted for the term "guidelines" in section 525.2, to make clear that the requirements of Part 525 are mandatory and not merely advisory.

A new paragraph (b) is added to section 525.7, requiring petitioners to state whether the petitioner controls, is controlled by, or is under common control with another manufacturer of passenger automobiles, and if so, to indicate the number of passenger automobiles manufactured by such other manufacturer in the second model year immediately preceding the affected model year. The agency interprets the term "control" to include any stock ownership, credit relationship or contractual arrangement which enables one person, as a practical matter, to influence the decisions of another person. Paragraphs (b) through (g) are redesignated (c) through (h).

In addition, the paragraph that was 525.7(e) in the NPRM is amended by substituting "40 CFR 600.506(a)(2)" for "40 CFR (a)(2)". This amendment corrects a typographical error which appeared in the NPRM and is not a substantive change.

The subparagraph that appeared as 525.7(d)(5) in the NPRM is amended to read "fuel metering system, including the number of carburetor barrels, if applicable". This change is not substantive, but is made to make the subparagraph consistent with terminology in EPA regulations in 40 CFR Part 600.

The subparagraph that appeared in the NPRM as 525.7(g)(5) would have required petitioners which are not considering means or strategies to comply with applicable average fuel economy standards for the affected model year to explain their reasons for not doing so. This subparagraph is amended to make it clear that the explanations are to be comprehensive. As amended, the subparagraph requires that the explanation include discussion of weight reduction, straight-line acceleration reduction, other technological changes or improvements, and shifts in production mix. This amendment will ensure that the agency receives economic and technological justification for all major aspects of potential fuel economy improvement.

All references to "Part 522" are deleted. At the time of the NPRM, the agency intended to issue a procedural regulation, Part 522, that would specify the informal rulemaking procedures used by the agency in the fuel economy area. The agency has since decided to continue to use the procedures in 47 CFR 551–553.

In light of the foregoing, Title 49, Code of Federal Regulations, is amended by adding a new Part 525, *Exemptions From Average Fuel Economy Standards.* Because these rules are procedural in nature, the agency has determined that they shall become effective on the date of publication in the Federal Register.

The program official and lawyer principally responsible for the development of this regulation are Douglas Pritchard and David Zisser, respectively.

Issued on July 21, 1977.

Joan Claybrook
National Highway Traffic Safety Administrator

42 F.R. 38374
July 28, 1977

PREAMBLE TO AMENDMENTS TO PART 525—EXEMPTIONS FROM AVERAGE FUEL ECONOMY STANDARDS

(Docket No. FE 76-04; Notice 4)

Action: Final rule.

Summary: This rule makes several amendments to the requirements governing the contents of petitions by manufacturers of fewer than 10,000 passenger automobiles annually for exemptions from the generally applicable fuel economy standards and in the procedures followed by the National Highway Traffic Safety Administration (NHTSA) in processing those petitions. These amendments will require that petitions for exemption contain more information concerning the fuel economy testing of the vehicles, but otherwise simplify the general content requirements for these petitions. In addition, the notice of receipt of the petitions and the proposed decision on the petitions will now be combined into one notice. These changes will simplify and expedite the preparation and processing of these petitions.

Effective date: This rule is effective with respect to petitions for exemption for 1980 and subsequent model years.

For further information contact:

William Devereaux, Office of Automotive Fuel Economy Standards, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202-755-9384).

Supplementary information:

Section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended (the Act), provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable average fuel economy standards for passenger automobiles if those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if the NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one who manufactures fewer than 10,000 passenger automobiles in the model year for which the exemption is sought (the affected model year) and who manufactures fewer than 10,000 passenger automobiles in the second model year preceding the affected model year.

To implement section 502(c), NHTSA issued Part 525, Exemptions From Average Fuel Economy Standards. Part 525 prescribes the content of exemption petitions and sets forth the agency procedures for processing those petitions. In connection with the processing of petitions submitted by low manufacturers, several problems with the process for handling exemption petitions became apparent. The most obvious problems were the amount of time needed to obtain a complete petition from the petitioners and the amount of time needed to publish a final decision on the petitions. To reduce these problems, NHTSA published a notice of proposed rulemaking to amend Part 525 at 44 FR 21051; April 9, 1979.

Two comments were submitted in response to this proposal. One comment addressed the issue of the fuel economy improvements to be expected from improved lubricants, but did not address any of the issues raised in the notice. Accordingly, that comment will not be discussed further in this notice.

The other comment was submitted by Aston Martin Lagonda, a low volume manufacturer. Aston Martin suggested that the rule be amended so that low volume manufacturers not be required to submit petitions two years before the affected model year. This suggestion has not been adopted. For the same reasons set forth in the final rule originally establishing Part 525 (42 FR 38374; July 28, 1977), NHTSA believes that retention of the two year requirement is more consistent with the energy conservation purposes of the Act. Early

submission allows NHTSA to set standards at levels that require maximum fuel economy improvements by the exempted manufacturers. The agency also believes that it is essential that low volume manufacturers know the fuel economy which they will have to meet as far in advance of the affected model year as possible, so that the manufacturers can make any necessary changes in their product plans with a maximum of efficiency and a minimum of expense and disruption.

Aston Martin went on to argue that it should not be expected to make any significant alterations to its vehicles. This does not relate to the issues raised in the proposal, but on how NHTSA should determine a manufacturer's maximum feasible average fuel economy. As such, the comment is not relevant to the issues raised in the notice.

Neither of these commenters responded to NHTSA's request for comments as to means of avoiding an annual submission and processing of petitions for exemption, and the request for comments on extending the duration of the exemption from the current three year maximum to a longer period. Since no commenter has raised any objection to the proposed amendments, they are being adopted without change.

The agency has reviewed the impacts of this rule and determined that they are minimal, and that the rule is not a significant regulation with the meaning of Executive Order 12044.

The program official and attorney principally responsible for the development of this proposed regulation are William Devereaux and Stephen Kratzke, respectively.

In consideration of the foregoing, 49 CFR Part 525 is amended. . . .

Issued on September 19, 1979.

Joan Claybrook
Administrator

44 F.R. 55578
September 27, 1979

PREAMBLE TO AN AMENDMENT TO PART 525—EXEMPTIONS FROM AVERAGE FUEL ECONOMY STANDARDS

(Docket Nos. FE 76-04; Notice 5; FE 77-03, Notice 4; 80-21, Notice 1)

ACTION: Final Rule.

SUMMARY: This notice makes conforming amendments to several of the agency's regulations deleting specific requirements for confidentiality determinations. These conforming amendments are needed as a result of the publication today of a new agency regulation governing requests for confidentiality determinations (Part 512). Since that new regulation supercedes the confidentiality provisions existing in several of the agency's other regulations, these conforming amendments are being made without notice and opportunity for comment.

EFFECTIVE DATE: These amendments are effective April 9, 1981.

FOR FURTHER INFORMATION CONTACT:

Roger Tilton, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-9511).

SUPPLEMENTARY INFORMATION: In accordance with the above, Title 49 of the Code of Federal Regulations is amended as follows.

Part 525, *Exemptions From Average Fuel Economy Standards,* is revised as follows:

(1) Section 525.6(g) (1) and (2) are deleted and replaced with the following:

(g) Specify and segregate any part of the information and data submitted under this part that the petitioner wishes to have withheld from public disclosure in accordance with Part 512 of this Chapter.

(2) Section 525.13 is deleted and section 525.12 is revised to read:

§ 525.12 Public inspection of information.

(a) Except as provided in paragraph (b), any person may inspect available information relevant to a petition under this Part, including the petition and any supporting data, memoranda of informal meetings with the petitioner or any other interested persons, and the notices regarding the petition, in the Docket Section of the National Highway Traffic Safety Administration. Any person may obtain copies of the information available for inspection under this paragraph in accordance with Part 7 of the regulations of the Office of the Secretary of Transportation (49 CFR Part 7).

(b) Except for the release of confidential information authorized by section 505 of the Act and Part 512 of this Chapter, information made available for public inspection does not include information for which confidentiality is requested under § 525.6(g) and is granted in accordance with Part 512 and sections 502 and 505 of the Act and section 552(b) of Title 5 of the United States Code.

Part 537, *Automotive Fuel Economy Reports,* is revised as follows:

(1) Section 537.5(c) (7) (i) and (ii) are deleted and replaced with the following:

(7) Specify any part of the information or data in the report that the manufacturer believes should be withheld from public disclosure as trade secret or other confidential business information in accordance with Part 512 of this Chapter.

(2) Section 537.12 is deleted and section 537.11 is revised to read:

§ 537.11 Public inspection of information.

(a) Except as provided in paragraph (b), any person may inspect the information and data submit-

ted by a manufacturer under this part in the docket section of the National Highway Traffic Safety Administration. Any person may obtain copies of the information available for inspection under this section in accordance with the regulations of the Secretary of Transportation in Part 7 of this title.

(b) Except for the release of confidential information authorized by section 505 of the Act and Part 512 of this Chapter, information made available under paragraph (a) for public inspection does not include information for which confidentiality is requested under § 537.5(c) (7) and is granted in accordance with Part 512 of this Chapter, section 505 of the Act, and section 552(b) of Title 5 of the United States Code.

Part 555, *Temporary Exemption From Motor Vehicle Safety Standards,* is revised as follows:

(1) Section 555.5(b) (6) is revised to read:

(6) Specify any part of the information and data submitted which petitioner requests be withheld from public disclosure in accordance with Part 512 of this Chapter.

(2) Section 555.10(b) is revised to read:

(b) Except for the release of confidential information authorized by Part 512 of this Chapter, information made available for inspection under paragraph (a) shall not include materials not relevant to the petition for which confidentiality is requested and granted in accordance with sections 112, 113, and 158 of the Act (15 U.S.C. 1401, 1402, and 1418) and section 552(b) of Title 5 of the United States Code.

Issued on December 30, 1980.

Joan Claybrook
Administrator

46 F.R. 2063
January 8, 1981

PART 525—EXEMPTIONS FROM AVERAGE FUEL ECONOMY STANDARDS

§ 525.1 Scope.

This part establishes procedures under section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 2002), for the submission and disposition of petitions filed by low volume manufacturers of passenger automobiles to exempt them from the average fuel economy standards for passenger automobiles and to establish alternative average fuel economy standards for those manufacturers.

§ 525.2 Purpose.

The purpose of this Part is to provide content and format requirements for low volume manufacturers of passenger automobiles which desire to petition the Administrator for exemption from applicable average fuel economy standards and for establishment of appropriate alternative average fuel economy standards and to give interested persons an opportunity to present data, views and arguments on those petitions.

§ 525.3 Applicability.

This part applies to passenger automobile manufacturers.

§ 525.4 Definitions.

(a) Statutory terms.

(1) The terms "fuel," "manufacture," "manufacturer," and "model year" are used as defined in section 501 of the Act.

(2) The terms "average fuel economy," "fuel economy," and "model type" are used as defined in 40 CFR 600.002–77.

(3) The term "automobile" means a vehicle determined by the Administrator under 49 CFR 523 to be an automobile.

(4) The term "passenger automobile" means an automobile determined by the Administrator under 49 CFR 523 to be a passenger automobile.

(5) The term "customs territory of the United States" is used as defined in 19 U.S.C. 1202.

(b) Other terms.

(1) The terms "base level" and "vehicle configuration" are used as defined in 40 CFR 600.002–77.

(2) The term "vehicle curb weight" is used as defined in 40 CFR 85.002.

(3) The term "interior volume index" is used as defined in 40 CFR 600.315–77.

(4) The term "frontal area" is used as defined in 40 CFR § 86.129–79.

(5) The term "basic engine" is used as defined in 40 CFR § 600.002–77(a)(21).

(6) The term "designated seating position" is defined in 49 CFR § 571.3.

(7) As used in this Part, unless otherwise required by the context—

"Act" means the Motor Vehicle Information and Cost Savings Act (Pub. L. 92–513), as amended by the Energy Policy and Conservation Act (Pub. L. 94–163);

"Administrator" means the Administrator of the National Highway Traffic Safety Administration;

"Affected model year" means a model year for which an exemption and alternative average fuel economy standard are requested under this Part;

"Production mix" means the number of passenger automobiles, and their percentage of the petitioner's annual total production of passenger automobiles, in each vehicle configuration which a petitioner plans to manufacture in a model year; and

"Total drive ratio" means the ratio of an automobile's engine rotational speed (in revolutions per minute) to the automobile's forward speed (in miles per hour).

§ 525.5 Limitation on eligibility.

Any manufacturer that manufactures (whether or not in the customs territory of the United States) 10,000 or more passenger automobiles in the second model year preceding an affected model year or in the affected model year, is ineligible for an exemption for that affected model year.

§ 525.6 Requirements for petition.

Each petition filed under this part must—

(a) Identify the model year or years for which exemption is requested;

(b) Be submitted not later than 24 months before the beginning of the affected model year, unless good cause for later submission is shown;

(c) Be submitted in three copies to: Administrator, National Highway Traffic Safety Administration, Washington, D.C. 20590;

(d) Be written in the English language;

(e) State the full name, address, and title of the official responsible for preparing the petition, and the name and address of the manufacturer;

(f) Set forth in full data, views and arguments of the petitioner supporting the exemption and alternative average fuel economy standard requested by the petitioner, including the information and data specified by § 525.7 and the calculations and analyses used to develop that information and data. No documents may be incorporated by reference in a petition unless the documents are submitted with the petition;

(g) [Specify and segregate any part of the information and data submitted under this part that the petitioner wishes to have withheld from public disclosure in accordance with Part 512 of this Chapter. (46 FR 2063—January 8, 1981. Effective: April 9, 1981)]

§ 525.7 Basis for petition.

(a) The petitioner shall include the information specified in paragraphs (b) through (h) in its petition.

(b) Whether the petitioner controls, is controlled by, or is under common control with another manufacturer of passenger automobiles, and, if so, the nature of that control relationship, and the total number of passenger automobiles manufactured by such other manufacturer or manufacturers.

(c) The total number of passenger automobiles manufacutured or likely to be manufactured (whether or not in the customs territory of the United States) by the petitioner in the second model year immediately preceding each affected model year.

(d) For each affected model year, the petitioner's projections of the most fuel efficient production mix of vehicle configurations and base levels of its passenger automobiles which the petitioner could sell in that model year, and a discussion demonstrating that these projections are reasonable. The discussion shall include information showing that the projections are consistent with—

(1) The petitioner's annual total production and production mix of passenger automobiles manufactured or likely to be manufactured in each of the four model years immediately preceding that affected model year;

(2) Its passenger automobile production capacity for that affected model year;

(3) Its efforts to comply wit that average fuel economy standard; and

(4) Anticipated consumer demand in the United States for passenger automobiles during that affected model year.

(e) For each affected model year, a description of the following features of each vehicle configuration of the petitioner's passenger automobiles to be manufactured in that affected model year:

(1) Frontal area;

(2) Vehicle curb weight;

(3) Number of designated seating positions and interior volume index;

(4) Basic engine, displacement, and SAE net horsepower;

(5) Fuel metering system, including the number of carburetor barrels, if applicable;

(6) Drive train configuration and total drive ratio; and

(7) Emission control system;

(8) Dynamometer road load setting, determined in accordance with 40 CFR Part 86, and the method used to determine that setting, including information indicating whether the road load setting was adjusted to account for the presence of air conditioning and whether the setting was based on the use of radial ply tires; and

(9) Use of synthetic lubricants, low viscosity lubricants, or lubricants with additives that affect friction characteristics in the crankcase, differential, and transmission of the vehicles tested under the requirements of 40 CFR Parts 86 and 600. With respect to automobiles which will use these lubricants, indicate which one will be used and explain why that type was chosen. With respect to automobiles which will not use these lubricants, explain the reasons for not so doing.

(f) For each affected model year, a fuel economy value for each vehicle configuration specified in 40 CFR 600.506 (a)(2), base level, and model type of the petitioner's passenger automobiles to be manufactured in that affected model year calculated in accordance with Subpart C of 40 CFR Part 600 and based on tests or analyses comparable to those prescribed or permitted under 40 CFR Part 600 and a description of the test procedures or analytical methods.

(g) For each affected model year, an average fuel economy figure for the petitioner's passenger automobiles to be manufactured in that affected model year calculated in accordance with 40 CFR 600.510(e) and based upon the fuel economy values provided under paragraph (f) of this section and upon the petitioner's production mix projected under paragraph (d) of this section for the affected model year.

(h) Information demonstrating that the average fuel economy figure provided for each affected model year under paragraph (g) of this section is the maximum feasible average fuel economy achievable by the petitioner for that model year, including—

(1) For each affected model year and each of the two model years immediately following the first affected model year, a description of the technological means selected by the petitioner for improving the average fuel economy of its automobiles to be manufactured in that model year.

(2) A chronological description of the petitioner's past and planned efforts to implement the means described under paragraph (h)(1) of this section.

(3) A description of the effect of other Federal motor vehicle standards on the fuel economy of the petitioner's automobiles.

(4) For each affected model year, a discussion of the alternative and additional means considered but not selected by the petitioner that would have enabled its passenger automobiles to achieve a higher average fuel economy than is achievable with the means described under paragraph (h)(1) of this section. This discussion must include an explanation of the reasons the petitioner had for rejecting these additional and alternative means.

(5) In the case of a petitioner which plans to increase the average fuel economy of its passenger automobiles to be manufactured in either of the two model years immediately following the first affected model year, an explanation of the petitioner's reasons for not making those increases in that affected model year.

§ 525.8 Processing of petitions.

(a) If a petition is found not to contain the information required by this Part, the petitioner is informed about the areas of insufficiency and advised that the petition will not receive further consideration until the required information is submitted.

(b) The Administrator may request the petitioner to provide information in addition to that required by this Part.

(c) The Administrator publishes a proposed decision in the *Federal Register*. The proposed decision indicates the proposed grant of the petition and establishment of an alternative average fuel economy standard, or the proposed denial of the petition, specifies the reasons for the proposal and invites written public comment on the proposal.

(d) Any interested person may, upon written request to the Administrator not later than 15 days after the publication of a notice under paragraph (c) of this section, meet informally with an appropriate official of the National Highway Traffic Safety Administration to discuss the petition or notice.

(e) After the conclusion of the period for public comment on the proposal, the Administrator publishes a final decision in the *Federal Register*. The final decision is based on the petition, written public comments, and other available information.

The final decision sets forth the grant of the exemption and establishes an alternative average fuel economy standard or the denial of the petition, and the reasons for the decision.

§ 525.9 Duration of exemption.

An exemption may be granted under this Part for not more than three model years.

§ 525.10 Renewal of exemption.

A manufacturer exempted under this Part may request renewal of its exemption by submitting a petition meeting the requirements of §§ 525.6 and 525.7.

§ 525.11 Termination of exemption; amendment of alternative average fuel economy standard.

(a) Any exemption granted under this Part for an affected model year does not apply to a manufacturer that is ineligible under § 525.5 for an exemption in that model year.

(b) The Administrator may initiate rulemaking either on his own motion or on petition by an interested person to terminate an exemption granted under this Part or to amend an alternative average fuel economy standard established under this Part.

(c) Any interested persons may petition the Administration to terminate an exemption granted under this Part or to amend an alternative average fuel economy standard established under this Part.

§ 525.12 Public inspection of information.

[(a) Except as provided in paragraph (b), any person may inspect available information relevant to a petition under this Part, including the petition and any supporting data, memoranda of informal meetings with the petitioner or any other interested persons, and the notices regarding the petition, in the Docket Section of the National Highway Traffic Safety Administration. Any person may obtain copies of the information available for inspection under this paragraph in accordance with Part 7 of the regulations of the Office of the Secretary of Transportation (49 CFR Part 7).

(b) Except for the release of confidential information authorized by section 505 of the Act and Part 512 of this Chapter, information made available for public information does not include information for which confidentiality is requested under § 525.6(g) and is granted in accordance with Part 512 and sections 502 and 505 of the Act and section 552(b) of Title 5 of the United States Code. (46 FR 2063—January 9, 1981. Effective: April 9, 1981)]

§ 525.13 [Deleted]

42 F.R. 38374
July 28, 1977

PREAMBLE TO AN AMENDMENT TO PART 526 and 533

Petitions Under the Automobile Fuel Efficiency Act of 1980; Procedures Relating to Light Truck Fuel Economy Standards

(Docket No. 82-01; Notice 1)

ACTION: Interim final rule.

SUMMARY: The notice establishes requirements for the contents of petitions filed under Automobile Fuel Efficiency Act of 1980 ("the 1980 Act"). The 1980 Act authorizes the granting of relief from certain requirements related to the automobile fuel economy standards established under Title V of the Motor Vehicle Information and Cost Savings Act ("the Cost Savings Act"). This notice is being issued to inform manufacturers about types of information which must be submitted in support of the various types of relief petitions and plans. This notice also explains the flexibility of manufacturers in determining how to group their vehicles for the purposes of compliance with the MY 1982 light truck fuel economy standards.

EFFECTIVE DATE: February 18, 1982.

SUPPLEMENTARY INFORMATION:

The Automobile Fuel Efficiency Act of the 1980 (94 Stat. 1821) amended the fuel economy provisions of the Motor Vehicle Information and Cost Savings Act to assist the automobile manufacturers in complying with fuel economy standards and to promote employment in the U.S. automotive industry. To obtain this relief, the 1980 Act requires manufacturers first to file petitions or plans with the agency and make certain specified showings. This notice establishes an interim final regulation concerning the specific information which manufacturers must submit in their petitions and plans.

This notice addresses four different types of relief authorized under the 1980 Act. The agency has previously issued a rule under the 1980 Act relating to the availability of monetary credits for exceeding the light truck average fuel economy standards. See 45 FR 83233, December 19, 1980, and section 6(b) of the 1980 Act.

The first set of requirements established in this notice applies to the exemption provided by section 4(a) of the 1980 Act from the domestic content requirement in section 503 of the Cost Savings Act. The requirement specifies that if at least 75 percent of the cost to the manufacturer of an automobile is attributable to value added in the United States or Canada, the automobile is considered domestically-manufactured. If the percentage is below that level, the automobile is considered to be foreign-manufactured. See section 503(b)(2)(E). Under that requirement, if a manufacturer produces cars both in this country and abroad for sale in this country and it raises the domestic content of the cars produced in this country above 75 percent, it must ensure that its domestically-produced cars and its foreign-produced cars separately meet the fuel economy standards. Thus, the manufacturer could not average high fuel economy imported cars with lower fuel economy domestically-manufactured cars as a strategy for complying with the fuel economy standards.

The domestic content provision was originally included in the Cost Savings Act to promote employment in the U.S. automobile industry by encouraging manufacturers to produce high fuel economy vehicles in this country, instead of relying on the importation of high fuel economy cars which they produce or purchase abroad. However, the requirement for separate compliance has had the opposite effect on U.S. employment in its application to foreign manufacturers. Foreign manufacturers which seek or might seek to produce high fuel economy cars in the U.S. are penalized under the original domestic content provision. If they produce their high fuel economy cars in the country and

eventually exceed 75 percent domestic content, they would lower the average fuel economy of their remaining foreign-produced fleet. As a result, a manufacturer's foreign fleet might not comply with the fuel economy standards, although its combined foreign and domestic fleet would probably exceed the standard substantially.

To reduce this disincentive for foreign manufacturers to initiate production in this country and to achieve high levels of domestic content, Congress amended section 503(b) of the Cost Savings Act by adding a new subsection (3). Under that provision, a manufacturer which completes its first model year of domestic production of automobiles between 1975 and 1985 may petition the agency for exemption from the requirement for separate compliance so that it does not apply when the domestic content of the U.S. produced fleet exceeds 75 percent. Section 503 (b)(3) requires that the agency grant such a petition unless it finds that doing so would "result in reduced employment in the United States related to motor vehicle manufacturing." Employment reductions could occur if, for example, granting the petition resulted in the petitioner's capturing increased sales from current U.S. manufacturers whose vehicles have a higher domestic content. The agency has already granted a petition under this provision to Volkswagen of America. (See 46 FR 54453; November 2, 1981.) It appears that in most instances, increasing U.S. content for one company should produce net increases in overall U.S. employment.

To determine whether to grant a petition filed under this provision, the agency needs information on the magnitude of these possible adverse employment effects, if any. The agency would also need to know the magnitude of the positive employment effects resulting from the decision to begin domestic production or increase domestic content. Therefore, the regulations or petitions and plans for relief set forth below specifies that a petitioning manufacturer submit information describing insofar as possible the vehicles it plans to sell in the United States during the exemption period, the projected sales of those vehicles, the domestic content of those vehicles and plans for obtaining components from domestic sources. Information is also required on the extent, if any, to which additional sales of the petitioner's vehicles are expected to be gained at the expense of current U.S. manufacturers, and the net employment impact of the shift in sales. The petitioner must also submit data on the yearly total employment related to its U.S. production operations to give an overview of the positive impact of granting petition. Finally, information is required on the extent to which the petitioner's product plan and component sourcing decisions would be affected by the agency's granting or denial of the petition.

The second relief provision added by the 1980 Act is intended to encourage manufacturers to transfer production of a foreign-produced vehicle to this country. Section 503(b)(4) of the Coast Savings Act authorizes a temporary exemption from the domestic content requirement in section 503. Under that requirement, an automobile whose domestic content is less than 75 percent must be treated as a foreign-produced automobile. This poses a problem particularly if a manufacturer wishes to transfer production of a high fuel economy car and average it with its domestic fleet. The exemption is available to any manufacturer which plans to phase-in domestic production of a new vehicle by gradually increasing its domestic content to 75 percent. A manufacturer which satisfies the satutory requirements is permitted to include up to 150,000 automobiles in its domestic fleet if the automobiles have at least 50 percent domestic content initially and if the manufacturer submits and the agency approves a plan for achieving 75 percent domestic content by the fourth year of the exemption.

In considering whether to approve a plan under this provision, the agency must determine whether the plan is adequate. To verify achievement of the 50 and 75 percent domestic content levels, the regulation specifies that information must be provided on the total manufacturing costs of the vehicles whose production is to be transferred to this country. In addition, information is required on the changes in domestic content of the vehicles to be produced in this country during each of the four years covered by the plan, including information on the timing and nature of the change.

The third relief provision relates to compliance with fuel economy standards for 4-wheel drive light trucks. This provision, which was added by the 1980 Act to the Coast Savings Act as section 502(k), authorizes the agency to adjust the manner in which average fuel economy is calculated for a petitioner's 4-wheel drive light truck fleet or to provide other relief with respect to a fuel economy standard for 4-wheel light trucks. To obtain this relief, the petitioner must show that it would be unable to comply with such a standard "without causing service economic impacts such as plant closings or reduction

in employment in the United States related to motor vehicle manufacturing." (Section 502(k)).

To enable the agency to assess the impacts on a petitioning manufacturer of compliance with a fuel economy standard for 4-wheel drive light trucks, the regulation requires that information be submitted on the changes planned by the manufacturer to achieve compliance and the cost and fuel economy impacts of each of those changes. The manufacturer must also identify the particular compliance steps which the manufacturer believes would cause "severe economic impacts" and the nature of those impacts. This information will permit the agency to determine what level of rule economy the petitioner is capable of achieving without experiencing "severe economic impacts."

Information must also be submitted on monetary credits likely to be earned in the three model years preceding and the three model years following model year for which relief is sought. This information will permit the agency to assess the effect of available credits on the need for relief. Credits are earned at the rate of five dollars per vehicle for each tenth of a mile per gallon by which a manufacturer's fleet exeeds a average fuel economy standard. Earned credits may be used to offset civil penalties (accrued at the same rate) for the manufacturer's falling below a standard in one or more of the three model years before or after the model year in which the credit was earned.

Finally, the petitioner must specify the precise type and extent of relief being sought.

The final relief provision is section 502(1) of the Cost Savings Act which was added by section 6(b) of the 1980 Act. Section 502(1) authorizes a manufacturer which expects to fail to meet a fuel economy standard in a particular model year to file a plan with NHTSA regarding the prospects for earning credits in the next three model years. The plan must set forth the individual actions comprising the plan and the schedule for accomplishing those actions. If NHTSA approves the plan, the credits are available immediately to offset the civil penalty for the model year in which the manufacturer failed to meet the standard. The benefit of having such a plan approved is that the manufacturer can avoid ever being deemed to have violated the fuel economy standard for the model year if it actually earns the projected credits. If such a manufacturer does not obtain the agency's approval for a plan under section 502(1), the manufacturer may have to pay the civil penalty and then seek a refund if credits are subsequently earned.

Section 502(1) directs the agency to approve any plan submitted by a manufacturer under that section unless the agency determines that "it is unlikely that the plan will result in the manufacturer earning sufficient credits" to offset the civil penalty. The agency might make such a finding if either the technological or other steps planned by the manufacturer will fail to produce the levels of average fuel economy necessary to earn the credits.

Therefore, the regulation specifies that the manufacturer must submit information demonstrating the feasibility of its plan. Among types of required information are descriptions of planned product actions which will affect fuel economy (e.g., the introduction of a new model), and the effect of that product action on the manufacturer's average fuel economy.

In addition to establishing a regulation regarding certain types of submissions under provisions added to the Cost Savings Act by the 1980 Act, this notice also adopts a simple change relating to how light trucks are grouped for purposes of compliance with the light truck fuel economy standards for model year 1982. The change would give manufacturers the same latitude in grouping their light trucks in the model year the they presently have for model years 1983–1985. On December 31, 1979, the NHTSA published a proposal to establish separate standards for 2-wheel drive and 4-wheel drive light trucks for model years 1982-1985. Due to a statutory deadline for issuing the model year 1982 standards, the agency published them on March 31, 1980. The standards were 16 miles per gallon for 4-wheel drive light trucks and 18 miles per gallon for 2-wheel drive light trucks. The NHTSA then sought further comment on the model year 1983-1985 standards and expressly focused public attention on the concept of a combined standard. Whe the agency published its decision on December 11, 1980, it provided manufacturers with an option of complying with separate standards or a single combined standard. The NHTSA did not, however, then go back and provide the same option for model year 1982.

Over the past year, the agency has been reviewing its existing procedures and regulations pursuant to E.O. 12291 to determine the need for any amendments to eliminate ineffective or unnecessarily burdensome or inflexible regulations. However, it was only in December that the agency received informaton indicating the value of increasing the flexibility of the manufacturers in grouping their light trucks for compliance purposes. In that month, the

manufacturers submitted their semi-annual fuel economy reports required by 49 CFR 537. The agency's analysis of the information in those reports revealed for the first time the value of giving manufacturers the same flexibility in grouping their light trucks for model year 1982 as they already have for model years 1983-1985. By placing all of its light trucks in a single group, a manufacturer has greater freedom to choose how it allocates its efforts to improve fuel economy between technology changes and sales mix changes.

Accordingly, the agency has decided to provide manufacturers with the option of complying with a single, combined standard. in terms of required fuel savings, the separate standards of 16 and 18 miles per gallon are essentialy the equivalent of a single standard of 17.5 miles per gallon for all light trucks together. The single standard has therefore been set at the level. The figure of 17.5 was calculated by harmonically weighting the separate standards based on the 75 percent/25 percent sales mix of 2-wheel drive light trucks and 4-wheel drive light trucks used in the 1983-1985 proceeding. This notice adopts that combined standard of 17.5 miles per gallon. As noted above, this action makes no change in the level of fuel economy required of manufacturers, but does allow a manufacturer the choice of placing all of its 2-wheel drive and 4-wheel drive light trucks together in a single group or maintaining two separate groups for compliance purposes. It also provides an additional method of compliance, i.e., selling larger numbers of the higher fuel economy 2-wheel driven light trucks.

The actions taken by this notice are being issued as an interim final rule because they are essentially procedural and therefore notice and opportunity for comment is not required by the Administration Procedures Act. Neverless, the agency is providing an opportunity to comment. Appropriate changes warranted by the comments will be incorporated in the permanent final rules.

The agency also notes and expressly finds there is good cause for proceeding directly to an interim final rule. As noted above, the need for their amendment was identified by the agency as a result of its evaluation of the recently submitted pre-model year fuel economy reports. Those reports were submitted to the agency last month. If manufacturers are to have a meaningful opportunitiy to take advantange of the change, it must be adopted now. Typical production runs for 1982 light trucks of major domestic manufactuers end in June 1982. That is only about four months away. If the rule were not adopted and made effective until after a comment period and the issuance of another *Federal Register*, little or no time would remain for the manufacturers to take advantage of the additional flexibility being provided through the combined standard. Extensive comment has already been solicited and obtained on the concept of an optional combined standard for the immediately following model years. Applying the concepts to model year 1982 does not appear to raise any issues not considered in the rulemaking. For these reasons and because this amendment relieves a restriction, the agency finds good cause also for making the amendment effective upon publication in the *Federal Register*.

The petitions and plans regulation also is being made effective immediately. The agency finds good cause for doing so since it will facilitate the submission of any requests for relief.

For the reasons set forth in the preamble, Chapter V of Title 49, Code of Federal Regulation, is amended as set forth below.

Issued on February 11, 1982.

Raymond A. Peck, Jr.,
Administrator

33 F.R. 7245
February 18, 1982

PREAMBLE TO AN AMENDMENT TO PART 526 and 533

Petitions Under the Automobile Fuel Efficiency Act of 1980; Procedures Relating to Light Truck Fuel Economy Standards

(Docket No. 82-01; Notice 2)

ACTION: Final rule.

SUMMARY: This notice issues in final form certain fuel economy procedural rules which were initially implemented on an interim basis. Most of the procedures relate to provisions in the Automobile Fuel Efficiency Act of 1980 for granting relief to manufacturers from automobile fuel efficiency requirements. The balance relate to compliance with light truck fuel economy standards. Since no comments were received on the interim procedures, this notice establishes final procedures identical to the interim ones.

EFFECTIVE DATE: July 29, 1982.

SUPPLEMENTARY INFORMATION:

The Automobile Fuel Efficiency Act of the 1980 (94 Stat. 1821) amended the fuel economy provisions of the Motor Vehicle Information and Cost Savings Act to assist the automobile manufacturers in complying with fuel economy standards and to promote employment in the U.S. automotive industry. To obtain this relief, the 1980 Act requires manufacturers first to file petitions or plans with the agency and make certain specified showings. On February 18, 1982, the agency published interim procedures on the required contents of these petitions and invited comment on those procedures. See 47 FR 7245. That notice also specified an optional procedure for complying with 1982 light truck standards. Since no comments were received on the interim procedures during the established public comment period, the agency is now adopting those procedures in final form without change.

Two of the petition procedures in the interim rules relate to fuel economy domestic content requirements. The Cost Savings Act specifies that, in general, each manufacturer's domestically manufactured (i.e., those with at least 75 percent U.S. or Canadian content) and imported automobiles must comply separately with average fuel economy standards. This provision was originally enacted to discourage domestic auto manufacturers from merely importing increasing numbers of fuel efficient, foreign produced vehicles to comply with standards, thereby adversely affecting U.S. employment. However, the original provision could, in certain situations, penalize manufacturers which intended to transfer production of a foreign automobile to the United States or, in the case of a foreign manufacturer, to begin U.S. production of an existing model. Therefore, Congress enacted the previously mentioned two exemption provisions.

The first provision applies to foreign manufacturers which begin U.S. production. Such manufacturers may be exempted from domestic content requirements if they submit, and NHTSA approves, a petition demonstrating that granting the requested relief would not adversely affect employment in the U.S. automobile industry. The second provision applies to the situation where a manufacturer transfers a foreign produced automobile to U.S. production. To obtain exemption from domestic content requirements under that provision, a petitioner must show (among other things) that it will achieve at least 75 percent U.S. content with the transferred automobiles by the fourth model year after U.S. assembly begins. The interim procedures specify the required contents for both types of petitions.

The 1980 Act also authorized special relief for manufacturers which plan to exceed fuel economy standards for a year prior to that future one. Under the current statutory scheme, manufacturers earn credits for any model year in which they exceed a fuel economy standard. These credits may be used to offset civil penalties which would otherwise be assessed for falling short of a standard in any of the three prior or subsequent model years. The 1980 Act

authorized these credits to be available in advance where a manufacturer submits and the agency approves a plan for earning the necessary credits in the future. Approval of such a plan eliminates the need for manufacturers to pay civil penalties and subsequently apply for a refund when credits are earned, and also eliminates any stigma associated with being in violation of a standard.

The fourth provision of the 1980 Act authorizes special relief for manufacturers which are unable to comply with one or more of the four-wheel drive light truck fuel economy standards in model years 1982-85. Such manufacturers may petition the agency to adjust the manner in which average fuel economy is calculated for these truck. The 1980 Act requires petitioning manufacturers to submit information on their abilities to comply with the standard and the economic consequences of their efforts to comply.

The final provision in the interim rule permitted manufacturers to combine their two-wheel drive and four-wheel drive light truck fleets in order to comply with the 1982 model year fuel economy requirements for light trucks. When those requirements were originally established, 1982 model year light trucks were required to comply with separate two-wheel drive and four-wheel drive standards. Manufacturers' fleets of two-wheel drive trucks were required to comply with a standard of 18 miles per gallon, while the average fuel economy of each company's four-wheel drive trucks was required to be at least 16 miles per gallon. When standards were later established for the 1983-85 model years, the agency set separate standards for each of these classes of trucks. However, it also set an optional combined standard for each manufacturer's entire light truck fleet. The combined standard was intended to achieve essentially the same overall fuel efficiency improvement as the separate standards, while giving manufacturers the flexibility of making greater improvements to one class or the other. When the 1983-85 standards were established, the agency did not make corresponding changes to the 1982 standards by adding a separate combined standard option for that year. However, that conforming change was made in the February 18 interim procedures, by establishing a 17.5 mile per gallon optional combined standard.

Further information on the final procedures can be found at 47 FR 7245 with the actual text of the procedures appearing at 47 FR 7248-50.

Since this notice makes final existing procedures, it is effecive immediately

For the reasons set forth in the preamble, the agency adopts as final the amendments made to Chapter V of Title 49 , Code of Federal Regulation, in 47 FR 7248–50.

List of Subjects in 49 CFR Parts 526 and 533

Energy conservation
Gasoline
Imports
Motor vehciles
National Highway Traffic Safety Administration

Sec. 9, Pub. L. 89–670, 80 Stat. 931 (49 U.S.C. 1657); sec. 301, Pub. L. 94–163, 89 Stat. 901 (15 U.S.C. 2002 and 2003); delegation of authority at 49 CFR 1.50.)

Issued on July 2, 1982.

Raymond A. Peck, Jr.,
Administrator

47 F.R. 32721
July 29, 1982

PART 526—PETITIONS AND PLANS FOR RELIEF UNDER THE AUTOMOBILE FUEL EFFICIENCY ACT OF 1980

§ 526.1 General provisions.

(a) *Applicability.* These regulations apply to petitions and plans submitted under the Automobile Fuel Efficiency Act of 1980, Pub. L. 96–425, as codified in Title V of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2001 *et seq.*

(b) *Address.* Each petition and plan submitted under the Automobile Fuel Efficiency Act of 1980 must be addressed to the Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington D.C. 20590.

(c) *Authority and scope of relief.* Each petition or plan must specify the specific provision of the Act under which relief is being sought. The petition or plan must also specify the model years for which relief is being sought.

§ 526.2 U.S. production by foreign manufacturer.

Each petition filed under section 4(a) of the Act must contain the following information:

(a) For each model type (as defined by the Environmental Protection Agency in 40 CFR Part 600) planned by the petitioner to be sold in the United States (regardless of place of manufacture), and for each model year beginning with the year before the first one for which relief is sought by the petition through the last year covered by the petition, the following information based on the petitioner's current product plan and the assumption that the petition will be granted:

(1) A description of the model type, including car line designation, engine displacement and type, transmission type, and average fuel economy;

(2) U.S. sales projected for the model type;

(3) The average percentage of the cost to the manufacturer of the model type which is attributable to value added in the United States or Canada, determined in accordance with 40 CFR 600.511–80, and the total manufacturing cost per vehicle; and

(4) In the case of model types not offered for sale in the United States before the first year for which relief is sought in the petition or other model types for which expansions in production capacity are planned during the years covered by the petition, information (including any marketing surveys) indicating from where the additional sales will be captured. If sales are projected to be captured from U.S. manufacturers the petition must provide an estimate of the employment impact on those manufacturers of the lost sales and the gain in employment for the petitioner and its U.S. suppliers.

(b) The total number of persons employed in the United States by the petitioner, excluding non-motor vehicle industry related employees, for each model year covered by the petition and for the model year immediately prior to those years.

(c) A description of how the petitioner's responses to paragraphs (a) and (b) of this section would differ if the petition were denied.

§ 526.3 Transfer of vehicle from foreign to U.S. production.

Each plan submitted under section 4(b) of the Automotive Fuel Efficiency Act of 1980 must contain the following information:

(1) A description of the model type, including engine type and displacement, transmission class, car line designation, and fuel economy;

(2) The projected U.S. sales of the model type;

(3) The average total manufacturing cost per vehicle for the model type;

(4) The precentage of the cost to the manufacturer attributable to value added in the United States or Canada for the model type:

(b) For each year covered by the plan, a list of individual product actions (e.g., change from imported engine to domestically manufactured engine) which will increase the domestic content of the affected vehicles. For each action, provide the model year in which the action will take effect, a description of the nature of the action, and the percentage change in domestic content resulting from the action.

§ 526.4 Adjustment of fuel economy standards for 4-wheel drive light trucks.

Each petition submitted under section 5 of the Automobile Fuel Efficiency Act of 1980 must contain the following information:

(a) For each configuration (as defined by the Environmental Protection Agency in 40 CFR Part 600) of 4-wheel drive light trucks to be manufactured by the petitioner and for each model year from the year in which the petition is filed to the year for which relief is sought:

(1) Model designation and type (e.g., K–15 pickup);
(2) Test weight;
(3) Gross vehicle weight rating;
(4) Engine displacement, cylinder configuration and engine type;
(5) Transmission type;
(6) Fuel economy;
(7) Projected sales;
(8) Rear axle ratio; and
(9) N/V ratio.

(b) A list and full description of each planned product action (e.g., new transmission, addition of improved tires) which will affect the average fuel economy of the petitioner's 4-wheel drive light trucks beginning with the current model year and ending with the model year for which relief is sought.

(c) An indication of which configurations specified under paragraph (a) of this section are affected by each product action specified under paragraph (b) of this section.

(d) The fuel economy effect of each product action specified under paragraph (b) of this section per affected vehicle.

(e) The petitioner's actual or projected average fuel economy for 4-wheel drive light trucks subject to fuel economy standards for the model year for which relief is sought, the three preceding model years and the three following model years. For model years 1979 and 1982-85, also provide actual or projected fuel economies for the combined fleet of 2-wheel drive and 4-wheel drive light trucks, and the number of vehicles in the combined fleet. For those same five model years, provide the number of the vehicles in the combined fleet which are subject to a fuel economy standard for 4-wheel drive light trucks.

(f) The actions which the petitioner would undertake to comply with the fuel economy standard for 4-wheel drive light trucks in the model year for which relief is sought and which the petitioner believes would result in severe economic impacts.

(g) The economic effects (such as reduction in employment or plant closings) which would result from undertaking the actions specified under paragraph (f) of this section. Provide information to support the conclusion that these impacts would result from attempted compliance. If reductions in employment or plant closings are projected, identify the plants which may be affected and the number of employees at each plant which are involved in the production of 4-wheel drive light trucks.

§ 526.5 Earning offsetting monetary credits in future model years.

Each plan submitted under section 6(b) of the Automobile Fuel Efficiency Act of 1980 must contain the following information:

(a) Projected average fuel economy and production levels for the class of automobiles which may fail to comply with a fuel economy standard and for any other classes of automobiles from which credits may be transferred, for the current model year and for each model year thereafter ending with the last year covered by the plan. For light truck credit transfers which may occur between different classes of light trucks, provide the information specified in § 526.4(e).

(b) A list and full description of each planned product action (e.g., new model, mix change) which will effect the average fuel economy of the class of automobiles subject to the credit earning plan, for each model year beginning with the current model year and ending with the last year covered by the credit earning plan.

(c) The portion of the petitioner's fleet affected by each product action (e.g., all K-cars with 6-cylinder engines) and the number of affected vehicles.

(d) The fuel economy effect of each product action specified under paragraph (b) of this section per affected vehicle.

47 F.R. 32721
July 29, 1982

PREAMBLE TO PART 527—REDUCTION OF PASSENGER AUTOMOBILE AVERAGE FUEL ECONOMY STANDARDS

(Docket No. FE 76-2; Notice 2)

ACTION: Final rule.

SUMMARY: This regulation prescribes requirements for the contents and processing of petitions by passenger automobile manufacturers to reduce the average fuel economy standards applicable to passenger automobiles produced in model years 1978, 1979, and 1980 to compensate for any adverse fuel economy impact of more stringent Federal motor vehicle emission, safety, noise, or damageability standards in those years. Such requirements and reductions are authorized by the Motor Vehicle Information and Cost Savings Act. This regulation is intended to provide notice to passenger automobile manufacturers of the procedures to be followed in processing those petitions.

EFFECTIVE DATE: November 14, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Theodore Bayler,
Office of Automotive Fuel Economy, (NFE-01),
National Highway Traffic Safety
Administration, 400 Seventh Street, S.W.,
Washington, D.C. 20590, 202-755-9384.

SUPPLEMENTARY INFORMATION:

I. Background Information

Title V of the Motor Vehicle Information and Cost Savings Act, as amended (hereafter, "the Act"), establishes average fuel economy standards applicable to manufacturers of passenger automobiles. The term "passenger automobiles" generally includes four-wheeled vehicles manufactured primarily for on-road use and for the transportation of ten or fewer passengers, e.g., sedans and station wagons. See 15 U.S.C. 2001(1) and (2) and 41 F.R. 55368. Compliance of a manufacturer with these standards is to be determined by averaging the fuel economy ratings of the various types of passenger automobiles manufactured by the manufacturer in a model year and comparing that number to the fuel economy standard. The Act specifies fuel economy standards of 18, 19, 20, and 27.5 miles per gallon for model years 1978, 1979, 1980, and 1985, respectively. Fuel economy standards for model years 1981-84 have been established administratively at 22 mpg for 1981, 24 mpg for 1982, 26 mpg for 1983, and 27 mpg for 1984. Fuel economy values for the various types of passenger automobiles are determined in accordance with procedures established by the Environmental Protection Agency. See 40 CFR Part 600.

The fuel economy achievable by a particular passenger automobile may be adversely affected by the technology adopted by the manufacturer in order to comply with Federal motor vehicle emission, safety, noise, and damageability standards (hereafter called "nonfuel economy standards") requirements. The fuel economy standards for model years 1978-80 were established at levels which took into account the effects of the nonfuel economy standards in effect in 1975. However, in order to compensate for possible increases in the stringency of the nonfuel economy standards and for any corresponding fuel economy impacts, an additional provision was included in the Act. Under Section 502(d) of the Act, a manufacturer can petition for an adjustment of a fuel economy standard (called a "Federal standards fuel economy reduction") due to the impacts of these more stringent nonfuel economy standards. The Act gives the Department authority to publish regulations specifying the required content of these petitions; the regulations published herein are based upon this authority.

These regulations were published in proposed form on October 26, 1976. See 41 F.R. 46878. A comment period of 60 days was established. A docket was established for this rulemaking proceeding in the Department's headquarters offices in Washington, D.C. Four domestic automobile companies, two federal agencies, one manufacturer of gasoline additives, one newspaper publishing association, one "public interest" group, and three

private individuals submitted written comments on the proposal. All written comments, together with certain other related material such as an economic impact assessment were placed in the docket and made available for public inspection. Finally, copies of this notice were circulated to various Federal agencies for their comment and review. All of the various submissions, discussions referred to above, and other available information were considered in developing the final regulations promulgated herein.

Section 502(g) of the Act requires that petitions for reduction be processed according to standard informal rulemaking procedures, except for the mandatory additional opportunity for oral presentations. The Act also authorizes the consolidation of petitions by more than one automobile manufacturer, to permit the conduct of a single proceeding for all. See section 502(d) (4). As noted in the preamble to the October 26 notice, NHTSA intends to exercise this consolidation authority to the maximum extent possible, consistent with the other requirements of the Act and the commonality of issues raised by various petitioners. See 41 F.R. 46884. This will reduce the administrative burden of processing petitions and will facilitate participation in the proceeding by less affluent individuals and organizations, who might be unable to participate in a series of completely separate proceedings.

These regulations require a manufacturer applying for a reduction to submit information on two sets of passenger automobiles for the purpose of calculating a reduction. The first set is the actual set of passenger automobiles which the manufacturer plans to produce in the model year for which the reduction is requested (hereafter called the "affected model year"). The second set is the hypothetical set of passenger automobiles which the manufacturer would have produced had 1975-level standards in those nonfuel economy categories for which a reduction is sought (e.g., emissions and damageability) still been in effect. For each of these sets, information is requested on, among other things, the distribution of vehicles among the various vehicle categories expected to be produced (called the "production mix"), the fuel economy-related technology used in the vehicles, and any available technology not used but which would have reduced any loss of fuel economy and improved the resulting vehicle fuel economy. From all this information, the average fuel economy of the two sets of vehicles can be calculated, and the difference between the two averages gives an indication of the fuel economy penalty associated with the nonfuel economy standards. The required information would also enable NHTSA to assure that the manufacturer has used all available means for complying with the nonfuel economy standards so as to minimize or avoid entirely any reduction of the fuel economy of its passenger automobiles. If a manufacturer sustains its burden of demonstrating that a reduction is warranted under the statute and the regulations, the fuel economy standard applicable to that manufacturer for the affected model year is reduced in accordance with Section 502(d) of the Act.

A more detailed description of this rule and related statutory requirements can be found in the Notice of Proposed Rulemaking published in 41 F.R. 46878 on October 26, 1976.

II. Principal Changes In the Rule

As a result of the public comments and NHTSA's further analysis, several changes were made to the rule as proposed. Under the final rule, NHTSA will grant confidential treatment to any portion of a reduction petition only in the most exceptional circumstances. Based on comments expressly solicited in the NPRM, the procedure for calculating a reduction was revised to take into account the possible interaction of efforts to comply with more than one category of Federal standards. In addition, the format for submitting information on each of a petitioner's vehicle configurations was revised to make data submission less burdensome. The final rule revises the methodology for adjusting a petitioner's production mix when none of the petitioner's passenger automobiles has a fuel economy rating that equals or exceeds the fuel economy standard. Also, several revisions to the proposed procedures for holding hearings on petitions were adopted. Each of these changes, as well as requested changes that were not adopted, are discussed in greater detail below.

III. Comments Received and the Final Version of the Regulation

A. Required Contents of Petitions

Several commenters raised questions with respect to the quantity of data and level of detail required in petitions. The NPRM suggested that the submission of particular items of data and in-

formation would not be required, but that the petitioner would be required to make various specified showings by whatever means it deemed best. If the means chosen by a manufacturer were inadequate, its petition would be denied. The Administrator retained the authority to require additional supporting information at any time prior to a final decision, however, and to suspend processing of the petition until such information was submitted.

Ford Motor Co., in its comment on the NPRM, argues that NHTSA should not refuse to consider a petition on the basis of inadequacy "unless the petition on its face fails to present any information with respect to each of the items required under the applicable regulations." This argument rests on Ford's reading of *"International Harvester* v. *Ruckelshaus,"* 478 F.2d 615 (D.C. Cir. 1973). However, the portion of that opinion which Ford cites actually states that denial of a petition on the grounds of incompleteness is improper where the petitioner came forward "with all the data there was to be had, and the Administrator did not ask for more." 478 F.2d at 642. Therefore, NHTSA reasserts its right to request additional relevant information where such information either presently exists or can be generated and made available, and to refuse to further consider petitions which a petitioner fails to supplement as required. Failure to provide such information constitutes a failure to satisfy the burden of persuasion in the proceeding.

Most of the automobile manufacturers which responded to the NPRM cautioned NHTSA on the potentially burdensome impact of the data submission requirements, particularly with respect to the requirement for the submission of detailed information on the technology used in each vehicle configuration (as defined by EPA in 40 CFR 600.002–77) of the petitioner's passenger automobiles. It is NHTSA's intent to minimize the data submission burden on petitioners, consistent with our need for detailed information in order to calculate reductions. However, the EPA average fuel economy calculation procedure, which is also applicable to our reduction calculations, requires fuel economy values for most large-selling vehicle configurations. Each data point in the average fuel economy calculation may affect the reduction calculation and must therefore be reviewed by NHTSA in our analysis of petitions for reduction. To reduce this burden, the regulations permit the incorporation by reference of material contained elsewhere in the petition. For example, a petitioner could first list all technology which is used throughout its entire product line, then list additional technology which is common to an individual car line but which differs from other car lines, and so on with similar listings for each model type within that car line, each base level, and finally each configuration. This approach should reduce the amount of duplication involved in presenting the required information.

Chrysler Corporation suggested two additional methods for reducing this burden. First, it suggests that petitioners should be permitted to submit copies of reports containing quarterly vehicle production data which are submitted to EPA pursuant to 40 CFR 86.077–36 and 86.078–37 in order to satisfy the need for information on its past production mix and totals. Second, it suggests that the requirement that petitions continually be updated as new information becomes available should be revised to permit periodic updates. Both suggestions have merit. To the extent that reports required to be submitted to EPA or to any other agency present the information required under this regulation in a straightforward manner, not requiring extensive culling of useful information from surrounding material irrelevant to a section 502(d) proceeding, copies of those reports may be submitted. The EPA reports cited by Chrysler may satisfy the product mix submission requirements. With respect to the question of updating petitions, Chrysler correctly points out that much of the required data, such as projected production mix and total, will be in a state of flux at the time the manufacturer submits its petition. The regulation has, therefore, been changed to require the submission of revised information within 30 days after the revision. This permits petitioners to submit new information either as it becomes available or to submit monthly updates including more than one change. Allowing more than 30 days for submission of updated information (Chrysler suggested 90 days) would prejudice NHTSA's ability to evaluate petitions quickly and accurately.

In contrast to the above comments, the Center for Auto Safety argues that the data required to be submitted under the proposed regulations is inadequate to evaluate petitions. That organization suggests requiring the submission of additional information similar to that required in EPA emission standard suspension proceedings, principally in-

volving the manufacturer's research and development program resources and its efforts to develop alternative technology. NHTSA has concluded that it would be inappropriate to routinely require the submission of all of this information as part of every petition for a reduction. However, to the extent that this type of information is relevant to a particular reduction proceeding, it is expected that it would normally be submitted to NHTSA as part of the manufacturer's petition for a reduction. Much of the suggested information seems more relevant to an evaluation of a manufacturer's maximum feasible fuel economy improvements in a standard-setting proceeding than to a reduction proceeding. Compliance with applicable fuel economy standards is not a prerequisite to qualifying for a reduction. Both manufacturers which greatly exceed and manufacturers which fail to meet the fuel economy standards may still qualify for a reduction if they can demonstrate that their fuel economy suffered as a result of their efforts to comply with nonfuel economy standards, notwithstanding the use of a "reasonably selected technology." For the purpose of submitting a petition, it is not even necessary for a manufacturer to actually have used reasonably selected technology in its vehicles, since a petition must be granted if a fuel economy penalty would have resulted had the petitioner used such a technology. See section 502(d) (2) (B) (ii) of the Act.

B. Reasonably Selected Technology

A difference of opinion in the comments arose with respect to the determination of whether a particular technology is "reasonably selected." Ford argues that this should be an individualized determination, with the reasonableness of a given technology depending on the particular manufacturer's circumstances. On the other hand, the Council on Wage and Price Stability contends that the regulations would have an anticompetitive effect unless the same criteria were applied to all technological assessments for all manufacturers. In the Council's view, the regulation should not tolerate the use of less energy efficient technology by financially weaker manufacturers, since to do so would reward inefficiencies in management, production, or marketing which a competitive market would penalize. Although recognizing merit in the Council's argument, NHTSA cannot contravene the clear Congressional intent that an individualized evaluation be performed. Section 502(d) of House bill H.R. 7014, the direct precursor to the reduction provisions in section 502(d) of the Act, required that "emission standards penalties" be calculated on the basis of "all passenger automobiles to be manufactured in a model year," not limiting consideration to a particular manufacturer's fleet. The House Report on H.R. 7014 (H. Rep. No. 94-340, 94th Cong., 1st Sess. 90 (1975)) states that the determination of an emission standards penalty should be on "an industry-wide basis, rather than a manufacturer-by-manufacturer basis." However, the version of that provision which came out of the Conference Committee contained significantly different language. Under the conference substitute, reductions are to be based on "the reduction in *a manufacturer's* average fuel economy in a model year." (Emphasis added.) Section 502(d) of the Act is replete with references to the petitioning manufacturer's unique circumstances. For example, in evaluating various technological options to determine whether the petitioner applied a reasonably selected technology, the Administration must, under the Act, consider the manufacturer's cost and lead-time requirements. Also, only fuel economy values for the petitioning manufacturer are to be considered in calculating a reduction. Therefore, the Council's position cannot be accepted. It should be noted, however, that beyond 1980, fuel economy standards will be the same for all manufacturers, and any anticompetitive pressures generated by these procedures will no longer exist.

The Council also suggests that a "cost-effectiveness" analysis be performed when evaluating various technological options. The Act requires that NHTSA evaluate the additional costs and fuel savings associated with these options. It is NHTSA's intent to compare the costs of technological improvements with the value of their associated fuel economy benefits. This would be accomplished by placing a dollar value on the gasoline saved. As noted by the Council, it may be appropriate to assume a number of different gasoline prices in conducting this analysis, since the present pump price cannot be expected to reflect the average pump price prevailing over the lifetime of the vehicles produced in the affected model years, nor does it reflect the "social cost" of gasoline. The results of these analyses would be factors considered by the Administration in deter-

mining whether a particular technology is "reasonably selected."

C. Adjustment and Selection of Production Mix

In certain instances, a petitioner's projected production mix for the affected model year would not be used in calculating reductions. This would occur whenever the petitioner's average fuel economy at the projected mix failed to meet the standard for that model year, even if its vehicles were modified to meet 1975-level nonfuel economy standards. In such cases, the petitioner's projected production mix would be adjusted according to the procedure set forth in section 527.11 of the regulations.

Ford notes that the use of this slightly arbitrary adjustment procedure may result in the use, for calculation purposes, of a production mix which would have been infeasible for the manufacturer to implement. However, NHTSA remains convinced that the proposed adjustment procedure is generally appropriate. Section 502(d) (3) (E) of the Act requires the use in reduction calculation of a production mix which would have resulted in compliance with fuel economy standards. An adjusted mix is used only if the manufacturer would fail to meet the fuel economy standards with its planned production mix, even if the manufacturer's vehicles were designed to meet 1975 nonfuel economy standards in all four categories. If a mix existed which was feasible for the manufacturer and which would have resulted in meeting the fuel economy standard, the manufacturer presumably would have used it rather than risk the substantial civil penalties associated with noncompliance. Furthermore, if no adjustment methodology were specified in advance, petitioners would have an incentive to postulate increased production of those vehicle configurations with a large nonfuel economy standard-related gas mileage penalty. It was deemed necessary, therefore, to use a uniform adjustment methodology. In most instances, the methodology adopted results in reasonable types of adjustments which a manufacturer might well decide to employ in order to comply with the fuel economy standards.

The Center for Auto Safety objected to the adjustment procedure used when no mix of a petitioner's automobiles would meet the applicable fuel economy standard. This situation would arise if the petitioner did not manufacture even a single vehicle configuration whose fuel economy met or exceeded the standard. Under the proposal, such a petitioner would use its projected mix in calculating the reduction, even though that mix failed to satisfy the requirements of section 502(d) (3) (E). The Center recommends using that mix which would come closest to meeting the standard, to wit, all vehicles produced being of that configuration with the highest fuel economy. This suggested revision has been incorporated in the final rule. Since in this situation the section 502(d) (3) (E) requirement cannot be met by any mix vehicles, it is reasonable to come as close as possible to complying with that requirement, which the Center's approach does. As a practical matter, however, it should be noted that it is extremely unlikely that this provision will ever apply to a petitioner. NHTSA is aware of no vehicle manufacturer subject to fuel economy standards which would not qualify for a low-volume exemption under section 502(c) of the Act and which fails to manufacture at least one vehicle configuration whose fuel economy equals or exceeds even the most stringent standard applicable in the 1978–80 period, the 1980 standard of 20 mpg.

Ford also argues that in those instances where a petitioner can demonstrate that its production mix would differ from that projected if 1975-level nonfuel economy standards remained in effect, it should use that revised mix in its set 2 calculation. However, as discussed in the preamble to the NPRM at 41 F.R. 46882, section 502(d) (3) (E) of the Act requires the use of the same production mix for set 1 and set 2 passenger automobiles. Ford did not specifically dispute this statutory construction in its comment. Therefore, the regulations continue to require the use of a single production mix.

D. Fuel Economy Reduction Calculation Procedures

The most fundamental issue raised with respect to calculation procedures involves the use of analytical methods as an alternative to fuel economy tests in petitions. The notice of proposed rulemaking permitted the use of such methods. General Motors Corp. and Ford argued that such analyses are appropriate and should be permitted. Chrysler, on the other hand, argued that such analyses are inappropriate, at least for deriving the majority of the required fuel economy values. The need to use alternatives to actual fuel economy

testing arises because of three incompatibilities between EPA's fuel economy testing requirements and the procedures for processing reduction petitions. First, EPA test results may not be available for all specified vehicle configurations in time for inclusion in a manufacturer's petition. Section 502(d) (1) of the Act permits manufacturers to submit reduction petitions at any time within the twenty-four months before the beginning of the affected model year. Petitioners would, as a practical matter, hope to file petitions and obtain a final decision as early as possible, in order to obtain maximum leadtime in planning production adjustments which may be necessary depending on the level of the applicable average fuel economy standard. However, required EPA testing may not be completed until just prior to the required date for the manufacturer's preliminary determination of its fuel economy average, 10 days prior to its public introduction date. See 40 CFR 600.506–78 (a). Second, the EPA tests can only provide data with respect to set 1 vehicles, and then only to the extent that the planned production vehicles employ a reasonably selected technology. Third, an incompatibility arises where the projected production mix must be adjusted for purposes of calculating a reduction, and different configurations are required to be tested under the EPA regulations at the adjusted mix than would be required under the projected mix. In each of these cases, EPA test data may not be available for inclusion in the petition for reduction.

The maximum use of actual test data is clearly desirable from the point of view of accuracy in calculating reductions, and is indeed mandated by section 502(d) (2) (A). However, it must be recognized that imposing substantial additional test requirements upon the manufacturers would be extremely burdensome, given the cost of conducting those tests (estimated by Ford at a minimum of $3,000 per test). Therefore, NHTSA will continue to permit the use of appropriate analytical methods in limited situations. Whether a given method is appropriate will be determined in the context of individual reduction proceedings.

The regulations promulgated herein permit the submission of petitions based on analytical methods, subject to certain conditions. First, the petition must contain all available data from EPA fuel economy testing and the petitioner's own in-house testing program which has been completed by the time the petition is submitted. Second, the petitioner must schedule its fuel economy testing so that as much testing is completed by the time of submission as is reasonably practicable. Third, to the extent practicable, testing should be scheduled so that those vehicle configurations with the largest projected sales are tested first, so that this important data may be included in the petition. Fourth, the previously discussed monthly updates of petitions must include all additional test data which becomes available. Finally, if set 1 data is based in whole or significant part upon analytical methods, the decision made by NHTSA on the petition will be an "interim decision," subject to revision if there are significant disparities between subsequently obtained EPA test data and the analyses submitted in the petition. See pp. 156–7 of the Conference Report (S. Rep. No. 94–516, 94th Cong., 1st Sess. (1975)). To avoid situations in which the submitted non-test data consistently overstates the reduction shown through actual test results, and to take into account variability in test procedures, the "significance" of disparities between EPA and analytically generated data will be determined with reference to the aggregate impact of all disparities. In other words, large differences between interim and final fuel economy values for individual configurations would not require revision of the interim decision if the differences did not reflect *systematic* bias in the analytical procedure used by the petitioner. "Significant disparities" will be defined as those which, when taken together, would result in a difference of 0.1 mpg or more in the calculated average, the level of precision specified in section 503(e) of the Act for fuel economy calculations. Relatively large but nonsystematic errors would tend to cancel each other out in the overall calculation. The approach adopted in this regulation will permit early processing of petitions and will give the petitioner the advantage of greater leadtime, but will place the risk of using inaccurate analytical methods on the advocate of those methods.

As previously noted, it is unlikely that any test data for set 2 vehicles would be generated unless additional tests were run specifically for the purposes of providing data for a reduction petition. In this regard, Chrysler has suggested conducting tests on prototype vehicles in each of the petitioner's largest-selling vehicle configurations which comprise a total of seventy percent of the

petitioner's sales, then modifying each vehicle tested to comply with 1975-level nonfuel economy standards and retesting the same vehicle. Presumably, analytical methods could be used to provide set 2 data for the other configurations which were not tested, and EPA-approved data would satisfy other set 1 requirements, although Chrysler does not specifically suggest this. This approach would appear to be an entirely appropriate method for generating data for a petition. However, NHTSA will not attempt to establish generally applicable minimum testing requirements for all manufacturers. Manufacturers may submit petitions in which set 2 data is based entirely upon analytical methods. However, such manufacturers should recognize that data based upon analytical methods will not be given the same probative weight as actual test data in NHTSA's review of petitions. As previously noted, particular types of analytical methods may be found to be completely inadequate for predicting fuel economy values, and a petition based on such analyses could not be granted.

Where it becomes necessary to obtain fuel economy data for particular vehicle configurations solely because of required adjustments to the production mix, NHTSA would accept appropriate non-test data for both set 1 and set 2. These configurations would generally not have large sales fractions, even under the adjusted production mix, and would not be tested otherwise.

Ford has suggested that, in calculating a reduction due to emission standards, vehicles subject to the more stringent California emission standards should be included in set 1 but excluded from set 2. This approach would have the effect of lowering set 1 average fuel economy with respect to that of set 2, and thereby increasing the reduction granted, because of the generally lower fuel economy of vehicles subject to California emission standards.

Ford bases its argument on its reading of H.R. 7014, which contained the House version of Title V, and its view of the assumptions on which Congress based the reduction provisions. First, Ford points out that section 502(d) (3) (C) (i) of the Act specifies the first step in calculating a Federal standards fuel economy reduction is determining "the reduction in a manufacturer's average fuel economy in a model year which results from the application of a category of Federal standards applicable to such model year, and which would not have occurred had Federal standards of such category applicable to model year 1975 remained the only standards of such category in effect." Section 502(d) (3) (D) lists several "categories of Federal standards," the first of which, emission standards, specifically includes the more stringent California standards. Ford concludes from this that the reference in section 502(d) (3) (C) (i) to the average fuel economy resulting from the application of a "category of Federal standards" for the affected model year, which corresponds to set 1 fuel economy under the regulations, must include California vehicles because of the definition of "category of Federal standards" in section 502(d) (3) (D).

However, in Ford's view, the reference to "Federal standards of such category applicable to model year 1975" in section 502(d) (3) (C) (i), which corresponds to set 2 fuel economy under the regulations, is not subject to the same definition, despite the use of the words "such category" and "Federal standards." Rather, in Ford's view, the standards on which set 2 fuel economy is to be based are to be determined by referring to section 502(d) of H.R. 7014, which bases the calculation of an emission standards fuel economy penalty on the 1975-level 49-state emission standards. Ford's second argument is that reductions must be calculated in a manner consistent with the procedure Congress used to project the 1980 fuel economy standard, which was based on the level of fuel economy achieved at 1975-level 49-state emission standards, again referring to H.R. 7014 and its legislative history.

NHTSA is unable to accept this argument. The language of section 502(d) of the Act is unambiguous on its face in this respect. Reductions are to be calculated on the basis of changes in stringency in a "category of Federal standards," and, in the case of emission standards, the category was defined to include the more stringent California standards. The differences in the language of the phrases "category of Federal standards" and "Federal standards of such category" are too minor to justify giving them completely different meanings, especially when the latter phrase clearly refers to the former. If the meaning of a statute is unambiguous on its face, the generally accepted rules of statutory construction prohibit reference to the legislative history to seek a different meaning.

Even assuming arguendo that Ford's reading of H.R. 7014 is correct, it does not follow that the Conference Committee necessarily adopted the House provision in total. Ford argues that the Conference Committee lacked authority to amend the House version since, under 2 U.S.C. 190c(a), a Conference Committee can amend a provision only where the House and Senate versions disagree. If Ford's reading of the House bill is correct, the two bills must be viewed as being inconsistent. Under section 504 of S. 1883, baseline fuel economy was established at the "industrywide average fuel economy level for model year 1974," which must be read to include California vehicles. Fuel economy standards were to be established taking into account "the impact of other Federal standards." See § 504(a) (3) of S. 1883. The product of the Conference Committee would necessarily, therefore, be viewed as a "germane modification of subjects in disagreement" between the two bills. 2 U.S.C. 190c(a).

Furthermore, to the extent that the reduction procedure and the 1978 fuel economy standards set forth in H.R. 7014 were drafted with an assumed baseline of 1975 49-state emission standards in mind, the manufacturers will not suffer under the Conference substitute from any increased stringency due to the inclusion of California vehicles. The Conference substitute decreased each of the fuel economy standards applicable in model years 1978 to 1980 by 0.5 mile per gallon and reduced the amount by which the calculated average fuel economy penalty must be diminished when calculating the allowable reduction from 1.0 to 0.5 mile per gallon per category of standards.

Ford's approach is also inconsistent with the purpose of section 502(d). If the intent of that provision is to first measure the impact on fuel economy of affected model year nonfuel economy standards with respect to 1975-level standards and to give the manufacturers partial credit for that impact, the Ford approach would overstate the actual fuel economy penalty experienced. In fact, it is theoretically possible under Ford's approach for a manufacturer to obtain an emission standards reduction where affected model year and 1975 emission standards are identical in stringency. The more stringent California emission standards had a measurable impact upon average 50-state vehicle fuel economy in 1975. Congress recognized that fact in adopting section 502(d), and the final regulations must also take that fact into account.

Chrysler Corporation stated that the NPRM was unclear regarding the methodology to be used for revising the 1978 or 1979 standard for domestic passenger automobiles with includable captive imports when a manufacturer requests the reduction of the standard as it applies to those vehicles, but not as it applies to the residual, nonincludable group of captive imports. Under the reduction regulations, the manufacturer is to provide for its captive imports the same type of technological information that it is required to provide for its domestically manufactured vehicles. The fuel economy calculations are to be performed in accordance with EPA procedures in 40 CFR Part 600. With respect to the treatment of captive imports in model years 1978 and 1979, 40 CFR 600.511–78 restates the requirements of section 503(b) of the Act. Under § 600.511–78, the petitioner separately calculates, using the projected production mix, the average fuel economy of its planned imports for the affected model year. Next, the petitioner divides its planned imports into its "includable base import volume" and into a residual group of planned imports. Both groups are deemed to have the same average fuel economy as the manufacturer's overall volume of planned imports. In calculating a reduction, as in calculating an overall fuel economy average for standards compliance purposes, the "includable" imports are treated as a single model type with a sales volume equal to the includable base import volume. That model type is added to the model types of domestically manufactured passenger automobiles. The residual group is not included in the calculation. Corresponding technological information and fuel economy calculations are required to be provided for the set 2 vehicles with the technology modified to reflect the assumption of 1975-level nonfuel economy standards in those categories for which a reduction is sought.

The NPRM raised the issue of how to take into account possible interactions between technology used by a manufacturer to comply with different categories of nonfuel economy standards. Such interactive effects might appear if, for example, compliance with a vehicle damageability standard required the addition of relatively heavy bumpers to a vehicle and the additional weight made com-

pliance with emission standards more difficult.[1] The procedure set forth in the NPRM would have calculated a reduction by separately assessing the impacts of the two standards, if reductions for both damageability and emission standards were requested. The damageability standards reduction would have been calculated by subtracting the average fuel economy of the vehicles designed to comply with all categories of affected model year standards (set 1) from the average fuel economy of those vehicles at 1975-level damageability standards and affected model year standards in all other categories (set 2), less 0.5 mile per gallon. The 0.5 mile per gallon per category of standards is subtracted as required by section 502(d) (3) (C) of the Act. See Table 1.

TABLE 1

	Emission standards	Safety standards	Noise standards	Damageability standards
Set 1	AMY [1]	AMY	AMY	AMY
Set 2	AMY	AMY	AMY	75 MY

[1] AMY = affected model year

Similarly, under the procedure in the NPRM, the reduction attributable to more stringent emission standards would be calculated by subtracting the same set 1 fuel economy as in Table 1 from the average fuel economy of those vehicles designed to meet 1975-level emissions standards and affected model year standards in all other categories of standards, less 0.5 mile per gallon. See Table 2.

TABLE 2

	Emission standards	Safety standards	Noise standards	Damageability standards
Set 1	AMY [1]	AMY	AMY	AMY
Set 2	75 MY	AMY	AMY	AMY

[1] AMY = affected model year

The total reduction would have been calculated by summing the two numbers calculated above. This sum may not reflect the actual fuel economy penalty suffered by the petitioner due to the interaction problem. This becomes apparent when one considers that the comparison in Table 1 would measure not just the damageability standards penalty, but also an emission standards impact resulting from the ability of set 2 vehicles to use less extensive emission controls, due to their lighter weight. The impact of emission standards could be partially "double counted" in the above example.

Ford has suggested an alternative method for calculating reductions which avoids the interaction problem by not attempting to apportion the total fuel economy penalty incurred among the various categories of standards for which a reduction is sought. Under Ford's approach, the same set 1 vehicles would be used as above. However, set 2 would include vehicles designed to meet 1975-level standards in all categories for which a reduction is sought. In the example above, where reductions for both emission and damageability standards were sought, the two sets would be defined as set forth in Table 3.

TABLE 3

	Emission standards	Safety standards	Noise standards	Damageability standards
Set 1	AMY [1]	AMY	AMY	AMY
Set 2	75 MY	AMY	AMY	75 MY

[1] AMY = affected model year

In calculating a reduction, the difference in fuel economy of the two sets would be calculated, and 0.5 mile per gallon would be subtracted for each category of standards for which a reduction is sought. Thus, in the example above, 1.0 mile per gallon would be subtracted from the fuel economy difference between the two sets.

The Ford approach greatly reduces the data requirements and simplifies calculations where reductions for more than one category of standards are sought. In addition, the Ford procedure is mathematically equivalent to that specified in the Act, merely rearranging and reassociating the terms in the overall summation. Where interactions are present, the Ford procedure measures the true total impact on fuel economy, while the procedure specified in the NPRM, as the NPRM preamble noted, could either overstate or understate that effect. The fact that the Ford procedure does not assign a fuel economy penalty to each of the separate categories of standards is un-

[1] It is also possible that compliance with more stringent standards in one category may facilitate compliance with more stringent standards in another category. For example, a safety requirement relating to high-speed crash survivability might require the use of "soft" vehicle front ends, which reduce vehicle weight and might, therefore, make compliance with emission standards easier.

important, since the total penalty is the critical number in adjusting the fuel economy standard. The only possible inaccuracy in the Ford procedure would occur if, for example, one of the categories of standards had an associated fuel economy difference between the two vehicle sets of less than 0.5 mile per gallon. Under the NPRM approach, the fact that the difference for category A was less than 0.5 mile per gallon would have no effect on the calculation of the applicable fuel economy reduction for category B. The only significance of the fact would be that no applicable fuel economy reduction would be allowed for category A. Under the Ford approach, there would be such an effect since the differences for the two categories are added together and then 1.0 mile per gallon (0.5 mile per gallon for each category) is subtracted from the total difference. To the extent that 0.5 mile per gallon was greater than the difference for category A, it would be subtracted from the potential reduction obtainable under category B. A petitioner could avoid this penalty, however, by simply not applying for a reduction in that category. Although the statute defines separate reductions for each category of standards, nothing in the statute requires that these numbers be separately calculated.

Therefore, the NHTSA has revised the final regulations to incorporate the Ford proposal. The regulations no longer provide for the separate calculation of "applicable fuel economy reductions" as in § 527.10 of the proposed rule, and corresponding revisions have been made in other sections.

American Motors Corporation raised two issues relevant to the manner in which reductions are calculated. First, it suggested that uniform reductions be promulgated for all manufacturers where changes in stringency of nonfuel economy standards occur and where the impact of those changes is similar for all manufacturers. Although it is not inconceivable that such a situation could arise, NHTSA is unaware of any cases of this type, and does not anticipate promulgating uniform reductions at this time. In order to grant a reduction NHTSA must evaluate the technology actually used by a manufacturer and other technology which might have been reasonably selected. Both of these determinations are necessarily individualized, necessarily made in the context of an individual manufacturer's situation, and the overall determination would not, therefore, lend itself to uniform treatment. See discussion of reasonably selected technology in section IIIb. AMC's second point was that changes in nonfuel economy test procedures which affect the stringency of those standards should be treated the same as changes in the numerical level of the standards. NHTSA agrees that where a test procedure change has this effect, the change should be treated the same as a revision to the standard for purposes of calculating a reduction. However, whether particular test procedure changes will be deemed to have such an effect must be determined in individual reduction proceedings, since the precise effect of such changes may differ for the various automobile manufacturers. Changes in the emission test procedures which impact measured fuel economy values (the emission and city fuel economy test procedures are the same) for 1978, 1979, or 1980 would be evaluated for comparability under section 503(d) (1) of the Act. Changes in nonfuel economy test procedures or standards which occur after 1980 would be reflected in possible amendments to the fuel economy standards, under section 502(f).

Ford raised the issue of whether petitioners would be permitted to base their analyses on their need to build vehicles in such a way that the vehicles will have a high probability of meeting applicable nonfuel economy standards. Ford maintains it must "target" its production process to the achievement of an effectively more stringent standard, in order to take into account product variability and, in the case of emissions, performance deterioration of control technology. To the extent that a petitioner can demonstrate that its projected design targeting is reasonable and consistent with past practice, such level may be taken into account in petitions. However, NHTSA will carefully scrutinize any purported lower design targets to assure that assumed safety margins are reasonable in light of methods available to manufacturers to reduce these margins without undue risk and its own past practices. Among these methods might be retesting failed vehicles, certifying several versions of individual models intended for sale, and avoiding recertification of a previous year's vehicles which met a subsequent year's more stringent nonfuel economy standards.

The Ethyl Corporation argued that all fuel economy calculations must take into account the different amounts of energy needed to produce a

gallon of leaded or unleaded gasoline. The need for unleaded gasoline was generated in part by the adverse impact of lead additives on some emission control devices. However, the determination of the equivalence of various types of automobile fuels is the responsibility of EPA under section 503(d) (2) of the Act and it would be improper for NHTSA to attempt to decide the matter in this proceeding.

E. Hearing Procedures and Processing of Petitions

Several comments were received with respect to the question of the proper format for reduction proceedings. Since some of those comments resulted from misunderstandings of or ambiguities in the NPRM, it is worthwhile to restate and clarify the intended procedures. The proceeding would commence with the submission of a petition by a manufacturer. The Administrator would then evaluate the petition to assure that it meets each of the requirements of §§ 527.5 through 527.12 of the regulations. If the petition is deemed to be incomplete, the Administrator would so notify the petitioner, specifying the additional material needed. Once a complete petition is received, it is placed in a public docket, and a copy of the petition is transmitted to the Federal agency responsible for the administration of the category of standards for which a reduction is sought for that Agency's evaluation. For example, in the case of a petition for an emission standards reduction, a copy of the petition would be sent to the Environmental Protection Agency. Simultaneously, the Administrator would publish a notice of receipt in the FEDERAL REGISTER. The notice would state that a petition had been received, identify the petitioner, cite the reduction requested and summarize the petitioner's rationale therefor, state the Administrator's options for disposition of the petition and list the criteria to be applied in evaluating the petition. The notice would also identify the location of copies of the petition available for public inspection and solicit comment on the petition. Once comments are received from interested parties and Federal agencies and evaluated, a proposed decision or, as appropriate, set of alternative decisions would be published. In the latter case, the proposal would set forth reasonable alternative dispositions of the issues, granting, denying, or denying in part the reduction. The alternatives could range from complete denial to complete granting of petitions, but neither of these extreme positions would be proposed unless NHTSA concluded that those levels could be supported by available data and information and were based on reasonable assumptions and judgments. This will permit advocates of either granting or denying the petition to focus their comments on attacking the undesirable alternative or alternatives and supplementing the data base for the desired one. The proposal would set forth the data, analyses, and methodology on which each alternative disposition is based, and would request comments from the public. The notice also establishes a time and place for a public hearing. Following the hearing, and subsequent comment period, the entire record for the proceeding is reviewed and an interim or final decision is published. An interim decision is subject to readjustment when EPA test data becomes available, after an opportunity for public comment on the readjustment.

EPA's Office of Mobile Source Air Pollution Control (OMSAPC) and the Center for Auto Safety have suggested that proceedings held pursuant to this regulation be patterned after those held in the past by EPA on the suspension of automotive emission standards. Under the suggested EPA procedure, a notice of receipt would be published containing the same information as the notice of receipt in the NHTSA procedure, plus information about the required hearing. OMSAPC and the Center for Auto Safety suggest eliminating the proposed decision from the NHTSA procedure. They propose holding the public hearing after the issuance of the notice of receipt and then proceeding to a final notice. OMSAPC argues that this procedure is legally sufficient and superior from a policy standpoint to the NHTSA procedure.

With respect to the first point, it is true that initial notices which do not provide detailed information on every aspect of the final rule adopted are appropriate in some cases. See, e.g., *"Ethyl Corp. v. EPA,"* 541 F.2d 1, at 48. However, courts may be less tolerant of such "general" notices in rulemaking proceedings which have significant adjudicatory aspects. In such cases, the inclusion of a requirement for opportunity for oral comment in addition to the usual opportunity for submission of written comments may evince a Congressional policy of encouraging greater "give-and-take" in the rulemaking proceeding, which may in turn require a more detailed description of the "subjects

and issues involved." See, e.g., "International Harvester," supra at 632, where the court expresses diffidence with respect to the opportunity for full public comment provided in the EPA procedure. Also, the statutory requirements under which NHTSA proceedings will be held differ in two respects from those under which EPA operated. First, no statutory time constraint is specified for the completion of a reduction proceeding, as was the case under the Clean Air Act. The court in "International Harvester" frequently cited the Clean Air Act "60 day requirement" as a basis for tolerating certain procedural "shortcuts." 478 F.2d at 629, 631, 632. Second, unlike EPA, NHTSA rulemaking, under section 502(d) is subject to the "substantial evidence test" in any subsequent judicial review. 15 U.S.C. 2004(a). Although the courts are still grappling with the question of the effect of combining informal rulemaking under 5 U.S.C. 553, normally subject to the less stringent "arbitrary and capricious" test of 5 U.S.C. 706(2)(A), with the substantial evidence test, at least one court has concluded that such a combination necessitates additional procedural safeguards to assure the opportunity for a full dialogue between the agency and interested parties. *"Mobil Oil Corp.* v. *FPC,"* 483 F.2d 1238, 1257–1263 (D.C. Cir. 1973). This may also necessitate the presentation of a more precise statement of the agency's views at a time prior to the formulation of a final rule. NHTSA does not conclude from this discussion that a procedure such as EPA's is necessarily inadequate in the context of section 502(d), but rather that substantial legal questions may exist with respect to the appropriateness of that procedure.

OMSAPC also argues that its procedures would avoid shifting the burden of proof in a proceeding away from the petitioner. However, under the EPA procedure, once the petitioner makes its prima facie case, the burden is shifted to anyone, including the agency, which seeks to apply a different methodology to reach a different result. See "International Harvester," supra at 643. The only effect of the proposed decision in the NHTSA procedure is to clarify where the burden of proof lies at that time, by either advancing one or more alternative methodologies or concurring in the petitioner's.

In addition, NHTSA disagrees with the policy arguments made by OMSAPC. The original intent of the regulations has been clarified to require that the notice of receipt will solicit comments from the general public. (See letter from Stephen Wood, Assistant Chief Counsel, NHTSA, to Eric Stork, Deputy Assistant Administrator for Mobile Source Air Pollution Control, EPA, dated November 17, 1976, Docket FE 76–2, No. 1A.) Taken together with our prior statement that the views of other affected Federal agencies would be solicited (41 F.R. 46884) and formal interagency review requirements for rulemaking, it appears that OMSAPC's objections regarding NHTSA taking a position on a petition prior to receiving any outside input have been met. Furthermore, it is NHTSA's view that the use of a proposed decision will achieve a significant improvement over the EPA procedure, by soliciting public comment on not only Agency methodology (it is not clear from the OMSAPC comment that they even recommended this, the "International Harvester" requirement for such comment notwithstanding), but also on the application of that methodology. While the law may not require such a full opportunity for comment, NHTSA deems it appropriate to provide more than the bare minimum which the Administrative Procedure Act requires. In light of this, NHTSA cannot conclude that the EPA procedure is clearly superior to that set forth in this regulation from a policy standpoint.

With respect to the issues of the desirability of permitting "two cycles of notice and comment" on complex matters and making public the agency's views on matters important to the final rulemaking at a time prior to the final decision, "in order to enhance the usefulness of further comments," the positions adopted in this regulation appear to be supported by a recent recommendation of the Administrative Conference of the United States. See Recommendation No. 76–3, 1 CFR 305.76–3, also published in 41 F.R. 29654, July 19, 1976.

There is some merit in the points raised by OMSAPC and the Center for Auto Safety, in regard to the likelihood that an agency which proposes a specific rule has a natural tendency to resist changes to the rule. Efforts to minimize this acknowledged phenomenon conflict with NHTSA's need to provide a full opportunity for public comment by clearly detailing the relevant considerations in the proceeding. NHTSA has attempted to balance these conflicting considerations by providing in the regulation that the proposed decision will, when appropriate, contain alternatives which establish a reasonable range of justifiable reduc-

tions, or denial of the petition. Therefore, the proposed procedure, as clarified, has been retained.

Several commenters raised the issue of the need for NHTSA to act on petitions as expeditiously as possible. Recognizing the importance of an early decision to the petitioning manufacturer, NHTSA will endeavor to complete the entire decision process within 180 days from the time a complete petition is received. If complying with that goal proves impossible, NHTSA will still make every effort to expedite the decision, albeit by a later date.

Several changes to the procedures for the public hearing on petitions were adopted. As suggested by EPA, individuals other than NHTSA officials may serve on the hearing panel. In order to emphasize the need for complete and accurate presentations at the hearing, all testimony will be made under oath. In addition, any participant in the proceeding may petition NHTSA to use its authority under section 505(b) of the Act to compel the appearance and testimony at the hearing of any individual shown to have relevant information necessary to an informed decision in the proceeding. The agency may well use that authority on its own initiative to secure the testimony of automobile manufacturers and suppliers of automobile components. Notice of the public hearing will be given through the issuance of a press release by NHTSA, in addition to a FEDERAL REGISTER notice, in order to inform the public at large.

F. Treatment of Confidential Information

Several commenters discussed the question of how NHTSA should handle petitioners' requests for confidential treatment of information included in petitions for reduction. In such cases, the public's need to obtain access to the information in order to make informed comments on the petition runs counter to the manufacturer's desire to prevent disclosure of information which may be of some benefit to its competitors. This same conflict appears in most of NHTSA's rulemaking activities under Title V of the Act. In recognition of the importance of these issues, NHTSA published a notice requesting comment on how these requests for confidential treatment should be handled. 42 F.R. 3240 (January 17, 1977).

After evaluating comments submitted on this issue in the context of this proceeding and the January 17 notice, NHTSA deems it appropriate to alert potential petitioners to the agency's intention to grant confidential treatment to information submitted as part of reduction petitions only in exceptional circumstances. This approach is taken under the authority of section 505(d) (1) of the Act which permits the release of trade secret information where relevant to any administrative or judicial proceedings. NHTSA does this for several reasons. First, Congress has expressed its intent that the 1976–80 fuel economy standards established in section 502(a) (1) of the Act should be entitled to a strong presumption of validity and should be modified only on a clear showing by a petitioner and after a broad opportunity for public participation in the reduction proceeding. Unlike most other rulemaking under the Motor Vehicle Information and Cost Savings Act, Congress specified that section 502(d) rulemaking would be subject to the more stringent "substantial evidence" test in any subsequent judicial review, and that participants in the rulemaking proceeding would be entitled to make oral presentations, in addition to the usual opportunity for written comment. See 15 U.S.C. 2002(g) and 2004(a). In view of the manufacturer-specific nature of reduction proceedings (see section IIIb above), the ability of participants in the proceeding to effectively comment on all relevant issues would be limited unless they have access to the entire petition. This is a greater problem in the context of reduction proceedings than in most rulemaking proceedings, where industry-wide considerations and long-term capabilities are of greater relevance. The portions of a petition for which a petitioner is most likely to request confidential treatment, projected production mix and technology to be employed or capable of being employed in the affected model year, will be critical to an informed analysis of the petition and are likely to be central issues in NHTSA's final decision. Second, no manufacturer is required to submit a reduction petition, so that the potential release of any confidential information is, in a sense, voluntary on the part of the manufacturer. Although manufacturers possess a statutory right to petition for a reduction, it is not unreasonable for NHTSA, in exercising its discretionary authority under section 505(d) (1) to promote the goals of Title V, to require manufacturers to balance their

need for a reduction against the potential danger from release of the contents of their petition. Failure to obtain a reduction is unlikely to have devastating consequences for a manufacturer. All manufacturers other than those qualifying for "low-volume" exemptions under section 502(c) of the Act are expected to have average fuel economies either closely approaching or exceeding the applicable fuel economy standards for model years 1978–80. Thus, even in the worst case, a manufacturer which, without a reduction, would fail by a small margin to meet the standard, could elect to pay the civil penalty specified in section 508, which, because of the manufacturer's nearly meeting the standard, would be relatively small on a per-vehicle basis, compared to the price of the automobile. On the other hand, such a manufacturer could elect to implement some of the technological improvements which would be necessary to meet the next year's fuel economy standard in any case, one year early in order to avoid paying the penalties. Finally, the information submitted in a petition would become public in a relatively short time regardless. Petitions must be submitted within two years of the start of the affected model year under section 502(d) (1). In most cases, a competitor would not have adequate leadtime to take advantage of the information contained in the petition between the time of submission and the start of the affected model year, when the information necessarily becomes public through the sale of the affected model year vehicles. For these reasons, NHTSA will grant confidential treatment to information contained in reduction petitions only in exceptional, and presently unforeseen, circumstances.

IV. Economic and Environmental Impacts

The economic and environmental impacts of these regulations were evaluated and found to be minimal. The granting of denial of reductions based on these regulations may have significant impacts but those impacts will be individually evaluated in the context of individual reduction proceedings. No adverse environmental impacts were found to be associated with this essentially procedural regulation itself. The only economic impacts would involve staff time spent in preparing and evaluating petitions and perhaps a small number of additional fuel economy tests. The additional costs attributable to the rule are expected to be under three million dollars total for both the industry and the government, based on the submission of four petitions.

The program official and lawyer principally responsible for the development of this regulation are Ralph J. Hitchcock and Roger C. Fairchild, respectively.

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Joan Claybrook
Administrator
42 F.R. 58938
November 14, 1977

PART 527—REDUCTION OF PASSENGER AUTOMOBILE AVERAGE FUEL ECONOMY STANDARDS

(Docket No. FE 76-2; Notice 2)

AUTHORITY.—Sec. 9, Pub. L. 89-670, 80 Stat. 931 (49 U.S.C. 1657); sec. 301, Pub. L. 94-163, 89 Stat. 901 (15 U.S.C. 2002); delegation of authority at 41 FR 25015, June 22, 1976.

§ 527.1 Scope and purpose.

This part establishes procedures for the submission and disposition of petitions filed by manufacturers of passenger automobiles to obtain reduction of the applicable average fuel economy standard for model year 1978, 1979, or 1980. These reductions are intended to offset any loss of fuel economy due to the application in that year to passenger automobiles of Federal emission, safety, noise, or damageability standards more stringent than those applicable in model year 1975. This part also establishes procedures for holding public hearings on those petitions.

§ 527.2 Applicability.

This part applies to manufacturers of passenger automobiles.

§ 527.3 Definitions.

(a) *Statutory terms.* (1) The terms "Federal standards fuel economy reduction," "fuel," "manufacturer," "model year," and "reasonably selected technology" are used as defined in section 501 or 502 of the Act.

(2) The terms "average fuel economy," "fuel economy," and "model type" are used in 40 CFR 600.002-77.

(3) The terms "automobile" and "passenger automobile" are used as defined in section 501 of the Act and in accordance with the determinations in 49 CFR Part 523.

(b) *Other terms.* (1) The terms "base level" and "vehicle configuration" are used as defined in 40 CFR 600.002-77.

(2) As used in this part, unless otherwise required by the context—

"Act" means the Motor Vehicle Information and Cost Savings Act (Pub. L. 92-513), as amended by the Energy Policy and Conservation Act (Pub. L. 94-163).

"Administration" means the National Highway Traffic Safety Administration.

"Affected model year" means the model year for which a reduction of an average fuel economy standard is requested under this part.

"Category of Federal standards" means any of the following categories of motor vehicle standards and associated measurement procedures—

(1) Emissions standards issued under section 202 of the Clean Air Act (42 U.S.C. 1857f-1), and emissions standards applicable by reasons of section 209(b) of that Act (42 U.S.C. 1857f-6a(b));

Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.);

(3) Noise emission standards issued under section 6 of the Noise Control Act of 1972 (42 U.S.C. 4905); or

(4) Property loss reduction standards issued under title I of the Act (15 U.S.C. 1911 et seq.).

"EPA Administrator" means the Administrator of the Environmental Protection Agency.

"Modifications" means changes by a petitioner in the technology of a passenger automobile consistent with the need of the Nation to improve automobile fuel economy and with the energy savings, economic costs, and leadtime requirements associated with the technologies that would have been practicably available to the petitioner given the applicability of the model year 1975 standards in the category or categories of Federal standard for which a reduction is sought.

"NHTSA Administrator" means the Administrator of the National Highway Traffic Safety Administration.

"Production mix" means the number of passenger automobiles, and the percentage of the petitioner's annual total production of passenger automobiles, in each vehicle configuration which a petitioner plans to produce in a specified model year.

"Set 1" means the set of passenger automobiles which a petitioner will produce in the affected model year.

"Set 2" means the set of passenger automobiles which a petitioner would have produced in the affected model year had the model year 1975 standards in all categories of Federal standards for which a Federal standards fuel economy reduction is sought been the only standards in those categories.

§ 527.4 Eligibility.

Any manufacturer of passenger automobiles may petition the NHTSA Administrator under this part for a reduction of the average fuel economy standard applicable to passenger automobiles for model year 1978, 1979, or 1980.

Each petition filed under this part must:

(a) Request the reduction of an average fuel economy standard for not more than one model year;

(b) Identify the affected model year;

(c) Be submitted within the 24-month period immediately preceding the beginning of the affected model year;

(d) Be submitted in twenty copies to: Administrator, National Highway Traffic Safety Administration, Washington, D.C. 20590;

(e) Be written in the English language;

(f) State the full name, address, and title of the official responsible for the preparation of the petition; and

(g) Set forth in full the data, views, and arguments of the petitioner supporting the Federal standards fuel economy reduction requested in its petition, including the information and data specified in §§ 527.6 through 527.12 and the calculations and analyses used to develop the information and data. No documents may be incorporated by reference in a petition unless the documents are submitted with the petition.

§ 527.6 Technology.

(a) The petitioner shall submit the following information as part of its petition—

(1) *Set 1 technology.* For each vehicle configuration specified in 40 CFR 600.506(a) (2) (iii) of the petitioner's passenger automobiles to be produced in the affected model year, the information specified in paragraph (a) (1) (i) and (ii) of this section:

(i) A description of the technology that is incorporated in the vehicle configuration and that either relates to the petitioner's efforts to comply with any category of Federal standards or affects the fuel economy of the vehicle configuration;

(ii) A description of any alternative or additional technology that was practicably available to the petitioner for incorporation in the vehicle configuration and the use of which would have enabled that vehicle configuration to achieve higher fuel economy and would have resulted in a smaller Federal standard fuel economy reduction than the technology described under paragraph (a) (1) (i) of this region; and

(iii) For each item of alternative technology described under paragraph (a) (1) (ii) of this section, a statement of the reasons for not incorporating the item, including a comparison of the fuel savings, economic costs and lead-time requirements of that item and of the technology that was incorporated in the vehicle configuration.

(2) *Set 2 technology.* A description of the modifications that the petitioner would have made to each vehicle configuration specified in 40 CFR 600.500(a) (2) (iii) had the model year 1975 standards in all categories of Federal standards for which a Federal standards fuel economy reduction is sought been the only standards in those categories for the affected model year.

§ 527.7 Fuel economy of vehicle configurations and model types.

The petitioner shall submit a fuel economy value for each vehicle configuration specified in 40 CFR 600.506(a) (2) (iii) and for each model type of the petitioner's set 1 and set 2 passenger automobiles.

§ 527.8 Average fuel economy.

The petitioner shall submit the average fuel economy determined in accordance with § 527.12(c) of the petitioner's set 1 and set 2 passenger automobiles.

§ 527.9 Federal standards fuel economy reduction.

Federal standards fuel economy reductions shall be calculated as follows:

(a) Subtract—

(1) Set 1 fuel economy determined under § 527.8 from

(2) Set 2 fuel economy determined under § 527.8; and

(b) Subtract 0.5 miles per gallon from the result obtained under paragraph (a) of this section for each category of Federal standards for which a Federal standards fuel economy reduction is sought.

§ 527.10 Projected production total and mix.

(a) The petitioner shall submit its projections, based on the average fuel economy standard for passenger automobiles as specified in the Act for the affected model year, of its total production and production mix of all model types of its passenger automobiles for the affected model year, and all vehicle configurations within each of those model types, and information demonstrating that those projections are reasonable. The information shall include information showing that those projections are consistent with the petitioner's mixes of passenger automobiles produced or expected to be produced in each model year from model year 1975 through the model year immediately preceding the affected model year, its passenger automobile production capacity for the affected model year, its efforts to comply with that average fuel economy standard, and the anticipated consumer demand for passenger automobiles during that model year.

§ 527.11 Production mix for determining Federal standards fuel economy reductions.

The production mix to be used for calculating Federal standards fuel economy reductions shall be the mix or mixes specified in paragraph (a), (b), or (c) of this section, as appropriate.

(a) (1) The production mix to be used shall be the mix projected under § 527.10 if either of the following conditions are met:

(i) The average fuel economy determined in accordance with § 527.12(c) of the petitioner's passenger automobiles for the affected model year, based upon the production mix projected under § 527.10, equals or exceeds this applicable average fuel economy standard; or

(ii) The average fuel economy based on the mix projected under § 527.10 of the petitioner's passenger automobiles to be produced in the affected model year with the modifications that the petitioner would have made to them had the standards in one or more categories of Federal standards for model year 1975 been the only standards in that category or categories in effect during the affected model year equals or exceeds the applicable average fuel economy standard.

(2) If the condition in paragraph (a) (1) (i) of this section is not met but the condition in paragraph (a) (1) (ii) of this section is met, the petitioner shall provide the information specified in §§ 527.6, 527.7, and 527.8 for the passenger automobiles described in paragraph (a) (1) (ii).

(b) If the average fuel economy of no mix of passenger automobiles for the affected model year as modified under § 527.11(a) (1) (ii) equals or exceeds the applicable average fuel economy standard, the production mix to be used shall be that

mix with production total equal to that total projected under § 527.10 and with all vehicles being of the vehicle configuration with the highest fuel economy.

(c) The production mix to be used shall be that mix calculated under this paragraph if none of the criteria in paragraphs (a) or (b) of this section are met. For the purposes of adjusting the production mix pursuant to this paragraph, the following procedures shall be followed:

(1) Assume initially that the modified passenger automobiles specified in paragraph (a) (1) (ii) of this section are to be produced in the production total and mix projected under § 527.10.

(2) Keeping that total production constant, adjust that production mix as follows:

(i) For each model type of those modified passenger automobiles whose fuel economy is less than the average fuel economy standard for passenger automobiles for the affected model year, decrease the numbers of those modified passenger automobiles in that model type and in each vehicle configuration within that model type by 0.1 percent.

(ii) For each model type of those modified passenger automobiles whose fuel economy is equal to or greater than that standard, increase the numbers of those modified passenger automobiles in that model type and in each vehicle configuration within that model type by that percentage which, in conjunction with the decrease specified in paragraph (c) (2) (i) of this section, will keep the total production constant.

(3) Calculate the average fuel economy of the production mix as adjusted under paragraph (c) (2) of this section.

(4)(i) If the average fuel economy calculated under paragraph (c) (3) of this section equals or exceeds the applicable fuel economy standard, the mix as adjusted under paragraph (c) (2) of this section shall be used for calculating Federal standards fuel economy reductions.

(ii) If the average fuel economy calculated under paragraph (c) (3) of this section is less than the standard, adjust the projected production mix further by repeating the procedure in paragraphs (c) (2) and (3) of this section until the first production mix is reached whose average fuel economy equals or exceeds that standard.

§ 527.11 Calculation of fuel economy values and average fuel economy.

For the purposes of this part, fuel economy values shall be determined as follows:

(a) *Determination of vehicle configuration fuel economy values.* (1) For each vehicle configuration for which a fuel economy value is required under 40 CFR 600.506(a) (2) (i) through (a) (2) (iii) and for which a fuel economy value has been determined and approved under 40 CFR Part 600, the petitioner shall submit that fuel economy value.

(2) For each vehicle configuration for which a fuel economy value is required under 40 CFR 600.506(a) (2) (iii) and for which an approved value does not exist, the petitioner shall submit a fuel economy value based on tests or analyses comparable to those prescribed or permitted under 40 CFR Part 600 and a description of the test procedures or analytical methods. Values based on actual tests conducted in accordance with procedures specified in Subpart B of 40 CFR Part 600, shall be entitled to greater probative weight in NHTSA's evaluation of petitions than values based on analytical methods. Values to be used in the average fuel economy calculation in § 527.8 and based on methods other than such actual tests will be acceptable to NHTSA only if the petitioner demonstrates in its petition that—

(i) The petition contains all data previously approved by EPA and all relevant fuel economy test data from the petitioner's in-house testing program;

(ii) To the maximum extent practicable, all fuel economy testing required to be conducted under 40 CFR Part 600, has been scheduled so that as much testing as possible is completed prior to the submission of the petition; and

(iii) To the maximum extent practicable, testing required to be conducted under 40 CFR Part 600, has been scheduled so that those vehicle configurations with the largest projected sales are tested first.

(b) *Determination of model type fuel economy values.* For each model type, the petitioner shall submit a fuel economy value based on the values determined in accordance with paragraph (a) of

this section and calculated in the same manner as model type fuel economy values are calculated for use under Subpart F of 40 CFR Part 600.

(c) *Determination of average fuel economy.* Average fuel economy shall be based upon fuel economy values calculated under paragraph (b) of this section for each model type and shall be calculated in accordance with 40 CFR 600.506, except that—

(1) The production mix determined under § 527.11 shall be used in place of projected sales; and

(2) Fuel economy values for running changes implemented and for vehicle configurations added are required only for those changes or additions made before the submission of the petitioner's petition. Data for subsequent running changes and added vehicle configurations must be included in reports submitted under § 527.13(c).

§ 527.13 Supplementary information requirements.

(a) The petitioner shall provide the NHTSA Administrator with any revisions that it makes, after submitting its petition and before a final decision is rendered under § 527.14, to the production mix and total provided under § 527.10. The petitioner shall submit information demonstrating that the revisions are reasonable, including the information described in § 527.10.

(b) For each vehicle configuration of the petitioner's passenger automobiles to be produced in the affected model year for which a fuel economy value is generated by the petitioner's in-house testing program or approved by the EPA Administrator under 40 CFR 600.506–78 after the submission of the petition and before a final decision is rendered under § 527.14, the petitioner shall provide the NHTSA Administrator with that value and a revised fuel economy value for that vehicle configuration as modified under § 527.6(a) (2).

(c) All revisions required to be submitted under § 527.13(a) or (b) shall be submitted within thirty days of their availability to the petitioner. The petitioner shall show the effect on the petition of all revisions submitted.

§ 527.14 Processing of petitions.

(a) On receipt of a petition, the petition is evaluated for completeness. If a petition is found not to contain the information required by this part, the petitioner is informed about the areas of insufficiency and advised that the petition will not receive further consideration until the necessary information is submitted.

(b) The NHTSA Administrator may request the petitioner to provide relevant information in addition to that required by this part: *Provided,* That such informaton either presently exists or can be obtained by the petitioner without undue hardship.

(c) (1) After the NHTSA Administrator concludes that a petition contains all the information required under this part, a notice of receipt of the petition is published in the *Federal Register.* The notice of receipt provides the following information:

(i) That a petition has been received;

(ii) The petitioner's identity;

(iii) The reduction requested and a brief summary of the petitioner's rationale therefor;

(iv) NHTSA's options for disposition of the petition;

(v) The criteria to be applied in evaluating the petition;

(vi) The location of copies of the petition available for public inspection; and

(vii) An invitation of comments from the public and a deadline for submission of those comments.

(2) At the same time the notice of receipt is published, a copy of the petition is sent to the Federal agency responsible for administering the category of standards for which the Federal standards fuel economy reduction is sought and the comments of that agency are invited.

(d) The NHTSA Administrator requests the EPA Administrator to provide him with fuel economy values as they are approved by the EPA for the petitioner's passenger automobiles to be produced in the affected model year. These values replace the corresponding unapproved values in all calculations of average fuel economies.

(e) After all comments are received and evaluated, the NHTSA Administrator publishes a proposed decision or set of reasonable alternative decisions in the *Federal Register.* The notice specifies the reasons for each alternative, solicits written comment on the proposal, and establishes a date and place for a public hearing.

(f) After the conclusion of the public comment period and hearing specified in paragraph (e) of this section, the NHTSA Administrator publishes a final decision in the *Federal Register*. The final decision is based upon the petition, written and oral comments, and other available information. The final decision sets forth the grant or denial of the petition in accordance with section 502(d) (2) of the Act and the reasons for the decision. To the extent practicable, a final decision will be rendered within 180 days of receipt of a complete petition.

(g) If fuel economy values approved by the EPA Administrator cannot be obtained by the NHTSA Administrator for most model types of the petitioner's passenger automobiles to be produced in the affected model year, the NHTSA Administrator may rely on fuel economy values submitted pursuant to § 527.12(a) (2) and issue the notice described in paragraph (f) of this section as an interim determination. The notice, which is published in the *Federal Register*, contains the interim determination and the findings and analysis upon which such determination is based. The interim determination becomes final unless the NHTSA Administrator determines, after notice and opportunity for written and oral comment in accordance with this section, that significant disparities exist between the fuel economy values upon which the interim determination was based and fuel economy values subsequently approved by the EPA Administrator or submitted by the petitioner under § 527.13(b). Notice of the final determination with the adjusted reduction and of the reasons therefor is published in the *Federal Register*. For the purposes of this section, disparities between approved and unapproved data are deemed significant if, when all such disparities are taken together, the total average fuel economy calculate pursuant to § 527.8 would differ by 0.1 mile per gallon or more.

§ 527.15 Public hearing.

(a) Each hearing under § 527.14(e) is a legislative type hearing intended to provide interested persons with an opportunity to state their views or arguments, or to provide pertinent information concerning the proposed reduction.

(b) (1) The NHTSA Administrator appoints one or more employees of the Administration to serve on the hearing panel and designates one of those employees to be the presiding official. Other Federal employees may be invited to serve on the panel as well.

(2) The presiding official may:

(i) Limit the length of oral presentations;

(ii) Exclude irrelevant or redundant material; and

(iii) Direct that corroborative material be submitted in writing rather than presented orally.

(c) Any person desiring to make an oral statement at the hearing should file a notice of such intention and, if practicable, five copies of his proposed statement with the NHTSA Administrator at least ten days prior to the hearing.

(d) (1) The NHTSA Administrator requires representatives of the petitioner able to address all matters raised in the petition to attend the hearing.

(2) The NHTSA Administrator may, on his own motion or at the request of a hearing participant, require any person who submits written comments to the NHTSA Administrator on the proposed reduction before the hearing or who has relevant information necessary to an informed decision in the proceeding to attend the hearing at any time before its conclusion.

(3) The Administrator requires any person who, under paragraph (d) (1) or (2) of this section attends the hearing, to respond to questions posed to him under paragraph (e) of this section.

(4) All testimony at the hearing is made under oath.

(e) Any individual appointed under paragraph (b) of this section may, on his own initiative or at the request of any interested person attending the hearing, propound questions to—

(1) Any person subject to paragraph (d) of this section.

(2) Any person who makes an oral presentation at the hearing.

(f) Interested persons attending the hearing may submit to the panel written questions to be propounded to persons identified in paragraph (e) of this section. Questions for a witness other than those identified in paragraph (d) (1) of this section may not be submitted to the panel after the completion of testimony by that witness.

(g) A verbatim transcript of the proceeding is made and copies are available from the reporter at the expense of any person requesting them.

§ 527.16 Public inspection of information.

Any person may inspect available information relevant to a petition under this part, including the petition and any supporting data, memoranda of informal meetings with the petitioner or any other interested persons, the transcript of the public hearing, and the notices regarding the petition, in the Docket Section of the Administration. Except as provided in § 527.15(g) regarding transcripts of the public hearings, any person may obtain copies of the information available for inspection under this paragraph in accordance with the regulations of the Office of the Secretary of Transportation (49 CFR Part 7).

[FR Doc. 77-32887 Filed 11-11-77; 8:45 am]

Joan Claybrook
Administrator
42 F.R. 58938
November 14, 1977

PREAMBLE TO PART 529—MANUFACTURERS OF MULTISTAGE AUTOMOBILES

(Docket No. FE 77–02; Notice 2)

The purpose of this notice is to establish a rule for determining, in cases where more than one person is the manufacturer of an automobile, which person is to be treated as the manufacturer for purposes of Title V of the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 2001 et seq.), and its implementing regulations. Section 501(8) of the Act requires such rule to be issued. In most instances, the rule makes the incomplete automobile manufacturer responsible for meeting the Title V requirements, including those relating to automobile fuel economy standards, fuel economy labeling, and reporting.

Effective Date: July 28, 1977.

For further information, contact:

Roy Dennison
National Highway Traffic Safety Administration
Department of Transportation
400 Seventh Street, S.W.,
Washington, D.C. 20590
(202) 755–9384

Supplementary Information:

Section 501(8) of Title V requires the Administrator of the National Highway Traffic Safety Administration (NHTSA) to prescribe rules for determining, in cases where more than one person is the manufacturer of an automobile, which person is to be treated as the manufacturer of that automobile and thus responsible for compliance with the requirements of Title V. The principal requirements are those for complying with average fuel economy standards, submitting reports, and placing fuel economy labels on new automobiles.

The general outlines of a rule to implement section 501(8) were first discussed in the notice of proposed rulemaking (November 26, 1976, 41 FR 52087) on average fuel economy standards for model year 1979 nonpassenger automobiles. That notice stated that the agency contemplated issuing a proposal that would place compliance responsibilities on incomplete automobile manufacturers in most instances. A notice of proposed rulemaking (NPRM) dealing directly with multistage automobiles was published on February 14, 1977 (42 FR 9040). Consistent with the November 26 notice, the NPRM proposed that incomplete automobile manufacturers be made responsible in most instances for complying with the Title V requirements. The major exception to this assignment of responsibility was when a subsequent manufacturer, i.e., an intermediate or final-stage manufacturer, altered an automobile sufficiently to void the results of the fuel economy testing of the automobile by the incomplete automobile manufacturer. In such an instance, the subsequent manufacturer would become partially or totally responsible for complying with Title V.

A relatively minor exception was provided in the instance of a final-stage manufacturer that completed manufacture of a multistage automobile in a model year after the model year in which the incomplete automobile manufacturer finished its manufacturing operations on the automobile and that marketed the automobile as one manufactured in the latter model year. The NPRM provided that the final-stage manufacturer would assume responsibility for compliance in this circumstance also. Under either exception, the assumption of responsibility by the subsequent manufacturer would permit the incomplete automobile manufacturer to remove the automobile from its fleet of automobiles subject to the fuel economy standards.

Comments on the February 14, 1977 notice were received from American Motors Corporation (AMC), Chrysler, Ford, General Motors (GM)

and the Automobile Club of Southern California (Auto Club). All comments have been considered and the most significant ones are discussed below.

Major differences between the proposed and final rules. The most significant differences between the proposed rule and the final rule established by this notice are set forth below:

(1) The manufacturer which attaches the portion of the automobile body containing the windshield and front seat side windows to an incomplete automobile is made responsible for affixing the fuel economy label to that automobile.

(2) An incomplete automobile manufacturer is responsible for submitting a partial semiannual report regarding its incomplete automobiles even if it ceases to be treated as their manufacturer for purposes of standards and labeling compliance. No report is required from intermediate or final-stage manufacturers under any circumstance.

(3) The final rule does not adopt the proposed requirement that a final-stage manufacturer which sells a multistage automobile as one manufactured in the model year in which it completed its manufacturing operations must assume responsibility for complying with Title V with respect to that automobile if that model year is subsequent to the model year in which the incomplete automobile manufacturer completed its manufacturing operations.

Assignment of responsibility. The NPRM assigned to incomplete automobile manufacturers the responsibility for complying with the requirements of Title V and its implementing regulations that affect multistage automobiles. Ford and Chrysler agreed with this assignment, noting that the incomplete automobile manufacturer is the manufacturer of a multistage automobile if it designs and builds the chassis and power train components that primarily determine the fuel economy of the completed automobile. Ford observed that incomplete automobile manufacturers generally have the engineering manpower and test facilities necessary to perform fuel economy development and testing, while intermediate and final-stage manufacturers seldom have these resources. Neither AMC nor GM objected to this assignment.

Ford and GM also stated that they did not object to the proposed assignment of responsibility because including their incomplete automobiles in their fleets for standards compliance purposes would have a negligible effect on their average fuel economy. This was said to be true even if the fuel economy of their incomplete automobiles were based upon "worst case" testing.

Ford and Chrysler did, however, limit their agreement with the proposed assignment of responsibility to those automobiles which had been completed by the subsequent manufacturers within the specifications of the incomplete automobile manufacturer. Ford and Chrysler urged, as the agency had proposed, that if an intermediate or final-stage manufacturer exceeds the maximum curb weight or maximum frontal area specified by the incomplete automobile manufacturer, thus invalidating the fuel economy values determined by the incomplete automobile manufacturer, that subsequent manufacturer should become responsible for that automobile under Title V.

Compliance with average fuel economy standards. The NPRM suggested alternative methods of testing to determine the fuel economy of multistage automobiles. It was noted that the practice of "worst case" testing, while appropriate for emissions certification, might not be suited for use under Title V. For emissions standard enforcement purposes, the actual emissions levels are not too important. What is important is whether they exceed the maximum specified in the emissions standards. However, the actual tested level of performance is important under the fuel economy program. The fuel economy of each model type produced by a manufacturer is used to calculate whether and to what extent the average fuel economy of the manufacturer has fallen below or exceeded the prescribed minimum level of average fuel economy. The amount of civil penalties and credits against civil penalties are determined by the level of shortfall or excess, respectively. The NPRM noted that if an incomplete automobile manufacturer were required to determine the fuel economy of its fleet based partially on " worst case" tested incomplete automobiles, a manufacturer of a substantial number of those automobiles could be at a disadvantage relative to a manufacturer of only

single-stage automobiles in trying to comply with the average fuel economy standards.

The comments suggest that there would be no such disadvantage. GM said that it preferred "worst case" testing because that approach minimized GM's testing burden. Ford expressed no preference, pointing out that the use of "best case" testing instead of "worst case" testing or vice versa would make no practical difference in the resulting average fuel economy. Ford, GM, and Chrysler all noted that the sale of incomplete automobiles was such a small proportion of their total sales that the effect of the incomplete automobiles on their average fuel economy was negligible. Ford stated that determining more representative fuel economies would require additional testing. In that company's view, that additional testing was not justified because of the insufficient effect on average fuel economy.

The NPRM also noted that "worst case" testing might be inappropriate for determining fuel economy because the fuel economy value appearing on the label would then be the lowest possible value for that automobile. That is, the value would be that for an automobile completed to the maximum permissible curb weight and frontal area specified by the incomplete automobile manufacturer. Thus, a final-stage manufacturer that completes an automobile with a curb weight and frontal area significantly less than the maxima would not be rewarded by a commensurately higher fuel economy value. Thus, there would be reduced incentive for a final-stage manufacturer to attempt to minimize curb weight and frontal area. Further, in competing with manufacturers of single-stage vehicles having a comparable size and function, the final-stage manufacturer might be at a disadvantage due to the comparatively low fuel economy that its automobiles appear to be capable of achieving. No final-stage manufacturer commented on this or any other portion of the proposed rule.

Ford, GM, and Chrysler opposed additional testing to determine the fuel economy of multistage automobiles more accurately. They stated that the cost and burden of additional testing could cause an incomplete automobile manufacturer to eliminate or sharply curtail production of those automobiles. In response to a question posed in the NPRM, the costs stated by the manufacturers for retesting an automobile after having tested it and then reset the road load would range from $200 to $400.

Chrysler stated that it believed that the fuel economy values for multistage automobiles should represent as accurately as possible the fuel economy that would result from testing the completed automobile. For the reasons stated in the immediately preceding paragraph, that company said that there is no cost-effective way of accurately establishing the fuel economy of completed multistage automobiles through testing. However, Chrysler indicated that the cost of conducting additional fuel economy tests should not prevent developing a best estimate of the fuel economy that could be achieved by the completed multistage automobiles. Chrysler suggested a method that might be used for determining a best estimate of the fuel economy for those automobiles.

Under Chrysler's suggested method, the incomplete automobile would be tested in its "worst case" condition. If the curb weight and frontal area of the completed automobile incorporating the incomplete automobile are less than the maxima specified for the incomplete automobile, then, according to Chrysler, it should be possible to estimate mathematically the fuel economy of the incomplete automobile using the fuel economy values for the completed automobile and incomplete automobile.

Ford and GM responded negatively to the suggestion in the NPRM that a more accurate determination of the fuel economy of multistage automobiles might be possible through improved communication between the incomplete and final-stage manufacturers. These commenters stated that there was no practicable means by which they could learn about the final specifications of the incomplete automobiles that they manufacture. According to these commenters, incomplete automobiles are sold to more than 1,000 different intermediate and final-stage manufacturers and converted into as many as 25 different types of automobiles, with the final-stage manufacturer having substantial latitude regarding body style and shape and options.

All of the above comments regarding methods for developing fuel economy values have been referred to the Environmental Protection Agency

(EPA). The EPA has the authority under section 503 of Title V for specifying the procedures for determining fuel economy.

Compliance with labeling requirements. Chrysler, Ford, and GM recommended that the fuel economy label values for multistage automobiles be derived from the corresponding completed, single-stage automobiles manufactured by the incomplete automobile manufacturer. This comment, like the other comments on methods for developing fuel economy values, has been referred to EPA for consideration.

Chrysler, Ford, and GM also commented that they were presently complying with the labeling requirements in the same manner as for single-stage automobiles. Ford noted that most fuel economy labels for incomplete automobiles were attached to the windshields or side windows. For incomplete automobiles sold with no body, that company recommended that the labels be enclosed with the emissions certification and safety compliance information furnished by the incomplete automobile manufacturer to subsequent manufacturers. The NHTSA agrees with this recommendation. The rule has been revised to provide that while the incomplete automobile manufacturer would be responsible for preparing the fuel economy label for those incomplete automobiles, the responsibility for affixing the label would be placed on the manufacturer that adds the body to the automobile.

Ford commented that the NPRM did not completely and appropriately assign responsibility for the fuel economy labels remaining affixed to the multi-stage automobiles. That company stated that when the incomplete automobile manufacturer affixes the label to an incomplete automobile, all subsequent manufacturers of the automobile must assume responsibility and be held accountable for maintaining the label. The NHTSA agrees that there was incomplete assignment of this responsibility. The rule has been revised to ensure an unbroken chain of accountability for the fuel economy labels' remaining attached. If a manufacturer receives an incomplete automobile that has the portion of the body including the windshield and front seat side windows and therefore should be labeled, but does not have a fuel economy label, the manufacturer is required to attach a label identical to the one that should be on the automobile. The document containing the curb weight and frontal area maxima and the addenda, if any, to that document will identify the previous manufacturer of that automobile which should have prepared the missing label. Similarly, if a fuel economy label is removed from an incomplete automobile while it is in the possession of one of its manufacturers, that manufacturer must reattach that label or obtain an identical one from the manufacturer which prepared the removed label. A manufacturer is not required to replace a label that is removed in the circumstances of the immediately preceding sentence if the manufacturer has exceeded one of the maxima and must prepare a new label with new fuel economy values.

Compliance with reporting requirements. The NPRM assigned reporting responsibilities in the same general manner as standards compliance and labeling responsibilities, but stated that the manner of assigning reporting responsibilities would be addressed in greater detail in a subsequent notice of proposed rulemaking dealing solely with reporting requirements. That subsequent notice was published April 11, 1977, 42 FR 18867. The question of multistage manufacturers was addressed at 42 FR 18869. The reporting NPRM provided that even when an intermediate or final-stage manufacturer assumed full responsibility for the compliance of an automobile with the fuel economy standards, it would assume only partial responsibility for compliance with the reporting requirements. In commenting on the multistage NPRM, Chrysler, Ford, and GM stated that an intermediate or final-stage manufacturer which exceeds the curb weight and frontal area maxima should assume the reporting responsibilities. However, in commenting on the subsequent reporting NPRM, none of these manufacturers objected to a proposal that the reporting responsibilities be divided between the incomplete automobile manufacturer and one of the subsequent manufacturers when the latter manufacturer exceeds one of the maxima.

After considering these comments and the comments discussed above about the degree of communication between the incomplete automobile manufacturers and subsequent manufacturers, the NHTSA has decided to make several relatively

minor changes in the reporting responsibilities described in the reporting NPRM. First, the incomplete automobile manufacturer would not be required to provide information relating to certain aspects of completed multistage automobiles manufactured from its incomplete automobiles. These aspects would include items such as number of designated seating positions, body style, and passenger and cargo carrying volumes. Based on the comments regarding the lack of communications between the incomplete automobile manufacturers and the subsequent manufacturers, information of this type would apparently not be available to the incomplete automobile manufacturers. Second, intermediate and final-stage manufacturers are not required to do any reporting under any circumstances, including any circumstance in which an intermediate or final-stage manufacturer exceeds the maximum frontal area or curb weight. Given the agency's expectation that intermediate and final-stage manufacturers will rarely exceed either of the maxima, these manufacturers were unlikely to have been required to submit reports in any event. For the same reason, incomplete automobile manufacturers are unlikely to be required to submit more information about their incomplete automobiles than they would have been required to do under the reporting NPRM. Further, exceeding the maxima would not affect most of the information that the incomplete automobile manufacturer is required to submit.

Model year determination. The NPRM provided that the final-stage manufacturer would have two options regarding the designation of model year of a multistage automobile. The manufacturer could choose to offer for sale or sell the automobile as one manufactured in either the model year in which the incomplete automobile manufacturer completed its manufacturing operations or the model year in which that final-stage manufacturer completed its manufacturing operations. It was proposed that if the final-stage manufacturer chose to offer the automobile for sale as one manufactured in the model year in which the incomplete automobile manufacturer completed its manufacturing operations, and if no subsequent manufacturer had exceeded the curb weight and frontal area maxima, the final-stage manufacturer could rely on the fuel economy testing and label of the incomplete automobile manufacturer. If, however, the final-stage manufacturer completed the automobile in a model year after the incomplete automobile manufacturer completed its manufacturing operations and if the final-stage manufacturer elected to offer the automobile for sale as one manufactured in the latter model year, the final-stage manufacturer would become the manufacturer of the automobile for the purposes of Title V and would be required to conduct fuel economy testing and to comply with the fuel economy standard and labeling requirements for that later model year.

Chrysler initially commented that the model year of a multistage automobile should be the model year in which the incomplete automobile manufacturer completed its manufacturing operations. This comment was qualified in a subsequent meeting and telephone conversation with the NHTSA which were summarized in memoranda placed in the docket. In that meeting and conversation, Chrysler stated that its suggestion regarding model year was merely meant to indicate that a multistage automobile should be subject to the average fuel economy standard for the model year in which the incomplete automobile manufacturer completes its manufacturing operations on the automobile unless a subsequent manufacturer exceeded either the maximum frontal area or maximum curb weight in a subsequent model year. With respect to the marketing of completed automobiles, Chrysler intended to suggest that the final-stage manufacturer have the option of marketing the completed multistage automobile either as one manufactured in the model year in which the manufacturer for standards compliance purposes completed its manufacturing operations or as one manufactured in the model year in which the final-stage manufacturer completed its manufacturing operations. Chrysler went further to urge that the final-stage manufacturer's election of the latter model year not cause that manufacturer to become the manufacturer of that automobile for the purposes of Title V and to be compelled to comply with the applicable fuel economy standard for that model year. Chrysler's comments stemmed from a concern that the NPRM would have motivated final-stage manufacturers to order all of their

incomplete automobiles for delivery early in each model year to avoid having to market out-of-date automobiles. That company stated that it had discouraged such one-time ordering because large block ordering was disruptive of its efforts to spread orders evenly over each model year.

The NHTSA believes that the Chrysler comments have merit. To avoid unnecessarily burdening both the incomplete automobile manufacturers and final-stage manufacturers, the rule has been revised to eliminate the model-year-determination provision. The elimination of that provision leaves the manufacturer free under Part 529 to designate the model year of its automobiles as it desires. However, the fuel economy label will bear the model year in which the manufacturer for purposes of standard and labeling compliance completed its manufacturing operations. Further, other law may limit the discretion of the manufacturer in designating a model year. See the discussion below of the Auto Club comment.

The elimination of the provision on model year determination makes it unnecessary to respond in detail to an objection by GM to that provision. That company interpreted that provision as meaning that any multistage automobile that a final-stage manufacturer completes after the model year in which the incomplete automobile manufacturer completes its manufacturing operations would be subtracted from the incomplete automobile manufacturer's fleet for that earlier model year. That interpretation was wrong in several respects. However, the essential point is that the model year in which a multistage automobile is completed has no effect on the determination of which automobiles are to be counted as being in the incomplete automobile manufacturer's fleet.

The Auto Club objected to the model-year-determination proposal on the basis that it conflicted with California law. Section 11713.5 of the California Vehicle Code prohibits a dealer or manufacturer from offering for sale a motor vehicle if the vehicle is represented to be of a model year different from the model year designated at the time of manufacture or assembly. The Auto Club stated that "if the incomplete automobile manufacturer, who is the manufacturer for purposes of Federal law, designates a model year for the incomplete automobile, then any final-stage manufacturer licensed to do business in California who attempts to sell that automobile under subdivision (a) of Section 529.7 would be in violation of (the California Vehicle Code)."

The deletion of the model-year-determination provision eliminates the problem perceived by the Auto Club. The provision was eliminated in response to the Chrysler comment discussed above and to avoid the possibility of unnecessarily interfering with California law. The agency notes that the provision might not have caused any interference. The determination under Part 529 of which manufacturer is to be treated as the manufacturer of a multistage automobile is controlling for the limited purposes of Title V only. Under the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391 *et seq.*) and implementing regulation in 49 CFR Part 568, the final-stage manufacturer is treated as the manufacturer. These differing determinations of who is to be treated as a manufacturer to serve different statutory purposes do not control the determination of who is a manufacturer under California law. California, not Federal, law must be interpreted to determine which of the manufacturers of a multistage automobile is the manufacturer of the automobile for the purposes of section 11713.5 of the California Vehicle Code.

Additional comments. Ford suggested that the proposal be modified to include express reference to importers of incomplete automobiles in the definition of "incomplete automobile manufacturer". This agency does not believe that this additional language is necessary. The term "manufacture" is defined in section 501 to include the importation of automobiles into the customs territory of the United States.

Chrysler recommended that the NHTSA consider exempting an incomplete automobile manufacturer from any responsibility under Title V with respect to its complete automobiles if those automobiles constitute less than 2 percent of the total number of automobiles that the manufacturer produces in that class. This recommendation was based upon Chrysler's arguments about the negligible effects of those incomplete automobiles on the average fuel economy of the manufacturer. There is no authority under Title V for adopting Chrysler's suggestion. Exemption from standard compliance responsibilities are

available only to low volume manufacturers of passenger automobiles. Most multistage automobiles are nonpassenger automobiles. Further, the exemptions are not complete. Alternative standards must be established for exempted manufacturers.

GM recommended that the multistage automobile rule be drafted to permit a final-stage manufacturer which manufactures less than 10,000 automobiles per year to petition for an exemption under section 502(c) of Title V. That company stated that when an exemption is granted for multistage automobiles, their incomplete automobile manufacturer should not have to include any of them in its fleet. Section 502(c) provides for the exemption of manufacturers which manufacture less than 10,000 passenger automobiles per year. As noted above, the exemptions can apply to passenger automobiles only and can be granted only if an alternative standard is established for the exempted passenger automobiles. The eligibility of a final-stage manufacturer to apply for an exemption depends upon the number of passenger automobiles it produces, assembles, or imports and upon whether it is treated under this rule as the manufacturer of those automobiles. If the final-stage manufacturer produces a multistage automobile but is not treated as its manufacturer, that final-stage manufacturer may not obtain its exemption under section 502(c). An exemption may be granted to a manufacturer for automobiles under Title V only if the manufacturer can demonstrate that its maximum feasible average fuel economy is less than the level of average fuel economy specified in the standard generally applicable to all manufacturers. An automobile for whose fuel economy the final-stage manufacturer has no responsibility has no bearing upon its maximum feasible average. If the final-stage manufacturer produces a multistage automobile and is treated as its manufacturer, that automobile is excluded by this rule from the incomplete automobile manufacturer's fleet irrespective of any exemption. Thus, GM's comment states no basis for changing the rule.

In light of the foregoing, Title 49, Code of Federal Regulations, is amended by adding a new Part 529, Manufacturers of Multistage Automobiles. . . .

The program official and lawyer principally responsible for the development of this rule are Roy Dennison and Kathy DeMeter, respectively.

Issued in Washington, D.C. on July 21, 1977.

Joan Claybrook
National Highway Traffic Safety Administrator

42 F.R. 38369
July 28, 1977

PART 529—MANUFACTURERS OF MULTISTAGE AUTOMOBILES

AUTHORITY: Sec. 301, Pub. L. 94–163, 80 Stat. 901 (15 U.S.C. 2001), delegation of authority at 41 FR 25015, June 22, 1976.

§ 529.1 Scope and purpose.

This part determines, in cases where more than one person is the manufacturer of an automobile, which person is to be treated as the manufacturer for purposes for compliance with Title V of the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 2001 et seq.), and rules issued thereunder.

§ 529.2 Applicability.

This part applies to incomplete automobile manufacturers, intermediate manufacturers, and final-stage manufacturers of automobiles that are manufactured in two or more stages.

§ 529.3 Definitions.

(a) *Statutory terms.* (1) The term "automobile" is used as defined in section 501 of the Act and in accordance with the determinations in 49 CFR Part 523.

(2) The terms "manufacture," "manufacturer," and "fuel economy" are used as defined in section 501 of the Act.

(b) *Other terms.* (1) "Act" means the Motor Vehicle Information and Cost Savings Act (Pub. L. 92–513), as amended by the Energy Policy and Conservation Act (Pub. L. 94–163).

(2) "Completed automobile" means an automobile that requires no further manufacturing operations to perform its intended function, other than the addition of readily attachable components, such as mirrors or tire and rim assemblies, or minor finishing operations such as painting.

(3) "Curb weight" is defined the same as "vehicle curb weight" in 40 CFR Part 86.

(4) "Final-stage manufacturer" means a person who performs such manufacturing operations on an incomplete automobile that it becomes a completed automobile.

(5) "Frontal area" is used as defined in 40 CFR § 86.079–2.

(6) "Incomplete automobile" means an assemblage consisting, as a minimum, of frame and chassis structure, power train, steering system, suspension system, and braking system to the extent that those systems are to be part of the completed automobile, that requires further manufacturing operations, other than the addition of readily attachable components, such as mirrors or tire and rim assemblies, or minor finishing operations such as painting, to become a completed automobile.

(7) "Incomplete automobile manufacturer" means a person who manufactures an incomplete automobile by assembling components none of which, taken separately, constitute a complete automobile.

(8) "Intermediate manufacturer" means a person, other than the incomplete automobile manufacturer or the final-stage manufacturer, who performs manufacturing operations on an incomplete automobile.

§ 529.4 Requirements for incomplete automobile manufacturers.

(a) Except as provided in paragraph (c) of this section § 529.5 and § 529.6, each incomplete automobile manufacturer is considered, with respect to multistage automobiles incorporating its

incomplete automobiles, the manufacturer of the multistage automobiles for purposes of the requirements of Title V and rules issued thereunder.

(b) Each incomplete automobile manufacturer shall furnish with each of its incomplete automobiles, when it is delivered to the subsequent manufacturer, (1) a document that contains the following information—

(i) Name and mailing address of the incomplete automobile manufacturer.

(ii) Month and year during which the incomplete automobile manufacturer performed its last manufacturing operation on the incomplete automobile.

(iii) Identification of the incomplete automobile or group of incomplete automobiles to which the document applies. The identification may be by serial number or otherwise, but it must be sufficient to enable a subsequent manufacturer to ascertain positively that the docuemnt applies to a particular incomplete automobile even if the document is not attached to that automobile.

(iv) Fuel economy values determined by the incomplete automobile manufacturer for the automobile in accordance with 40 CFR Part 600 and a statement that a fuel economy label containing those values has been prepared in accordance with Environmental Protection Agency regulation by the manufacturer identified in the document.

(v) Maximum curb weight that may not be exceeded by a subsequent manufacturer without invalidating the fuel economy values determined by the incomplete automobile manufacturer.

(vi) Maximum frontal area that may not be exceeded by a subsequent manufacturer without invalidating the fuel economy values determined by the incomplete automobile manufacturer.

(vii) Whether the fuel economy values have been computed with the road load horsepower set to take into account the presence of air conditioning.

(2) A fuel economy label conforming with 40 CFR Part 600.

(c) (1) The incomplete automobile manufacturer shall either attach the document specified in paragraph (b) (1) of this section to the incomplete automobile in such a manner that it will not be inadvertently detached or send that document directly to the subsequent manufacturer to which that automobile is delivered.

(2) (i) If the incomplete automobile manufacturer places the portion of the body including the windshield and front seat side windows on the incomplete automobile, the manufacturer shall attach the fuel economy label specified in paragraph (b) (2) of this section to that automobile in accordance with 40 CFR Part 600. If the incomplete automobile manufacturer does not place that portion of the body on the incomplete automobile, that manufacturer shall send that label directly to the subsequent manufacturer to which that automobile is delivered.

(ii) Upon request by an intermediate or final-stage manufacturer for a copy of a fuel economy label that is required by paragraph (b) (2) to have been prepared by the incomplete automobile manufacturer for one of its incomplete automobiles, identified by the requesting manufacturer in the same fashion as in the document specified in paragraph (b) (1) of this section, the incomplete automobile manufacturer shall send that manufacturer a copy of the label.

§ 529.5 Requirements for intermediate manufacturers.

(a) Except as provided in paragraph (d) of this section and in § 529.6, each intermediate manufacturer whose manufacturing operations on an incomplete automobile cause it to exceed the maximum curb weight or maximum frontal area set forth in the document furnished it by the incomplete automobile manufacturer under § 529.4(c) (1) or by a previous intermediate manfacturer under paragraph (b) of this section, as appropriate, is considered the manufacturer of the multistage automobile manufactured from that automobile for the purpose of the requirements of Title V and rules issued thereunder, other than that in Part 537, Fuel Economy Reports.

(b) Each intermediate manufacturer of an incomplete automobile shall furnish, in the manner specified in § 529.4(c), to the subsequent manu-

facturer of that automobile the document required by § 529.4(b) regarding that automobile. If any of the changes in the automobile made by the intermediate manufacturer affect the validity of the fuel economy values or other statements in the document or any addendum attached to the document by a previous manufacturer shall furnish an addendum to the document that contains its name and mailing address and an indication of all changes that should be made in the document to reflect changes that it made in the automobile.

(c) Each intermediate manufacturer that is required by paragraph (b) of this section to furnish an addendum to a document required by § 529.4(b) shall, within 10 days after completing its manufacturing operations, send a copy of the document and addendum to the Administrator of the Environmental Protection Agency and to the manufacturer previously considered under this part to be the manufacturer of the automobile.

(d) (1) If the intermediate manufacturer's manufacturing operations on an incomplete automobile cause it to exceed the maximum curb weight or maximum frontal area set forth in the document furnished it by the incomplete automobile manufacturer under § 529.4(c) (1) or a previous intermediate manufacturer under paragraph (b) of this section, as appropriate, that manufacturer shall prepare a new fuel economy label for that automobile in accordance with 40 CFR Part 600.

(2) If neither the intermediate manufacturer of an incomplete automobile nor any previous manufacturer of that automobile has placed the portion of the body including the windshield and front seat side windows on that automobile, the intermediate manufacturer shall send the fuel economy label furnished it by the incomplete automobile manufacturer under § 529.4(c) (2) (i) or a previous intermediate manufacturer under paragraph (d) (2) of this section or prepared by it under paragraph (d) (1) of this section, as appropriate, directly to the subsequent manufacturer to which that automobile is delivered.

(3) If the intermediate manufacturer places the portion of the body including the windshield and front seat side windows on the incomplete automobile, that manufacturer shall attach the fuel economy label furnished it under § 529.4(c) (i) or paragraph (d) (2) of this section or the fuel economy label prepared by it under paragraph (d) (1) of this section, as appropriate, to that automobile in accordance with 40 CFR Part 600.

(4) The intermediate manufacturer shall attach to the incomplete automobile in accordance with 40 CFR Part 600 a fuel economy label identical to the label that is required under this part to have been prepared by the manufacturer considered under this part to be the manufacturer of that automobile if:

(i) The portion of the body including the windshield and front seat side windows was added to the incomplete automobile by a previous manufacturer;

(ii) The intermediate manufacturer's manufacturing operations do not cause that automobile to exceed either of the maxima specified in paragraph (d) (1) of this section; and

(iii) That label is not on that automobile when received by the intermediate manufacturer or is removed from that automobile while it is in the possession of that manufacturer.

(5) Upon request by a subsequent intermediate manufacturer or by a final-stage manufacturer for a copy of a fuel economy label prepared by the intermediate manufacturer under paragraph (d) (1) of this section for one of its incomplete automobiles, identified by the requesting manufacturer in the same fashion as in the document specified in § 529.4(b) (1), the intermediate manufacturer shall send that manufacturer a copy of that label.

§ 529.6 Requirements for final-stage manufacturers.

(a) Except as provided in paragraph (c) of this section, each final-stage manufacturer whose manufacturing operations on an incomplete automobile cause the completed automobile to exceed the maximum curb weight or maximum frontal area set forth in the document specified in § 529.4 (b) and furnished it by the incomplete automobile manufacturer under § 529.4(c) (1) or by the last intermediate manufacturer under § 529.5(b), as appropriate, is considered the manufacturer of the completed automobile for the purpose of

the requirements of Title V and rules issued thereunder, other than those in Part 537, Fuel Economy Reports.

(b) Each final-stage manufacturer that becomes the manufacturer of a multistage automobile under paragraph (a) of this section shall, within 10 days after completing its manufacturing operations on that automobile, send written notification of its exceeding the curb weight or frontal area maximum to the Administrator of the Environmental Protection Agency and to the manufacturer previously considered under this part to be the manufacturer of the automobile.

(c) (1) If the final-stage manufacturer becomes the manufacturer of a multistage automobile under paragraph (a) (1) of this section, that manufacturer shall prepare a new fuel economy label for that automobile in accordance with 40 CFR part 600.

(2) If the final-stage manufacturer places the portion of the body including the windshield and front seat side windows on the incomplete automobile, that manufacturer shall attach the fuel economy label furnished by the incomplete automobile manufacturer under § 529.4(c) (2) or by the last intermediate manufacturer under § 529.5(d) (2) or the fuel economy label prepared by the final-stage manufacturer under paragraph (c) (1) of this section, as appropriate, to that automobile in accordance with 40 CFR Part 600.

(3) The final-stage manufacturer shall attach to the completed automobile in accordance with 40 CFR Part 600 a fuel economy label identical to the label that is required under this part to have been prepared by the manufacturer considered under this part to be the manufacturer of that automobile if:

(i) The portion of the body including the windshield and front seat side windows was added to the completed automobile by a previous manufacturer;

(ii) The final-stage manufacturer's manufacturing operations do not cause that automobile to exceed either of the maxima specified in paragraph (c) (1) of this section; and

(iii) That fuel economy label is not on that automobile when received by that manufacturer or is removed from that automobile while it is in the possession of that manufacturer.

42 F.R. 38369
July 28, 1977

PREAMBLE TO PART 531—PASSENGER AVERAGE FUEL ECONOMY STANDARDS

(Docket No. FE 76–1; Notice 5)

This notice establishes average fuel economy standards for passenger automobiles manufactured in model years 1981–84. These standards are 22 miles per gallon (mpg) for passenger automobiles produced in model year 1981, 24 mpg for 1982, 26 mpg for 1983, and 27 mpg for 1984. These standards are promulgated to satisfy the requirements of section 502(a)(3) of the Motor Vehicle Information and Cost Savings Act, as amended. The establishment of these standards is intended to result in the consumption of approximately 41 billion fewer gallons of gasoline (worth $19 billion, with gasoline valued at 65¢ per gallon) over the life of the vehicles manufactured in 1981–84 than would be the case if the average fuel economy of new passenger automobiles remained at the level of the 1980 fuel economy standard, 20.0 mpg.

Dates: These standards will apply to the model years 1981 through 1984.

For further information contact:

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Supplementary Information:

I. Background information.

Title V of the Motor Vehicle Information and Cost Savings Act, as amended (hereafter, "the Act"), establishes average fuel economy standards applicable to manufacturers of passenger automobiles. Title V was added to the Act by Part A of Title III of the Energy Policy and Conservation Act (hereafter, "the Energy Act"). The term "passenger automobiles" generally includes four-wheeled vehicles manufactured primarily for on-road use and for the transportation of ten or fewer passengers, e.g., sedans, coupes, and station wagons. See 15 U.S.C. 2001(1) and (2), and 41 FR 55368, December 20, 1976. Compliance of a manufacturer with these standards is to be determined by computing the production-weighted fuel economy average of the various model types of passenger automobiles manufactured by the manufacturer in a model year and comparing that number to the fuel economy standard. Fuel economy values for the various model types of passenger automobiles are determined in accordance with procedures established by the Environmental Protection Agency. See 41 FR 38675, September 10, 1976. The Act specifies fuel economy standards of 18, 19, and 20 mpg for model years 1978, 1979, and 1980, respectively, and 27.5 mpg for 1985 and thereafter. Fuel economy standards for model years 1981–84 are to be established administratively by the Secretary of Transportation not later than July 1, 1977. See section 502(a)(3) of the Act. This notice establishes the latter standards.

Section 502(a)(3) imposes two substantive requirements for the 1981–84 standards. That section requires that the standards for each of those model years be set at a level which (1) is the maximum feasible average fuel economy level and (2) will result in steady progress toward meeting the 1985 standard. The statutorily-established standard for 1985 and thereafter of 27.5 mpg may be adjusted either upward or downward by the Secretary of Transportation if he determines that the present standard does not reflect the maximum feasible average fuel economy level for those years. If the Secretary amends the standard for any model year to a level above 27.5 mpg or below 26.0 mpg, that amendment is subject to a veto by either House of the Congress. See section 502(a)(4). In determining maximum feasible average fuel economy, the Secretary must, under section

502(e) of the Act, consider four factors: technological feasibility, economic practicability; the effect of other Federal motor vehicle standards on fuel economy; and the need of the nation to conserve energy.

Responsibility for the automotive fuel economy program was delegated by the Secretary of Transportation to the Administrator of the National Highway Traffic Safety Administration (NHTSA) in 41 FR 25015, June 22, 1976. Rulemaking under section 502(a)(3) was initiated on September 23, 1976, when the NHTSA published an advance notice of proposed rulemaking (ANPRM). See 41 FR 41713. The ANPRM solicited specific information on all subjects relevant to the establishment of 1981–84 standards, with particular emphasis on the four considerations relating to the determination of maximum feasible average fuel economy levels set forth above. Six automobile manufacturers, two industry trade associations, one state and one federal energy agency, and one private individual provided responses to the ANPRM. These responses were considered in developing the notice of proposed rulemaking and supporting materials discussed below. To encourage the representation in the proceeding of interests and points of view which have traditionally been underrepresented due to the high costs of participation, NHTSA invited applications for financial assistance from individuals and groups which were financially unable to participate. See 42 FR 5178, January 27, 1977. Five public interest organizations received funding in this first action under the Department's demonstration program for financial assistance, which was announced in 42 FR 2864, January 13, 1977.

On February 22, 1977, a notice of proposed rulemaking and public hearing (NPRM) was published in 42 FR 10321. This notice discussed in additional detail the issues which were deemed relevant to the establishment of 1981–84 standards. The notice also announced the availability of a document titled "Data and Analysis for 1981–84 Passenger Automobile Fuel Economy Standards" (hereafter, the "Support Document"), which set forth the methodology and data on which fuel economy improvement projections would be based. This document was released on March 1, 1977. As noted in the NPRM, the Support Document projected potentially achievable fuel economy levels which would result in steady progress toward meeting 27.5 mpg by 1985. These projections were based on the use of a limited class of technological improvements, and were therefore not projections of "maximum feasible average fuel economy levels." See 42 FR 10322, and Tr-I, p. 87 (remarks of Dr. Robert Sawyer).[1] However, such projections were useful for demonstrating that average fuel economy levels in the range to be considered in this proceeding were achievable.

The NPRM also announced a public hearing to commence on March 22, 1977, to permit interested parties to make oral presentations in addition to their opportunity to make written submissions. The hearing was not required by the Act, but was held at the discretion of the Secretary to augment the opportunity for public participation in this important informal rulemaking action. The Secretary of Transportation presided over the first day of the hearing, together with the Administrator of the Federal Energy Administration and the Deputy Administrator of the Environmental Protection Agency. Representatives of the latter agencies also participated throughout the remainder of the hearing. Eleven companies, groups and individuals made presentations at the hearing, including five passenger automobile companies and four funded public interest groups. The NPRM established a deadline of April 7, 1977, for the submission of written comments on the NPRM and the Support Document and on issues raised at the hearing. This deadline was extended on April 1, 1977, to April 12, 1977, at the request of Chrysler Corporation,[2] to allow additional time for the pre-

[1] The abbreviation "Tr" refers to the transcript of the fuel economy public hearing, copies of which are in the fuel economy docket. The roman numeral following the abbreviation refers to the transcript volume, "I" being the Tuesday, March 22 volume, "II" being the March 23 volume, and "III" being the March 24 volume. References to the transcript and other materials are intended as an aid to persons dealing with the voluminous materials in this rulemaking, and may not be exhaustive.

[2] DN–25. The abbreviation "DN" followed by a number refers to the docket number of material in NHTSA docket FE 76–01–NO3. This docket is located in Room 5108 of the Nassif Building, 400 Seventh Street, S.W., Washington, D.C., and is open to the public during normal business hours.

paration of responses to questions for which the hearing panel received no answer at the hearing. See 42 FR 18413, April 7, 1977. To assure fully responsive answers to certain important questions asked at the public hearing, "special orders" were issued on April 1, 1977, under section 505(b)(1) of the Act to the five automobile companies which participated in the hearing. DN–7. In addition, on April 21, similar special orders were issued to certain foreign passenger automobile manufacturers to obtain information on their capabilities to achieve high levels of average fuel economy. DN–28. On April 20, special orders were sent to five automobile equipment and material suppliers to obtain information on the fuel economy improvement potential and cost associated with the equipment and material they could supply to passenger automobile manufacturers in the 1981–84 period. DN–27. An additional special order was issued on May 19 to the recipients of the April 1 order to obtain further information on the impact of the Administration's proposed emission standards and energy plan on fuel economy. DN–35. All comments and responses have been considered and the most significant are discussed below.

Material contained in the Support Document, as supplemented or revised in light of material submitted in response to the NPRM and special orders, together with other relevant material, were used in the development of the standards promulgated herein. More detailed information including more extensive data and analyses used in the development of these standards is contained in a Rulemaking Support Paper (hereafter, the "RSP"), copies of which will soon be available from the Office of Automotive Fuel Economy (NFE–01), National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 or by calling 202–472–5906. The data and analyses in that paper appear to justify average fuel economy standards more stringent than 27.5 mpg by 1985. However, the scope of notice limits this final rule to standards for 1981–84. Thus, the statutory standard of 27.5 mpg for 1985 and thereafter cannot be changed by this rulemaking. Further, standards of 27.5 mpg or higher cannot be set for any year before 1985 so long as the 1985 standard remains at 27.5 mpg. This second limitation results from the statutory requirement that the 1981–84 standards lead to steady progress toward the 1985 standard.

It should be noted that these limitations on the 1981–85 standards are only temporary. Shortly, the Department intends to exercise its authority under section 502(a)(4) of the Act to initiate rulemaking to increase the average fuel economy standards for 1985 and thereafter. At that time, the relation between the new standard for 1985 and the standards for 1981–84 established herein will be considered. A further discussion of this topic is contained in section XII below.

II. Methodology on which standards are based.

A. *The methodological approach.*

In view of the statutory requirement for maximum feasible standards and of the nation's need to conserve energy, the Department has attempted to set fuel economy standards at the most stringent possible level, consistent with other statutory requirements. At least two approaches exist for determining such maximum levels. One approach is to evaluate the most fuel efficient passenger automobiles produced today in each of the various market classes of automobiles, and to use that evaluation to set improvement targets for all other automobiles in the same class. This approach has the advantage of providing a clear basis for evaluating current technological capabilities. However, to the extent that the best of the present vehicles, or even existing prototype vehicles, do not employ all available fuel economy-improving technology, this approach does not truly measure even current maximum capabilities. Further, it does not consider technological improvements that will occur in time to be incorporated in the 1981–84 passenger automobiles. Therefore, in developing 1981–84 fuel economy standards, the Department has employed a different approach. The adopted methodology looks at present passenger automobiles and projects the impact of applying current and expected future technology to those vehicles. This approach has the disadvantage that no one has actually built or tested a vehicle that combines the technological attributes of the vehicles postulated in the analysis. However, the Department is convinced that the individual technologi-

cal improvements considered in this analysis have been sufficiently well demonstrated through engineering analysis and other means that the combined fuel economy projections provide a reliable estimate of the achievable fuel economy of future passenger automobiles.

The Department's analysis started with the detailed schedules for downsizing, weight reduction through materials substitution and matching of engines with vehicles by the four major domestic manufacturers, as contained in the Support Document. Then the schedules for inertia weight reduction over the period 1981–85 were revised to reflect further information. The projected fuel economy results for each manufacturer for each year were then revised to reflect the new weight estimates as well as the Department's assessment that an average 10 percent reduction in acceleration performance could be achieved by the 1981 model year to increase fuel economy by an additional 4 percent.

Next, the percentage increases in fuel economy due to technological improvements in transmissions, aerodynamic drag, rolling resistance, engine and vehicle accessories, and lubricants were evaluated and these technological improvements were projected to be phased-in to the 1981–85 vehicles at various rates for each manufacturer. The phase-in schedules took into account differences in capability for implementation among the manufacturers.

The technologies and the associated increases in fuel economy are:

Improved automatic transmission	10%
Improved manual transmission	5%
Improved lubricants	2%
Reduced accessory loads	2%
Reduced aerodynamic drag	4%
Reduced rolling resistance	3%

In addition, the assessment included a 1 percent fuel economy penalty due to safety standards necessary to assure adequate levels of crash survivability in the automobile fleet of the 1980's. See RSP.

Finally, the distribution of car sizes for each manufacturer was assumed to be approximately the same as in 1976.

The diesel engine was also considered in the assessment. It is available to manufacturers as an alternative way to obtain increased fuel economy and the Department concludes that manufacturers potentially could achieve a 25 percent penetration of diesel engine powered passenger automobiles by 1985. Similarly, the Department considered a shift in size distribution to 10 percent large cars, 25 percent midsize, 25 percent compact, and 40 percent subcompact by 1985 as a way to obtain a further increase in fuel economy. Diesel engines and mix shifts were placed in a "safety margin" category of technologically feasible means for the purposes of this rulemaking.

The economic practicability of the specific technical approach to improving fuel economy was examined in depth. The assessment considered the cost to the manufacturer of the needed capital facilities and the variable costs associated with the various technological improvements in fuel economy. It projected price increases based on those cost estimates. It examined the overall costs to the consumer due to changes in new car prices, improvements in fuel economy, and changes in maintenance costs over the life of the car. It considered the impacts of price and fuel economy changes upon new car sales. It examined in some depth the capability of the four domestic manufacturers to finance the capital facilities and equipment out of revenue.

This approach results in a demonstration of *one* feasible path for attainment of the fuel economy standards, which, however, is not necessarily the least cost or lowest risk path for each automobile manufacturer to adopt to achieve compliance. Since the fuel economy standards are "performance standards," manufacturers are free to select any alternative path for achieving compliance. Even if the Department had based its fuel economy projections on the use of all known technology, manufacturers would still have flexibility in achieving compliance. In some cases, the Department's analysis makes an allowance for alternative technologies (e.g., downsizing or material substitution to achieve weight reduction) from which manufacturers may select. In addition, manufacturers may increase the percent of their production for which some methods are used and thereby generate flexibility to decrease

the usage of some other method. The manufacturers may vary the intensity with which they apply a particular method, for example, achieving a greater or lesser reduction in weight or acceleration capability. Many of the achievable improvements assumed in the analysis are based on projections of fuel economy improvement potential which the Department considers conservative. If improvements in fuel economy greater than those projected are in fact realized, more flexibility is obtained. Finally, any new technological developments over the intervening years would generate additional flexibility. For these reasons, it is clear that, even excluding the measures comprising the compliance safety margin provided in this analysis, alternate approaches to complying with fuel economy standards will be open to the automobile manufacturers.

B. *Statutory requirements.*

Section 502 of the Act provides guidance regarding the analysis to be used in setting the 1981–84 fuel economy standards. The first required step is to determine the "maximum feasible average fuel economy level." The first consideration required under section 502(e) in determining that level is "technological feasibility." The Department interprets the latter phrase, in the context of the "maximum feasible" requirement and the methodological approach discussed above, as presenting the question of whether the various technological options for improving fuel economy are, individually and when used with other options, capable of commercial application in 1981–84. Therefore, the technology considered in the Department's assessment is not limited to that presently in production. If it can be reasonably projected that the technology will become available in time to be applied in a specified model year, its use is technologically feasible in that year. See generally "Chrysler Corp. v. Department of Transportation," 472 F.2d 659 (6th Cir. 1972, at 671–3; "International Harvester v. Ruckelshaus," 478 F.2d 615 (D.C. Cir. 1973), at 628–9. Although marketing strategies for encouraging the purchase of fuel efficient passenger automobiles are not items of technology, those strategies have been included in the "mix shift" portion of the discussion of the technology-based average fuel economy projections. Given the use of "maximum," the Act must be construed to require the Department to base its analysis on the use of all feasible methods for improving average fuel economy.

The NPRM, at 42 FR 10322, solicited comment on the second statutory consideration, "economic practicability." Ford Motor Company argued that this consideration, along with the technological feasibility consideration, requires the Department to reject any level of standards which would create even a risk of reductions in industry sales, employment or profits or of restrictions in the mix of automobiles offered for sale. DN–15, Document II, p. 2. Ford suggests basing the standards on a "risk-benefit" analysis. Chrysler Corporation argued that the term means as a minimum that "the various manufacturers are financially capable of taking the necessary steps to insure compliance." DN–30, p. 20. Chrysler goes on to state that the analysis should require a consideration of the impacts of the proposed standards on employment, inflation, and consumers. The Department's view on this issue is more consistent with that of Chrysler than with Ford's.

The dictionary meaning of the word "practicable" is that something is "capable of being put into practice, done or accomplished." Webster's Third New International Dictionary, p. 1780 (1961) 8 Oxford English Dictionary, p. 1218 (1970). "Economic practicability" is nowhere defined in the Act. However, similar terms, "economically justified" and "economically feasible," are used in Part B of Title III of the Energy Act, and it is possible to infer the meaning of "economic practicability" from the use of those terms. The word "practicable" is synonymous with "feasible," according to the Oxford definition. This appears to be consistent with the way the term is used in the Act.

Section 325(a)(4)(D) defines "economically justified":

> . . . improvement of energy efficiency is economically justified if it is economically feasible the benefits of reduced energy consumption, and the savings in operating costs throughout

the estimated average life of the covered product, outweigh—

(i) any increase to purchasers in initial charges for, or maintenance expenses of, the covered product which is likely to result from the imposition of the standard,

(ii) any lessening of the utility or the performance of the covered product, and

(iii) any negative effects on competition.

It should be noted that "economically feasible the benefits of" is a grammatical error which appears in the Energy Act itself as well as the Conference Report. The legislative history indicates that it should probably be read "economically feasible and if the benefits of."

Section 325 clearly contemplates that a standard must be *both* economically feasible *and* justified on a cost-benefit basis. Since Congress used the two concepts separately, it obviously did not intend them to be synonymous, i.e., economically feasible is not the same as cost-beneficial. This is further made clear by the definition of feasibility in the Conference Report:

> The term feasibility is used in section 325 in the strict sense, namely "capable of being carried out." Economic feasibility refers to whether or not a manufacturer has the economic capability to carry out the requirements of an energy efficiency standard. S. Rep. No. 94–516, H. R. Rep. No. 94–700 (94th Cong., 1st Sess.) at 172.

In the dictionary definitions listed above, "feasible" was listed as a synonym for "practicable," and interchanging them would lead to the conclusion that economic practicability is a separate concept from cost-beneficial (the second element of economically justifiable).

In addition, not equating cost-benefit considerations with economic practicability is consistent with the goal of achieving maximum feasible fuel economy by allowing economically and technologically possible standards which will improve fuel economy but which an analysis, subject to many practical limitations, might indicate are not cost-beneficial.

The word "practicable" appears in the other major vehicle regulatory statute that NHTSA administers, the National Traffic and Motor Vehicle Safety Act. Section 103(a) of the Vehicle Safety Act (15 U.S.C. § 1392(a)) states, in part:

> . . . The Secretary shall establish by order appropriate Federal motor vehicle safety standards. Each such Federal motor vehicle safety standard shall be practicable . . .

Unfortunately, the term is defined neither in the Vehicle Safety Act nor its legislative history. However, the legislative history of the Vehicle Safety Act states that the determination of practicability must include consideration of technological and economic factors. Further, there is a small body of judicial interpretations of the term which outlines its contours.

First, it is clear that the term does not mean cost-beneficial. In "Chrysler Corp. v. Department of Transportation," 472 F. 2d 659 (6th Cir. 1972), the court noted that the Automobile Manufacturers Association had suggested a number of amendments to the bill from which the Vehicle Safety Act arose, including limiting standards to those at costs commensurate with the benefit to be achieved. Id. at 672, fn. 16. and stated:

> None of these specific restraints sought by the Automobile Manufacturers Association was adopted, and we must decline to write into the Act the very same suggestions which Congress declined to write into the Act. Id. at 672, fn. 16.

Considering the definition of "economically justifiable" that Congress placed in Part B but not Part A of Title III of the Energy Act, the Department must likewise decline any invitation to write such limitation into Part A.

What "practicability" does mean is suggested in the following cases. In "Chrysler Corp. v. Department of Transportation," 515 F. 2d 1053 (6th Cir. 1975), relating to rectangular headlamps, the court stated:

> A review of the cases in this area suggests the practicability requirement was designed primarily to prevent the NHTSA from establishing mandatory safety standards that are economically or technologically infeasible. (citations omitted). Id. at 1060.

In "Chrysler Corporation v. Department of Transportation," 472 F. 2d 659 (6th Cir. 1972), relating to passive restraints the court stated:

> We do not intend to suggest that the Agency might impose standards so demanding as to require a manufacturer to perform the impossible, or impose standards so imperative as to put a manufacturer out of business. But it is clear from the Act and its legislative history that the Agency may issue standards requiring future levels of motor vehicle performances which the manufacturers could not meet unless they devoted more of their resources to producing additional safety technology than they might otherwise do.

Id. at 672. It should be noted that this explicitly recognizes the Department's authority to set standards at non-free market dictated levels, i.e., at levels not fully cost justified under traditional free market economic theory.

Finally, in "H & H Tire Co. v. U.S. Department of Transportation," 471 F. 2d 350 (7th Cir. 1972) the Court said:

> We agree with the Government that "the fact that a government regulation may cause economic hardship to a party does not make such regulation unreasonable." Id. at 354.

Congress was presumably aware of the judicial interpretation of this term. It can be inferred from Congress' use of the same term in the Cost Savings Act as in the Vehicle Safety Act, both of which are overseen by the Commerce Committee and administered by the NHTSA, that Congress intended the same interpretation in both cases.

Considering all these factors, the Department concludes that "economic practicability" should be interpreted as requiring the standards to be within the financial capability of the industry, but not so stringent as to threaten substantial economic hardship for the industry. A cost-benefit analysis would be useful in considering these factors, but sole reliance on such an analysis would be contrary to the mandate of the Act.

The third consideration in determining "maximum feasible average fuel economy" levels is "the effect of other Federal motor vehicle standards on fuel economy." This term is interpreted to call for making a straight-forward adjustment to the fuel economy improvement projections to account for the impacts of other Federal standards, principally those in the areas of emission control, occupant safety, vehicle damageability, and vehicle noise. However, only the unavoidable consequences of compliance with these standards should be accounted for. The automobile manufacturers must be expected to adopt those feasible methods of achieving compliance with other Federal standards which minimize any adverse fuel economy effects of those standards.

The final statutory consideration is the "need of the Nation to conserve energy." The Support Document contains information on this topic, including a discussion of the impact of our national need to import large quantities of petroleum, and the impact of various automotive fuel economy standards schedules on such importation. No participant in the rulemaking proceeding disputed the importance of the need to conserve energy. The magnitude and prominence of this need have increased in the years since Congress' amendment of the Act. It must be recognized that achieving improvements in automobile fuel economy, no matter how great, will not by itself solve the national energy problem. Maximum conservation efforts must be made in all areas of energy consumption if the nation is to begin to solve its overall energy problem. It would jeopardize the overall national conservation effort if individual elements of that effort, such as the automobile fuel economy program, were to fail to require the last increments of feasible fuel savings on the sole ground that such increments are small in comparison to the overall need. Therefore, in considering various fuel economy schedules for 1981–84 passenger automobiles, the Department must select the highest schedule consistent with the other statutory requirements, due to the serious national need to conserve energy. See Federal Energy Administration submission, DN–37, pp. 1–2.

The second substantive statutory requirement for the 1981–84 standards is that they must result in "steady progress" toward meeting the 1985 standard. Although the Act does not define the term "steady progress," some guidance as to the term's meaning can be obtained by reference to

the "plain meaning" of the two words, cases construing the two words, and the Act's legislative history. From a review of these materials, it appears that the term requires annual increases in average fuel economy, but with none of the annual increments varying dramatically from the other annual increases. Schedules like those suggested by American Motors Corporation (Tr–I, p. 74) and by Damiler-Benz AG (DN–10, p. 11), which require increases in average fuel economy in only one year during the 1981–84 period, would be inconsistent with the "steady progress" requirement, even if they met the "maximum feasible" requirement, since they do not require annual progress. On the other hand, a projected maximum feasible average fuel economy level of 26 mpg for 1981, for example, would have to be adjusted downward because of the disproportionately large increment resulting for that year.

III. Determination of maximum feasible average fuel economy levels.

A. *Technology-based fuel economy projections.*

Participants in the rulemaking proceeding did not seriously challenge the appropriateness of the basic methodological approach used in the Support Document (Docket Number FE 76–01 GR–3) to project fuel economy improvement potential. That methodology assigns an analytically-derived percent average fuel economy improvement to certain options which are technologically feasible and applies that percentage to each of the various manufacturers' present passenger automobile fleets. The same implementation schedule is not used for all manufacturers nor for all automobiles in a given manufacturer's fleet due to the significant differences which exist in the financial capability and in the efficiency of the current automobiles of the various manufacturers. Rather, a maximum appropriate improvement schedule taking those factors into consideration is assigned. The technology considered in the development of the standards established in this notice are discussed in detail below. Because of the qualitative difference in the domestic automobiles and the imports, the fuel economy improvement potential of the imports will be discussed separately.

1. *Weight reduction.*

The most obvious method for improving fuel economy is to make the passenger automobile lighter. For analytical purposes, the Support Document divided this option into three suboptions: downsizing; material substitution; and mix shifts. "Downsizing" referred to the reduction of vehicle weight and exterior dimensions by optimizing the vehicle design. The goal of downsizing is to reduce the exterior dimensions of the automobile without reducing significantly the interior passenger and luggage volume of the automobile. According to General Motors, this option "retains the essential characteristic of cars that meet a variety of consumer needs and desires." DN–18, Attachment VIII, p. 3. The Department notes that there is significant variation in the interior space of different passenger automobiles with the same number of seating positions and that tradeoffs between interior space and improved fuel economy are possible. "Material substitution" refers to the substitution of materials with lighter weight for a given strength, such as aluminum, plastics, and high-strength steel, for currently used materials. "Mix shifts" refers to shifting the percentages of the vehicles sold in different market classes (e.g., selling more compacts and fewer midsize automobiles). For explanation of these market classes, see the fuel economy labeling regulations established by E.P.A. in 41 FR 49753 (November 10, 1976). The automobile manufacturers generally argued that they were unable to differentiate between weight savings attributable to downsizing and material substitution, since they are both inseparable parts of the vehicle redesign process. See GM comment, DN–18, p. 11; Chrysler comment, DN–32, pg. 11. Therefore, the Rulemaking Support Paper has combined the weight reduction potentials for those two methods. Mix shifts will be dealt with separately in section III.A.10.

The Support Document based its projections of feasible weight reduction through downsizing primarily on the reductions already achieved by General Motors with its large-sized vehicles and on press reports of planned downsizing of the other market classes. See Support Document 2, Volume I, page 2–7. Since these projections were based on current downsizing efforts, they

may well understate the maximum potential for downsizing in 1981–84. See DN–11, p. 4, comments of Mr. Thomas Austin. In fact, Ford, in response to the April 1 special order (DN–7) projected greater total weight reduction for its fleet than NHTSA had originally assumed. DN–15, Doc. III, p. 30. GM strongly implied that a second round of downsizing, in addition to the one now underway, was both feasible and planned. DN–18, Att. VIII, p. 3. In addition, GM submitted a "hypothetical scenario" of actions it could take to meet a standard of 27.5 mpg in 1985. DN–18, p. 12. Although GM characterizes this scenario as "drastic," the company's main concern appears to be that the scenario assumes the use of diesel engines in 25% of its automobiles and a reduction in average acceleration capability. The projected weight reductions, which are significantly greater than those initially projected by NHTSA, do not appear "drastic," and are generally consistent with Ford's projections. The reasonableness of GM's projections can also be inferred from GM's statement that the reduction assumed *no* mix shift toward smaller market classes (p. 12) and the fact that its projected average inertia weight for 1984 subcompacts (p. 13) is substantially higher (2690 pounds) than that of many subcompacts built today.

Additional evidence that the Support Document's projections of achievable weight reductions were unduly pessimistic was provided by Alcoa and U.S. Steel Corporation in response to the April 20 special order. See DN–27. Alcoa projected that the use of aluminum in certain vehicle components where that use is expected to be feasible by 1982 could reduce the weight of a present compact car by 415 pounds. Alcoa emphasized that that total was *not* based on a complete list of *all* feasible aluminum substitutions and that no allowance was made for propagation effects, i.e., the ability to reduce the weight of certain additional components because of weight reductions achieved in other components. DN–27–D.

Alcoa projected a material cost increase of only $33 for its proposed aluminum substitution. U.S. Steel projected a slightly greater weight reduction, at a higher cost, through the substitution of certain steel products for those presently used. DN–27–A. These projected weight reductions, which do not refer to identical lists of vehicle components, are approximately twice as great as those projected in the Support Document, Doc. 2, Vol. I, page 2–7, of 150–250 pounds. Since the Alcoa and U.S. Steel projections were not available at the time of the NPRM, the Department is reluctant at this time to revise upward its projections in this rulemaking of weight-saving potential on the basis of those submissions. However, these submissions do support the feasibility of the original weight reduction projections.

Front engine, front wheel drive power trains offer another technological option for further downsizing of passenger automobiles. GM (DN–18, p. 10) and Chrysler (DN–19, p. 7) each projected use of such power trains in their fleets in 1981–84. Their use allows additional vehicle downsizing through maximizing passenger compartment volume by elimination of the driveline tunnel and rear axle kick-up area. It may also be possible to reduce the length of the engine compartment by transverse mounting of the engine and transmission. The only projection given for fuel economy improvements associated with front wheel drive was the 5 percent figure offered by Dr. Sawyer at the hearing. Tr–III, p. 93. Although no percent improvement is assigned to front-wheel drive for the purposes of this analysis, the use of such power trains is recognized as a feasible method for optimizing vehicle design. The availability of this option, which was not part of the original DOT analysis, tends to confirm the Department's conclusion that the weight reductions projected in the Support Document are conservative estimates of the maximum feasible reductions. There appears to be no technological reason which would prohibit the use of such power trains in all vehicles, particularly if the implementation of this option were phased in concurrently with transmission changes. (See sections 3 and 4.)

Therefore, the weight reductions assumed for Ford and GM have been revised to take into account the higher projections made by those companies, but not the submissions by Alcoa and U.S. Steel. In the case of AMC and Chrysler, the original projections in the Support Document have been retained, despite the claims of those

two manufacturers that the Department's projections exceed their plans.[3] AMC argues that its vehicles are presently optimally designed, and that the other manufacturers' downsizing plans will merely bring the latter automobiles up to AMC's level of efficiency. DN–14, p. 1. Chrysler argues that DOT projections are 100–200 pounds too optimistic per vehicle. DN–30, p. 9. With respect to both AMC and Chrysler, there is no reason to believe that the improvements associated with material substitution are not as fully applicable to them as to Ford and GM, which did not dispute the projected improvements. Neither AMC nor Chrysler gave any indication that they presently use light-weight materials to a greater extent than their domestic competitors, and a comparison of the weights of their present vehicles confirms that there is no such difference. AMC's claim that absolutely no downsizing of its vehicles is possible must also be rejected. For example, the AMC Gremlin has less interior room than a Honda Accord, but weighs nearly 800 pounds more. See 1977 EPA/FEA Gas Mileage Guide, Second Edition, and Automotive News, 1977 Market Data Book Issue, April 27, 1977, p. 76, 109. The AMC Hornet weighs nearly 500 pounds more than an Audi 100LS, but has less interior room. The AMC Pacer weighs nearly 600 pounds more than that same Audi model, with equivalent interior roominess. The AMC Matador weighs 168 pounds more than a large size Pontiac, based on a comparison of six-cylinder versions of both cars, but has eight less cubic feet of total interior volume. A similar comparison between present Chrysler and Ford automobiles reveals no significant differences in weight or roominess, yet Ford projects that it will achieve a significantly lower fleet average weight than Chrysler. It is significant that Chrysler engineers have projected that weight reductions of 630 pounds could be achieved through light-weight material substitution alone in a mid-size car, with "moderate changes in design and manufacturing techniques." SAE Paper #760203, Docket FE–76–01–GR–21.[4] Those engineers project that such weight reduction techniques could be implemented in "two or three years," with a resulting fuel economy improvement of 26 percent. Therefore, the original assessments of weight reduction potential for AMC and Chrysler have been retained. The originally adopted schedule for attaining those reductions allows more time for those two companies to complete the process than in the cases of Ford and GM, in order to take into account differences in economic and product development capabilities (see Support Document, Doc. 4). These delays provide needed flexibility for the smaller domestic manufacturers without significantly reducing total fuel savings. Table 5.1 of the RSP provides the projected fleet average inertia weights for each manufacturer and the resulting fuel economy values appear in Table 5.9.

2. *Reduction in straight-line acceleration capability.*

Over a limited range of engine parameters, it is possible to achieve fuel economy improvements through reducing engine displacement or the ratio of engine speed to vehicle speed (N/V), or some combination of those two items. These reductions, while improving fuel economy, also adversely affect vehicle acceleration capability. Where it is possible to merely substitute one set of gears for another to change the axle ratio or expand the ratio of transmission gearing or where sufficient plant flexibility exists for a manufacturer to increase the production of lower displacement engines, this method of improving fuel economy can be implemented in a highly economical manner. The primary constraint which restricts the use of this method is consumer resistance, at least initially, to significantly reduced levels of vehicle acceleration. A secondary constraint is the increased difficulty of controlling NOx emissions as engine loading increases.

[3] Many of the automobile manufacturers' specific objections to the percent improvements projected by the Department for various technological options are phrased in terms of differences between DOT projections and the manufacturer's present "plan." It is clear, however, that under the statute DOT's projections must be based on maximum achievable improvements, notwithstanding any contrary "plans" by the manufacturer.

[4] "SAE Papers" are technical research papers presented before the Society of Automotive Engineers. The papers cited in this notice were prepared by engineers and scientists expert in particular areas of automotive technology.

Therefore, in the April 1 special orders, the automobile manufacturers were required to submit estimates of the minimum level of acceleration performance which consumers currently find acceptable. DN–7, Question I.B.2. The responses to this question were relatively consistent. In terms of the time required for vehicles to accelerate from rest to a speed of 60 miles per hour, GM indicated that vehicles which require more than 15 seconds are "currently meeting with unfavorable consumer acceptance" (DN–18, p. 5); Ford judged the same time to be the "minimum performance acceptable without encountering consumer resistance" (DN–15, p. 11); Chrysler estimated a "threshold level" at about 17 seconds (DN–32, p. 8); and AMC states that times in excess of 20 seconds are "clearly unacceptable" (DN–14, p. 4). However, the specified "thresholds" do not appear to be absolute minima, even at present, which all passenger automobiles must exceed. GM states that 16 percent of its present fleet of passenger automobiles presently have acceleration times poorer than its specified minimum (id., p. 5), Ford states that nearly 26 percent of its fleet is in that class (DN–43, Att. I), and AMC states that 26 percent of its sales are presently near the 20 second threshold (id., p. 4). Eight percent of Chrysler's *domestic* fleet has acceleration times poorer than 17 seconds. DN–32–A. Large portions of all manufacturers' current import fleets have acceleration performance levels poorer than these "thresholds."

In view of these statements, it is concluded that a reduction in average passenger automobile acceleration of approximately 10 percent from the present average baseline acceleration times of approximately 14 seconds can be achieved without incurring substantial consumer resistance. This reduction roughly corresponds to a fleet average "zero-to-sixty" time of 15.4 seconds, and would be phased-in by the 1981 model year. A fuel economy benefit of four percent would result from this change.

It should be noted that several factors combine to mitigate the impact of even this relatively modest reduction. First, it is possible for the manufacturers to achieve this reduction by narrowing the range of offered acceleration characteristics, e.g., by decreasing the acceleration time for its faster automobiles. Even under the GM "Hypothetical Scenario," which assumed a greater performance reduction than the one projected here, the reduction in average acceleration performance is achieved while concurrently *improving* the performance of the slowest of GM's present passenger automobiles. DN–18, p. 17. In addition, it may be possible for the manufacturers to offset this performance reduction in their passenger automobiles. At the same time that a manufacturer switches from an 8-cylinder engine to a 6-cylinder engine or lowers the N/V ratio, it could increase the acceleration performance of whatever engine is used by using a turbocharger or fuel injection system. The use of this alternate technology may even result in a net fuel economy benefit, in some cases. DN–16, p. 1 (Volkswagen) and DN–27B, p. 2 and Attachment (Bendix). Fuel injection is presently used on a number of passenger automobiles, and at least one manufacturer plans to use turbochargers in the near future. DN–18, p. 9 (GM). Volkswagen, under DOT contract, tested a turbocharged version of the Diesel Rabbit and achieved a fuel economy improvement of up to 18 percent with a concurrent *improvement* in acceleration performance. The acceleration level of this vehicle is superior to that of approximately 24 percent of General Motors' present passenger automobiles. DN–16, p. 2 (VW) and DN–18, p. 6 (GM). The fuel economy benefit from turbocharging is an indirect one which would typically result from the ability to substitute a smaller displacement engine for the larger one currently used and increasing the smaller engine's horsepower while maintaining its better fuel economy by turbocharging. Therefore, the performance reduction discussed above is adopted in the analysis on which the 1981–84 standards is based. See Rulemaking Support Paper, Section 5.3, for a further discussion of this topic.

3. *Improved automatic transmissions.*

The Support Document projected that improvements in automatic transmissions could result in a 10 percent fuel economy improvement in vehicles which use automatic transmissions, or about 85 percent of the domestic fleet. This improvement was based on tests of prototype transmissions under contract for DOT, and several studies presented in papers submitted to the

Society of Automotive Engineers. Id. Document 2, Vol. 1. These data indicate that improvements up to nearly 20 percent are achievable with certain types of improved automatic transmissions. Present automatic transmissions are generally three-speed units with a conventional torque converter. Some data generated by the domestic manufacturers indicate that certain modified versions of the present three-speed transmissions, principally those employing a lock-up clutch on the torque converter in conjunction with a wide gear ratio range, have the potential to achieve the assumed 10 percent improvement. In addition, a four-speed, wide ratio range automatic transmission has the potential to achieve even greater fuel economy improvements, but at significantly higher costs. Ford, GM, and Chrysler each projected fuel economy improvements achievable through the use of one or more of the above types of automatic transmission of a magnitude either consistent with or very close to the assumed 10 percent figure projected in the Support Document. DN–15, Doc. I, p. 3; DN–18, p. 3; DN–30, p. 11. Volvo also supported the 10 percent improvement projection. DN–28–02, p. 5. Even if the higher cost four-speed unit is necessary to achieve this improvement, none of the four domestic manufacturers claimed that the use of such units is economically impracticable, in response to a specific question in the April 1 special order. DN–7, Questions IIA and B. Indeed, Ford has begun plant modifications to permit the production of a four-speed automatic transmission with lock-up torque converter in time for installation in some 1980 model year automobiles. Docket FE–76–01–GR–23. Therefore, the original 10 percent improvement is retained in the final analysis.

GM argued that the 10 percent improvement in automatic transmissions is not applicable to all automobiles which use automatic transmissions. DN–19, p. 3. Lightweight vehicles "with small displacement engines, small automatic transmissions and high axle ratios" are projected to attain a significant share of the market and, according to GM, the fuel economy of such vehicles is not significantly improved by the addition of a lock-up clutch. Id., p. 4. NHTSA cannot accept this argument for several reasons. First, GM addressed itself primarily to the impact of the lock-up clutch, without addressing the impact of increasing the number of geared speeds, which, as was previously noted, is considered both technologically feasible and economically practicable, or of other transmission improvement techniques. Second, none of the other manufacturers raised a similar objection to the assumed across-the-board application, despite their even greater orientation toward smaller market class automobiles. Third, it should be noted that General Motors' engineers have projected fuel economy improvements up to nearly 20 percent, over a wide range of engine sizes and axle ratios. See SAE Paper #770418, Docket FE–76–01–GR–21. It may be that GM is implying that its future use of a (presumably new) small automatic transmission with high axle ratio would obviate the need to use a lock-up torque converter on its small cars. If this is true, then the projected 10 percent improvement figure for all automobiles which employ automatic transmissions is still correct, since the new drive train would achieve that improvement. GM is in no way constrained to achieve that improvement in precisely the same manner in which it is postulated in this analysis.

AMC stated that it could only achieve a 2 percent improvement in its automatic transmissions. DN–14, p. 1. However, AMC presently purchases its transmissions from Chrysler and is likely to continue to purchase such technology from outside sources in the future. Therefore, any transmission improvements achieved by the "Big Three" would become available to AMC, albeit on a delayed basis. Implementation delays similar to those assumed for Chrysler and AMC for weight reduction were also assumed for transmission improvements in this analysis. See RSP Tables 5.5–5.8.

4. *Improved manual transmissions.*

Another possible area of fuel economy improvement is the use of additional drive gears in manual transmissions. Many domestic manual transmissions have only 3 speeds. Information received on this subject in response to the April 1 (DN–7) and April 21 (DN–28) special orders supports a projected fuel economy improvement of 5 percent for the manual transmission portion of the fleet. DN–18, p. 8 (GM); DN–28–02, p. 6

(Volvo); DN–28–03, p. 5 (Honda). Ford's submission supports the feasibility of this substitution for all present manual transmissions. DN–15, Doc. I, p. 11. No information was submitted which raised any doubts about the technological feasibility or economic practicability of this option. In fact, five-speed manual transmissions have currently achieved substantial market penetrations in the import fleet. Honda projects that the use of five-speed manual transmissions would result in a $50 per vehicle price increase (for those vehicles with manual transmissions). DN–28–03, p. 5. Therefore, a 5 percent improvement for all manual transmission vehicles was adopted in the analysis. The percentage of vehicles which use manual transmissions was not projected to increase between the present and 1985, due to the difficulty encountered by certain manual transmission vehicles in attempting to meet more stringent emission standards. The use of manual transmissions with additional drive gears results in a small, but nevertheless significant, increase in average fuel economy.

5. *Improved lubricants and accessories.*

Improvements in average fuel economy can also be obtained through the use of synthetic, lower viscosity, or extended viscosity range lubricants and through improvements in the efficiency of vehicle and engine accessories such as pumps, fans, and accessory drives. A total improvement of 4 percent was assigned to these options in the Support Document, 2 percent for each category. See Doc. 2, Vol. I, p. 2–19. Three domestic manufacturers which addressed this issue did not object to the 4 percent improvement projection. DN–18, p. 1 (GM); DN–15, Doc. I, p. 3 (Ford); DN–14, p. 1 (AMC). Improvements up to the assumed 4 percent for lubricant improvements alone have been documented. See SAE Papers 750376 (Docket FE–76–01–GR–21) and 750675 (Docket FE–76–01–GR–21). Therefore, the assumed 4 percent improvement is retained in this analysis.

6. *Reduction of aerodynamic drag and rolling resistance.*

Further fuel economy improvements are achievable through reducing the automobile's aerodynamic drag and rolling resistance. The latter term refers to the use of improved radial and other advanced tires and reductions in the frictional losses of bearings and other similar drive line and chassis components. Aerodynamic drag and rolling resistance improvements should be achieved in two ways. The first way is to obtain credit for aerodynamic drag reductions already achieved, through the use of the optional EPA "coast-down" procedure for determining road load dynamometer settings in fuel economy tests. See 40 CFR 86.177–11(e)(2). If the optional procedure is not used, fuel economy test results will be based on current tabulated values of road load power which in certain cases may result in deleterious fuel economy effects. The second way results from future improvement in these two areas. Credit for future aerodynamic drag reductions must also be obtained through the use of the optional EPA procedure. Data indicates that improvements in the first category alone can be of substantial magnitude. See RSP, App. D, Ref. 18.

The automobile manufacturers expressed a major difference of opinion on the magnitude of achievable improvements in this area. GM indicated that improvements up to 4 percent for aerodynamic drag and 4 percent for rolling resistance were achievable. DN–18, p. 5, 10, and ANPRM submission, Docket Number FE 76–01–N01, #10, pp. 16a, 21–24. The other manufacturers indicated much lower improvement potential, although apparently not assigning a high research and development priority to these items. DN–14, pp. 4, 5 (AMC); DN–19, p. 3, DN–32, Att. II (Chrysler); DN–15, Doc. I, p. 11 (Ford). As was frequently the case with the manufacturers' statements, the percent improvements given reflect present plans as opposed to maximum capabilities. Therefore, the Department conducted an investigation to determine which of the disparate projections most closely corresponded to the actual maximum feasible improvement. Available data indicates that improvements in the upper range of GM's projections are in fact feasible for the 1981–84 time period. Volkswagen, for example, has demonstrated how relatively minor changes to automobile exterior design can result in significant reductions in aerodynamic drag, even beyond the GM projections. SAE Paper #760185, Docket FE–76–01–

GR–21. Methods for reducing aerodynamic drag are discussed further in Appendix D of the Rulemaking Support Paper.

In the case of rolling resistance, it appears that a 5 percent fuel economy improvement can be obtained by switching from bias tires to "first generation" radials, although much of the switching has already occurred. "Second generation" radials which will offer further improvements of 2 to 4 percent are now under development, with GM apparently being the leader in this area among the auto companies. Docket FE76–01–GR–19, 20, 22. It should be noted that developments in this area will result from the automobile companies working together with the tire manufacturers, since the automobile companies generally do not manufacture their own tires. It is likely that major breakthroughs by one automobile manufacturer would soon become available to all manufacturers, since the tire company which produces the improved tire could market that tire freely. Additional rolling resistance reduction can be obtained through increasing tire inflation pressures while making appropriate changes in the vehicle suspension system. See Appendix D of the Rulemaking Support Paper for further information on reducing rolling resistance. It is concluded that the previously discussed improvements in each of these two areas are feasible in the 1981–84 time frame, on a gradual phase-in basis. See RSP, Tables 5.5–5.8.

7. *Use of alternative engines.*

The present fleet of domestically manufactured passenger automobiles is powered exclusively by conventional, homogeneous charge spark ignition gasoline engines. However, certain alternative engine types such as the diesel and such stratified charge concepts as the Honda CVCC and the Ford PROCO (programmed combustion) offer the potential for significantly better fuel efficiency than present engines. Many manufacturers plan to use some form of alternative engine in their domestic fleets in the near future, including General Motors with the diesel (DN–18, p. 32), Ford with the PROCO (DN–15, Doc. I, p. 2), and Chrysler with a form of pre-chamber engine (DN–35–01, Attachment B, p. 6), in addition to the Honda CVCC and Mercedes, VW, and Peugeot diesels already on the market. In the case of the diesel, the Support Document projected (Summary Report, p. A39), and the domestic manufacturer most actively pursuing the development of diesel engines confirmed in its response to the April 1 special order, that the diesel offers 25 percent better fuel economy than a comparably performing conventional spark ignition engine. DN–18, p. 2 and Attachment V (GM); DN–7, Question I.A. In addition, Volvo indicates that the PROCO engine can be expected to provide an improvement in fuel economy of approximately 20 percent. DN–15, Doc. I, p. 3 and Tr–II, p. 38. Honda projects a fuel economy improvement differential of roughly 10 percent for its CVCC engine. DN–28–03, p. 11. This projection may be low. The fuel economy difference between its CVCC and non-CVCC versions of the Civic, as determined in EPA fuel economy tests, is approximately 30 percent. The Support Document's projection of a 25 percent improvement in fuel economy for the diesel was based on a comparison of fuel economy differentials actually experienced by GM and VW with their recently certified diesel passenger automobiles.

A number of objections were raised by a variety of participants in the proceeding with respect to the Department's original projections of a market penetration for diesels in the passenger automobile fleet growing linearly from 5 percent in 1981 to 25 percent in 1985. The passenger automobile industry argued that the primary difficulties in achieving those substantial market penetrations involve questions about the marketability of diesels and the ability of diesel engines to meet stringent nitrogen oxides emission standards. Tr–II, p. 105, 126, (GM); DN–19, p. 1 (Chrysler). The marketability problem for diesels is attributed to their higher initial cost and current problems with exhaust smoke, engine noise, cold-starting, fuel availability, and odors. The nitrogen oxide problem results from the diesel's alleged inability to achieve nitrogen oxide standards as low as 1.0 gram-per-mile, the level specified in the Senate and House versions of the Clean Air Act amendments. On the other hand, representatives of some public interest groups argued that the most serious problem with the diesel engine is that it emits certain

presently unregulated, but nevertheless dangerous, pollutants such as particulates and polynuclear aromatics (PNA) and that increased use of diesel engines should therefore be pursued with caution. DN–12, pp. 19–28 (Citizen's for Clean Air); Tr–I, p. 93 (Dr. Sawyer, for Environmental Defense Fund).

In order to obtain more information on the marketability of diesel engines, the Department, in the April 1 special order, required those passenger automobile manufacturers most actively pursuing the diesel option to submit copies of any surveys in their possession relating to the marketability of diesels in the United States. DN–7, Question IV.A (GM) and Question B (VW). These surveys tended to support the conclusion that a 20 to 25 percent market penetration is potentially achievable. DN–18, Att. IV. It appears that the initial orientation of present passenger automobile buyers toward diesels is improved significantly when potential buyers obtain more information about the diesel's characteristics. In addition, present consumer resistance to diesels is based on perceptions of those diesel vehicles presently on the road. GM reports that "(r)ecent developments have significantly improved some of the factors that have historically detracted from the market acceptance of diesel engines such as noise, odor, cold start time and reduced acceleration." DN–18, p. 2. See also DN–16, p. 1 (VW), with respect to the turbocharged diesel Rabbit. Further improvements in diesel performance can be anticipated as the use of diesels is expanded. Therefore, marketability of diesel engines does not at this time appear to be as serious a problem as the manufacturers have indicated, although questions of the precise extent of future market penetration remain.

Similarly, the nitrogen oxides emission problem does not appear to be beyond solution. Relatively little has been done in the area of research on control of diesel emissions because of their present low market penetration and their ability to meet present emission standards essentially without emission controls external to the combustion chamber. In small diesel passenger automobiles, such as the VW Rabbit, NOx levels either meeting or closely approaching a 1.0 gram-per-mile standard have been achieved without the use of such NOx control techniques as exhaust gas recirculation. Tr–III, p. 11. In larger automobiles, GM states that a level of 1.5 grams-per-mile of NOx is achievable with its 350 V–8 diesel. Tr–II, p. 127. Further, both the recently passed House and Senate amendments to the Clear Air Act provide for some type of NOx waiver for diesel engines. Ford states that its PROCO alternative has the capability to achieve the 1.0 NOx standard without encountering the unregulated pollutant problems to the same extent as diesels. Tr–II, pp. 36, 42. The Honda CVCC approach appears to offer significantly better emission control potential than the homogeneous charge engine, without associated unregulated pollutant problems. DN–28–03, Attachment, p. 100. Therefore, the Department has concluded that control of NOx emissions down to approximately 1.0 gram-per-mile will not present an insurmountable barrier to the increased use of alternative engines, although further development work may be required. See Tr–I, p. 93 (Dr. Sawyer).

The magnitudes of the problem presented by the unregulated pollutants emitted from the diesel and the PROCO and of the potential for reducing those emissions are presently unclear. The particulate emissions from diesels are of concern to EPA because of the potential significant contribution to air quality control regions' particulate problems. EPA is studying the total mass and other aspects of diesel particulates, but as yet no firm guidelines on allowable diesel particulate emissions have been set. Control of diesel particulates, if needed, is expected to be a formidable technical task. See Docket Number FE–76–01–GR–17.

For the reasons specified above, and particularly because the Department desires further information on health effects the Department has not included alternative engines in the analysis forming the basis for maximum feasible average fuel economy projections. The foregoing disposition of the "alternative engine" issue does not preclude the Department from including the use of such engines in projections of maximum feasible average fuel economy in a subsequent proceeding to amend the 1985 standard.

One final point with respect to future use of the diesel engine deserves further discussion. Up to the present, the use of diesel engines has generally been confined to luxury automobiles such as the Mercedes and Peugeot. Recently, Volkswagen and General Motors have begun implementation of that engine by dieselizing an existing engine, rather than designing a completely new engine. In view of past applications of the diesel engine, it would not be surprising if the new dieselized versions of the VW and GM engines were marketed as luxury items at a high price mark-up, higher than that justified by the additional cost alone. If this were done, this fuel efficient technology might not get the fair market test which it deserves, because of the high price differential.

Volkswagen has not adopted this approach. Rather, it has offered its diesel engine as a $170 option in the Rabbit (Tr–III, p. 18), and all indications are that the diesel version is selling extremely well, both in the United States and in Europe. Persistent rumors have circulated that the General Motors diesel would be offered at an extremely high mark-up, of up to $1,000. Tr–II, p. 110. This would raise serious questions as to the adequacy of the market test which the GM diesel would receive, if those rumors are in fact true. See Tr–II, p. 111 (GM). Despite the differences in size between the VW and GM engines, the Department would be hard pressed to understand such a large price difference between the two engines. See Support Document, Doc. 3, App. B.

8. *Improved spark ignition engines.*

The Support Document projected that a fuel economy improvement on the order of 10 percent is achievable through improvements to the conventional spark ignition engine. The use of an integrated electronic control unit for spark advance, fuel metering, and exhaust gas recirculation, optimization of combustion chamber, intake system, and valve timing, and the use of knock sensing and fuel injections were identified as methods for achieving the improvement. See Support Document, Doc. 2, Vol. I, pp. 2–16, 3–7. The percent improvement attributable to each of those options was not specified, although it was stated that 2 percent of the total was assigned to fuel injection, with the remaining 8 percent divided among the others. Id., 3–7.

The Support Document also identifies other spark ignition engine improvements that could occur as a result of that Document's downsizing methodology. As vehicles were downsized, smaller engines were projected to be used in those vehicles, in order to maintain horsepower-to-weight ratios. However, in selecting among a manufacturer's existing engine line, it was anticipated that in those cases where a choice among existing engines was possible, the manufacturer would select the more efficient one and phase out the least efficient. This procedure would result in an improvement in average engine efficiency of 8 to 13 percent. See Support Document, Doc. 2, Vol. 1, p. 3–8.

The Support Document noted further that several of the technological changes to engines for fuel economy improvement might also be used to control engine exhaust emissions. The dual benefits of such engine and emission control technologies is explicitly recognized. It is necessary to avoid double counting of benefits, however, and since the automobile companies and the Environmental Protection Agency (EPA) have generally treated the electronic control unit as part of the emission control system, this analysis is revised accordingly to make it consistent. DN–18, p. 20 (GM); DN–15, Doc. I, p. 17 (Ford); "Analysis of Alternative Motor Vehicle Emission Standards," Docket FE 76–01–GR–17, App. A. Therefore, no separate fuel economy benefit was attributed to the use of electronic control units.

The 2 percent fuel economy improvement assigned to fuel injection was confirmed by Ford, and no participant in the proceeding suggested a lower number. Id., Doc. I, p. 17. Bendix, the major domestic manufacturer of these units, claimed a 15 percent fuel economy benefit, adjusting for comparable emission and horsepower levels. DN–27B, p. 2. Bendix projects the costs of the unit, including the previously discussed electronic control unit and sensors, to be less than $100, about $15 more than the advanced carburetor it would be likely to replace. Several model types now in production employ fuel injection. See 1977 EPA/FEA Gas Mileage Guide.

It appears likely that the precise improvement achievable through the use of the remaining engine improvement techniques will vary from manufacturer to manufacturer, depending on the efficiency of engines presently in use. AMC expressed "no disagreement" with the originally assigned improvement, which was 10 percent. DN–14, p. 1. Chrysler projected up to a 3 percent fuel economy improvement for redesigned cylinder heads, and a total of 7½ percent for engine control optimization. DN–30, 10, 44. Ford did not address the issue except for the impact of electronic control unit.

Therefore, it appears that a fuel economy improvement rising from 2 to 10 percent, depending on the manufacturer, is achievable by improvements to spark ignition engine efficiency, even beyond that associated with the use of the best of present engines. In the case of the manufacturers with the most efficient engine lines, the 2 percent fuel injection benefit would be available, as a minimum, since present domestic automobiles use that technology only to a negligibly small extent. In the case of the manufacturers with the least efficient engines, even selecting the most efficient engines in their lines would not result in the application of optimally efficient engines. Further techniques would be available to those manufacturers to achieve up to the 10 percent improvement in fuel economy projected in the Support Document.

The Department's assessment of the fuel economy improvements due to improved engines in 1981–1984 is that the detailed matching of specific engines with vehicles in specific inertia weight classes as identified in the Support Document is valid, and that the various engine and emission control technologies discussed above can be used to maintain the fuel economy resulting from that matching process while emission standards are tightened. See Section III. C, however, for further discussion of the relation between fuel economy and emission standards.

A specific engine efficiency improvement device not included in the previous discussion is the variable displacement engine. This concept involves the use of an electromechanical system which deactivates some of the engine's cylinders during those operating modes which require less power, such as idle, light acceleration, cruising and deceleration. Eaton Corporation, the developer of this technology, projects fuel economy improvements of 10 to 40 percent with its units, depending on the engine operating mode. Some fuel economy benefit would accrue during all operating modes except moderate to heavy acceleration. Ford, which is the automobile company most actively pursuing the implementation of this technology, cites fuel economy benefits to date of 3 to 7 percent on the EPA composite driving cycle. DN–15, Doc. 1, p. 17. It should be noted that this technology has been applied to certain prototype alternative engines, in addition to conventional engines. Tr–II, p. 39.

9. *Building "captive imports" domestically.*

Section 503 of the Act provides that for purposes of determining compliance with fuel economy standards, the fuel economy ratings of domestically manufactured automobiles may not be averaged after model year 1979 together with automobiles more than 25 percent of whose cost is attributable to value added outside the United States and Canada. Ford, GM, and Chrysler each have subcompact passenger automobiles which fall in the latter category. Thus, if those "captive import" passenger automobiles were manufactured in the United States in the future, they could be included in those manufacturers' averages, resulting in some increase in that average. All three manufacturers disclaimed having present plans to do this, but none claimed this to be infeasible. Therefore, this also presents a possible method for complying with the fuel economy standards, while concurrently increasing domestic employment.

Volkswagen has noted that this provision has the anomalous effect of discouraging a foreign manufacturer from building production facilities in the United States. While it was adopted to prevent an exportation of jobs, the provision, as applied to a foreign manufacturer, discourages the importation of jobs. Although this impact may well not have been intended by Congress, it follows directly from the statutory language and the Department is powerless to change the result administratively. However, Volkswagen, or any other foreign manufacturer, may manufacture automobiles in the United States as long as more

than 25 percent of the value added content is foreign, and still average those vehicles together with their imported fleet.

10. *Mix shifts.*

A significant fuel economy benefit can be achieved through the use of marketing strategies to increase the sales of smaller automobiles. In addition, some improvement can result from mix shifts even in the absence of any initiatives by the manufacturers, if increases in demand for the smaller market class automobiles can be projected. Such a trend is projected by Ford and Chrysler, relying in part on long-term trends toward the smaller market classes. Tr–II, p. 270 (Chrysler) and DN–15, Doc. I, p. 11 (Ford). See also Tr–I, p. 89 (Dr. Sawyer), DN–13, p. 4 (Environmental Defense Fund), and DN–21, Attachment (Public Interest Economics Foundation), the latter with respect to the issue of the feasibility of "forcing" mix shifts.

Ford argued that requiring the manufacturers to take actions to shift the mix of passenger automobiles away from that mix which would result from "free market" forces is beyond the Department's statutory authority. DN–15, Doc. IV, p. 3–8. The Department rejects this position as inconsistent with the "maximum feasible" requirement and the legislative history of the Act.

The legislative history of S. 1883, the Senate version of the fuel economy provisions, contains a clear indication of the Congressional intent with regard to the role of market forces and mix shifts in establishing the standards. In explaining the standards set in the bill, the Senate Commerce Committee stated:

> a DOT/EPA report estimated that up to a 63-percent improvement in new car fuel economy could be achieved by 1980. This 63-percent gain was based upon maximum technological improvement through 1980 (weight reduction, aerodynamic drag reduction, transmission improvement, engine resizing and optimization) and a moderate shift in sales mix to 35 percent large and intermediate cars, and 65 percent compact and subcompact cars. Such a shift is within the current capability of the auto industry. By calling for a 50-percent improvement, this legislation provides ample cushion for unforeseen contingencies.

S. Rep. No. 94–179 (94th Cong., 1st Sess.) at 10. The Committee thus seems to have implicitly accepted the necessary or propriety of requiring such a mix shift to achieve the standards it set. In selecting a 50 percent instead of 63 percent improvement, the Committee did not reject any particular identified means of improving fuel economy. It simply provided a cushion against all types of contingencies. One contingency would be the failure of the assumed mix to sell. Another would be the failure of technology to develop at the assumed pace or to yield the anticipated improvement. The Committee's acceptance of the shift is made even clearer a few pages later in the Report:

> Figures obtained from the Recreational Vehicle Industry Association indicate that there will be approximately 2 million travel trailers (homes-on-wheels) and 1.2 million camping trailers (fold-down types) in the hands of the American public in 1976. There are also 3.2 million families in the United States of 7 or more persons. If reasonable assumptions are made about yearly growth in the number of trailers, auto fleet turnover rates, etc., a conservative estimate of the towing and large family demand for big cars is something under 1 million per year over the next few years. *Even if the most drastic sales mix shifts necessary to meet the 1980 goal occur*, there will still be at least 1 million full size and luxury cars produced, clearly a sufficient number to meet the demand. Special problems could arise in the 1980's if the automakers insist on sticking solely to the internal combustion engine to meet the 1985 goal. However, diesel towing packages could be an answer to this problem, with no sacrifice in fuel economy. Also, light duty trucks, which are not subject to the 1980 or 1985 goals, could meet a significant portion of towing demand.

Id. at 14. The Committee clearly anticipated shifts in both sales mix and the type of vehicles offered for given uses. The 1 million figure was apparently obtained by multiplying the 10 percent large car figure used in the mix shift assumed in the DOT/EPA report and 10 million, the total number of passenger automobiles sold annually in the mid-1970's.

The extent of the sales mix shift the Committee contemplated as being possibly required to meet the 27.5 mpg standard, and the means that would be necessary to achieve it, are apparent from the DOT/EPA report cited by the Committee. The potential 63 percent improvement was under "Scenario D," which required:

> Steady technological improvement through the 1980's . . .
>
> . . . with 1980 sales mix assumed at 10 percent large cars, 25 percent intermediates, 25 percent compact, and 40 percent subcompact.

Potential for Motor Vehicle Fuel Economy Improvements: Report to the Congress, U.S. Department of Transportation and the U.S. Environmental Protection Agency, October 24, 1974, at 66. The DOT/EPA report also states that:

> . . . sales shift in Scenario D would probably not occur "voluntarily" because of market demands for larger cars, i.e., Scenario D would probably require more substantial government pressure on manufacturers and/or consumers than would be the case under Scenarios B and C.

Id. at 64, and that;

> Shift in mix was limited to that possible given the availability of production facilities, but no limitations due to consumer demand were assumed. Some of the technological options considered require further development; however, their implementation is deemed feasible by 1980. Technological options were screened for consumer acceptability prior to their inclusion, but once selected, eventual 100 percent application to the new car fleet was assumed.

Id. at 4. The Committee thus explicitly recognized that major shifts in sales mix could be required to meet the standards and implicitly recognized that these shifts might not result voluntarily but could require government pressure on the manufacturers and/or consumers. The only limit on the mix shift that was contemplated was that which was imposed by the availability of production facilities; consumer acceptance was considered only with respect to technological improvements.

The Senate Committee apparently realized that this process would not be without some risks. First, as stated above, it reduced its standard to require only a 50 percent increase, rather than a 63 percent increase, to provide "ample cushion for *unforeseen* contingencies" (emphasis added). Second, the bill itself contained provisions to protect the manufacturers from an "unanticipated retail sales mix" beyond the control of the manufacturer in section 508(b)(3):

> (3) The Secretary may waive or modify a civil penalty determined under subsection (a)(1) of this section if, and to the extent that the manufacturer involved demonstrates to the Secretary that its failure to comply with an applicable average fuel economy performance standard resulted from an unanticipated retail sales mix among different classes of automobiles or light duty trucks, as appropriate, manufactured by it and that such mix was beyond the control of the manufacturer: Provided, That the Secretary may not waive or modify any such penalty unless the manufacturer involved demonstrates to the Secretary that it included in its automobiles or light duty trucks, as appropriate, all of the improvements to increase fuel economy that were technologically feasible, and that it made a good faith effort to produce or stimulate a retail sales mix that would have resulted in compliance with the applicable standards, through advertising, pricing practices, availability of models, and any other means.

In other words, a manufacturer could be let off, but only if it had done everything it could to achieve the required product sales mix.

Finally, the bill provided some additional protection for the manufacturers by allowing for recoupment of penalties in the event of subsequent overachievement (section 508(c)) and for modification of the standards by the Secretary if new information indicated the standards could not be achieved (section 504(b)). It should be noted, however, that downward revision of the 1980 and 1985 standards would be subject to Congressional approval (section 504(b)(2)).

To summarize briefly, the Committee apparently recognized that a major sales mix shift away from current levels would be necessary to meet the standards, and that achieving this shift would require pressure from the government on the manufacturers and by the manufacturers on the consumers. It realized there were risks involved in this, and tried to reduce them first by setting the standards below the maximum achievable level, and then by allowing an escape clause for the manufacturers if the consumers did not accept the sales mix necessary to meet that reduced level after every good faith effort to change their preferences. Finally, it provided a mechanism for recoupment of penalties, and for revision of the standards downward, subject to Congressional approval, if the standards could not be met.

There is only one statement in the report which could be claimed to limit this virtual requirement of significant sales mix shifts:

> The fuel economy standards approach adopted in this legislation leaves maximum flexibility to the manufacturer to meet the standards. This should result in a more diverse product mix and wide consumer choice. In meeting the fuel economy standard applicable to any given model year one manufacturer could choose new technology, another could choose to shift more rapidly to lighter weight vehicles, and still another could choose some combination of the two.

S. Rep. No. 94–179, *supra*, at 6. Arguably, the "more diverse product mix" language limits the extent to which any mix shift could be pushed. However, this argument must be rejected because the language already states that the standards adopted in the bill, which include the significant mix shifts, will satisfy this concern. Rather than limiting the magnitude of the mix shifts necessary, this language seems to indicate that the approach of letting each manufacturer choose its own approach to meeting the standards will result in a more diverse product mix than the alternative legislative solutions that were considered, such as mandating the procedures to be used for forbidding the sales of vehicles getting below a specified fuel efficiency rating.

The legislative history of H.R. 7014, the bill containing the House version of the fuel economy provisions, is less specific in its treatment of product mix and market demand. The first references were in regard to the process of setting the 1980 standards:

> The DOT-EPA study of the potential for motor vehicle fuel economy improvement indicates that with technological improvements and use of smaller engines but without any shift to smaller cars, sales-weighted fuel economy of automobiles sold in 1980 could reach 20.3 MPG in 1980 (a 45 percent increase above 1974). If the maximum feasible shift to small cars occurred, sales-weighted fuel economy could reach 22.2 mpg in 1980 (a 59 percent increase over 1974). The study assumed, for purposes of these projections, that these levels of fuel economy could be achieved without any reduction in the stringency of the statutory hydrocarbon (HC) and carbon monoxide (CO) emission standards which are scheduled to be effective in 1978.

H.R. Rep. No. 94340 (94th Cong., 1st Sess.) at 86, and

> The Committee, in setting the statutory average fuel economy standards for passenger automobiles, gave careful consideration to the EPA-DOT study's conclusion that a 63 percent improvement in average fuel economy levels between 1974 and 1980 (22.2 MPG) was the maximum potential improvement in average fuel economy. This projection was on an industry-wide basis and was not a level which each manufacturer necessarily could be expected to reach; it assumed the maximum shift to smaller cars which was technologically feasible, and it appeared to assume that there would be no reduction in fuel economy associated with more stringent emissions standards. The Committee, in translating this industry-wide potential average fuel economy projection into an average fuel economy standard which each manufacturer must attain, was of the view that any emission standards likely to be in effect in 1980 would involve at least a 5 percent reduction (1 MPG) in average fuel economy in 1980. In addition, because of the likelihood that in that year a number of smaller manu-

facturers are likely to "overachieve" (have an average fuel economy in excess of the industry-wide target), the Committee felt it could set a standard for each manufacturer which was somewhat lower than the industry-wide target. In light of these considerations, the Committee set the average fuel economy standard for each manufacturer at 20.5 MPG for model year 1980. The model year 1978 and 1979 standards were set at 2 MPG and 1 MPG, respectively, below the 1980 standard.

Id. at 88.

Taken together, these two passages leave no doubt that the Committee based its standards on the improvement projection that included the significant product mix shift, as discussed above, and thus also implicitly accepted the possibility that mix shifts would be required to meet the standards. Id. at 87. This seems particularly clear from the second statement. The Committee started with one figure and made two adjustments in it to obtain the standard specified in the House bill. Since the starting figure was based on the mix shift assumed in the DOT-EPA report and since neither of the adjustments involved elimination of the mix shifts, the final figure must be based upon those shifts too.

The only other mention of product mix or consumer demand is the following:

> . . . Committee recognizes that the automobile industry has a central role in our national economy and that any regulatory program must be carefully drafted so as to require of the industry what is attainable without either imposing impossible burdens on it or unduly limiting consumer choice as to capacity and performance of motor vehicles. The Committee has devised the regulatory program, which appears in Part A of the bill, . . .

Id. at 87. Again, it is arguable that the "without . . . unduly limiting consumer choice" language could limit the extent of any market shift. However, it is again clear that the Committee believed that the program it had proposed would satisfy this constraint, i.e., that the mix shifts contemplated by the standards would not unduly limit consumer choice. Further, this passage proscribes only "*unduly* limiting consumer choice". (Emphasis added.) That is, consumer choice may not be limited unless it can be justified by resulting improvements in fuel economy.

Finally, the House bill did not contain any provisions allowing modification of any penalties incurred because of unanticipated sales mix. However, the bill contained provisions allowing both the carry-back and carry-forward of penalty credits for overachieving in any model year (section 508(a)(3)) and modification of the standards, subject to Congressional disapproval for decreases below 26.0 mpg or increases above 27.5 mpg.

The legislative history indicates that both houses of Congress expected that significant shifts in product mix might be required to meet the standards they were setting, and that there would have to be some efforts to induce the market to achieve these shifts. The manufacturers have a panoply of marketing measures, including pricing, advertising, and dealer incentives, to aid them in such efforts. Both houses of Congress provided some mechanism for reducing penalties if the standards could not be achieved, with the Senate specifically providing for the effects of a failure of a manufacturer to succeed in inducing the market to accept the required mix.

The Act as finally adopted does not contain the Senate unanticipated mix provision, but is basically identical to the House bill in its penalty recoupment provisions. The fact that the Senate provision was eliminated may indicate either that a tougher standard was finally agreed to by the Senate, or that the recoupment and standard modification procedures were believed adequate to handle failures to achieve required product mixes. What is clear is that free market demand and product mix in no way determinative of the standards finally adopted. If consideration of non-free market mix shifts is appropriate in establishing the 1980 standard, it must also be appropriate for the 1981–84 standards, which are required to result in "steady progress" over the 1980 base toward the 1985 target.

11. *Combining the improvement projections.*

To determine the technologically feasible level of average fuel economy for each of the domestic manufacturers, it is necessary to combine the percent improvements assigned to each of the technological options discussed in section III.A,

according to the phase-in schedule set forth in Tables 5.5–5.8 of the RSP. The methodology in the Support Document assumed (Doc. 2, Vol. I, p. 2–23), and the manufacturers did not seriously dispute, that the improvement options, including weight reduction, transmissions, engine improvements, and alternative engines could be combined in a straight forward arithmetically additive manner. Question I.D of the April 1 special order directed the automobile manufacturers to specify which, if any, of the options for improving fuel economy are not additive, to quantify any negative synergistic effect, and to submit any data relevant to this issue. GM responded that the options it had evaluated are additive. DN–18, p. 11. Ford presented a table showing areas of judged incompatibility between various options but presented no supporting data or rationale. DN–15, Doc. I, p. 14. Most of the areas of questionable additivity involved alternative engines. Chrysler expressed the opinion that the various options are either "additive or very nearly additive" and stated that it relied on the assumption of additivity for its own internal projections. DN–32, p. 12. Chrysler expressed uncertainty about the options related to engine speed, such as some accessory improvements and over-drive transmissions, but was unable to quantify this effect. Therefore, the assumption of additivity has been retained. Options which are mutually exclusive, such as improved automatic and manual transmissions, are of course not additive.

Based upon the technologically feasible weight reduction only, the Department projects that General Motors, Ford, Chrysler, and American Motors will be able to achieve 21.6 mpg, 21.6 mpg, 22.7 mpg, and 21.2 mpg, respectively, by 1981, and 22.2 mpg, 23.0 mpg, 23.6 mpg, and 24.7 mpg, respectively, by 1985. Table 1 lists additional average fuel economy gains that can be achieved through the use of the other technological options.

B. *Economic practicability.*

In considering the economic practicability of implementing the technologically feasible options in 1981–84, the Department examined several different schedules of standards based upon different sets of options. The sets ranged from one that was almost fully comprehensive to one that included only a select number of the options. Excluded from all sets were some spark ignition engine improvements, variable displacement engines, further weight reduction beyond that initially projected in the Support Document or submitted by the manufacturers, and domestic production of captive import passenger automobiles. Due to the lack of complete data for these options and their omission from the NPRM and Support Document, they have been excluded from further consideration in this rulemaking. Efforts will be made to supplement the Department's data base in these areas in future rulemaking proceedings.

TABLE 1

Acceleration reduction	10 percent
Automatic transmission with lockup torque converter	10 percent
Five-speed manual transmission	5 percent
Improved lubricants	2 percent
Reduced accessory loads	2 percent
Reduced aerodynamic drag	4 percent
Reduced rolling resistance	3 percent
Diesels (or equivalent alternative engine)	20–25 percent
Further weight reduction (additional material substitution and further downsizing, including front wheel drive)	5 percent
Improved spark ignition engines	2–10 percent
Variable displacement engines	3–7 percent
Turbochargers	0–15 percent
Domestic production of captive imports	0–4 percent
Mix shift to 10 percent large, 25 percent intermediate, 25 percent compact, and 40 percent subcompact	5 percent

The least comprehensive set was that underlying the schedule of standards suggested by Ford: 21 mpg in 1981; 22 mpg in 1982; 23 mpg in 1983; 24 mpg in 1984; and 25 mpg in 1985. Even though that was the highest schedule suggested by any manufacturer, the Department regards it as a low range schedule. It was rejected for several reasons. First, it would not satisfy the maximum feasible requirement. The manufacturers have available to them options that involve little or no engineering or marketing risk that in combination would be economically practicable and would enable them to exceed substantially Ford's suggested schedule. Second, the schedule would violate the requirements that the 1981–84 standards result in steady progress toward the 1985 standard which, unless changed by future rulemaking, is 27.5 mpg, not 25 mpg.

The Department also considered a high range schedule based on all of the options not excluded in the first paragraph of this section.

The Department believes that there are risks associated with substantial mix shifts notwithstanding the historical trend toward smaller passenger automobiles. While that trend may continue, there is no assurance that it will. For reasons including prestige, comfort, and sheer size, there continues to be a strong demand for midsize and large size passenger automobiles. This is true even though most of these automobiles offer no more seating capacity in terms of number of positions than some compacts. Further, as discussed below, the downsizing of passenger automobiles may at least temporarily slow the trend to small cars. Further, the Department lacked sufficient marketing data to justify a lesser shift toward small cars.

Given the overriding purpose of the fuel economy provisions in the Act to conserve fuel, the Department was concerned that the standards be set as high as possible, but not so high as to necessitate the manufacturers' using compliance methods that would result in a substantial sales drop. To the extent that the total passenger automobile population fails to turn over and renew itself at the usual pace because some owners retain their existing vehicles for an extra year or two, the projected fuel savings from a given fuel economy standard would not be fully realized. In addition, a substantial sales drop would have a significant effect on employment in the automobile and related industries and would adversely affect the manufacturers' efforts to raise capital for further fuel economy improvements. See RSP, Chap. 13, Reference 27, Section E.

The Department concluded that the implementation of the schedule of standards resulting from this set was not economically practicable due to the risk posed by substantial mix shifts that a significant number of consumers might defer purchasing new passenger automobiles in 1981–84. Further, implementing all of the options in this set would result in levels of average fuel economy above those permitted under the steady progress requirement, since the 27.5 mpg level would be exceeded prior to 1985.

The Department is also concerned about the possible adverse environmental impacts associated with some alternative engines, notably the diesel. As discussed above, several commenters pointed out that particulate and PNA emissions of these engines may pose a health hazard. If the existence of a health hazard is confirmed by the Environmental Protection Agency, then regulation of those emissions will presumably follow. The stringency of those regulations and their effect on the fuel economy of the alternative engines is indeterminant at this time. As information from that agency and other sources clarifies this question, the Department will begin to consider whether to base fuel economy standards on the use of those engines.

For all of the foregoing reasons, the Department decided not to set the average fuel economy standards so high as to necessitate the use of all options within the limited period of 1981–84.

The Department also considered a medium range schedule of standards based on a less comprehensive set of technological options from which alternative engines and mix shifts had been excluded. In excluding these options as bases for determining the fuel economy standards under this set of options, the Department was particularly mindful that there will be substantial changes in passenger automobiles in the early 1980's due to changes in fuel economy and emission standards. In a later period of less product design and technological flux, the risk associated with mix shifts and alternative engines would be lessened.

The Department regards mix shifts and alternative engines, as well as the options excluded from the high range set of options, as constituting a safety margin for the manufacturers that choose to implement the medium range options to the extent set forth below. If the latter options do not yield the anticipated gains, despite the conservative assessments of those gains, the manufacturers may avail themselves of options in the safety margin. For manufacturers which do not wish to implement the medium range collection of options in the amount described below, these additional options represent alternative options which they can utilize. The Department notes that virtually every option excluded from the high or medium range sets of options will be used by at least one manufacturer and some by several. To the extent that these options are used, the manufacturers will not have to rely so much on the collection of medium range options. Further, all manufacturers can use marketing measures to encourage the purchase of the most fuel efficient vehicles within each carline.

The schedule for implementation of the various middle range technological options or improvements, which are set forth in Tables 5.5–5.8 of the RSP, reflect the differences in economic capability of the various domestic manufacturers. That implementation schedule is in no case more stringent than that in the NPRM Support Document. See Document 2, Volume 1. None of the manufacturers claimed that the proposed implementation schedule is impracticable. However, objections to specific cost assumptions in the Support Document were submitted by some manufacturers. Since these cost numbers affect the projected sales, employment and inflationary impacts of the standards, and thereby economic practicability, these objections have been carefully reviewed. However, the vagueness and unsubstantiated character of the assertions in the manufacturers' comments have impaired the usefulness of the submitted information, here as in the case of the technological issues discussed in section III.A.

General Motors, Ford, and Chrysler all objected to the projected capital investment requirement for downsizing of $150–250 million for an annual production capacity of 400,000 automobiles. All stated that this figure was about half the correct amount. DN–18, p. 18 (GM), DN–43, Att. II, p. 2 (Ford), and DN–30, p. 53 (Chrysler). Therefore, and in view of the fact that GM and Ford already have had substantial experience with implementing this technological option, the capital requirement for downsizing was revised to the $400 million figure. GM and Chrysler both objected to the variable cost savings of $200 assigned to downsizing, but neither submitted a different figure or a detailed critique of the Department's analysis. Ford's discussion of the savings resulted from the introduction of a new, small, future car line is consistent with the Department's assumption, when weight reduction and concurrent product improvements are separated. DN–43, Att. II, p. 3. Therefore, the originally projected savings in variable cost was retained. Chrysler's unquantified objection to the maintenance cost figure is also rejected. The Department's further evaluation of data supporting the original projection of a 35¢/pound maintenance cost saving reaffirms the original conclusion. See Support Document, Summary Report, p. R–2, #3.

GM, Ford, and Chrysler raised similarly vague objections to the projected capital and variable costs attributable to material substitution. DN–18, p. 19; DN–43, Att. II, p. 4; DN–30, p. 54. Nevertheless, Chrysler conceded that the use of high strength steel would have no appreciable effect on variable costs. Detailed cost information on the use of aluminum and high strength steel was submitted by Alcoa and U.S. Steel Corporation, respectively. DN–27–D, DN–27–A. Both submissions supported the Department's original conclusion about the cost of light-weight material substitution. If components are selected from the lists of feasible material substitutions provided by these two companies, it is possible to achieve the weight reductions projected in the Support Document without increasing variable costs. Further weight reductions could be achieved at slightly higher cost. Similar objections were raised to cost savings attributable to reduced maintenance. However, as noted above, the Department's further study in this area fully supports the Support Document's projected relationship between weight reduction and reduced maintenance expense. This savings results from, as one example, the ability to use smaller tires

on lighter automobiles, thereby reducing replacement costs. GM failed to quantify or substantiate its claim that the lighter weight substitute materials would be more damage prone than present materials. DN–18, p. 22. The Department's analysis, together with the Alcoa and U.S. Steel submissions, supports the achievability of the assumed weight reduction by careful matching of a particular substitute material to the particular application desired. Furthermore, GM failed to address the savings associated with the improved corrosion resistance of aluminum or plastic substitutes. DN–27D, p. 2 (Alcoa). Therefore, the original maintenance costs savings estimate has been retained.

The costs associated with improvements in such areas as lubricants, accessories, aerodynamic drag reduction, and rolling resistance reduction are as set forth in Table 7.1 of the Rulemaking Support Paper. No contradictory information was submitted on these costs, in response to a specific question in the April 1 and April 21 special orders. DN–7, DN–28, Question II. A.

No manufacturer challenged the costs attributed to automatic transmission improvements. Chrysler, the only manufacturer to address the issue specifically, found the costs to be within "an acceptable planning range." DN–30, p. 55. For the purposes of the total cost calculation, the upper bound of the cost range for the four speed automatic transmission was used as a "safe" estimate. This probably overstates the total cost impact, since, as previously noted, it is likely that a variant of the three-speed transmission would in fact be used. Capital requirements associated with the four-speed unit are up to twenty times greater than those for the three-speed (less than $10 million vs. $200 million per standard production facility with a capacity of 500,000 units per year), since relatively inexpensive changes can be made to existing transmission production facilities to accommodate improvements to three speed units, while complete new plants are necessary to produce four speed units.

Reductions in acceleration performance were assumed to be achieved through the substitution of existing smaller displacement engines, up to the maximum level consistent with production flexibility at existing engine plants, at no increased cost. These reductions could also be achieved through axle ratio changes, at negligible cost.

Total required capital expenditure to achieve the postulated fuel economy was generally within the range of planned expenditures for fuel economy improvement over the 1976–85 time period. DN–30, p. 52 (Chrysler); DN–15, Doc. I, p. 20 (Ford); p. I–18, Economic Impact Statement (see sec. VIII, infra). However, it is not correct to treat this as a totally "extraordinary" investment required of the automotive industry in order to comply with fuel economy standards. Much of this expense is "integral to the normal cycle of product improvements" which the companies would engage in regardless of the standards. DN–30, p. 55 (Chrysler). The fact that improved fuel economy is itself a highly marketable attribute for passenger automobiles might force the companies to make many of the product improvements discussed in this notice, as a result of competitive market pressures regardless of the fuel economy standards. DN–15, Doc. I, p. 20 (Ford). Conceptually, this means that the automobile companies must, as part of each decision to change a significant component in a passenger automobile, take into account, and possibly reorient their product line in view of, the fuel economy requirements. Therefore, the capital expenditures discussed above have been adjusted to take into account "business-as-usual" reinvestment, which would occur even in the absence of any standards. A further discussion of this topic is contained in the RSP, Reference 27, Chap. 13.

The total cost increases are assumed to be reflected in increased new passenger automobile prices according to the formulas set forth in the Support Document. See Summary Report, p. A–27. Generally, the manufacturers did not object to the total or "bottom line" price changes generated by this methodology, although they did not necessarily agree with all of the details. See, e.g., DN–15, Doc. I, p. 21 (Ford). GM merely noted that price increases are determined by market forces, rather than some arbitrary cost pass through formula. DN–18, p. 24. The Department does not take issue with that statement, but some method must be used to assess price impacts, and no participant in the proceeding suggested a better alternative. Chrysler argued

that the methodology did not provide for recovery of the value of the investment itself. DN–32, p. 19. However, it appears that Chrysler has misunderstood the application of the methodology, since capital costs are assumed to be recovered by price increases tied to the rate of return on investment. The projected impact on new car prices, as shown in Table 8.1 of the Rulemaking Support Paper, is an increase of $54 by 1985, as an industry average, relative to 1977 model year automobiles. When gasoline and maintenance savings are considered, net *savings* to the consumer of approximately $1000 over the life of the automobile are projected. See Table 8.4, RSP.

The final impacts to be considered in the evaluation of economic practicability are the projected impacts on industry sales and employment. These impacts were projected by using the Wharton Automobile Demand Model. See Support Document, Summary Report, p. A–91. This model is one of the latest and most complex for projecting automobile industry sales and employment. See DN–15, Doc. I, Att. A, p. 176 (Ford); DN–30, p. 38 (Chrysler).

On the basis of this projection, domestic industry sales and employment would attain levels higher than present levels during the 1981–84 period, and would be approximately the same as would be the case if there were no additional costs attributable to fuel economy standards. A sensitivity analysis that assumes a 2 percent per year increase in automobile prices for the 1981–84 model years shows a small decrease in projected sales during those years and a small increase in subsequent years. Since the average change in car prices due to these fuel economy standards for those same model years is only 1 percent, the effect on sales is similarly small.

The Department has been unable to quantify the impact of such non-price changes as acceleration capability reductions and exterior downsizing. However, as discussed in section III.A of this section, these impacts are not expected to be severe. The Department has taken into account any possible adverse impacts in those areas by the provision of a "safety margin" of fuel economy improvement potential and in the discussion of uncertainties in section IV.

The industry generally argued that the uncertainty of consumer acceptance of more fuel efficient vehicles was a major concern in this rulemaking. Tr–I, pp. 19 (Ford), 50 (GM), 78 (AMC), and 104 (Chrysler). However, these statements appear to be more in the nature of fear of the unknown than the result of detailed study and analyses. See Tr–II, pp. 10, 23, 58, 62–64, 121, 146, 161. The Federal Energy Administration's own analyses show that it is the "manufacturer's response to the standards, rather than the consumer demand, that most influences new car fleet average fuel economy under a scenario of little or no market shift." DN–37, p. 2. The provision of a safety margin of technology permits a variety of manufacturer responses.

Improvements in automotive fuel economy, if unaccompanied by adverse impacts on other automobile attributes, are undeniably an aid to marketability. The technological options relied upon are not expected to have such accompanying detriments. Among these options, material substitution, and improvements in accessories, lubricants, aerodynamic characteristics, and rolling resistance are virtually undetectable by consumers, except with respect to price changes, whose impact has been accounted for above. Downsizing, while maintaining or even increasing vehicle interior roominess, has been accomplished without consumer rejection to date, in the case of General Motors' full-size automobiles. Although downsizing of all market classes has yet to be completed, it appears likely that purchasers of the largest size automobiles are the group most concerned about size attributes, and if they are willing to accept downsized vehicles, the purchasers of other market class automobiles would also accept them. With respect to automatic transmission improvements, it appears that past driveability problems with lock-up torque converters are near resolution, in view of some manufacturers near-term implementation plans. Acceleration performance reductions have been limited to those within the manufacturers' stated range of consumer acceptability. Turbochargers could be used to offset even those very modest acceleration reductions. Safety margin technology would permit flexibility in selecting compliance approaches which individual manufacturers find more salable than the ones projected in this

analysis. Further, it is likely that consumer acceptance of fuel efficient automobiles will increase as gasoline prices increase in the future. Therefore, the Department concludes that marketability constraints would not prevent the attainment, in an economically practicable manner, of the standards promulgated herein.

Thus, it appears that the total impact of the fuel economy standards established in this notice is relatively modest, certainly within the "economic capability of the industry." The Department concludes that compliance with these standards is economically practicable.

C. *The effect of other Federal standards.*

The next step in calculating the manufacturers' maximum achievable fuel economy is an assessment of the impact of other motor vehicle standards on fuel economy. It is impossible at this time to predict with perfect accuracy even the level of these standards which will be in effect in the 1981–84 period, since all categories of these standards are either subject to future administrative action or are being reviewed by Congress. Nevertheless, for the purposes of this analysis, it is assumed that the applicable automotive emission standards will be those contained in the Administration proposal, i.e., 0.41 gram per mile hydrocarbons, 3.4 grams per mile carbon monoxide, and 1.0 gram per mile of nitrogen oxides, with waivers for nitrogen oxides up to 1.5 gram per mile for heavier diesel automobiles, if necessary. The same result would apply under either the House or Senate passed emission standard schedules.

The issue of the impact on fuel economy of various proposed emission standards was one of the more controversial ones in this proceeding. Much development work remains to be done in the emission control area between now and 1981, so projections in this rapidly progressing area necessarily involve some degree of uncertainty. However, the Environmental Protection Agency (EPA) has done extensive evaluation of the emission control systems now under development. The Department of Transportation has worked with the EPA in many of these studies.

Among the more recent of these studies are the February, 1977, report titled "Analysis of Effects of Several Specified Alternative Automobile Emission Control Schedules Upon Fuel Economy and Costs," prepared jointly by the Departments of Commerce and Transportation, the Energy Research and Development Administration, EPA, and FEA; an EPA report dated April, 1977, titled "Automotive Emission Control—The Development Status, Trends, and Outlook as of December 1976;" and the May 19, 1977, "Analysis of Alternative Motor Vehicle Emission Standards." (All of these reports are in the General Reference section of the FE 76–01 Docket.) All three reports evaluate the optimal emission control systems for meeting emission standards at minimum fuel economy penalty, and all three conclude that little or no penalty need result from the use of optimal systems at the level of the proposed emission standards, as compared to 1977 levels. This conclusion was supported by those public interest representatives which participated in this proceeding and addressed the issue. DN–11, p. 8 (Mr. Thomas Austin); DN–12, p. 33 (Citizens for Clean Air); DN–13, p. 16 (Environmental Defense Fund).

As identified in Appendix A of the May 19, 1977 DOT-EPA-FEA report, fuel optimal systems to meet standards of 0.41 HC/3.4 CO/1.0 NOx may be expected to include a three-way catalyst, start catalyst, electronic spark advance, electronic control of exhaust gas recirculation, electronic air-fuel ratio control, oxygen sensor, high energy ignition, improved fuel metering, and a complex electronic control unit. In addition, the heavier cars, those weighing more than 3000 lbs., would have an air injection unit.

The passenger automobile manufacturers' views on the issue of emission standard penalties varied rather widely. Ford stated that the proposed emission standards could be achieved without fuel economy penalty through the use of three-way catalyst and full electronic control technology. DN–15, Doc. I, p. 24, Doc. III, p. 4, Tr–II, pp. 93–4. Volkswagen stated that compliance with the emission standards without a fuel economy penalty was possible. DN–28–01, p. 2. Daimler-Benz projected that compliance with the more stringent emission standards would produce a 3 to 5 percent *benefit* in fuel economy for the portion of its fleet which presently employs fuel injection. DN–28–05, p. 34.

On the other hand, the remaining domestic manufacturers all project substantial emission standards fuel economy penalties. GM claimed to have experienced fuel economy penalties as high as 20 percent on some prototype vehicles (DN–18, p. 27), although it admits that much development work remains to be done. Tr–II, p. 124. Chrysler projected a penalty of 12 percent (DN–30, p. 62, DN–35–01, Att. B, p. 27), but projects the use of a control system which is apparently less efficient than that assumed by EPA, DN–30, p. 61, in such areas as the use of electronic spark advance, port liners, and start catalysts. Further, Chrysler's projections were apparently based on actual test data from their 1977 California vehicles, adjusted by some arbitrary amount for future system optimization. These vehicles do not employ three-way catalysts and full electronic controls on which EPA's projections are based. Tr–II, p. 258. Likewise, AMC's projected fuel economy penalties were based on their present California technology, not the advanced system assumed by EPA. DN–14, p. 3. GM also assumes a control system less complex than EPA's by not including the use of such technology as electronic exhaust gas recirculation, electronic air-to-fuel ratio control, port liners, and start catalysts. DN–18, p. 27. GM remains hopeful that, given enough development time, the penalty could be eliminated. Tr–II, p. 124.

Ford notes that, even with the three-way catalyst, a clean up catalyst, and a full electronic system to meet the 0.41 HC, 3.4 CO, 1.0 NOx standard, it would expect a 2 percent difference in average fuel economy between the first and third year of the standards. DN–15, Doc. I, p. 15. The May 19, 1977 DOT-EPA-FEA report observes that:

> The development of technology to control emissions and permit good fuel economy calibrations to be maintained is expected to take longer than just the development of technology solely for the purpose of controlling emissions. For example, the use of electronic controls which have the potential to be an important part of future low emission, fuel efficient systems will require the generation and analysis of significant quantities of new engine data in order to determine more optimum calibrations.

Thus, it appears that none of the manufacturers presented any evidence which would directly contradict EPA's findings in this area, and in fact some manufacturers supported the "no penalty" assumption. Therefore, it is concluded that compliance with the specified emission standards in the 1981–84 time period can be achieved with little or no fuel economy penalty, through the use of the advanced control technology postulated by EPA. In the technical analysis contained in the RSP, a fuel economy penalty of zero percent is used for all the 1981–84 models.

One other issue with respect to the emission standards was raised by AMC and Chrysler. Those two companies claim that an emission test procedure change recently proposed by EPA (41 FR 38674, Sept. 10, 1976) would, if adopted, adversely affect the derivative fuel economy data. DN–23, p. 2 and DN–30, p. 30. Chrysler projects a very small impact for this revision on fuel economy, to the order of 0.28 mpg. The change in question involves decreasing the magnitude of inertia weight class increments and modification of the road load horsepower requirements. The proposed changes are intended to permit dynamometer testing of vehicles at inertia weight and road load settings that are more representative of actual vehicle weight and road load, so that the resulting fuel economy value would be a more realistic estimate of on-the-road fuel economy. Since this test procedure change is merely a proposal, it is unnecessary to attempt now to quantify the precise impact of any test procedure revisions which EPA may ultimately adopt. It should be noted further that EPA presently believes that the revisions in question should not result in a systematic change in fuel economy data either upward or downward, but rather that the revisions tend to improve the overall accuracy of the data. DN–20, p. 2.

An adjustment is made to each manufacturer's projected fuel economy capability to allow for the added weight associated with Federal Motor Vehicle Safety Standards. To assure adequate crash survivability in the passenger automobiles of the 1980's, additional safety requirements will be necessary. Those requirements are anticipated to cause an estimated 1 percent fuel economy penalty. See RSP.

The Department has no basis at this time to project the existence of any other motor vehicle standards at a specific level. If these projections are proven erroneous by future events, and if the impact of those future standards would substantially reduce the safety margin provided in this notice, it may be necessary to reconsider the standards promulgated herein.

D. *The need of the Nation to conserve energy.*

As discussed in section II.B of this notice, this final consideration in establishing maximum feasible average fuel economy levels requires the establishment of fuel economy standards at the highest level consistent with the other statutory considerations.

When the four statutory considerations are considered together, the fuel economy levels achievable by the four domestic manufacturers, as derived from the above analyses, are as set forth in Table 2 below. These numbers are based on a 0 percent emissions penalty. For the reasons discussed in section III.E below, including consideration of the emissions standards, an adjustment is made in that section to Table 2.

TABLE 2

Manufacturer	*1981*	*1982*	*1983*	*1984*
American Motors	22.2	22.6	23.1	24.7
Chrysler	23.8	25.1	26.3	28.1
Ford	23.4	24.5	26.1	27.0
General Motors	23.3	24.2	26.5	28.8

E. *Establishing the maximum feasible average fuel economy level.*

In determining maximum feasible average fuel economy, the Department cannot simply select the level achievable by the least capable manufacturer in each model year. Instead, an analysis along the lines of that set forth in pages 154–5 of the Conference Report must be carried out. That Report states:

> Such determination should therefore take industry-wide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual automobile manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic automobile manufacturers that currently exist, and the possible implications for the national economy and for reduced competition associated with a severe strain on any manufacturer. However, it should also be noted that provision has been made for granting relief from penalties under Section 508(b) in situations where competition will suffer significantly if penalties are imposed.

It is clear from this admonition that in certain circumstances the standards must not be set at levels which every manufacturer will be able to achieve in every year. Rather, they should be set at some point above those levels. Whether and how far standards should be set above those levels depends on a balancing of the burdens placed on the manufacturers with lower achievable average fuel economy on one hand against the benefits of a higher standard on the other. This in turn requires an analysis of the impacts of civil penalties imposed on the manufacturers at a given standard level. Implicit in this analysis is consideration of the ability of a manufacturer to apply civil penalty "credits" from other years to reduce or eliminate a penalty and of the ability of the Department to compromise penalties where insolvency, bankruptcy, or substantial lessening of competition may occur. See section 508 of the Act. The latter possibility is especially significant in the case of American Motors, which has reported no taxable income over the past ten years and has suffered serious declines in its sales in the past year, DN–14, p. 6 and Attachments, and whose projected maximum achievable fuel economy is substantially less than its domestic competitors. See Table 2.

When this clarifying language in the Conference Report is applied to the projected maximum feasible fuel economy values for each manufacturer as set forth in Table 2, it becomes clear that in establishing these standards the "least capable" manufacturer should not be the limiting constraint in determining maximum feasible average fuel economy. From that table, it appears that

the projected maximum feasible level for AMC in the years 1981–84 ranges from approximately one to three miles per gallon less than that of the least capable of the "Big Three" in each of those years. In terms of the nation's petroleum import bill, the cost to consumers of setting the fuel economy standards at the level attainable by AMC as opposed to basing it on that attainable by the "Big Three" could be nearly half a billion dollars in 1983 alone. Against the benefit of avoiding that substantial cost through establishing higher standards, the Department must balance the potential civil penalty liability which AMC could be subject to, which could be up to $145 per automobile sold in 1983. Further, the Department must consider AMC's present small market share of under 3 percent of the domestic market and its resulting relatively small impact on industry employment, and the possibility discussed in the previous paragraph that any civil penalty liability might be mitigated by the Department. In view of these considerations, the Department must not base its determination of maximum feasible average fuel economy on the single domestic manufacturer with the lowest projected fuel economy capability.

While the Department believes that the previous paragraph correctly applies the statutory criteria, it may paint a misleading picture of AMC's ability to meet fuel economy standards. First, as previously discussed, the projected fuel economy values in Table 2 are based on a limited class of available fuel economy improvement methods. AMC could adopt additional measures to improve fuel economy. Second, a number of further measures are available to relatively small manufacturers such as AMC to achieve major improvements in average fuel economy in a short time period. Among these are the discontinuance of sale of poor fuel economy model types and the purchase of high efficiency engines and other technology from outside sources. Both of these options require minimal capital investment and are readily implementable. The Department has no information on AMC's precise product plans over the next several years, but it appears that some significant initiatives is planned which would result in major fuel economy improvements for that company's automotive fleet. Recently, AMC's president predicted that their corporate fuel economy average would achieve 27.5 mpg by the *early 1980's*. "Ward's Auto World," June 1977, p. 30, Docket Number FE–76–01–GR–16. AMC officers also testified that they expect the average fuel economy of their passenger automobiles to remain competitive with that of the other domestic manufacturers, and not fall significantly below that level, as the Table 2 numbers might indicate. Tr–II, p. 220. Thus, it appears that AMC's future average fuel economy levels may be significantly understated in the DOT analysis, and the resulting civil penalty impact correspondingly overstated.

The Conference Report clarification of the "maximum feasible" requirement also has implications for the "Big Three" manufacturers. Although the fuel economy improvement potentials of those three companies were found to be relatively close numerically, some significant fuel savings benefit could be achieved by setting the fuel economy standard at a level higher than that found to be achievable for the least capable of the three. The harm suffered by those companies as a result of a higher standard is measured by the magnitude of the civil penalties generated. If the calculation of manufacturer-specific fuel economy improvements in Table 2 is correct, and if each manufacturer improved its average fuel economy up to those levels in each year, no net civil penalty liability would result for the "Big Three" if the maximum feasible average fuel economy levels were established as follows: 23.3 mpg for 1981, 24.6 mpg for 1982, 26.1 mpg for 1983, and 27.4 mpg for 1984. At those levels, any civil penalty liability for those companies in one of the affected years would be offset by credits obtained for overachievement in prior or subsequent years. The only obvious adverse impact from adopting this approach would be possible bad publicity resulting from the failure to meet standards. In view of the fact that the Act's sanctions are monetary civil penalties, which can be offset from year to year, no major stigma would attach to single year noncompliance. In fact, the Act's unique enforcement scheme appears to be designed to create economic incentives for encouraging compliance rather than harsh sanctions for noncompliance. Therefore, the Department has concluded that any harm to the individual manufacturers from single year non-

compliance would be outweighed by the benefits of establishing "maximum feasible average fuel economy" at levels where these manufacturers would pay no net civil penalty, taking into account their ability to carry credits forward or back.

The Department has concluded that the emissions standards expected to be effective in the early 1980's can be achieved with little or no fuel economy penalty. The analysis of average fuel economy potential discussed above was predicated upon a zero penalty. It appears clear, however, that the engineering and manufacturing problems associated with the introduction of complicated emission control technology may well be substantial, particularly since these advancements will have to be implemented simultaneously with other new technology required to meet fuel economy and safety standards. Although the Department has already tried to ensure the soundness of its average fuel economy standards by making generally conservative conclusions at each step in its analysis, no allowance has yet been made for unforeseen contingencies that may arise due to the need for manufacturers to deal simultaneously with the diverse set of manufacturing requirements imposed by the various fuel economy, emissions, and safety standards that will become effective in the early 1980's, particularly in 1981. Allowing for such contingencies is consistent with the approach taken by the Senate Commerce Committee in establishing the 1980 average fuel economy standard in S. 1883. See S. Rep. No. 179, 94th Cong., 1st Sess. 10 (1975). More important, allowance of these contingencies will ensure that the manufacturers can produce and sell cars that meet energy, environmental, and safety needs of the Nation. It is important to recognize that one limitation on the rate of product innovation is the rate of consumer acceptance of that innovation. Finally, there are some uncertainties, particularly in the later years of the 1981–84 period, associated with the accuracy of the estimates of the average fuel economy to be gained from the combination of the various technological options.

In view of the factors enumerated in the immediately preceding paragraph, the Department has determined it to be prudent to adjust the no net penalty average fuel economy levels to 22 mpg for 1981, 24 mpg for 1982, 26 mpg for 1983, and 27 mpg for 1984. Based upon consideration of the domestic manufacturers, the Department has determined that these are the maximum feasible levels of average fuel economy for those model years.

IV. The Imports.

With the possible exceptions of downsizing, mix shifts, straight-line acceleration reductions, and domestic production of captive imports, the same technological improvement options apply to the imported passenger automobiles as to their domestic counterparts. Since the passenger automobiles produced in foreign countries generally start at a much higher fuel economy base, those passenger automobiles can generally meet any level of average fuel economy which the domestics can attain. However, the possible unavailability of the options listed above and the fact that the U.S. market may account for only a small portion of such manufacturers' total sales necessitate an analysis of the impact of fuel economy standards on the foreign manufacturers.

Total sales of imported automobiles has varied between approximately 15 and 20 percent of total U.S. sales for the past four years. The four largest importers in 1976, Toyota, Nissan (Datsun), Volkswagen, and Honda, accounted for approximately two-thirds of the import total. "Automotive News 1977 Market Data Book Issue," p. 70. Each of these four manufacturers either presently has or will have in the near future an average fuel economy exceeding the 1985 standard of 27.5 mpg. DN–9, p. 1 (Toyota); DN–28–03, p. 1 (Honda); DN–28–04, p. 5 (Nissan); DN–16, p. 2 (VW—projections exclude Rabbit). Therefore, the majority of the import market must only maintain or marginally improve their present average fuel economy levels to comply with these fuel economy standards. Another group of importers, accounting for nine percent of import sales, are presently either meeting the 1985 standard or are in close proximity of that goal. This group includes Subaru, and the captive import fleets of Chrysler and GM. See 1977 EPA/FEA Gas Mileage Guide, Second Edition. Of the remaining manufacturers, which account for a total of slightly

more than 20 percent of all imports, Volvo, Daimler Benz, and British Leyland are the largest importers which may face difficulties in meeting a fuel economy standard of 27.5 mpg. Volvo and Daimler-Benz each account for approximately 3 percent of the import total, with British-Leyland accounting for nearly 5 percent.

Volvo projects that it could achieve an average fuel economy level not higher than 24.5 mpg by 1985. DN–28–02, p. 9. This level of fuel economy would result in the imposition of a civil penalty of $150 per passenger automobile sold in the U.S. Since Volvo presently sells its passenger automobiles in the $7,000 to $10,000 range and since demand in that price range is relatively inelastic, the added cost would not be likely to reduce sales substantially. Furthermore, NHTSA believes that it may be possible for Volvo to achieve better fuel economy than it has projected. For example, the Volvo projection is apparently based on the assumption that no weight reduction is achieved, although its 244 model weighs nearly 400 pounds more than a comparable Audi 100LS. See DN–28–02, p. 9 and "Automotive News," supra, at 76–7.

Daimler-Benz projects being able to attain levels of fuel economy close to those projected for the domestic manufacturers (DN–28–05, p. 32), primarily by achieving a diesel market penetration of over 60 percent by 1980. DN–10, p. 8. This projection is also based on relatively little weight reduction. For example, Daimler-Benz projects that by 1985 its two-seater sports model will be in the same or a higher inertia weight class as the GM "hypothetical scenario" projects for large-size six-seater passenger automobiles. DN–28–05, p. 31 and DN–18, p. 13. Even if Daimler-Benz' projections reflected the maximum fuel economy improvement achievable by that company, the civil penalties resulting from noncompliance with the fuel economy standards would likely be less than those mentioned above with respect to Volvo and would have a negligible impact on sales of passenger automobiles whose prices are in the $10,000–$20,000 range.

British Leyland's present product mix is split between relatively inexpensive two-seater sports cars and luxury cars in the Mercedes price range. The small sports cars are highly inefficient even by present standards. For example, the MG Midget and Triumph Spitfire weigh about the same as a Volkswagen Rabbit, yet the Rabbit has roughly 50 percent more horsepower and 25 percent better fuel economy. The Toyota Celica weighs 200 pounds more and has 50 percent more horsepower than the MG-B, yet the Toyota has about 18 percent better fuel economy. See "Automotive News," p. 76, and 1977 EPA/FEA Gas Mileage Guide. Therefore, it seems likely that substantial improvements must be made to the smaller British Leyland products just to be competitive in the U.S. market. If such improvements are made, the British Leyland average promulgated level would be close enough to the standards promulgated herein to allow any required civil penalties to be passed on to consumers of the luxury passenger automobiles which are responsible for bringing down their average.

In summary, it appears that the manufacturers of the less expensive import passenger automobiles are already in compliance with the applicable fuel economy standards through 1985, or are close to that level now and can readily achieve compliance. The manufacturers of the more expensive imports may face some difficulties in meeting the standards. However, if those difficulties prove to be insurmountable, the manufacturers will incur civil penalties that will be small in comparison to the price of their passenger automobiles. Therefore, and in view of the Congressional admonition against basing these standards on the least fuel efficient manufacturer (see pages 154–5 of the conference report on the Act, S. Rep. No. 94–516, 94th Cong., 1st Sess. (1975), and section III.E of this notice), it is concluded that the establishment of these standards is not constrained by the capabilities of these import manufacturers. A more detailed discussion of the capabilities for improving fuel economy of these manufacturers is contained in Appendix E of the Rulemaking Support Paper. Accordingly, the Department has determined that the maximum feasible average fuel economy levels based upon consideration of domestic and foreign manufacturers are the same as the levels set forth at the end of section III.E.

V. The "steady progress" criterion and setting the standards.

The final step in the standard-setting process is the application of the "steady progress" criterion. As discussed in section II, this provision requires that the standards increase each year, that all standards fall between 20 and 27.5 mpg, and that none of the resulting annual increases be disproportionate to the other increments. The Department has determined that the maximum feasible levels of average fuel economy specified at the end of Section V meet each of these tests and therefore will result in steady progress toward the 1985 standard of 27.5 mpg. Therefore, average fuel economy standards are: 22 mpg for 1981; 24 mpg for 1982; 26 mpg for 1983; and 27 mpg for 1984.

VI. Additional comments on the NPRM.

Most substantive comments received relating to the establishment of 1981–84 fuel economy standards have been discussed above, primarily in section III, as they relate to the development of the standards. However, certain additional comments on the NPRM deserve further discussion.

The single point raised most frequently in the rulemaking proceeding by the automobile industry did not relate to the technological feasibility or economic practicability of any particular level of average fuel economy, but rather involved the uncertainties inherent in the establishment of these standards. Among the uncertainties raised by industry were the precise fuel economy improvements achievable with the various items of technology, consumer acceptance of the more fuel efficient automobiles to be produced in the future, the impact of future motor vehicle standards in areas other than fuel economy, and the state of the national economy over the next eight years. Tr–I, p. 106 (Chrysler); Tr–I, pp. 53–58 (GM); Doc. IV, pp. 17–35 (Ford). The manufacturers who were unable to relate the alleged areas of uncertainty to any particular quantified impacts on sales or to any particular levels of average fuel economy standards. The Department recognizes that areas of uncertainty exist in this proceeding, although not fully agreeing with the manufacturers' assessments of the magnitude of the resulting risks, particularly in the technology area. But cf. Tr–I, p. 53, where GM characterizes the latter uncertainty as "relatively small." The Department also recognizes that in making projections as to future events and capabilities it is not appropriate to engage in a "crystal ball inquiry." "Natural Resources Defense Council v. Morton," 458 F. 2d 827, 837 (D.C. Dir., 1972). Nevertheless, the Act, in requiring that 1981–84 model year fuel economy standards be established by July 1, 1977, necessarily contemplates that standards will be established on the basis of less than perfectly certain information. Nor does the law require such certainty, so long as projections rest on a rational basis. See generally "Ethyl Corp. v. EPA," 541 F. 2d 1, 28 (D.C. Cir. 1976); "National Asphalt Pavement Association v. Train," 539 F. 2d 775, 7834 (D.C. Cir. 1976); "Reserve Mining Co. v. EPA," 514 F. 2d 492, 507 n. 20 (8th Cir. 1975); "Society of the Plastics Industry v. OSHA," 509 F. 2d 1301, 1308 (2d Cir. 1975); "Amoco Oil Co. v. EPA," 501 F. 2d 722, 741 (D.C. Cir. 1974); "Industrial Union Department v. Hodgson," 400 F. 2d 457, 474 (D.C. Cir. 1974). This is especially true in a regulatory program relating to a crucial national need such as energy conservation. "Mobil Oil Co. v. FPC," 417 U.S. 283, 318 (1974).

Substantial efforts have been made to account for the uncertainties involved in establishing these fuel economy standards. For example, as noted in section III, many of the projections of achievable fuel economy improvements are based on conservative estimates of achievable potential. Further, a safety margin of improvement potential is provided to compensate for any unforeseen contingencies. In addition, it is highly likely that some of the uncertainties inherent in this proceeding will operate to the manufacturers' advantage. For example, future technological developments may lead to greater fuel economy improvements than even the most optimistic of the projections made by the Department.

Given that the Department is required to set standards in an area of some uncertainty, it is appropriate to compare the consequences of erring on either the low or the high side in our judgments. This balancing of risks is quite similar to that conducted by the court in "International Harvester Company v. Ruckelshaus," 478 F. 2d 615 (D.C. Cir. 1973), involving the EPA Administrator's 1975 automobile emission stand-

ards suspension decision. If the Department's projections err on the low side, one obvious consequence is the lost opportunity to conserve energy, the significance of which needs no further discussion. A less obvious consequence is the removal of the "technology forcing" effect of a strict standard. "Union Electric Co. v. EPA," 427 U.S. 246 (1976). Stringent fuel economy standards are likely to encourage the automobile industry to pursue the development and refinement of technology which can reduce fuel consumption. Standards set at easily achievable levels provide no incentive to pursue the development technologies, such as alternative engines, which have substantial fuel economy improvement potential but which may never reach the market in large numbers unless additional technological refinement is accomplished. DN–37, p. 2 (Federal Energy Administration). On the other hand, the danger involved in setting the standards too high is much less than in the "International Harvester" situation. For example, under the Act, the penalty for noncompliance with fuel economy standards is a monetary civil penalty, the magnitude of which is tied to the extent of the violation. On the other hand, violation of Clean Air Act emission standards might result in enjoining the sale of the noncomplying vehicles, conceivably resulting in an industry shutdown. 42 U.S.C. 1857f–5. Fuel economy civil penalties are assessed at a level of five dollars per vehicle per 0.1 mpg of violation, generally within the capability of the automobile companies to either absorb or to pass on to consumers without substantial sales reduction. 15 U.S.C. 2008. In addition, civil penalties incurred in one year can be offset by credits earned in the previous and subsequent years, as previously noted. Penalties large enough to jeopardize a company's continued viability or generated by forces beyond the company's control can be reduced or eliminated. 15 U.S.C. 2008(b)(3). Finally, the Act provides for amending these standards at any time, where the amendment makes the standards less stringent. See section 502(f) of the Act. If some unforeseen contingency arises which makes the attainability of the standards appear dubious, adjustments can be made. The time frame for making these adjustments is much greater than was the case in "International Harvester." All of the technological improvements assumed in this notice are permitted and expected to be phased-in over several years. If problems arise with respect to the marketability or feasibility of the technology, the problem will appear at the start of the phase-in period for the technology, prior to the time when the industry has made irreversible commitments in that area regarding their entire fleets. This contrasts with the "International Harvester" situation where *all* automobiles would have been required to make major technological steps in a single year. Thus, a balancing of the risks involved in setting the standards indicates that less demage is incurred by erring on the high side. In that case, corrections can be made with limited adverse impacts. If the error is on the low side, that error may never become apparent, since additional research efforts would not be fully pursued, and the damage could be irreparable. This counsels against any major reduction in the standards to account for "uncertainties," especially given the safety margin.

VII. Impact on petroleum consumption.

Section 6 of the Rulemaking Support Paper and section III of the Economic Impact Statement contain discussions of the impacts on petroleum consumption of various fuel economy standards schedules. The RSP concludes that gasoline savings ranging from approximately 9.6 billion gallons per year in 1985 to about twice that amount in the year 1995 are achievable. See Table 6.6, RSP. Over the lives of the passenger automobiles produced in model years 1981–84, gasoline savings of approximately 41 billion gallons would result. These gasoline savings are calculated in relation to a baseline of the gasoline consumption which would have resulted had the new passenger automobile average fuel economy remained at a level of 20 mpg for the year 1980 and thereafter. This baseline was selected because it coincides with the level of the statutory 1980 fuel economy standard, it is consistent with the level of average fuel economy likely to have been voluntarily achieved by the manufacturers, and its use was supported by at least one participant in the proceeding. Tr–II, p. 96; DN–15, Document III, p. 2 (Ford). To put this fuel savings in perspective, the resulting reduction in

petroleum consumption could result in a cumulative national savings of approximately 25 billion dollars by the year 1995, at an assumed petroleum price of $13.50 per barrel. See RSP Table 6.7.

VIII. Economic impact of the standards.

The economic impact of these standards was independently evaluated in accordance with Internal Regulatory Procedures by the NHTSA Office of Planning and Evaluation. This assessment utilizes the assumptions set forth in the RSP and expands upon the analyses in that document. That is, the RSP shows cumulative impacts from 1977 for all fuel economy improvements while the Economic Impact Assessment reflects changes from MY 1980 vehicles due solely to improvements necessary to meet the rule.

To summarize the Economic Impact Assessment, the total change for the Domestic Auto Industry for model years 1981–84 (from a base of MY 1980 and 20 mpg) due to the rule are estimated as follows:

> Gasoline consumption for the average vehicle manufactured in MY's 1981–84 will be reduced by approximately 1100 gallons for a total lifetime savings of 1.2 billion barrels; consumer lifetime gasoline costs (at 65 cents per gallon) will be reduced by $640 per car, retail prices will increase by about 3 percent or $175 per car; total consumer costs (that is, retail prices, maintenance costs, and gasoline costs) are anticipated to decrease by about $450 per car or $20 billion nationally. The domestic industry extraordinary capital requirements are anticipated to increase by $3 billion, new car sales may decrease by about .4 percent or a total of 155,000 vehicles, and total industry employment is estimated to rise by 77,000 jobs due to extraordinary capital expenditures. Most of these impacts can be considered insignificant with the exception of the reduction in gasoline consumption and possibly the increase in industry capital requirements, should sales decline for several years due to unforeseen events.
>
> Sensitivity analyses performed on several of the variables used in the analysis show little change in results. Thus, these results are good approximations of the impacts to be expected from the rule.

It is recognized that the economic projections made in the Department's various economic analyses are subject to possible changes in the national economy and in the structure of the industry, which no one is presently able to predict with perfect accuracy.

IX. Environmental Impact.

A detailed analysis of the environmental impacts associated with various alternative fuel economy standard schedules for the 1981–84 period was conducted, consistent with the requirements of the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.* The analysis concluded that the national goals of a better environment and of energy conservation are generally compatible, in that measures which tend to conserve energy also tend to be beneficial to the environment. The most obvious environmental benefits associated with these standards are the conservation of scarce resources such as petroleum and the various metals which presently go into the automobiles, and the reduction of pollution associated with the extraction and processing of those materials. Most areas of possible adverse environmental impacts, such as the pollution associated with the increased use of lightweight materials, are offset by reductions in pollution associated with the items replaced. The most significant possible exception to this is the still unresolved issue of the generation and potential for control of presently unregulated pollutants from diesel and other alternative engines. The Department has not based its standards on the use of alternative engines at this time primarily for that reason. However, the issue of the environmental impacts associated with the various alternative engines is of major importance, and the EPA is pursuing the matter now.

X. Safety impact.

The NPRM raised a question regarding the impact of occupant safety of downsizing passenger automobiles as a result of the fuel economy standards. Depending upon the assumptions made, reasonable conclusions can be made that there will be little net safety impact or, alternatively, that there will be a significant adverse safety impact.

A major reason for suggesting that downsizing might have a significant adverse safety impact is the physical law of conservation of momentum, which indicates that when objects of different mass collide, the smaller object will experience a greater change in velocity than the larger one. DN–18, Att. VII, p. 4 (GM). There, in a collision between a small automobile and a large one, the occupants of the smaller one may collide with the vehicle interior with a greater velocity than would be the case for the occupants of the larger automobile, assuming that seat belts were not used. A further advantage which large automobiles may have is that their additional size may provide for additional energy-absorbing crush space outside the occupant compartment, which may allow the energy of a crash to be dissipated in a manner less injurious to the occupants.

On the other hand, accident information appears to indicate that the change of injury in single car crashes is not appreciably greater in a small car than in a large car. The reduction in vehicle weight and size will apparently be offset to a substantial degree by the reduction in the range of passenger automobile weights which is projected to occur as the larger automobiles are downsized. Further, smaller automobiles may have certain advantages in terms of accident avoidance which tend to offset their possible disadvantages. One such advantage is related to the "target-projectile" effect. See Docket No. FE–76–01–GR–7, pp. 40–2 (Mr. Stanley Hart). This effect results from the fact that the larger an automobile is in relationship to a road lane, the more likely it is to hit or be hit by anything else within that lane, and the more likely it is to veer outside its assigned lane because of the reduced margin for error. A corollary to this is the increased ability of a small automobile to maneuver within its lane to avoid other automobiles. Docket No. FE–76–01–GR–8, p. 9 (Prof. P. L. Yu, *et al.*). Furthermore, although the shielding effect of vehicular weight may be an indicator of an automobile's protective ability, that same weight also serves as a weapon with respect to other automobiles and pedestrians. Thus, additional weight in vehicles may be a benefit to the occupant of that particular vehicle but a detriment to other drivers and pedestrians.

Available technology provides the means to argue that the downsized automobile fleet of the 1980's will be as safe, or safer, than the fleet of today. The Department has statutory responsibility under the National Traffic and Motor Vehicle Safety Act to issue motor vehicle safety standards that meet the need for motor vehicle safety. The estimates of fuel economy penalties due to Federal motor vehicle safety standards presume the existence of standards that will yield safety improvements which more than offset any net safety impacts due to reduced vehicle size or weight (see RSP).

The above conclusions should not be construed to mean that passenger automobiles are or will be as safe as possible. Among the actions that could be taken to improve the safety characteristics of future automobiles are techniques described in Volvo's response to the May 10, 1977, special order, such as the use of energy-absorbing structural designs. DN–28–02, p. 11 and Attachment. These techniques could be implemented concurrently with the vehicle redesign which occurs as part of the downsizing process. When representatives of the two largest domestic manufacturers were asked at the fuel economy hearing whether their companies planned to incorporate such techniques as part of the redesign process, they responded that they would do whatever was necessary to comply with applicable safety standards, but presumably no more. Tr–II, p. 86 (Ford) and 187 (GM). The Department encourages the various automakers to consider techniques such as those described by Volvo when present passenger automobiles are redesigned.

XI. 1981–1984 Passenger Automobiles.

The passenger automobiles produced during the 1981–84 period will differ significantly from those presently produced. These differences will result not only from the requirements of the Motor Vehicle Information and Cost Savings Act, but also from requirements in the areas of safety and emission control and from market and other forces. It is therefore appropriate to discuss in general terms the implications of all these requirements for the driving public, with particular emphasis on the energy-related changes.

The President has recently stated that the nation's energy situation will require actions and possible sacrifices on the part of all citizens. In that context, any sacrifices required of the driving public as a result of these fuel economy standards appear insubstantial, mainly requiring the curtailment of wasteful automotive designs and technology. Such measures reduce the need for additional and possibly severe methods of conserving gasoline, such as reducing vehicle usage, and thus preserve the most important value of passenger automobiles, their contribution to public mobility. In fact, the Department believes that passenger automobiles produced in the 1981–84 period have the potential to be superior overall products as compared to their present counterparts. These future vehicles have the potential to be superior not just from the standpoint of fuel economy, but also in such important areas as emission control and occupant safety, and in terms of technological sophistication and overall reliability. Statements to the effect that 1981–84 fuel economy standards would necessarily force the entire new car buying public into cramped, spartan, 4-seat subcompacts are clearly incorrect in the Department's view. For example, the Department projects that if the present General Motors full-size cars with standard engine were modified in accordance with the options listed in section III of this notice in such areas as material substitution (but not downsizing), improved automatic transmission, lubricants, and accessories, and reduced aerodynamic drag and rolling resistance, the fuel economy of those passenger automobiles would be approximately 25 mpg. If some form of alternative engine were used in those automobiles, their fuel economy could rise to over 30 mpg.

The most obvious adverse impact of the various changes is that the cost to produce new passenger automobiles will increase. However, the manufacturing cost increases and resulting retail price increases can be held within an acceptable range. Further, these initial price increases are expected to be slight and to be recouped over the life of the automobile, in the form of fuel savings, reduced maintenance expenditures, and societal health benefits from improved emission and safety characteristics. Compared to 1977 automobiles, the net benefit for 1984 automobiles over their lifetime should be more than $1,000.

The Department believes that the 1981–84 passenger automobiles can be designed to have better overall performance characteristics than present ones. The term "performance" is often defined very narrowly as a synonym for high acceleration capability on a straightaway. However, straight-line acceleration is only one aspect of overall driving performance. Other important aspects are maneuverability, handling, reliability, and overall economy of operation. Many of today's passenger automobiles leave substantial room for improvement in these aspects of performance. Compliance with fuel economy standards will create the potential to improve these latter aspects, without major reductions in straight-line acceleration, primarily through the elimination of bulk. The Department's analysis shows that these changes can be accomplished without sacrifice to vehicle roominess and utility. Further changes can be made to future engines. There is no reason to believe that consumers' transportation needs would not be satisfied by such automobiles.

XII. Implications for the standards for 1985 and thereafter.

For the purposes of this rulemaking proceeding, the Department was constrained to consider standards within a "steady progress" path between the statutorily imposed 1980 standard of 20 mpg and the standard for 1985 and thereafter of 27.5 mpg. However, section 502(a)(4) of the Act authorizes the Department to amend the standard or standards for 1985 and thereafter if it is determined that the statutory level is not in fact the "maximum feasible average fuel economy level" for those years. Our analysis indicates that levels of average fuel economy in excess of 27.5 mpg are achievable in the 1985 time frame. In addition, several areas of additional fuel economy improvement potential deserve exploration. Among these are the impact of whatever new energy legislation ultimately is signed into law on future product mixes, the potential for additional weight reduction through extensive material substitution, and the potential to shift to alternative engines. Because of the limited scope of the present proceeding and time constraints,

it was not possible to explore these issues adequately. However, the significant fuel saving potential associated with these items and the high national priority correctly assigned to the need to conserve energy necessitate a consideration of the level of the standards for 1985 and thereafter. Therefore, in the near future the Department will exercise its discretionary authority under section 502(a)(4) of the Act to initiate rulemaking to amend those standards. As part of this rulemaking, it will also be necessary to reconsider the standards promulgated today, to assure that they are set at levels which are both the maximum feasible average fuel economy levels and will result in steady progress toward the selected standard for 1985. However, it is unlikely that the standards for 1981–83 would be significantly revised as part of the reconsideration, given the diminished lead-time for the manufacturers by the time that rulemaking is completed and the need to provide stable planning targets. See Senate Report, *supra*, at p. 21.

(Sec. 9, Pub. L. 89–670, 80 Stat. 931 (49 U.S.C. 1657); Sec. 301, Pub. L. 94–163, 89 Stat. 901 (15 U.S.C. 2002)).

The program official and lawyer principally responsible for the development of this regulation are Stanley R. Scheiner and Roger C. Fairchild, respectively.

Issued on June 27, 1977.

Brock Adams
Secretary of Transportation

42 F.R. 33534
June 30, 1977

PREAMBLE TO AMENDMENT TO PART 531—AVERAGE FUEL ECONOMY STANDARDS FOR PASSENGER AUTOMOBILES

(Docket No. LVM 77–05; Notice 3)

Action: Final decision to grant exemption from average fuel economy standards.

Summary: This notice exempting Excalibur Automobile Corp. (Excalibur) from the generally applicable average fuel economy standard of 18.0 miles per gallon (mpg) for 1978 model year passenger automobiles and establishing an alternative standard is issued in response to a petition by Excalibur. The alternative standard is 11.5 mpg.

Date: The exemption and alternative standard apply in the 1978 model year.

For further information contact:

Douglas Pritchard, Office of Automotive Fuel Economy Standards, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202–755–9384).

Supplementary information:

The National Highway Traffic Safety Administration (NHTSA) is exempting Excalibur from the generally applicable passenger automobile average fuel economy standard for the 1978 model year and establishing an alternative standard.

This exemption is issued under the authority of section 502(c) of Title V of the Act. Section 502(c) provides that a manufacturer of passenger automobiles that manufactures fewer than 10,000 vehicles annually may be exempted from the generally applicable average fuel economy standard if that generally applicable standard is greater than the low volume manufacturer's maximum feasible average fuel economy and if the NHTSA establishes an alternative standard applicable to that manufacturer at the manufacturer's maximum feasible average fuel economy. In determining the manufacturer's maximum feasible average fuel economy, section 502(e) of the Act requires the NHTSA to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

This final rule was preceded by a notice announcing the receipt of a petition for exemption from the 1978 standard (43 FR 19311; May 4, 1978) and a proposed decision to grant an exemption to Excalibur for the 1978 model year (43 FR 33268; July 31, 1978).

No comments were submitted in response to the notice of receipt of the petition.

Three comments were submitted in response to the proposed decision. One of these comments was submitted by a private citizen, who supported the proposed exemption, because he believed that Excalibur produced an excellent product. The other two comments, both of which opposed the proposed exemption, were submitted by public interest groups. The objections centered primarily on the suggestion that the proposed exemption for Excalibur was contrary to the Congressional intent, that the agency had erroneously determined Excalibur's maximum feasible average fuel economy level, and that even if Excalibur's maximum feasible average fuel economy level had correctly been determined, the agency should use its discretion to deny the requested exemption.

With regard to the first point, both commenters stated that granting an exemption to Excalibur would be contrary to the general Congressional intent of improving fuel economy. Congress, however, specifically included a provision whereby low volume manufacturers could

be exempted from the generally applicable standard if that generally applicable standard were greater than the low volume manufacturer's maximum feasible average fuel economy and the agency establishes an alternative standard for the low volume manufacturer at its maximum feasible average fuel economy level. The inclusion of this provision strongly suggests that Congress intended that, in some circumstances, low volume manufacturers would be exempted from the generally applicable standard.

One commenter went on to argue that Congress had intended that the low volume exemptions only be available to manufacturers of moderately priced cars, and not to manufacturers of very expensive cars. In this commenter's view, the manufacturer of very expensive cars can pass on any civil penalties to its customers in the form of a price increase, and both manufacturer and customer could consider this as "conscience money".

No legislative history supporting this contention regarding Congressional intent is cited by the commenter or known to this agency. Congress did give the agency discretionary authority to grant or deny petitions. However, Congress did not direct the agency to use the discretion to deny exemption petitions by manufacturers of high-priced automobiles or to use it in any other particular manner.

This commenter went on to urge that there is no incentive for these low volume manufacturers to improve fuel economy, because an exemption can be expected. However, any exemption is required to be accompanied by an alternative standard set at that manufacturer's maximum feasible average fuel economy level. This will ensure that these manufacturers must improve their fuel economy, or pay a civil penalty.

Both public interest groups asserted that NHTSA had incorrectly determined Excalibur's maximum feasible average fuel economy. One commenter pointed out that had Excalibur adopted the Corvette engine in 1975, its automobiles would have better fuel economy for the 1978 model year. This point is true, but, as the notice of receipt of Excalibur's petition pointed out, the decision not to use the Corvette engine was made because of technical problems relating to the placement of the catalyst and the costs of certifying that vehicle. This decision was not clearly unreasonable when made, and was made before the passage of any fuel economy standards by Congress. Accordingly, the determination of maximum feasible average fuel economy for Excalibur was made assuming that Excalibur was using the engine currently in its vehicles, instead of another engine it might have installed in those vehicles. It should be emphasized that the time for selecting a different engine and improving the fuel economy of 1978 Excaliburs has passed.

Both of these commenters asserted that the agency erred in suggesting that the Nation's need to conserve energy would be negligibly affected by granting this exemption. However, neither of these commenters questioned the agency estimate that Excalibur's 1978 automobiles achieving an average fuel economy of 11.5 mpg rather than 18.0 mpg would result in the consumption of an additional 2.5 barrels of fuel per day. Since the United States currently consumes about 5 million barrels of fuel in passenger automobiles each day, the additional fuel consumed by Excalibur achieving an average fuel economy of 11.5 mpg represents .00005 percent of daily passenger car fuel consumption. The agency again concludes that this amount is insignificant. In any event, NHTSA again points out that no excess fuel is used if Excalibur's standard is set at its maximum feasible level instead of some higher level.

Both commenters urged that even if Excalibur's excess use of fuel is minor, the excess use by all low volume manufacturers would not be minor. The additional fuel consumption by all low volume manufacturers who have petitioned for exemption in the 1978 model year achieving their maximum feasible average fuel economy levels rather than the generally applicable standard of 18.0 mpg will amount to about 64 barrels of fuel per day. This total represents about .0013 percent of daily passenger car fuel use, and is still small enough for this agency to conclude that it is an insignificant amount. More important, setting standards above these manufacturer's maximum feasible levels would not result in additional fuel savings.

The final reason suggested by the commenters for denying Excalibur's petition for exemption was that the agency should exercise its discretion to deny the petition on the grounds that it is contrary to the general goal of energy conservation and that an exemption would erode public support for the fuel economy program. This agency believes that the language in section 502(c) specifying that the agency may exempt low volume manufacturers indicates that Congress intended this agency to apply a test of whether granting an exemption would be generally consistent with the purposes of the Act. The main purpose of the Act is conserving energy. Establishing standards above the maximum feasible average fuel economy for Excalibur would not conserve any energy, since the alternative standard is based on the premise that it is not possible for Excalibur to achieve better fuel economy than its maximum feasible level.

As to the comments stating that an exemption for Excalibur would endanger public support for the program, this agency does not agree that requiring very small manufacturers like Excalibur to comply with standards set at their maximum feasible level instead of the maximum feasible level for larger manufacturers will necessarily erode public support for the program. Instead, the agency believes that the process of exempting the very small manufacturers will be viewed as equitably adjusting the generally applicable fuel economy standards to the lesser capabilities of these manufacturers.

For these reasons the agency has determined that the maximum feasible average fuel economy for Excalibur in the 1978 model year is 11.5 mpg. Therefore, this agency is exempting Excalibur from the generally applicable standard of 18.0 mpg for the 1978 model year and is establishing an alternative standard for Excalibur at 11.5 mpg for the 1978 model year.

Accordingly, 49 CFR Part 531 is amended. . . .

AUTHORITY: Sec. 9, Pub. 89–670, 80 Stat. 931 (49 U.S.C. 1657); sec. 301, Pub. 94–163, 89 Stat. 901 (15 U.S.C. 2002); delegation of authority at 41 FR 25015, June 22, 1976.

The program official and attorney principally responsible for the development of this decision are Douglas Pritchard and Stephen Kratzke, respectively.

Issued on January 11, 1979.

Joan Claybrook
Administrator

44 F.R. 3708–3709
January 18, 1979

PREAMBLE TO AMENDMENT TO PART 531—AVERAGE FUEL ECONOMY STANDARDS FOR PASSENGER AUTOMOBILES

(Docket No. LVM 77–02; Notice 3)

Action: Final decision to grant exemption from average fuel economy standards.

Summary: This notice exempting Rolls-Royce Motors Inc. (Rolls-Royce) from the generally applicable average fuel economy standard of 18.0 miles per gallon (mpg) for 1978 model year passenger automobiles and establishing an alternative standard is issued in response to a petition by Rolls-Royce. The alternative standard is 10.7 mpg.

Date: The exemption and alternative standard apply in the 1978 model year.

For further information contact:

Douglas Pritchard, Office of Automotive Fuel Economy Standards, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202–755–9384).

Supplementary information:

The National Highway Traffic Safety Administration (NHTSA) is exempting Rolls-Royce from the generally applicable passenger automobile average fuel economy standard for the 1978 model year and establishing an alternative standard.

This exemption is issued under the authority of section 502(c) of Title V of the Act. Section 502(c) provides that a manufacturer of passenger automobiles that manufactures fewer than 10,000 vehicles annually may be exempted from the generally applicable average fuel economy standard if that generally applicable standard is greater than the low volume manufacturer's maximum feasible average fuel economy and if the NHTSA establishes an alternative standard applicable to that manufacturer at the manufacturer's maximum feasible average fuel economy. In determining the manufacturer's maximum feasible average fuel economy, section 502(e) of the Act requires the NHTSA to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

This final rule was preceded by a notice announcing the receipt of a petition for exemption from the 1978 standard (42 FR 64171; December 22, 1977) and a proposed decision to grant an exemption to Rolls-Royce for the 1978 model year (43 FR 30081; July 13, 1978). Only one comment on the notice of receipt was submitted. That commenter urged that Rolls-Royce be exempted "in the name of common sense".

Eleven comments were received in response to the proposed decision, all of which opposed the proposed exemption. These comments raised three main points: Congress never intended that Rolls-Royce receive an exemption; the agency had incorrectly determined the maximum feasible average fuel economy for Rolls-Royce; and even if Rolls-Royce were eligible and had a maximum feasible average fuel economy of less than the generally applicable standard of 18.0 miles per gallon (mpg), NHTSA should use its discretion to deny the Rolls-Royce petition.

With respect to the first point, several commenters stated that it was unfair for some manufacturers to be forced to comply with a standard of 18 mpg, while others were exempted from that requirement. Congress determined, however, through section 502(c) of the Act, to authorize this agency to exempt low volume manufacturers from the generally applicable standard and establish a standard for those manufacturers at the level of their maximum feasible average fuel

economy. Congress took this action in recognition of a variety of factors, including the limited engineering staff and financial resources of these manufacturers. Low volume manufacturers can be exempted from the generally applicable standards only if they cannot comply with those standards, and if alternative standards are set.

Other commenters said that the agency should require fuel economy improvements by all manufacturers, not permit certain manufacturers to ignore the generally applicable fuel economy standards. The agency is requiring all exempted manufacturers to comply with an alternative standard set at their maximum feasible average fuel economy. A requirement that these manufacturers achieve some higher fuel economy level would not save any additional fuel, since the alternative standard is based on the premise that it is not possible for a manufacturer to achieve a higher fuel economy level. Hence, exempting low volume manufacturers from the generally applicable standards and establishing an alternative standard at their maximum feasible level does not result in any additional use of fuel.

In this vein, one other commenter suggested that Congress had intended that the low volume exemptions only be available to manufacturers of moderately priced cars, and not to manufacturers of very expensive cars. In this commenter's view, the manufacturer of very expensive cars can pass on any civil penalties to its customers in the form of a price increase. Given the price of these cars, this commenter concluded that the increase would not cause any noticeable decrease in sales, while an exemption would only serve to keep prices down for the purchasers of these expensive vehicles.

No legislative history supporting this contention regarding Congressional intent is cited by the commenter or known to this agency. Congress did give the agency discretionary authority to grant or deny petitions. However, Congress did not direct the agency to use that discretion to deny exemption petitions by manufacturers of high-priced automobiles or to use it in any other particular manner.

Other comments suggested that it was unfair to grant exemptions only to foreign companies, while requiring all domestic companies to comply with the generally applicable standard. Both domestic and foreign low volume manufacturers are eligible for exemptions. Indeed, the first two low volume manufacturers to receive exemptions were domestic manufacturers, Avanti and Checker.

The second major objection raised by the commenters concerned this agency's determination of the maximum feasible average fuel economy for Rolls-Royce. No commenters suggested that the consideration of technological feasibility or the effect of other Federal motor vehicle standards on fuel economy had been in error. In this connection, it should be emphasized that the time for improving the fuel economy of 1978 Rolls-Royces has passed. However, several commenters stated that this agency had not properly considered the economic practicability or the need of the Nation to conserve energy.

One commenter argued that this agency had not considered the ability of Rolls-Royce to pay the civil penalty which would be assessed if Rolls-Royce failed to comply with the higher generally applicable standard. The agency agrees that it has confined itself under Section 502(c) to an analysis of the financial capabilities of the petitioner to improve fuel economy by using smaller engines, lighter components, and the like, and does not consider the ability to absorb any potential civil penalties.

The reason for so limiting the analysis of economic practicability in setting alternative standards for individual manufacturers is that the agency believes that Congress intended the maximum feasible concept to result in an alternative set at the highest average fuel economy level a manufacturer could reasonably be expected to achieve in a given model year. If the ability to pay any civil penalty is considered as a part of economic practicability for an individual manufacturer, the resulting standard would be higher than the highest fuel economy level the manufacturer could achieve in that model year, and thus would impose an unavoidable civil penalty. This would not conserve any additional fuel since it would not cause that manufacturer to achieve higher fuel economy and would not apply to other manufacturers whose fuel economy could exceed the fuel economy of that manufacturer. Accordingly, the agency does not believe that

Congress intended the ability to pay a civil penalty to be a part of economic practicability under these circumstances.

Other commenters suggested that NHTSA's determination that the need of the Nation to conserve energy would be negligibly affected by granting this exemption was erroneous. For instance, one commenter stated that it was unfair to consider exempting Rolls-Royce because of the insignificant amount of fuel involved, and compared this to a proposal allowing Cadillac drivers to drive at whatever speed they chose while requiring drivers of all other cars to observe posted speed limits, because of the small number of Cadillacs on the road. Congress has already decided the issue of fairness by authorizing the exemption of low volume manufacturers. Further, the Act specifically directs the agency to consider the need of the Nation to conserve energy, and when that need is negligibly affected by a given fuel economy, the agency must give weight to that fact.

None of these comments questioned the agency estimate that Rolls-Royce 1978 automobiles achieving an average fuel economy level of 10.7 mpg rather than 18.0 mpg would result in the consumption of an additional 30.4 barrels of fuel per day. Since the United States currently uses about 5 million barrels of fuel in passenger automobiles each day, the additional fuel consumed by Rolls-Royce represents .00061 percent of daily fuel consumption. The agency concludes that an amount this small is insignificant.

The final reason suggested by the commenters for denying an exemption for Rolls-Royce was that the agency should exercise its discretion to deny the exemption request on the grounds that it is contrary to the goal of energy conservation and will erode public support for the fuel economy program. This agency believes that the language in section 502(c) specifying that this agency may exempt low volume manufacturers indicates that Congress intended this agency to apply a test of whether granting an exemption would be generally consistent with the purposes of the Act. The main purpose of the Act is conserving energy. Establishing standards above the maximum feasible average fuel economy levels for Rolls-Royce would not conserve any additional energy, since the alternative standard is based on the premise that it is not possible for the company to achieve better fuel economy than the maximum feasible level.

As to the comments stating that exemptions would endanger public support for the fuel economy program, this agency does not agree that requiring very small manufacturers like Rolls-Royce to comply with standards set at their maximum feasible level instead of the maximum feasible level for larger manufacturers will necessarily erode public support for the program. Instead, the agency believes that the process of exempting the very small manufacturers will be viewed as equitably adjusting the generally applicable fuel economy standards to the lesser capabilities of these manufacturers.

For the above reasons, the agency has determined that the maximum feasible average fuel economy for Rolls-Royce in the 1978 model year is 10.7 mpg. Therefore, the agency is exempting Rolls-Royce from the generally applicable standard of 18.0 mpg for the 1978 model year and establishing an alternative standard for Rolls-Royce at 10.7 mpg for the 1978 model year.

Accordingly, 49 CFR Part 531 is amended. . . .

The program official and attorney principally responsible for the development of this decision are Douglas Pritchard and Stephen Kratzke, respectively.

AUTHORITY: Sec. 9, Pub. L. 89–670, 80 Stat. 931 (49 U.S.C. 1657); sec. 301, Pub. L. 94–163, 89 Stat. 901 (15 U.S.C. 2002); delegation of authority at 49 FR 25015, June 22, 1976.

Issued on January 11, 1979.

Joan Claybrook
Administrator

44 F.R. 3710
January 18,1979

PREAMBLE TO AMENDMENT TO PART 531—PASSENGER AUTOMOBILE AVERAGE FUEL ECONOMY STANDARDS

(Docket No. LVM 77–07; Notice 3)

Action: Final decision to grant exemption from average fuel economy standards.

Summary: This notice exempting Officine Alfieri Maserati, S.p.A. (Maserati) from the generally applicable average fuel economy standard of 18.0 miles per gallon (mpg) for the 1978 model year passenger automobiles and establishing an alternative standard is issued in response to a petition by Maserati. The alternative standard is 12.6 mpg.

Applicable date: The exemption and alternative standard apply in the 1978 model year.

For further information contact:

Douglas Pritchard, Office of Automotive Fuel Economy Standards, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202–755–9384).

Supplementary information:

The National Highway Traffic Safety Administration (NHTSA) is exempting Maserati from the generally applicable passenger automobile average fuel economy standard for the 1978 model year and establishing an alternative standard. This exemption is issued under the authority of section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended, (the Act). Section 502(c) provides that a manufacturer of passenger automobiles that manufactures fewer than 10,000 vehicles annually may be exempted from the generally applicable average fuel economy standard if that standard is greater than the low volume manufacturer's maximum feasible average fuel economy and if the NHTSA establishes an alternative standard applicable to that manufacturer at that manufacturer's maximum feasible average fuel economy. In determining the manufacturer's maximum feasible average fuel economy, section 502(e) of the Act requires the NHTSA to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

This final rule was preceded by a notice announcing the receipt of a petition for exemption from the 1978 standard (43 FR 46016; October 5, 1978) and a proposed decision to grant an exemption to Maserati for the 1978 model year (44 FR 3737; January 18, 1979). Only one comment on the notice of receipt was submitted. That commenter urged that Maserati's petition be granted so that it could remain in the U.S. market and asserted that the world will be a better place because of the continued existence of these automobiles. No comments were received on NHTSA's proposal to exempt Maserati from the generally applicable standard of 18.0 mpg for the 1978 model year and to establish an alternative standard for Maserati at 12.6 mpg during the 1978 model year.

Accordingly, in consideration of the foregoing, 49 CFR Part 531 is amended. . . .

The program official and attorney principally responsible for the development of this decision are Douglas Pritchard and Stephen Kratzke, respectively.

AUTHORITY: Sec. 9, Pub. L. 89–670, 80 Stat. 931 (49 U.S.C. 1657); sec. 301, Pub. L. 94–163, 89 Stat. 901 (15 U.S.C. 2002); delegation of authority at 49 CFR § 1.50.

Issued on February 16, 1979.

Joan Claybrook
Administrator

43 F.R. 34785
August 7, 1979

PREAMBLE TO AN AMENDMENT TO PART 531—PASSENGER AUTOMOBILE AVERAGE FUEL ECONOMY STANDARDS

(Docket No. LVM 77-07; Notice 4)

ACTION: Technical Amendment.

SUMMARY: In the Federal Register of March 1, 1979 (44 FR 11548), this agency published a notice exempting Officine Alfieri Maserati, S.p.A. (Maserati) from the generally applicable average fuel economy standard of 18.0 miles per gallon (mpg) for 1978 model year passenger automobiles, and established an alternative average standard for Maserati at its maximum feasible level of 12.6 mpg. Upon recalculating Maserati's maximum feasible average fuel economy level, this agency discovered that it had made an error in rounding the number to the nearest tenth of a mile per gallon. The actual maximum feasible fuel economy for 1978 Maserati automobiles was 12.5 mpg, and this notice amends Maserati's alternative standard for the 1978 model year to 12.5 mpg.

EFFECTIVE DATE: This amendment is effective upon date of publication in the *Federal Register*. January 21, 1980.

FOR FURTHER INFORMATION CONTACT:

Robert Mercure, Office of Automotive Fuel Economy Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-755-9384).

SUPPLEMENTARY INFORMATION:

In a notice published at 44 FR 11548, March 1, 1979, the National Highway Traffic Safety Administration, (NHTSA) announced the final determination exempting Maserati from the generally applicable passenger automobile average fuel economy standard for the 1978 model year, and establishing an alternative standard of 12.6 mpg for Maserati for the 1978 model year. This alternative standard was set at the level which NHTSA determined was Maserati's maximum feasible average fuel economy for its two model types, as NHTSA is required to do by section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 2002(c)). Determination of that level involved assessing the extent to which the fuel economy of Maserati's two model types could be improved and then averaging the fuel economy values for those model types in accordance with the procedure of the Environmental Protection Agency.

A recent re-examination by the agency of its computation of Maserati's maximum average fuel economy for model year 1978 revealed a significant mathematical error. The agency had erroneously rounded off the fuel economy values for that company's two model types. When those values are properly rounded and the average is recomputed, the average is 12.5 mpg instead of the 12.6 mpg originally computed by the agency.

To correct this error, the agency is amending the alternative standard for Maserati for model year 1978 to change it from 12.6 mpg to 12.5 mpg.

Accordingly, 49 CFR § 531.5(b) (7) is amended to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(7) Officine Alfieri Maserati, S.p.A.: Model Year 1978, average fuel economy standard (miles per gallon), 12.5.

Issued on January 15, 1980.

Michael M. Finkelstein
Associate Administrator
for Rulemaking

45 F.R. 5738
January 24, 1980

PREAMBLE TO AN AMENDMENT TO PART 531

Passenger Automobile Average Fuel Economy Standards
(Docket No. LVM 77-04; Notice 3)

ACTION: Final decision to grant exemption from fuel economy standards.

SUMMARY: This notice exempts Aston Martin Lagonda Inc. (Aston Martin) from generally applicable average fuel economy standards of 19.0 miles per gallon (mpg) and 20.0 mpg for 1979 and 1980 model year passenger automobiles, respectively, and establishes alternative standards. The alternative standards are 11.5 mpg in the 1979 model year and 12.1 mpg in the 1980 model year.

DATES: The exemptions and alternative standards set forth in this notice apply in the 1979 and 1980 model years.

FOR FURTHER INFORMATION CONTACT:
Robert Mercure, Office of Automotive Fuel Economy Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-755-9384)

SUPPLEMENTARY INFORMATION: The National Highway Traffic Safety Administration (NHTSA) is exempting Aston Martin from the generally applicable average fuel economy standards for the 1979 and 1980 model years and establishing alternative standards applicable to that company in those model years. This exemption is issued under the authority of section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended (the Act) (15 U.S.C. 2002(c)). Section 502(c) provides that a manufacturer of passenger automobiles that manufactures fewer than 10,000 vehicles annually may be exempted from the generally applicable average fuel economy standard for a particular model year if that standard is greater than the low volume manufacturer's maximum feasible average fuel economy and if the NHTSA establishes an alternative standard applicable to that manufacturer at the low volume manufacturer's maximum feasible average fuel economy. In determining the manufacturer's maximum feasible average fuel economy, section 502(e) of the Act, (15 U.S.C. 2002(e)), requires the NHTSA to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

This final rule was preceded by a notice announcing the NHTSA's proposed decision to grant an exemption to Aston Martin for the 1979 and 1980 model years (45 FR 24511, April 10, 1980). NHTSA received 58 comments during the 30-day comment period. All comments were from Aston Martin owners, and all comments supported the proposed exemptions and alternative standards. NHTSA had previously considered all the factors enumerated by the commenters supporting the proposed exemptions.

NHTSA had proposed to establish alternative fuel economy standards of 11.4 mpg for Aston Martin in the 1979 model year and 12.4 mpg in the 1980 model year. Information which became available to this agency from the Environmental Protection Agency after the publication of the proposal indicates that the 1979 Aston Martins achieved a fuel economy level of 11.5 mpg, which is higher than was proposed, and 12.1 mpg in the 1980 model year, which is lower than was proposed. Since these Aston Martin automobiles used all the means for improving fuel economy deemed to be technologically feasible and economically

practicable, these fuel economy tests figures are a more accurate representation of Aston Martin's maximum feasible average fuel economy than the previous estimates made by NHTSA. Accordingly, this final decision incorporates the subsequent information, and adopts 11.5 mpg and 12.1 mpg as Aston Martin's maximum feasible average fuel economy in the 1979 and 1980 model years, respectively.

Based on its conclusions that it is not technologically feasible and economically practicable for Aston Martin to improve the fuel economy of its 1979 and 1980 model year automobiles above an average of 11.5 and 12.1 mpg, respectively, that other Federal automobile standards will not affect achievable fuel economy beyond the extent considered in this analysis, and that the national effort to conserve energy will be negligibly affected by the granting of the requested exemptions and establishment of alternative standards, this agency concludes that the maximum feasible average fuel economy for Aston Martin in the 1979 and 1980 model years is 11.5 and 12.1 mpg, respectively. Therefore, the agency is exempting Aston Martin from the generally applicable standards and is establishing alternative standards of 11.5 mpg for the 1979 model year and 12.1 mpg for the 1980 model year.

In consideration of the foregoing, 49 CFR Part 531 is amended by adding 531.5(b)(4) to read as follows:

§531.5 *Fuel economy standards.*

* * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * *

(4) Aston Martin Lagonda Inc.

Model Year	Average fuel economy standard (miles per gallon)
1979	11.5
1980	12.1

The program official and attorney principally responsible for the development of this decision are Robert Mercure and Stephen Kratzke, respectively.

Issued on September 29, 1980.

Joan Claybrook
Administrator

45 FR 67095
October 9, 1980

PREAMBLE TO AN AMENDMENT TO PART 531

Passenger Automobile Average Fuel Economy Standards (Docket No. LVM 77-01; Notice 6)

ACTION: Final decision to grant exemption from average fuel economy standards and to establish alternative standards.

SUMMARY: This notice exempts Avanti Motors Corporation (Avanti) from the generally applicable average fuel economy standards of 19.0 miles per gallon (mpg) and 20.0 mpg for 1979 and 1980 model year passenger automobiles, respectively, and establishes alternative standards. The alternative standards are 14.5 mpg in the 1979 model year and 15.8 mpg in the 1980 model year.

DATES: The exemptions and alternative standards set forth in this rule apply in the 1979 and 1980 model year.

FOR FURTHER INFORMATION CONTACT:
Robert Mercure, Office of Automotive Fuel Economy Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-755-9384)

SUPPLEMENTARY INFORMATION: The National Highway Traffic Safety Administration (NHTSA) is exempting Avanti from the generally applicable average fuel economy standards for the 1979 and 1980 model years and establishing alternative standards applicable to that company in those model years. This exemption is issued under the authority of section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended (the Act) (15 U.S.C. 2002(c)). Section 502(c) provides that a manufacturer of fewer than 10,000 passenger automobiles annually may be exempted from the generally applicable average fuel economy standard for a particular model year if that standard is greater than the low volume manufacturer's maximum feasible average fuel economy and if the NHTSA establishes an alternative standard applicable to that low volume manufacturer at the level of its maximum feasible average fuel economy. Section 502(e) of the Act (15 U.S.C. 2002(e)) requires the NHTSA to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

This final rule was preceded by a notice announcing the NHTSA's proposed decision to grant an exemption to Avanti for the 1979 and 1980 model years (46 FR 5022, January 19, 1981). No comments were received during the 45-day comment period.

Based on its conclusions that it is not technologically feasible and economically practicable for Avanti to improve the fuel economy of its 1979 and 1980 model year automobiles above an average of 14.5 and 15.8 mpg, respectively, that other Federal automobile standards did not affect achievable fuel economy beyond the extent considered in this analysis and that the national effort to conserve energy will be negligibly affected by the granting of the requested exemptions, this agency concludes that the maximum feasible average fuel economy for Avanti in the 1979 and 1980 model years is 14.5 and 15.8 mpg, respectively. Therefore, NHTSA is exempting Avanti from the generally applicable standards and is establishing alternative standards of 14.5 mpg for the 1979 model year and 15.8 mpg for the 1980 model year.

In consideration of the foregoing, 49 CFR Part 531 is amended by revising §531.5(b)(1) to read as follows:

§531.5 *Fuel economy standards.*

* * * *

(b) The following manufacturers shall comply with the fuel economy standards indicated below for the specified model years:

(1) Avanti Motor Corporation.

Model Year	Average Fuel Economy Standard (miles per gallon)
1978	16.1
1979	14.5
1980	15.8

* * * *

The program official and attorney principally responsible for the development of this decision are Robert Mercure and Stephen Kratzke, respectively.

Issued on April 27, 1981.

Diane K. Steed
Acting Administrator

46 FR 24952
May 4, 1981

PREAMBLE TO AN AMENDMENT TO PART 531

Passenger Automobile Average Fuel Economy Standards

(Docket No. LVM 77-02; Notice 5)

ACTION: Final decision to grant exemption from average fuel economy standards and to establish alternative standards.

SUMMARY: This notice exempts Rolls-Royce Motors, Ltd. (Rolls-Royce) from the generally applicable average fuel economy standards of 19.0 miles per gallon (mpg) and 20.0 mpg for 1979 and 1980 model year passenger automobiles, respectively, and establishes alternative standards. The alternative standards are 10.8 mpg in the 1979 model year and 11.1 mpg in the 1980 model year.

DATES: The exemptions and alternative standards set forth in this notice apply in the 1979 and 1980 model years.

SUPPLEMENTARY INFORMATION: The National Highway Traffic Safety Administration (NHTSA) is exempting Rolls-Royce from the generally applicable average fuel economy standards for the 1979 and 1980 model years and establishing alternative standards applicable to that company in those model years. This exemption is issued under the authority of section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended (the Act) (15 U.S.C. 2002(c)). Section 502(c) provides that a manufacturer of passenger automobiles that manufactures fewer than 10,000 vehicles annually may be exempted from the generally applicable average fuel economy standard for a particular model year if that standard is greater than the manufacturer's maximum feasible average fuel economy and if the NHTSA establishes an alternative standard applicable to that manufacturer at the low volume manufacturer's maximum feasible average fuel economy. In determining the manufacturer's maximum feasible average fuel economy, section 502(e) of the Act (15 U.S.C. 2002(e)) requires the NHTSA to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

This final rule was preceded by a notice announcing the NHTSA's proposed decision to grant an exemption to Rolls-Royce for the 1979 and 1980 model years (45 F.R. 67108; October 9, 1980). NHTSA received two comments on that proposed decision.

The first comment was submitted by Rolls-Royce, in response to an invitation in the proposed decision for the company to explain why it could not have improved the fuel economy of its 1980 cars certified to the 49-state emission standards. Specifically, Rolls-Royce used fuel injection and a 3-way catalyst on its 1980 California vehicles, which resulted in improved fuel economy for those vehicles compared with the 1979 California vehicles. NHTSA did not have sufficient information to determine whether it would have been feasible to have also made this change to the 1980 49-state models. Lacking sufficient information, the agency raised the issue in the proposed decision, and invited Rolls-Royce to provide specific information to show that the change would not have been

feasible. If the company did not provide the information, NHTSA would then consider deciding that the change was feasible.

In response, Rolls-Royce stated that fuel injection and 3-way catalysts were new technologies to the company, and that it was necessary to have a limited run with the new technologies to give the company experience with manufacturing them before including the technologies on all their vehicles. Additionally, Rolls-Royce stated that the 1980 California vehicles were certified at a low enough emissions level that the certification can be carried over for the 1981 and 1982 California and 49-state emissions standards. By not having to retest for compliance with those standards, the company will save an estimated $50,000 in each of the two model years.

The company also argued that it has decided to produce only one model type for emissions purposes—one that complies with both the 49-state and California emissions standards—beginning in the 1981 model year. By so doing, Rolls-Royce will join all the other low volume manufacturers except Checker Motors in producing a vehicle that complies with both sets of emissions standards. This is important for marketing flexibility, so that the low volume manufacturer can sell its cars in California or the other 49 states depending on the actual demand. When the company produces two models (49-state and California), it must forecast how many of each to make. It cannot sell 49-state vehicles in California, or vice versa, when actual demand differs from forecasted demand. Such a decision by Rolls-Royce is not unreasonable.

Rolls-Royce argued that use of fuel injection and a 3-way catalyst on its 1980 49-state vehicles would have required additional and different development work for the company to optimize the fuel consumption and emissions to the less-stringent 49-state standards. This development would have been useful only for that one model year, since the company was not planning to certify vehicles to these less stringent standards in the foreseeable future, as explained above. Given the company's limited engineering staff, it decided to devote all of its efforts to achieving emissions levels in its 1980 California vehicles that would satisfying the 1981 and 1982 California and 49-state requirements, instead of splitting its effort between that and achieving optimal settings for its 49-state vehicles, which would be used only for the 1980 model year. Rolls-Royce also argued that it was erroneous for the agency to imply that the use of fuel injection with a 3-way catalyst was responsible for the fuel economy improvement on its 1980 California vehicles. NHTSA recognizes that the fuel rich mixtures required for efficient operation of the 3-way catalyst would be above the level required for minimum fuel consumption, and that any potential fuel economy improvements would depend on the specific vehicle involved and the stringency of the applicable emissions standards. However, without resolving this latter argument, NHTSA concludes that it would not have been economically practicable for Rolls-Royce to have incorporated fuel injection and the 3-way catalyst on its 1980 49-state vehicles. This decision is based on the newness of the technology to the company, marketing considerations, the staff and resources available to the company, and the fact that the company is certifying only one model type in 1981 and subsequent model years.

The other comment was submitted two weeks after the comment period had closed. This comment criticized the timing of the agency's proposal, and the procedure used to reach a final decision on the feasibility of Rolls-Royce using fuel injection and 3-way catalysts on its 1980 49-state vehicles. The comment argued that the agency should have set the proposed alternative standard at the level Rolls-Royce would have achieved had it used fuel injection and the 3-way catalyst, and then lowered the standard only if Rolls-Royce was able to show that it could not have used the technology. This suggestion appears to be a distinction without a difference, because following either it or the procedure chosen by the agency required the manufacturer to demonstrate that it could not have used the item of technology, or the

maximum feasible average fuel economy for the manufacturer would be calculated as if the manufacturer had used the item. The agency notes that by raising the point in the proposed decision, there was sufficient notice and opportunity to comment (as required by the Administrative Procedure Act) to permit the final decision to include the use of fuel injection when calculating the manufacturer's maximum feasible average fuel economy.

This comment also raised two substantive objectives to the proposed decision. First, the comment stated, "NHTSA has concluded that Rolls-Royce was justified in foregoing any engine improvements because Rolls-Royce said doing so might well have increased NOx emissions (45 F.R. at 67111)." This objection is a misstatement of the proposal, in which NHTSA said that a reduction in engine size without an accompanying weight reduction for the vehicle might well have increased NOx emissions. This is because emissions of oxides of nitrogen increase with increased engine loading due to the higher operating temperatures. Increased engine loading can occur with either the substitution of a smaller engine or the use of a lower axle ratio on the same engine. Rolls-Royce reported no net fuel economy gain from reducing engine size, after returning the engine to control the higher NOx emissions. Further, the agency considered other engine improvements, such as alternative engines, but determined they were not technologically feasible, with no mention of NOx emissions.

The second objection was that the rear axle ratio used by Rolls-Royce could have been reduced. However, the agency set forth the reasons that this reduction would not be technologically feasible and economically practicable at 45 F.R. 67112, and the commenter did not explain why it considered the proposed finding to be erroneous or less than maximum feasible. Accordingly, the agency reaffirms its finding.

After analyzing the public comments received on the proposed decision, NHTSA believes that the fuel economy levels proposed therein represent Rolls-Royce maximum feasible average fuel economy for the 1979 and 1980 model years. Therefore, based on its conclusions that it was not technologically feasible and economically practicable for Rolls-Royce to improve the fuel economy of its 1979 and 1980 model year automobiles above an average of 10.8 mpg and 11.1 mpg, respectively, that other Federal automobile standards did not affect achievable fuel economy beyond the extent considered in this analysis, and that the national effort to conserve energy will be negligibly affected by the granting of the requested exemptions and establishment of alternative standards, NHTSA concludes that the maximum feasible average fuel economy for Rolls-Royce in the 1979 and 1980 model years was 10.8 and 11.1 mpg, respectively. Therefore, the agency is exempting Rolls-Royce from the generally applicable standards and is establishing alternative standards of 10.8 mpg for the 1979 model year and 11.1 mpg for the 1980 model year.

In consideration of the foregoing, 49 CFR Part 531 is amended by revising §531.5(b)(2) to read as follows:

§531.5 *Fuel economy standards.*

* * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * *

(2) Rolls-Royce Motors, Inc.

Model Year	Average fuel economy standard (miles per gallon)
1978	10.7
1979	10.8
1980	11.1

* * *

Issued on May 28, 1981.

Raymond A. Peck, Jr.
Administrator

46 F.R. 29944
June 4, 1981

PREAMBLE TO AN AMENDMENT TO PART 531—AVERAGE FUEL ECONOMY STANDARDS FOR PASSENGER AUTOMOBILES

(Docket No. LVM 82-01; Notice 2)

ACTION: Final Rule.

SUMMARY: This notice grants petitions by Aston Martin Lagonda, Ltd. (Aston Martin), Avanti Motor Corporation (Avanti), Checker Motor Corporation (Checker), Excalibur Automobile Corporation (Excalibur), and Rolls-Royce Motors, Ltd. (Rolls-Royce), requesting that they be exempted from the generally applicable average fuel economy standards for 1981–1985 passenger automobiles, and that lower alternative standards be established for those companies. This notice, which was preceded by a proposal requesting public comments, establishes those exemptions and alternative standards under the authority of the Motor Vehicle Informaton and Cost Saving Act. The alternative standards are the same as those proposed except in the case of Checker. Checker has stopped production of all its passenger automobiles. Accordingly, its petition for the 1983–85 model years is treated as moot.

DATE: These exemptions are effective for model years 1981–1985.

SUPPLEMENTARY INFORMATION: The NHTSA is exempting Aston Martin, Avanti, Excalibur, and Rolls-Royce from the generally applicable average fuel economy standards for passenger automobiles manufactured in the 1981–1985 model years and establishing alternative standards applicable to those companies in those model years. Checker is granted exemptions and subject to alternative standards for the 1981 and 1982 model years.

These exemptions are issued under the authority of section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended ("the Act") (15 U.S.C. 2002(c)). Section 502(c) provides that a manufacturer of passenger automobiles which manufacture fewer than 10,000 vehicles annually may be exempted from the generally applicable average fuel economy standard for a particular model year if that standard is greater than the low volume manufacturer's maximum feasible average fuel economy and if the NHTSA establishes an alternative standard applicable to that manufacturer at the maximum feasible average fuel economy. In determining the manufacturer's maximum feasible average fuel economy, section 502(e) of the Act (15 U.S.C. 2002(e)) requires the NHTSA to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

This final rule was preceded by a notice announcing the NHTSA's proposed decision to grant an exemption to all five of these companies for all five model years (47 FR 20639; May 13, 1982). NHTSA received only one comment during the 45-day comment period. The comment was from Checker.

Checker stated that its financial condition would not permit it to carry out its plans to improve fuel economy for its 1983–1985 model year vehicles, and requested lower alternative standards for each of those model years. On July 9, 1982, Checker ended production of its passenger automobiles with no plans to resume that production. Accordingly, NHTSA is dismissing Checker's petition for exemption during the 1983–1985 model years as moot. Exemptions and alternative standards are established for the 1981 and 1982 model years, the years in which Checker was producing automobiles. No other comments were received.

Based on its conclusions that the maximum feasible average fuel economy levels for each of the petitions during the 1981–1985 model years would be as shown below, that other Federal motor

vehicle standards would not affect achievable fuel economy beyond the extent considered in this analysis, and that the national effort to conserve energy will not be affected by the granting of these requested exemptions, NHTSA hereby exempts the five petitioners from the generally applicable average fuel economy standards and establishes alternative standards for the petitioners at the levels shown below.

Part 531—[Amended]

In consideration of the foregoing, 49 CFR Part 531 is amended by revising § 531.5 to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

(1) Avanti Motor Corporation.

Average Fuel Economy Standard

Model year	Miles per gallon
1978	16.1
1979	14.5
1980	15.8
1981	18.2
1982	18.2
1983	16.9
1984	16.9
1985	16.9

(2) Rolls-Royce Motors, Inc.

Average Fuel Economy Standard

Model year	Miles per gallon
1978	10.7
1979	10.8
1980	11.1
1981	10.7
1982	10.6
1983	9.9
1984	10.0
1985	10.0

(3) Checker Motors Corporation.

Average Fuel Economy Standard

Model year	Miles per gallon
1978	17.6
1979	16.5
1980	18.5
1981	18.3
1982	18.4

(4) Aston Martin Lagonda, Inc.

Average Fuel Economy Standard

Model year	Miles per gallon
1979	11.5
1980	12.1
1981	12.2
1982	12.2
1983	11.3
1984	11.3
1985	11.4

(5) Excalibur Automobile Corporation.

Average Fuel Economy Standard

Model year	Miles per gallon
1978	11.5
1979	11.5
1980	16.2
1981	17.9
1982	17.9
1983	16.6
1984	16.6
1985	16.6

Issued on December 3, 1982.

Raymond A. Peck, Jr.,
Administrator.

47 F.R. 55684
December 13, 1982

PREAMBLE TO AN AMENDMENT TO PART 531

Passenger Automobile Average Fuel Economy Standards
[Docket No. LVM 82-01; Notice 5]

ACTION: Final rule granting exemption from average fuel economy standard and establishing an alternative standard.

SUMMARY: This rule is issued in response to a petition filed by Rolls-Royce Motors, Ltd. (Rolls-Royce) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for 1986 model year passenger automobiles, and that a lower alternative standard be established for it. This rule grants Rolls-Royce that exemption and establishes an alternative standard of 11.0 mpg for Rolls-Royce for the 1986 model year.

EFFECTIVE DATE: This exemption and alternative standard apply to Rolls-Royce for the 1986 model year.

SUPPLEMENTARY INFORMATION: NHTSA is exempting Rolls-Royce from the generally applicable average fuel economy standard for 1986 model year passenger automobiles and establishing an alternative standard applicable to Rolls-Royce for that model year. This exemption is issued under the authority of section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended ("the Act") (15 U.S.C. 2002(c)). Section 502(c) provides that a passenger automobile manufacturer which manufactures fewer than 10,000 vehicles annually may be exempted from the generally applicable average fuel economy standard for a particular model year if that standard is greater than the low volume manufacturer's maximum feasible average fuel economy and if NHTSA establishes an alternative standard applicable to that manufacturer at its maximum feasible average fuel economy. In determining the manufacturer's maximum feasible average fuel economy, section 502(e) of the Act (15 U.S.C. 2002(e)) requires NHTSA to consider:

(1) Technological feasibility;
(2) Economic practicability;
(3) The effect of other Federal motor vehicle standards on fuel economy; and
(4) The need of the Nation to conserve energy.

This final decision was preceded by a proposed decision announcing the agency's tentative conclusion that Rolls-Royce should be exempted from the generally applicable 1986 passenger automobile average fuel economy standards, and that an alternative standard of 11.0 mpg should be established for Rolls-Royce in the 1986 model year; 50 FR 5405, February 8, 1985. No comments were received on the proposed decision.

The agency is adopting the tentative conclusions set forth in the proposed decision as its final conclusions, for the reasons set forth in the proposed decision. Based on the conclusions that the maximum feasible average fuel economy level for Rolls-Royce in the 1986 model year is 11.0 mpg, that other Federal motor vehicle standards will not affect achievable fuel economy beyond the extent considered in the proposed decision, and that the national effort to conserve energy will not be affected by granting this requested exemption, NHTSA hereby exempts Rolls-Royce from the generally applicable passenger automobile average fuel economy standard for the 1986 model year and establishes an alternative standard of 11.0 mpg for Rolls-Royce in the 1986 model year.

NHTSA has analyzed this decision, and determined that neither Executive Order 12291 nor the Department of Transportation regulatory policies

and procedures apply, because this decision is not a "rule," which term is defined as "an agency statement of general applicability and future effect." This exemption is not generally applicable, since it applies only to Rolls-Royce. If the Executive Order and the Department policies and procedures were applicable, the agency would have determined that this action is neither "major" nor "significant." The principal impact of this exemption is that Rolls-Royce will not be required to pay civil penalties if it achieves its maximum feasible average fuel economy, and purchasers of its vehicles will not have to bear the burden of those civil penalties in the form of higher prices. Since this decision sets an alternative standard at the level determined to be Rolls-Royce's maximum feasible average fuel economy, no fuel would be saved by establishing a higher alternative standard. The impacts for the public at large will be minimal.

The agency has also considered environmental implications of this decision in accordance with the National Environmental Policy Act and determined that this decision will not significantly affect the human environment. Regardless of the fuel economy of a vehicle, it must pass the emissions standards which measure the amount of emissions per mile travelled. Thus, the quality of the air is not affected by this exemption and alternative standard. Further, since Rolls-Royce's 1986 automobiles cannot achieve better fuel economy than 11.0 mpg, granting this exemption will not affect the amount of gasoline available.

Since the Regulatory Flexibility Act may apply to a decision exempting a manufacturer from a generally applicable standard, I certify that this decision will not have a significant economic impact on a substantial number of small entities. This decision does not impose any burdens on Rolls-Royce. It does relieve the company from having to pay civil penalties in the 1986 model year. Small organizations and small governmental jurisdictions generally are not purchasers of Rolls-Royce automobiles. In any event, since the prices of 1986 Rolls-Royce automobiles are not affected by this decision, the purchasers will not be affected.

List of Subjects in 49 CFR Part 531

Energy conservation, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 531 is amended by revising §531.5(b)(2) to read as follows:

PART 531—PASSENGER AUTOMOBILE AVERAGE FUEL ECONOMY STANDARDS

1. The authority citation for Part 531 is revised to read as follows:

AUTHORITY: 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

2. §531.5(b)(2) is revised to read as follows:

§531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(2) Rolls-Royce Motors, Inc.

Model year	Average fuel economy standard (miles per gallon)
1978	10.7
1979	10.8
1980	11.1
1981	10.7
1982	10.6
1983	9.9
1984	10.0
1985	10.0
1986	11.0

. . . . . .

Issued on: August 6, 1985

Diane K. Steed
Administrator

50 F.R. 32424
August 12, 1985

PREAMBLE TO AN AMENDMENT TO PART 531

Passenger Automobile Average Fuel Economy Standards
Model Year 1986
[Docket No. FE-85-01; Notice 3]

ACTION: Final rule.

SUMMARY: This notice amends the average fuel economy standard applicable to passenger automobiles manufactured in model year (MY) 1986 by reducing it from 27.5 mpg to 26.0 mpg. This rulemaking was initiated in response to petitions for rulemaking submitted by General Motors (GM) and Ford. The agency's analysis indicates that GM and Ford, constituting a substantial part of the industry, had sufficient plans to meet the 27.5 mpg standard in MY 1986 and made significant progress toward doing so, but were prevented from fully implementing those plans by unforeseen events. Among other things, there has been a substantial shift in consumer demand toward larger cars and larger engines, away from the sales mixes recently anticipated for MY 1986 by GM and Ford. This shift is largely attributable to a continuing decline in gasoline prices. The agency's analysis further indicates that the only actions now available to those manufacturers to improve their fuel economy levels for MY 1986 would involve product restrictions likely resulting in significant adverse economic impacts, including sales losses well into the hundreds of thousands and job losses well into the tens of thousands, and unreasonable restrictions on consumer choice. Based on its consideration of the relevant statutory criteria, NHTSA has determined that the maximum feasible average fuel economy level for MY 1986 is 26.0 mpg.

DATES: The amendment made by this rule to the *Code of Federal Regulations* is effective November 3, 1985. The standard is applicable to the 1986 model year.

Background

A. *The Energy Policy and Conservation Act*

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973-74, the Congress enacted the Energy Policy and Conservation Act. Based on the relatively low average fuel economy of cars at that time (14 mpg for model year 1974 cars) and on a report by the Department of Transportation on the potential for improving that average, Congress included a provision in that Act establishing the automotive fuel economy regulatory program. That provision added a new title, Title V, "Improving Automotive Efficiency," to the Motor Vehicle Information and Cost Savings Act.

Title V specified corporate average fuel economy (CAFE) standards for cars of 18, 19 and 20 mpg for model years 1978, 1979, and 1980, respectively, and 27.5 mpg for 1985 and thereafter. The Secretary of Transportation was required to establish standards for model years 1981-84. Section 502(a)(3) required that the standards for each of those model years be set at a level which (1) was the maximum feasible average fuel economy level and (2) would result in steady progress toward meeting the 27.5 mpg standard for model year 1985.

Although Congress clearly established the 27.5 mpg value as a goal to strive for (27.5 mpg is roughly twice the MY 1974 estimated CAFE), it recognized that such long-term goals are subject to considerable uncertainty. The Act permits the standard to be reconsidered by the Department based on up-to-date information and changing trends and assumptions. Section 502(a)(4) provides that the Secretary of Transportation can raise or lower the 27.5 mpg standard for model year 1985 or for any subsequent model year if he or she determines that some other standard represents the maximum feasible average fuel economy level. In determining maximum feasible average fuel economy, the Secretary is required under section 502(e) of the Act to consider four factors: technological feasibility, economic practicability,

the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy.[1]

Congress' recognition of the need for flexibility is clearly indicated by the Energy Policy and Conservation Act's legislative history. The report accompanying H.R. 7014, the bill containing the House version of the fuel economy provisions (which would have specified a 28.0 mpg standard for 1985 and thereafter), stated that "the automobile industry has a central role in our national economy and that any regulatory program must be carefully drafted so as to require of the industry what is attainable without either imposing impossible burdens on it or unduly limiting consumer choice as to capacity and performance of motor vehicles." H.R. Rep. No. 94-340, 94th Cong., 1st Sess. 87 (1975). The report recognized the difficulty in establishing goals ten years in the future by stating that "(t)he 1985 average fuel economy standard presented a different problem [then establishing standards for MY's 1978-80] because of the high level of uncertainty which attends any attempt to predict technological feasibility a decade into the furure." Id. at 88. The Committee also stated that although the 1985 standard was a "clear target," it also provided DOT the ability to amend that target so as to provide the program "with the necessary flexibility." Ibid.

It is noteworthy that the Secretary was given authority to lower the standard for MY 1985 or for any subsequent year to 26.0 mpg without such action being subject to a one-house veto. Conversely, any action to raise the standard above 27.5 mpg or to lower it beyond 26.0 mpg was subject to that form of congressional review and disapproval. While such legislative vetoes have since been declared unconstitutional in the Supreme Court's *Chadha* decision, the different treatment in the original legislation of action to lower the standard to any level between 26.0 mpg and 27.5 mpg appears to reflect Congress' view of the likelihood of such events and its willingness to accept – without formal review – Departmental actions which might make slight changes in the long-term goal established by the Act.[2]

B. *Setting the 1981-84 Standards*

On June 30, 1977, NHTSA published in the *Federal Register* (42 FR 33534) a final rule establishing the 1981-84 passenger automobile CAFE standards. As part of establishing these standards, the agency developed estimates of the maximum feasible fuel economy for each manufacturer for model years 1981 through 1985. The agency's conclusion at that time was that "levels of average fuel economy in excess of 27.5 mpg are achievable in the 1985 time frame." 42 FR 33552. The agency believed that it was feasible in model year 1985 for General Motors to achieve an average fuel economy level of 28.9 mpg, Ford 27.9 mpg, and Chrysler 28.7 mpg. 1977 Rulemaking Support Paper (RSP), p. 5-38 (Table 5.11). Those levels were based on a number of assumptions, including the ability of manufacturers to maintain a rapid rate of introduction of technology, consumer acceptance of a 10 percent reduction in vehicle acceleration, and significant use of a widespread range of technological options, including weight reduction, improved transmissions and lubricants, reduced aerodynamic drag, reduced accessory losses, and reduced tire rolling resistance.

The agency's estimates did not assume a downward mix shift in automobile sizes or the use of diesel engines. The agency concluded in 1977 that a standard set at a level requiring substantial mix shifts would not be economically practicable due to the risk that a significant number of consumers might defer purchasing new automobiles, resulting in a substantial sales drop. However, these techniques were viewed in the 1977 rule as "constituting a safety margin" for manufacturers in the event that other technological improvements did not result in sufficient CAFE improvements. 42 FR 33545, June 30, 1977.

As to foreign manufacturers, the 1977 RSP projected that all but three of them could improve their average fuel economy levels, without expanded use of diesel engines, sufficiently to meet the 27.5 mpg standard. With fleet fuel economy improvements from additional diesels included in the foreign fleet projections, only one manufacturer, Mercedes-Benz, was projected to fall below the 1985 standard.

It should be emphasized that the agency's 1977

[1] Responsibility for the automotive fuel economy program was delegated by the Secretary of Transportation to the Administrator of NHTSA (41 FR 25015, June 22, 1976).

[2] The Department of Justice has advised that the legislative veto provision in section 502(a)(4) is fully severable from the balance of that section. Thus, the Department of Transportation retains its authority to establish fuel economy standards both within and outside the 26.0 to 27.5 mpg range, so long as the standard is at the "maximum feasible" level for the model year in question.

estimates were intended to demonstrate the feasibility of achieving the 27.5 mpg standard and not to predict what specific actions the manufacturers would actually take to achieve that standard. The agency's estimates were based on one scenario of what the agency believed manufacturers could do to achieve an average fuel economy level of 27.5 mpg by 1985. Manufacturers were free to pursue other courses of action to achieve the 27.5 mpg fuel economy level.

Subsequent to the issuance of the June 1977 final rule, the domestic manufacturers all indicated they expected to meet the requirements.

C. *Events From 1977 to 1985*

In January 1979, NHTSA presented new feasibility estimates for each manufacturer for model years 1980 through 1985 in its Third Annual Report to the Congress on the Automotive Fuel Economy Program (44 FR 5742, January 29, 1979). The agency concluded that "(o)n balance, the conclusions reached during the 1981-84 rulemaking . . . are similar to those resulting from the most recent assessments. These assessments indicate that all domestic manufacturers can exceed the scheduled standards for each year through 1985." 44 FR 5757.

NHTSA recognized in its Third Annual Report that the changes in vehicle design necessary to meet the fuel economy projections would require tremendous outlays of capital. The agency stated:

> . . . the important impact of the fuel economy program on the industry relates directly to the fact that the industry must have the resources directly to generate an "extra" $11.5 billion in capital. This ability to make increased investments while maintaining financial health is the criterion which was of prime importance in determining whether the standards are "economically practicable." The Department largely views this criterion to mean that the investment requirements are within the industry's capability but not so stringent as to threaten economic hardship for the industry as a whole. 44 FR 5765.

NHTSA also recognized that its feasibility estimates were dependent on the continued financial health of the industry and could be subject to change in the event of a severe economic downturn. The agency stated:

> DOT also analyzed the degree to which potential anti-competitive pressures would be increased if the economy were to suffer a downturn. Certainly in a severe economic downturn, companies with a weaker financial base will find their resources strained more severely . . . . Thus, if a serious decline in auto sales occurs in conjunction with a severe economic downturn, the Department has the authority to revise the standards since regulations that were "economically practicable" in a healthy economy might not be so in a recession. . . . 44 FR 5772.

The Third Annual Report noted that a number of manufacturers did not agree with the agency's conclusion that "(t)he technology is available that will enable manufacturers to achieve an average fuel economy of 27.5 mpg without reducing vehicle interior space or significantly affecting performance and without significantly changing the mix of size classes." The document stated:

> Ford indicated the conclusion is wishful thinking on NHTSA's part. The technology on which Ford's predictions are based are the PROCO and/or diesel engines. They indicated that neither engine is "available" at the present time because of various problems yet to be solved. Ford also said the second round of downsizing will decrease interior volume unless very expensive materials are used and indicated that smaller engines in its vehicles will cause reduced vehicle acceleration.
>
> GM stated that the rise of standards at the rate of two miles-per-gallon per year will cause all manufacturers to introduce unproven technology and that there will be compromises in vehicle acceleration and owner utility. GM stated that much of the available technology is "high risk," and may not be "commercially practicable in production hardware." 44 FR 5775-5776.

Between January and May of 1979, NHTSA received a number of submissions from Ford and General Motors on the 1981-84 fuel economy standards for passenger automobiles asserting that those standards should be reduced. In response to these submissions, the agency published a document entitled "Report on Requests by General Motors and Ford to Reduce Fuel Economy Standards for MY 1981-85 Passenger Automobiles," DOT HS-804 731, June 1979. The report concluded that the standards were technologically feasible and economically practicable and noted that both companies had submit-

ted product plans for meeting the standards. Report, p. 14.

One year later, the nation was in the midst of another energy crisis, brought on by events in Iran. Gasoline prices were rising rapidly, creating significantly increased consumer demand for small cars. The U.S. city average retail price for unleaded gasoline rose from 90 cents per gallon in 1979 to $1.25 in 1980. (In 1984 dollars, this increase was from $1.24 in 1979 to $1.57 in 1980.) In light of these changed conditions, the industry announced plans to significantly exceed the 27.5 mpg standard for 1985. Both Ford and GM, as well as Chrysler and American Motors, indicated that they expected to achieve average fuel economy in excess of 30 mpg for that model year. Product plans submitted to NHTSA by those companies indicated that the projections assumed that consumer demand would produce significant mix shifts toward smaller cars, and rapid introduction of new technology. A letter submitted to the agency by Ford in July 1980, however, cautioned that "it is important to emphasize that the affordability of many of these programs is dependent upon substantial improvement in the market and economic conditions."

On January 26, 1981, NHTSA published an advance notice of proposed rulemaking (ANPRM) in the *Federal Register* (46 FR 8056) which addressed the issue of passenger automobile fuel economy standards for model year 1985 and beyond. That notice and an accompanying paper entitled "Analysis of Post-1985 Fuel Economy," assumed that manufacturers would achieve their announced average fuel economy goals of over 30 mpg for 1985. The notice also took note, however, of a deepening economic crisis then facing the auto industry and possible adverse effects on financing investments for improving fuel economy. The notice stated:

> A major issue is the capability of the domestic manufacturers to finance investments for fuel economy improvements after 1985 when they have strained that capability to make the investments needed to meet the fuel economy standards through model year 1985. It is expected that the combined losses of the domestic manufacturers for 1980 will exceed $4.5 billion. The domestic automobile industry's traditionally more profitable mid- and large-size passenger automobiles are once again selling poorly, while smaller passenger automobiles are selling at very high volumes. Indefinite layoffs of automobile workers now exceed 175,000, and significant operational cash shortfalls are being projected for the domestic manufacturers in the early 1980's. This will involve substantial borrowing by the domestic manufacturers, whereas they have traditionally used internal sources of funds for capital expenditures. Thus, the pace at which the domestic manufacturers can improve their fuel economy must be closely examined. . . . 46 FR 8058-8059.

On April 16, 1981, NHTSA published in the *Federal Register* (46 FR 22243) a notice withdrawing the ANPRM. The notice stated that "(t)his action is being taken in recognition of market pressures which are creating strong consumer demand for fuel-efficient vehicles and sending clear signals to the vehicle manufacturers to produce such vehicles. It is expected that the market will continue to act as a powerful catalyst. . . ."

Conditions affecting fuel economy changed dramatically after 1981, however, following decontrol of domestic oil and other external factors increasing available supplies. Gasoline prices did not continue to rise but instead declined over time. This, combined with economic recovery, caused consumer demand to shift back toward larger cars and larger engines. Data submitted to the agency by GM and Ford in mid-1983 indicated that instead of achieving fuel economy well in excess of the 27.5 mpg standard for MY 1985, they would be unable to meet the levels prescribed by the standard.

Petitions and Grant Notice

In March 1985, both GM and Ford submitted petitions for rulemaking requesting that NHTSA reduce the automotive fuel economy standards for passenger cars for the 1986 model year and beyond from 27.5 mpg to 26.0 mpg. The petitioners stated that factors beyond their control, including lower gasoline prices and a resultant shift in consumer demand toward larger cars and larger engines, had reduced their fuel economy capability. NHTSA granted the GM and Ford petitions in a notice published in the *Federal Register* (50 FR 12344) on March 28, 1985, and requested public comments. The agency noted that it was already considering, in connection with a petition for rulemaking submitted by the Center for Auto Safety (CFAS) and the Environmental Policy Institute (EPI), whether the fuel economy standards for passenger cars

manufactured in model years 1987 and thereafter should be amended. The CFAS/EPI petition had requested that those standards be increased.

NHTSA stated in the March 1985 notice that as a first step in its consideration of the fuel economy standards for passenger cars, it was focusing its attention on the 1986 model year. The agency explained that it believed this approach was appropriate in view of the possibility of serious economic harm cited by GM and Ford and the limited remaining time for amending the 1986 standard.

While the agency focused its attention first on the 1986 model year, it is in the process of analyzing the data for MY 1987 and subsequent years. The agency currently anticipates issuing shortly a notice proposing a range of alternatives for MY 1987 and subsequent years.

Notice of Proposed Rulemaking

On July 22, 1985, after considering the comments submitted in response to the March 1985 notice and based on a detailed agency analysis, NHTSA published in the *Federal Register* (50 FR 29912) a notice of proposed rulemaking (NPRM) to amend the model year 1986 passenger automobile average fuel economy standard by reducing it from 27.5 mpg to 26.0 mpg. The agency explained that, based on its analysis and in light of the four factors of section 502(e), it had tentatively concluded that the maximum feasible average fuel economy level for MY 1986 is 26.0 mpg. The agency's analysis indicated that GM and Ford, which together constitute a substantial part of the industry, had made significant efforts to meet the 27.5 mpg standard, and that those efforts had been overtaken by unforeseen events. The agency's analysis further indicated that the only actions now available to GM and Ford to significantly improve their fuel economy levels for MY 1986 would involve product restrictions likely resulting in significant adverse economic impacts, including sales losses well into the hundreds of thousands and job losses well into the tens of thousands, and unreasonable restrictions on consumer choice. The agency invited both written and oral comments on the proposal. A public meeting was held on August 8, 1985, in Washington, D.C., to receive oral comments.

Public Comments

Comments were received both from parties strongly supporting the proposed reduction in the MY 1986 passenger automobile CAFE standard and parties strongly opposing such action. Many of the parties reiterated the positions they had taken in response to the March 1985 notice granting Ford's and GM's petitions for rulemaking.

Supporters of the agency's proposal included GM, Ford, several automotive trade associations, the U.S. Department of Commerce, the U.S. Department of Energy (DOE), the Washington Legal Foundation, more than 40 members of Congress, and about 60 percent of the approximately 3,000 private individuals who submitted comments. The Council of Economic Advisers (CEA) supported the direction of the proposal, but also argued that it did not go far enough.

GM and Ford reemphasized the issues raised by their petitions, focusing particular attention on the efforts they have made to improve their fuel economy and on the serious economic consequences which could occur if the standard were not reduced. Those commenters also emphasized the relatively small effect the proposed amendment would have on energy conservation. Ford estimated that lowering the standard would increase U.S. petroleum consumption by no more than 0.06 percent, while GM stated that the effect would be an increase of less than 0.04 percent. Those manufacturers submitted various additional information in support of their petitions, some of it in response to agency requests for further explanation of their views and arguments. While both manufacturers strongly supported the agency's proposal, they did raise some issues concerning the agency's analysis. Also, GM objected to NHTSA's conclusion in the NPRM that the Cost Savings Act generally requires fuel economy standards to be set without regard to carryforward/carryback credits.

The Automobile Importers of America (AIA) stated that continuation of the 27.5 mpg standard would unduly restrict consumer choice and harm importers, while the proposed reduction in the standard would not unreasonably affect energy conservation. AIA argued that NHTSA has considerable discretion in amending the CAFE standard within the range of 26.0 mpg to 27.5 mpg, that consumer demand is a factor which the agency must consider as part of its standard-setting analysis, and that benefits must outweigh costs for a standard to be technologically feasible and economically practicable. AIA also stated that it does not agree with NHTSA's conclusion that a

given model year's standard cannot be reduced after the start of the model year. With respect to whether the agency should consider the need for carryback credits as part of its standard-setting process, that commenter argued that NHTSA should consider previously approved carryback plans.

Professor Robert Leone of Harvard University, commenting on behalf of AIA, argued that a 27.5 mpg standard for model year 1986 is not technically feasible due to inadequate lead time; not economically practicable because of excessive burdens on consumers, producers and workers; not feasible because fuel economy requirements for light trucks encourage diversion of sales from passenger cars to vans and light trucks, and not sound energy policy because of possible adverse effects on energy consumption. With respect to this last issue, Professor Leone stated that if one consumer in five who was frustrated by the inability to purchase a passenger car of choice chose to buy a light truck, specialty vehicle, or van instead, the net impact of a 27.5 mpg standard over a 26.0 mpg standard would be zero. That commenter also indicated that if one consumer in five who was frustrated by the inability to purchase a passenger car of choice decided to keep an old 18 mpg car on the road instead, gasoline fuel economy for the fleet as a whole would actually fall with the more stringent 27.5 mpg standard.

The National Automobile Dealers Association (NADA) stated that the agency's proposal would directly benefit the automobile buying public and the new car dealer industry that serves it. According to that commenter, a 26.0 mpg standard would ensure that GM and Ford customers would continue to be allowed the choice of purchasing vehicles of greater size, utility, comfort and performance. NADA stated that an overly stringent standard that leaves the manufacturer no choice but to reduce its production of larger vehicles would likely wreak as much, if not more, economic havoc on the dealer whose customers depend on those cars, as on the manufacturer itself.

The Recreational Vehicle Industry Association (RVIA) and several other commenters stated that continuation of the 27.5 mpg standard could create a lack of tow vehicles to safely pull travel trailers and other items of equipment. RVIA stated that larger cars with large engines are required to pull many travel trailers, due to the trailers' size and weight, and noted that there are very few travel trailers that can be towed with a six-cylinder engine.

The European manufacturers generally cited the significant progress they have already made in improving fuel economy, increased market demand for larger cars and larger engines, and the difficulty that limited-line manufacturers have in achieving higher average fuel economy if they do not produce small cars whose fuel economy can be averaged with that of their larger cars.

While the U.S. Department of Commerce did not submit a new comment in response to the July 1985 NPRM, its comment on the March 1985 grant notice expressed support for reducing the standard based upon its view that achievement of the 27.5 mpg standard for MY 1986 no longer appears to be economically practicable or technologically feasible. That Department stated that it believes GM and Ford could achieve that standard only by reducing their U.S. product offerings and adjusting their output mix, with economically damaging consequences, including substantial sales losses and employment decline.

The U.S. Department of Energy stated that it supports NHTSA's proposal and submitted an analysis concluding that GM and Ford would not be able to achieve CAFE of 27.5 mpg for model year 1986 without restricting the availability of larger car and station wagon models and larger optional engines. DOE stated that such actions would result in lost sales of between 630,000 and 770,000 vehicles for GM and between 160,000 and 230,000 for Ford. That commenter also stated that it believes efforts to reduce energy use serve the Nation's interest only to the extent that they contribute to the broader goals of increased economic growth and improved economic efficiency. Further, it does not believe that the "need to conserve energy" requires or justifies the imposition of cost-ineffective product changes or product choice restrictions on consumers and manufacturers.

On September 9, 1985, the Department of Energy provided a partial draft analysis prepared by one of its contractors, Energy and Environmental Analysis, Inc. (EEA), which concluded that GM could achieve 26.4 mpg (not including the GM/Toyota joint venture car) for MY 1986 and Ford 26.85 mpg. The Department of Energy noted that the results of that report do not represent either that Department's recommendation on a specific value for the maximum feasible level of

fuel economy in 1986 nor necessarily its views on various technical issues.

While the Council of Economic Advisers supported the direction of the agency's proposal, it stated that even a 26.0 mpg standard could increase the relative price of large cars, limit consumer choice, harm U.S. manufacturers in international competition, and cause the loss of jobs in efficient domestic production sectors. CEA urged a reinterpretation of statutory criteria to permit adoption of what it termed "nonbinding" standards, i.e., standards which permit major automobile manufacturers to produce and price automobiles in response to free market forces, without concern that their competitive production and pricing decisions will lower their CAFE and lead to civil penalties. CEA also argued that safety is adversely affected by shifts to smaller, more fuel-efficient cars and that the agency should consider the relationship between possible adverse safety effects and improved fuel economy.

Chrysler, the Energy Conservation Coalition (ECC), Americans for Energy Independence, EPI, CFAS, the attorney general of California, several members of Congress, and various private individuals opposed reducing the MY 1986 fuel economy standard.

Chrysler argued, as it had in its comment on the March 1985 notice, that the issue of this rulemaking is not whether the petitioners are currently capable of meeting the 27.5 mpg standard, but instead whether petitioners did everything possible, within the limits of technological feasibility and economic practicability, to meet the 27.5 mpg standard prescribed by Congress. According to that commenter, the threatened closing of factories and employee layoffs have nothing to do with the rulemaking. That commenter argued that the statute does not require such actions but instead prescribes civil penalties for noncompliance. Chrysler stated that since Congress provided nearly 10 years to meet the standard, the "maximum feasible" average is the highest level the petitioners could have reached if they had done everything reasonably possible over the course of that entire period. According to that commenter, if GM and Ford could have met the 27.5 mpg standard with due diligence, the agency has no legal authority to reduce it.

Chrysler alleged that even though GM and Ford have known since at least 1983 that their CAFE performance would come up short in 1985 and 1986, those companies took no adequate corrective action to raise their CAFE averages and, to the contrary, took a number of actions which have further reduced their CAFE averages.

Chrysler also reemphasized its position that reducing the standard would cause substantial harm to those manufacturers that, in its words, "chose to comply." That commenter argued that the proposed amendment would give a competitive advantage to GM and Ford, since they can most quickly adapt to the new standard. Chrysler argued that the competitive injury would fall on the firms that least deserve it, since they have, in that company's words, "already absorbed the substantial costs of CAFE compliance."

ECC objected to several aspects of the agency's analysis. That commenter argued that NHTSA's analysis erred by assuming that Ford and GM had to suddenly increase their CAFE's to 27.5 mpg by MY 1986. That commenter argued that if manufacturers petitioned NHTSA just before the start of each model year for a reduction in the standard, after having made no effort to improve fuel economy, the agency would always find that the previously established standard could not be met if it considered only what petitioners could do in the remaining time. ECC also argued, like Chrysler, that Congress did not intend to bar manufacturers from selling vehicles that would place them in noncompliance with fuel economy standards.

ECC also argued that the agency erred in analyzing technological feasibility by relying primarily on the level of consumer demand for fuel efficient vehicles to define the maximum technologically feasible standard, erred in analyzing the need of the nation to conserve energy by failing to adequately consider future energy needs, and reviewed the energy consumption effects of the proposed 26.0 mpg standard in an unreasonably narrow framework by not recognizing that small, steady improvements in fuel economy result in significant long-term energy savings. ECC also argued that comparing GM and Ford fleets to Chrysler's fleet indicates that Chrysler has more fuel-efficient technology in its fleet.

EPI argued that a reduction in the MY 1986 CAFE standard would sanction the failure of certain automobile companies to comply with the Energy Policy and Conservation Act; exacerbate what it contends is a currently diminished focus on energy conservation in the transportation sector; increase automobile fuel consumption, thereby

promoting U.S. dependence on oil imports; and greatly diminish or eliminate chances for enactment of future Federal policies to encourage progress in the production of fuel-efficient vehicles by the domestic manufacturers. Like Chrysler, that commenter argued that GM and Ford should have done more during recent years to improve their fuel economy. EPI also stated that carryback plans submitted by GM and Ford are inconsistent with their petitions to reduce the 27.5 mpg standard, since the carryback plans constitute a conclusion by those companies that they have the ability to exceed that standard.

CFAS stated that NHTSA improperly relied on market demand as a basis for proposing to reduce the standards, arguing that the Cost Savings Act intended that fuel economy standards lead the market rather than that the market lead fuel economy standards. CFAS also argued that the proposal cannot be sustained on grounds of economic practicability, since a difference of 1.5 mpg for a manufacturer which fails to meet a standard is simply a penalty of $75 per car. That commenter also argued that GM and Ford are below the 27.5 mpg standard because of their own marketing decisions, including retention of old models and old technology, that GM and Ford used various "accounting tricks" to project lower fuel economy for model year 1986 than they are capable of achieving, and that the agency should consider the ability of GM and Ford to obtain carryback credits as a basis for not reducing the model year 1986 standard.

Agency's Analytical Approach

As discussed above, section 502(a)(4) provides that if NHTSA determines that a level other than 27.5 mpg is the maximum feasible average fuel economy for 1985 or any subsequent model year, the agency may change the standard for that year to that level. If NHTSA were writing on a blank slate and establishing the MY 1986 standard for the first time, it would simply evaluate the current average fuel economy levels of the manufacturers and determine what improvements could be made in those levels between now and the end of MY 1986. This would involve taking into account the capabilities of each manufacturer and considering the four factors listed in section 502(e), i.e., technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the Nation to conserve energy.

The agency agrees with Chrysler and other commenters, however, that the issue is not solely whether manufacturers are now capable of meeting the 27.5 mpg standard. Since the Cost Savings Act imposed a long-term obligation on manufacturers to achieve a 27.5 mpg fuel economy level, it would be inappropriate to reduce the standard if a current inability to meet the standard simply resulted from manufacturers previously declining to take appropriate steps to improve their average fuel economy as required by the Act. Therefore, the agency must evaluate the manufacturers' past efforts to achieve higher levels of fuel economy as well as their current capabilities.

On the other hand, the agency does not consider it appropriate to judge each and every manufacturer product action by 20-20 hindsight. In assessing the sufficiency of manufacturers' fuel economy efforts, it is necessary to take account of the information available to manufacturers at the time product decisions were being made. Manufacturers had an obligation to take whatever steps were necessary, consistent with the factors of section 502(e), to meet the 27.5 mpg standard. To the extent that manufacturers had plans to meet the standard which subsequently became infeasible due to unforeseen events, NHTSA does not believe the manufacturers should be charged with a failure to make a sufficient effort.

The agency's analytical approach thus consists of first evaluating the maximum feasible average fuel economy level that manufacturers are now capable of achieving in MY 1986, taking into account the four factors of section 502(e) and second, to the extent that level is determined to be below 27.5 mpg, assessing the sufficiency of manufacturers' efforts to meet the 27.5 mpg standard, in light of the information available to manufacturers at the time fuel economy product decisions were being made and the four factors of section 502(e).

NHTSA has followed this same approach throughout this rulemaking. Therefore, ECC is incorrect in alleging that the agency simply assumed that Ford and GM would have to suddenly increase their CAFE's to 27.5 mpg by MY 1986.

Summary of Agency Decision and Analysis

After carefully considering all of the comments and other available information and making a detailed analysis, NHTSA has determined that the

maximum feasible average fuel economy level for MY 1986 is 26.0 mpg. The agency's analysis, which is similar to that presented in the NPRM, indicates that GM and Ford, constituting a substantial part of the industry, had sufficient plans to meet the 27.5 mpg standard, made significant progress toward doing so, and were prevented from fully implementing those plans by unforeseen events. The agency's analysis further indicates that the only actions now available to GM and Ford to improve their fuel economy levels for MY 1986 would involve product restrictions likely resulting in significant adverse economic impacts, including sales losses well into the hundreds of thousands and job losses well into the tens of thousands, and unreasonable restrictions on consumer choice. Accordingly, NHTSA is amending the MY 1986 standard from 27.5 mpg to 26.0 mpg.

Manufacturer Capabilities for MY 1986

In evaluating manufacturers' fuel economy capabilities for MY 1986, the agency analyzed the manufacturers' current projections and underlying product plans and then considered what, if any, additional actions the manufacturers could take to improve their fuel economy.

A. *Manufacturer projections*

While manufacturers have greatly improved their CAFE during the past decade, current projections indicate that the CAFE levels for a number of manufacturers remain below 27.5 mpg.

The NPRM indicated that, not including EPA test adjustment credits,[3] GM projected its MY 1986 CAFE at 25.7 mpg, 0.6 mpg higher than the company's projection of 25.1 mpg for MY 1985. This improvement was projected to result primarily from a reduction in the average weight of the GM fleet. The weight reduction is due mainly to the introduction of a new front-wheel drive large car (the GM70 – replacing the rear-drive Buick LeSabre and Oldsmobile 88 models), the introduction of a lighter mid-size luxury car (the GM30 – replacing the E- and K-body models: the Oldsmobile Toronado, Buick Riviera, the Cadillac Eldorado, and the Cadillac Seville) and the introduction of a 4-door version of the GM20 compact. There is an additional fuel economy gain due to the expanded use of 4-speed automatic transmissions. There is also an increase in CAFE because of a slight mix shift toward smaller models. (As discussed elsewhere in this preamble, however, mixes have generally shifted toward larger cars and larger engines over the past several years.) Much of this mix shift is due to an increase in compact sales as a result of the introduction of the 4-door GM20 model, as well as a reduction in the share of GM's mix taken by large car sales.

Several other changes in the characteristics of the GM car fleet have minor, and generally offsetting, effects on the company's projected MY 1986 CAFE. The new models have improved aerodynamics, increasing the company's fuel economy level. However, this effect is essentially offset by the elimination of diesel engines from all models except the Chevette/1000.

GM submitted a letter on June 18, 1985, indicating that its MY 1986 fuel economy projection was likely to change to 26.3 mpg. In its August 2, 1985 mid-model year report, GM confirmed that its MY 1986 CAFE may be as high as 26.3 mpg, including a 0.2 mpg EPA test adjustment credit. This represents a 0.4 mpg increase in GM's projection (since GM's 25.7 mpg projection did not include the EPA test adjustment credit). The increase relates to the length of the model year for certain models and to the type of engines to be placed in certain models. The specific details are subject to a claim of confidentiality.

CFAS argued that GM's MY 1986 projections incorporated a number of "accounting tricks" to lower the MY 1986 CAFE level while inflating the MY 1987 CAFE level. That commenter alleged that GM's projection artificially extends the 1986 model year for fuel-inefficient B and G bodies; decreases the projected fuel economies and mixes

[3] A factor which somewhat complicates analyzing the manufacturers' projections is Environmental Protection Agency (EPA) test adjustment credits. Since 1983, EPA has been engaged in rulemaking to provide CAFE adjustments to compensate for the effects of past test procedure changes. As discussed in the section of this preamble entitled "Other Federal Standards," EPA published its final rule on July 1, 1985. The final rule adopted a formula approach for calculating CAFE adjustments and generally provided higher CAFE adjustments for model year 1985 than for model year 1986.

While manufacturers closely followed the EPA rulemaking and were generally aware, based on the proposal, of what that agency was likely to do, they did not know what EPA's specific decision would be. Therefore, CAFE projections submitted by the manufacturers to this agency before EPA's decision could not fully reflect the EPA test adjustment credits. It should be noted, however, that some but not all manufacturers did include CAFE adjustments in their projections, based on EPA's proposal.

While NHTSA has fully taken account of EPA test adjustment credits throughout this rulemaking, it has, in its analysis, found it necessary to sometimes use manufacturer projections not reflecting the EPA test adjustment credits. The discussion in this preamble indicates which projections include EPA test adjustment credits and which do not.

for fuel-efficient compact J-bodies, GM-20's, and A-wagons, the latter of which are carryovers from the 1985 model year; eliminates the GM/Toyota joint venture car from inclusion in CAFE calculations; and projects higher sales for the G/G-SP cars than are being achieved in 1985.

NHTSA has analyzed each of CFAS's allegations with respect to GM's product plans and concluded that CFAS's arguments do not provide a basis for determining that GM's projected MY 1986 CAFE is unreasonable.

While an earlier GM product plan did include an extended 1986 model year for B and G models, that company's latest plan, submitted on August 2, 1985, does not. It is therefore unnecessary to discuss how an extended model year for a less fuel-efficient vehicle should be considered in determining maximum feasible average fuel economy level.

With respect to CFAS's argument about reduced fuel economies for J-bodies, GM-20's and A-wagons, in GM's latest projections the only model of this group which has overall lower fuel economy in MY 1986 than MY 1985 is the J-body. According to GM, its projection for the J-body is based on incomplete test data. That company estimates that with additional test data the cars will be within 0.1 mpg of the 1985 model. Since GM's product plan projects a somewhat larger difference (the magnitude of which is subject to a claim of confidentiality), the agency considered whether GM's projected CAFE should be adjusted to reflect that estimate. The agency concluded, however, that the effect of such an adjustment on GM's overall MY 1986 CAFE would be negligible. The GM-20's and A-wagons have certain models on which the fuel economy drops from MY 1985 to MY 1986 because of using different vehicles, test variability, test mileage, and/or calibration. However, these declines in fuel economy are more than offset by increases in other configurations of the same model.

The projection of higher sales for the G/G-SP was related to the extended model year for B and G models, discussed above. GM's current product plan does not project higher sales for these cars in MY 1986 than in MY 1985.

With respect to the issue raised by CFAS concerning the GM/Toyota joint venture car, the agency notes that the Cost Savings Act requires manufacturers to meet average fuel economy standards separately for their domestically manufactured and imported fleets. (The purpose of this provision was to attempt to prevent the fuel economy program from inducing domestic manufacturers to increase their importation of foreign-produced cars.) The GM/Toyota joint venture car is not included in GM's MY 1986 projection since it has less than 75 percent domestic content and therefore is considered to be nondomestically manufactured under section 503(b)(2)(E) of the Act.

There is an issue, however, whether GM could count the joint venture car in its domestic CAFE by virtue of an exemption under section 503(b)(3) of the Act. This would assume that the manufacturer of the cars, New United Motor Manufacturing, Inc. (NUMMI), could obtain such an exemption and then transfer it to GM. In fact, NUMMI has not applied for an exemption. The agency notes that the decision whether to apply for an exemption is discretionary. The agency also notes that, even if NUMMI applied for and met the statutory criteria for an exemption and could transfer that exemption to GM, a further issue exists regarding whether GM could then earn or use carryforward/carryback credits in a year in which an exemption exists, because the statutory provision authorizing such exemptions also appears to preclude the use of carryforward/carryback credits by a recipient of such an exemption. Given all these factors, the agency believes it would be too speculative for the agency to count this vehicle in GM's domestic CAFE for MY 1986.

With respect to EEA's conclusion that GM could achieve 26.4 mpg (without the GM/Toyota joint venture car) in MY 1986, the agency notes that EEA used an incorrect baseline for its analysis. EEA states that in November 1984 GM submitted a MY 1986 CAFE projection of 26.9 mpg. It appears that EEA derived this estimate from Attachment 3 of a GM submission dated May 30, 1985 (docket item FE-85-01-N01-067). This GM submission made available to the public information that had been previously categorized as confidential. However, the May 30 submission contained significant errors. These were corrected in a GM submission dated July 16, 1985 (docket item FE-85-01-N01-106). The July 16, 1985 submission correctly identified GM's November 1984 projection as 26.2 mpg for MY 1986 (without EPA test adjustment credits). This estimate is essentially the same as GM's current estimate of 26.1 mpg (without EPA test adjustment credits) or 26.3 mpg (with EPA test adjustment credits). Due to the use of a much

higher, incorrect baseline, EEA's analysis for GM is both overstated and invalid.

The NPRM indicated that, not including EPA test adjustment credits, Ford projected its MY 1986 domestic CAFE to be 26.2 mpg, 0.9 mpg higher than the company's projection of 25.3 mpg for MY 1985. The most visible change in Ford's fleet for MY 1986 is the introduction of the Taurus/Sable mid-size model. This new front-wheel drive car is designed to eventually replace the rear-wheel drive LTD/Marquis models. The new model includes new 2.5 liter 4-cylinder and 3.0 liter V-6 engines, as well as a new 4-speed automatic transmission, and is thus more fuel-efficient than the LTD/Marquis.

Between MY 1985 and MY 1986, Ford projected an increase in mid-size car sales as a percentage of its fleet and a decline in the large car and compact car share of its sales. Some of this effect is caused by the timing of the introduction of new models. This effect results in a slight lowering of Ford's CAFE.

Ford expected a slight increase in its average test weight for MY 1986. Reasons for this increase include the replacement of the 1.6 liter engine in the Escort/Lynx compacts with a 1.9 liter engine, increased sales of an optional larger engine in the Mustang/Capri, and the introduction of a new version of an existing vehicle. This impact on Ford's CAFE is a 0.4 mpg decline, which is completely offset by a reduction in average engine size with the introduction of the Taurus/Sable.

Ford intends to introduce a number of technological improvements for MY 1986. These improvements include engine efficiency improvements, reduced aerodynamic drag (primarily due to the introduction of the Taurus/Sable), lower rolling resistance tires on several models, improved calibrations on two engines, and a number of other, relatively minor, changes.

After the NPRM was issued, Ford estimated in its 1985 mid-model year report that its CAFE for that model year would be higher than previously expected. Ford now projects that its MY 1985 CAFE will be 26.3 mpg, including a 0.5 mpg test adjustment credit. Thus, without the credit, Ford's MY 1985 CAFE is 0.5 mpg higher than projected earlier, 25.8 mpg rather than 25.3 mpg. Since Ford has not changed its MY 1986 projection, this means it now expects a 0.4 mpg improvement in fuel economy between MY 1985 and MY 1986 rather than a 0.9 mpg improvement (when examining CAFE estimates without EPA test adjustment factors).

An analysis of Ford's projections indicates that there are two major reasons for the increase in that company's MY 1985 projection without accompanying increases in its previous MY 1986 projection: (1) a shift in model mix and (2) selection of additional voluntary test vehicles for certain models so that their assigned fuel economy value reflects configurations which have fuel economy values that are higher than those already tested for the purpose of certifying and labeling those models. The use of these additional test vehicles added 0.23 mpg to Ford's MY 1985 CAFE. The volume shift, which consists primarily of increased Tempo/Topaz and Escort/Lynx sales, is due to major marketing programs to increase Ford small car sales. This shift also added 0.23 mpg to Ford's MY 1985 CAFE. Ford argued that this gain cannot continue for MY 1986 because the sales represent pull-ahead of later planned purchases and because the impact of the elimination of import restrictions and the effect of competitive responses to its marketing programs are now well defined. The selection of additional voluntary test vehicles was already included in Ford's MY 1986 projection, but it was not anticipated by the agency that Ford would be able to achieve any MY 1985 CAFE improvements through this means.

CFAS argued that Ford's MY 1986 projections incorporated a number of "accounting tricks" to lower the MY 1986 CAFE level. That commenter alleged that Ford's projection includes artificially low sales of the Escort/Lynx/EXP, a lowered fuel economy rating for Taurus/Sable which is down 10 percent from its initial 1983 projection, an unexplained fuel economy drop for the Mustang and Capri, which are carryover models from 1985, an extended 1986 model year production for large cars, and a lower fuel economy rating for large cars than is consistent with a statement by that company that it does not anticipate paying a gas guzzler tax on any 1986 models.

NHTSA has reviewed each of CFAS's allegations and determined that they have no basis in fact. With respect to Ford's projection of Escort/Lynx/EXP sales, the agency notes that a recent surge in sales of those models appears to be related to the 1985 1/2 facelift on the Escort and Lynx (the EXP was not changed). Car sales of "new" models are highest when they are first introduced and then gradually decline over time. Sales of the

Escort/Lynx jumped during the month of May this year from 23 percent of Ford sales in 1984 to 34.3 percent in 1985. However, sales returned closer to 1984 levels in June and July. A 6.0 percent sales increase in July cited by CFAS is based on an overall 2.5 percent improvement in Ford sales for the month, so the share of these models rose only to 22.4 percent from the July 1984 share of 21.7 percent. Looking at January to July sales in 1985 without including the May sales, the Escort/Lynx/EXP market share of Ford sales dropped from 22.3 percent to 21.6 percent as compared to the previous year. Thus, there may be an overall trend toward a reduction in Escort/Lynx/EXP sales as a proportion of Ford's total sales. Indeed, the calendar year 1984 Escort/Lynx/EXP share is 22.9 percent of Ford sales, down from 27.3 percent in 1983. Other factors relevant to this issue include the fact that Ford engaged in major marketing efforts to increase its MY 1985 small car sales which, as discussed below, is a trend that the agency does not believe can be assumed to continue for MY 1986. In addition, the ending of the Voluntary Restraint Agreement with Japan and the introduction of new, inexpensive small cars from Korea, Yugoslavia, and possibly Greece, in MY 1986 will make it more difficult for the domestic manufacturers to sell small cars. Based on all of these factors, the agency believes that Ford's projection of a slight decrease in the share of Escort/Lynx/EXP sales for MY 1986 is reasonable.

The lowered fuel economy rating for the Taurus/Sable since 1983 reflects a decline from expectations concerning technology as the model was refined from conception to production. Recent EPA test data have led Ford to lower its previous fuel economy projections for these vehicles as the actual test data indicate the original fuel efficiency targets are not being met. Ford is not arbitrarily lowering these values as one might infer from the CFAS comment. Such decreases from projections are fairly typical of experience in introducing any new technology on cars and trucks. In addition, a larger portion of this fleet is now, based on recent trends in the market, expected to be the larger 3.0 liter engine models of the sedan and wagon. While CFAS indicates that there have been no changes in the Mustang/Capri between MY 1985 and MY 1986, the fuel economies of three Mustang/Capri models have increased 0.3 to 1.0 mpg, two have declined 0.3 to 0.5 mpg, and one is unchanged. The principal reason for the fuel economy decline for the series is a mix shift within the series from 2.3 liter models to 3.8 litter and 2.3 liter turbocharged models. This reflects a shift in consumer demand toward higher performance, particularly in sporty cars.

Contrary to CFAS's allegation about extended model years for large cars, Ford has indicated that it has no plans for unusual production schedules for the 1986 model year. All models will be produced on the normal 12-month cycle, except for the large Crown Victoria/Grand Marquis models and the Tempo/Topaz, both of which will have a later start by one or two months (thus resulting in a 10- to 11-month model year) and the LTD/Marquis which will end production after about six months. These minor production reductions should have a negligible effect on Ford's MY 1986 CAFE and are in the direction, in most cases, of increasing its CAFE.

The agency has also concluded that Ford's statement that it anticipates paying no gas guzzler tax for model year 1986 is not inconsistent with its fuel economy projections, as is alleged. Gas guzzler tax liability is based on the model type fuel economy generated for purposes of labeling. The volume of data used for these purposes is much more limited than for calculating CAFE. While some V-8 configurations will have fuel economy levels less than 22.5 mpg, the level where the gas guzzler tax is assessed for MY 1986, Ford expects that its highest selling sub-configuration of the highest selling configuration will exceed 22.5 mpg with the EPA test adjustment credit included. This test will establish the model type fuel economy for labeling and for gas guzzler tax purposes, and none of Ford's cars (or GM's) would qualify for the tax.

EEA concluded that Ford could achieve 26.85 mpg in MY 1986 based on several factors, all of which represented adjustments by that company to Ford's April 19, 1985, CAFE projection.

First, EEA added 0.07 mpg to Ford's projected CAFE of 26.4 mpg by adjusting the MY 1986 Mustang/Capri engine mix to match the MY 1985 mix, on the grounds that fuel prices are expected to be stable. As discussed elsewhere in this preamble, the Energy Information Administration projects declining gasoline prices during the next year (particularly when measured in real prices) rather than stable prices. In addition, shifts in consumer demand toward larger engines are possible even with stable fuel prices. Consumer demand for larger cars and larger optional engines may in-

crease as consumers gain confidence from continued economic growth. Accordingly, NHTSA believes Ford's projections in this area are reasonable and sees no basis to accept the EEA figure.

Second, EEA added 0.16 mpg to Ford's projected CAFE by restoring half of the combined total of "high probability/historic risks" and a reduction in Taurus/Sable fuel economy. NHTSA has evaluated these technical risks, the details of which are subject to a claim of confidentiality, and believes they are reasonable. These risks encompass such diverse areas as the gains in fuel economy anticipated through new items of technology to the production start-up dates of such items. The agency does not believe there is any reason, without supporting analysis, to arbitrarily reduce them by half. With regard to the Taurus/Sable fuel economy estimates, as discussed above, the decline reflects Ford's inability to achieve certain technological goals. The agency does not believe Ford will be able to achieve this gain in MY 1986.

Third, EEA added 0.20 mpg to Ford's projected CAFE by raising the level of anticipated MY 1986 sales of Escort/Lynx and Tempo/Topaz models to MY 1985 levels. The reasons why Escort/Lynx sales may decline from MY 1985 to MY 1986 are discussed above with respect to CFAS's comment. The Tempo/Topaz is a carryover model in its third year of production, and will be competing against a new GM four-door model and the new, larger Taurus/Sable, as well as more smaller cars. The agency thus believes it is reasonable to project a decline of sales for this model.

Fourth, EEA used a preliminary estimate of 0.2 mpg from Ford as to the level of the EPA test adjustment credit it would receive in MY 1986. Ford has since lowered this estimate by 0.1 mpg, based on EPA's final rule. Thus, its upper range estimate for MY 1986 is not 26.4 mpg but 26.3 mpg.

Fifth, EEA did not take account of the additional risks identified by Ford in its April 19, 1985, submission, including market and technical risks, which might lower its projected CAFE by 0.5 mpg.

For the reasons discussed above, the agency determines that EEA's analysis does not provide any basis to conclude that Ford's projected MY 1986 CAFE is unreasonable.

The NPRM indicated that, not including EPA test adjustment credits, Chrysler had projected that its MY 1985 CAFE would be 27.5 mpg and that its 1986 CAFE would be 28.1 mpg.

Chrysler now projects that, not including EPA test adjustment credits, its MY 1985 CAFE will be 27.3 mpg and its MY 1986 CAFE will be 27.7 mpg. The declines in the projections appear to reflect actual Chrysler test data instead of the use of projected vehicle fuel economy values, rather than significant changes in product plans.

Chrysler plans a number of technological improvements for MY 1986 that should lead to improvements in its CAFE compared to that of the previous model year. The technological improvements relate to changes in engines, carburetors, tires and oil. However, with the phase-out of the L-body (Omni/Horizon) car line (to be replaced by the new P-body compact model, introduced in mid-1986 as a 1987 model), the proportion of compacts and subcompacts in the Chrysler fleet should decline from MY 1985 to MY 1986. This shift between size classes is expected to result in a 0.1 mpg decline in Chrysler's average fuel economy, thereby offsetting some of the improvement in CAFE relating to technological changes.

American Motors, Volkswagen and the major Japanese manufacturers are expected to easily exceed the current 27.5 mpg standard for MY 1986. The fuel economy trend of the Japanese manufacturers has been mixed, however. Several of the Japanese manufacturers have actually declined in fuel economy during recent years due to a mix shift toward larger, more performance-oriented vehicles, and that decline may continue in MY 1986.

Most of the European manufacturers are expected to be below the 27.5 mpg level for MY 1986. These include BMW, Mercedes-Benz, Peugeot, Saab, Volvo, and Jaguar. Many of these manufacturers' CAFE's have also declined in recent years. In the discussion which follows, the European manufacturers' projections do not include an EPA test adjustment credit.

BMW projects a MY 1986 CAFE of 26.1 mpg. While that is above its projected MY 1985 CAFE of 25.6 mpg, it is well below its MY 1984 CAFE of 27.4 mpg. BMW's drop in CAFE has resulted from a mix shift in sales to vehicles with larger engines and greater performance. While BMW has a selection of vehicle models which exceed the standard of 27.5 mpg, sales have shifted toward higher performance vehicles with lower fuel economy.

While the agency does not have a MY 1986 CAFE projection from Mercedes-Benz, that company's fuel economy has dropped approximately 3 mpg over the last three years. Its 1983, 1984 and projected 1985 CAFE levels have been 26.5 mpg, 25.5 mpg and 23.4 mpg, respectively. The reason for the drop is that consumer demand has shifted sales toward the higher performance end of that company's model line and away from vehicles with diesel engines. The fraction of Mercedes-Benz cars equipped with diesels has fallen from 78 percent in 1983 to an estimated 44 percent in 1985. While Mercedes introduced a smaller model (the 190) with fuel economy of up to 40 mpg in some diesel versions, the sales volumes have not been enough to offset the sales of its larger vehicles. That company noted in its comment that the pump price of regular unleaded gasoline is currently approximately $1.15 per gallon versus $1.29 for diesel fuel, the opposite of the relative prices in effect when the CAFE legislation was passed and when that company developed its plans to improve its fuel economy.

Volvo projects a MY 1986 CAFE of 26.5 mpg, approximately the same as its projected CAFE for MY 1985. Peugeot projects that its MY 1986 CAFE will be 25.6 mpg, 0.8 mpg higher than its MY 1985 projection of 24.8 mpg. Saab projects that its MY 1986 CAFE will be 25.4 mpg, 0.4 mpg lower than its MY 1985 projection of 25.8 mpg. Jaguar, which produces only large, heavy, luxury class vehicles, projects a MY 1986 CAFE of 19.2 mpg.

The agency has evaluated the domestic and foreign manufacturers' MY 1986 CAFE projections and considers them to be reasonable projections based on the vehicles the manufacturers plan to offer for sale and expected market conditions. As with any sales projections, there are a number of uncertainties associated with them. Both GM and Ford indicated a number of marketing risks, including the possibility that Japanese car sales may rise substantially during the 1986 model year and result in a corresponding loss in sales of their most fuel-efficient cars and a concomitant reduction in their CAFE ability. Ford also identified a number of technological risks associated with achieving its CAFE estimates for MY 1986, which could result in a small reduction in that company's projected CAFE.

B. *Possible Actions to Improve MY 1986 CAFE*

Since the 1986 model year begins this fall, there is insufficient time for the manufacturers to make further significant technological changes in their product plans. Any additional efforts by the manufacturers to increase their MY 1986 CAFE would therefore largely be limited to attempts to change product mixes through increased marketing efforts and/or product restrictions.

The agency has indicated in the past that manufacturers must, under the Act, make efforts to promote the sales of fuel-efficient cars. The agency concludes, based on its analysis, that GM and Ford have in the past been, and are now, making such efforts. To counteract the declining consumer interest in new fuel economy, manufacturers have undertaken extensive and significant market efforts to shift consumers toward their more fuel-efficient vehicles and options. As discussed in the agency's 1985 Final Regulatory Impact Analysis (FRIA), both GM and Ford have undertaken pricing actions to encourage small car sales and to discourage large car sales and the purchase of optional, less fuel-efficient engines. Below-market financing offerings, cash discounts, and non-cash consumer and dealer incentives were some of the other measures undertaken by Ford and GM to increase their CAFE through marketing actions. Ford stated in its comment on the NPRM that it has put in place approximately 100 marketing incentive programs since 1982 to promote the sale of small cars. That company indicated that as a percent of retail value it is currently spending four times more on small car marketing programs than on large and luxury car programs. It also noted that the base Escort price is now 50 percent of a Crown Victoria, whereas in 1982 it was 60 percent. GM stated that its small car prices increased less than two percent per year between 1981 and 1985 while the average car price increased four percent during that period.

The agency believes that the ability to improve CAFE by marketing efforts is relatively small. As a practical matter, marketing efforts to improve CAFE are largely limited to techniques which either make fuel-efficient cars less expensive or less fuel-efficient cars more expensive. Moreover, the ability to increase sales of fuel-efficient cars largely relates to either increasing market share at the expense of competitors or pulling ahead sales from the future. A factor which makes it particularly difficult to increase sales of fuel-efficient cars is the strong competition in that market from the Japanese manufacturers, which enjoy a significant cost advantage over the domestic manufacturers. The comment submitted by the Department

of Commerce estimated the cost advantage at $2,000 per car. This cost advantage limits the ability of the domestic manufacturers to increase sales of small cars through price reductions, since the Japanese manufacturers will be able to match or exceed any price reduction.

An additional factor making it difficult for the domestic manufacturers to sell fuel-efficient cars is the expected entry in MY 1986 of three new manufacturers, Hyundai from Korea, Yugo from Yugoslavia, and Desta from Greece, selling small cars. These companies anticipate first-year sales of nearly 200,000 vehicles.

A problem with pulling ahead sales is that the manufacturer's CAFE for subsequent years is reduced. For example, if a manufacturer increases its MY 1985 CAFE by pulling ahead sales of fuel-efficient cars from MY 1986, the MY 1986 CAFE will decrease, compared with the level it would have been in the absence of any pull-ahead sales attributable to marketing efforts. For this reason, a manufacturer cannot continually improve its CAFE by pulling ahead sales.

Given these factors and the manufacturers' past and current marketing efforts, NHTSA does not believe that GM and Ford can significantly improve their CAFE by increased marketing efforts. Also, the agency agrees with Ford's comment that it cannot expect its MY 1985 fuel economy improvement attributable to major marketing efforts to continue for MY 1986, in light of competitive responses and since much of the improvement relates to pull-ahead sales. Further, the agency concludes that Ford and GM have made reasonable marketing efforts to improve their CAFE.

Manufacturers could improve their CAFE by restricting their product offerings, e.g., deleting less fuel-efficient car lines or dropping higher performance engines. However, as discussed below, such product restrictions would have significant adverse economic impacts on the industry and the economy as a whole.

The Department of Commerce comment estimated that the effect of GM and Ford achieving 27.5 mpg CAFE in MY 1986 could be sales losses ranging from 750 thousand to 1 million units. Based on the labor required for producing large domestic cars, including suppliers, that Department estimated job losses between 80 and 110 thousand. These estimates were based on the assumption that Ford and GM would either be unable to improve their estimated MY 1985 CAFE performance, then estimated at 25.7 mpg and 25.1 mpg, respectively, or improve it only slightly given the present competitive and energy price environments. Since Ford and GM now project their MY 1986 CAFE at 26.3 mpg, the Department of Commerce estimates are overstated, holding all of their other assumptions constant. Taking account of this factor, however, the Department of Commerce analysis still indicates enormous sales and job losses.

A submission from the Department of Energy indicated combined lost sales for GM and Ford of between 790,000 and 1,000,000 units, essentially indentical to the Commerce Department estimate.

Confidential submissions received from GM and Ford indicated that an even higher number of job losses than that estimated by the Department of Commerce would be possible.

NHTSA has analyzed these submissions and has concluded that, while it is difficult to calculate precise numbers for potential sales and employment losses associated with the major manufacturers achieving 27.5 mpg CAFE for MY 1986, there would be a likelihood of sales losses well into the hundreds of thousands of units and job losses well into the tens of thousands. Sales and employment losses of these magnitudes would have significant adverse effects on the economy as a whole.

With respect to improving CAFE by making larger cars and engines more expensive, the agency notes that there is no sharp dividing line between marketing efforts and product restrictions. As indicated above, GM and Ford already have raised the prices of their larger cars and engines as part of their efforts to improve their CAFE, although sales of larger, optional engines have continued to increase as prices have risen. While very large price increases, e.g., a doubling of prices, would likely significantly reduce sales of less fuel-efficient vehicles, such increases would amount to product restrictions. Expecting manufacturers to make such very large price increases would be inconsistent both with Congress' intent that consumer choice not be unduly limited and with the statutory criterion of "economic practicability."

In the preamble to the final rule establishing the MY 1981-84 passenger car standards, the agency concluded that economic practicability should be interpreted as requiring standards to be within the financial capability of the industry, but not so stringent as to threaten substantial economic hardship

for the industry. 42 FR 33537, June 30, 1977. In a final rule reducing the light truck fuel economy standard for MY 1985, the agency concluded that sales reductions to a manufacturer of 100,000 to 180,000 units, with resulting employment losses of 12,000 to 23,000, "go beyond the realm of 'economic practicability' as contemplated in the Act . . . ." 49 FR 41252, October 22, 1984. Since the employment losses associated with maintaining the 1986 passenger automobile CAFE standard at 27.5 mpg are at least as large as the ones projected in the MY 1985 light truck rule, the agency similarly concludes here that the economic hardship associated with the product restrictions necessary for the major manufacturers to achieve 27.5 mpg CAFE in MY 1986 would be beyond the realm of economic practicability.

Manufacturer Compliance Efforts 1977 to 1985

While there is now insufficient time for manufacturers to improve their MY 1986 CAFE by making significant technological changes in their product plans, the current MY 1986 standard has been in effect for nearly a decade. Therefore, an important issue in analyzing the GM and Ford petitions is whether manufacturers made sufficient efforts to meet the standard. As discussed above, the agency would not consider it appropriate to reduce the standard if a current inability to meet the standard simply resulted only from manufacturers declining to take sufficient steps to improve their average fuel economy as required by the Act. As part of analyzing this issue, NHTSA compared manufacturers' current product plans with past agency analyses which had concluded that the 27.5 mpg standard was feasible. The agency also compared current product plans with earlier plans submitted by the manufacturers indicating that they would meet the standards. As discussed below, the agency believes that GM and Ford made sufficient efforts to comply with the current MY 1986 standard and that the manufacturers' efforts were overtaken by unforeseen events whose effects could not be overcome with the means and time available.

(The discussion which follows first presents the agency's conclusions concerning the differences between the manufacturers' current product plans, i.e., what is now actually happening, and past analyses/plans by NHTSA and the manufacturers as to what was believed feasible, and then presents the agency's conclusions as to why manufacturers' CAFE's are lower than was once expected.)

A. *NHTSA's 1977 RSP*

As discussed above, as part of establishing the 1981-84 standards, the agency developed estimates of the maximum feasible fuel economy for each manufacturer for model years 1981 through 1985. The estimates were based on a number of assumptions, including the ability of manufacturers to sustain a rapid rate of introduction of technology, consumer acceptance of a 10 percent reduction in vehicle acceleration, and significant use of a widespread range of technological options, including weight reduction, improved transmissions and lubricants, reduced aerodynamic drag, reduced accessory losses, and reduced tire rolling resistance. The agency's estimates did not assume a downward mix shift in automobile sizes or the use of diesel engines.

The agency's 1985 FRIA contains a detailed analysis comparing NHTSA's 1977 feasibility estimates for MY 1985 with manufacturers' current projections for that model year. The analysis is similar to that of the PRIA, but reflects more recent information. It should be noted that while the 1977 RSP projected that it was feasible for a number of manufacturers to achieve fuel economy levels somewhat above 27.5 mpg by MY 1985, no standard was ever set above the 27.5 mpg level. Thus, manufacturers were never required to make efforts to achieve the higher (NHTSA-projected) CAFE levels.

The 1977 RSP estimated that GM could achieve 28.9 mpg CAFE for MY 1985. GM currently projects its MY 1985 CAFE at 25.5 mpg, including a 0.4 mpg EPA test adjustment credit. The FRIA concludes that the primary reason why GM's present MY 1985 projection is lower is that the average GM model for MY 1985 weighs about 360 pounds more than NHTSA projected in 1977. Part of the difference in expected weight is due to changes in EPA test weight classes, which could result in a measured fuel economy loss of 0.3 mpg. The effect of the remaining weight difference, including the fact that a proportionately larger engine is needed to maintain acceleration capabilities, is a 2.0 mpg reduction in average fuel economy from that estimated in 1977.

A number of factors appear to account for this weight difference. In the 1977 RSP, NHTSA concluded that GM could perform both a major redesign and a material substitution action for an additional reduction in weight, for every car line during the MY 1977-85 timeframe. GM made all

anticipated major redesigns except in the T-body cars (Chevette and Pontiac 1000) and, in addition, introduced two additional lightweight models not projected in the 1977 analysis. The redesigns did not, however, achieve the full amount of weight reduction originally projected as feasible, and, in most cases, the material substitution actions did not occur. Also, when GM introduced new models, the company often continued production of the earlier models.

Other factors which explain GM's lower CAFE are a higher than anticipated engine/size ratio (−0.6 mpg), indicating that GM's MY 1985 fleet does not include the reduction in acceleration capability by the percentage projected by the 1977 RSP (GM did achieve the postulated reduction in MY 1982, but consumer demand led to later increases), and fewer 4-speed automatic transmissions (−0.8 mpg). These factors account for the bulk of the remaining differences between GM's present MY 1985 CAFE estimate and NHTSA's 1977 projection.

The 1977 RSP estimated that Ford could achieve 27.9 mpg CAFE for MY 1985. Ford currently projects its MY 1985 CAFE at 26.3 mpg, including a 0.5 mpg EPA test adjustment credit. The agency's analysis in the FRIA concludes that a number of factors explain Ford's lower CAFE. The most significant are an increase instead of reduction in acceleration capability (−1.1 mpg) (Similarly to GM, Ford reduced acceleration capability through MY 1982, but consumer demand resulted in increases for later model years), higher weight than anticipated (−0.8 mpg), and fewer lockup and wide-ratio automatic transmissions (−0.8 mpg). Additional factors which explain Ford's lower CAFE are the EPA change in test weight classes (−0.3 mpg) and a sales mix adjustment (−0.1 mpg). While Ford's CAFE is lower than was projected as feasible back in 1977, the agency concludes, as discussed in the FRIA, that Ford exceeded the agency's projections for improving CAFE in the areas of reduced rolling resistance (+0.4 mpg) and reduced aerodynamic drag (+0.2 mpg). Also, diesel engines added slightly to Ford's CAFE (+0.1 mpg).

In Ford's comments on the NPRM, it took issue with NHTSA's analysis of the contributing factors to this CAFE shortfall, contending that the overwhelming influences on CAFE have been market-driven and that the agency's estimates of the weight, transmission and performance issues are overstated. While the agency agrees that market-related factors have been important, it disagrees that it overstated the effects cited by Ford. The agency notes that its estimate of the fuel economy effect of the acceleration capability improvement is identical to Ford's estimate in a May 8, 1985, submittal.

The 1977 RSP estimated that Chrysler could achieve a 28.7 mpg CAFE for MY 1985. Chrysler currently projects its MY 1985 CAFE at 27.9 mpg, including a 0.6 mpg EPA test adjustment credit. Major changes in product plans by that company from what were anticipated in 1977 make it difficult to directly compare the agency's 1977 RSP to Chrysler's current projections. An unanticipated shift toward smaller cars in the company's product line-up significantly increased Chrysler's CAFE (+2.3 mpg). This was more than offset, however, by the effect of fewer lock-up and no wide-ratio automatic transmissions (−2.5 mpg). A number of other items, such as not achieving as much reduction in acceleration capability as believed feasible and minor weight increases contribute to the remaining decline in fuel economy.

The FRIA also compares the 1977 RSP feasibility estimates for foreign manufacturers to current projections. On a sales-weighted basis, the foreign manufacturers' vehicle horsepower/weight ratio has increased by an average of 13 percent and vehicle weight has increased by an average of 8.6 percent since 1977, rather than decreasing as believed feasible by NHTSA in 1977. In spite of these changes, the foreign manufacturers have increased their average fleet fuel economy by about 2.5 mpg since 1977, as a result of factors such as improved rolling resistance and aerodynamic drag. However, this is significantly less than the agency had projected as feasible.

B. *Manufacturers' Previous Plans*

1. *1980*

During the summer of 1980, as fuel prices were rising rapidly, GM, Ford and Chrysler all announced that their MY 1985 CAFE levels would be approximately 30 mpg or higher. At NHTSA's request, the companies provided the agency with data to support the projections.

GM expected to achieve 31 mpg in MY 1985 with a completely redesigned line-up of U.S. passenger cars. Included in this product plan were extensive use of diesel engines, the introduction of an electric car, the introduction of a new domestic subcompact front-wheel drive economy car (the S-body,

designed to eventually replace the Chevette/Pontiac 1000), the replacement of essentially all GM's existing cars with lighter weight front-wheel-drive models, a mix shift toward smaller models, and the virtual elimination of V-8 engines.

There are a number of differences in GM's 1980 plan for MY 1985 and what actually happened, including a substantial drop in diesel engine sales, the fact that GM did not introduce an electric car or a new domestic subcompact economy car, a slowdown in the rate of replacing existing cars with lighter weight front-wheel-drive models, a sales shift toward larger models and engines, and the continuation of several existing lines.

In the summer of 1980, Ford projected that it could achieve a fuel economy level as high as 29.9 mpg in MY 1985. Included in that product plan was the complete elimination of large cars and large station wagons by MY 1985. Instead, large car sales are now projected to comprise approximately a fifth of Ford's MY 1985 volume. Other differences between Ford's 1980 Plan for MY 1985 and what actually happened include a delay in introducing the new front-wheel-drive Taurus mid-size car (to MY 1986), continuation of V-8 engines in a significant portion of the vehicle fleet instead of being able to eliminate them, lower-than-expected diesel sales, and substantially fewer sales of Ford's most fuel-efficient car line, the two-seater EXP.

In 1980, Chrysler expected to achieve a CAFE of 30.7 mpg in MY 1985, well above that company's current projection of 27.3 mpg, without the EPA test adjustment credit. A number of the car models in that plan have not been introduced. In addition, Chrysler projected it would replace the rear-wheel drive, relatively heavy M-body (presently the Diplomat, Gran Fury, and Fifth Avenue) with versions of the front-wheel-drive K-body. Instead, Chrysler continued to offer this model after its ostensible replacements were introduced. The older design M-body has an average fuel economy about 6 mpg below the equivalent front-wheel-drive models. Chrysler also planned a number of technological improvements that have not been introduced.

2. *1983*

By mid-1983, GM's and Ford's expectations about exceeding the fuel economy standards had reversed. By this time, the manufacturers were having difficulty meeting the levels of the fuel economy standards. GM, Ford and Chrysler, as well as many other companies, had experienced a decline in their CAFE levels between MY 1982 and MY 1983. At NHTSA's request, the manufacturers provided the agency with data indicating their projected fuel economy levels through MY 1988.

GM's and Ford's mid-1983 projections for MY 1985 were not substantially different from what they are today. GM projected a CAFE of 25.9 mpg for MY 1985, as compared to its current projection of 25.1 mpg, without the EPA test adjustment credit. In 1983, that company projected a sales mix with a slightly lower average weight and a greater number of diesel sales. Ford's 1983 projection was 25.2 mpg, compared to its current projection of 25.8 mpg, without the EPA test credit adjustment. The percentage of large cars and station wagons in the MY 1985 fleet increased from 16.1 percent in the 1983 projection to 21 percent today. However, this negative impact was offset by an increase in average fuel efficiency of the compact class due primarily to increases in projected Escort/Lynx sales and decreases in Thunderbird/Cougar sales.

Chrysler projected in 1983 that it could achieve 28.8 mpg in MY 1985, as compared to its current estimate of 27.3 mpg, without the EPA test credit adjustment. In 1983, Chrysler did not provide the agency with as detailed product plans for MY 1985 as did GM and Ford. Based on the limited data, it appears that Chrysler's least fuel-efficient models are now selling at higher rates than the company anticipated in 1983. In addition, the average fuel economy level for each car line is lower than anticipated. This appears to indicate a mix shift toward larger and more powerful engines within each car line, similar to the mix shift experienced by Ford and GM.

3. *1984-1985*

Product plan information provided to NHTSA within approximately the past year-and-a-half by GM and Ford indicates that those companies' CAFE projections for MY 1986 have changed during that period.

The most significant changes have been for Ford. A MY 1984 carryback plan submitted by that company on May 7, 1984, indicated that Ford then expected to achieve a MY 1986 CAFE of 28.5 mpg, without the EPA test credit adjustment. This projection was reduced to 26.9 mpg in a MY 1985 carryback plan submitted on December 7, 1984. Ford's February 28, 1985, response to a NHTSA questionnaire on post-1985 fuel economy and an April 19, 1985, submission discussing the effects of

changes in the Voluntary Restraint Agreement (VRA) with Japan both included additional declines in projected CAFE for MY 1986.

The FRIA includes an analysis of the changes in Ford's CAFE projections. Ford explained the reductions by citing changes in mix and model start-up schedules and the fact that new models had resulted in less fuel economy improvement than expected. The agency's analysis is largely in agreement with Ford's explanation.

As discussed by the FRIA, GM's projected MY 1986 fuel economy, without the EPA test adjustment credit, was 26.2 mpg in a November 1984 carryback plan, 25.7 mpg in a February 1985 submission, and 26.1 mpg in a June 1985 submission. The reasons for these relatively small changes are discussed in the FRIA.

C. *Assessment of Manufacturers' Compliance Efforts*

Assessing manufacturers' efforts to meet the 27.5 mpg standard is a difficult and complex task. With 20-20 hindsight, one can point to various actions that manufacturers might have been able to take at different points over the past decade, e.g., increased use of material substitution, that would have improved their current fuel economy capability for MY 1986. The manufacturers, however, had to make their product plan decisions based on the information then available and, in the early 1980's, in the face of considerable economic difficulty and uncertainty.

In looking back over the past decade, the agency notes that the manufacturers' progress in improving fuel economy has been impressive. In evaluating technological feasibility, the agency considers whether an item of technology will be commercially available in time to aid in meeting a standard for a particular model year. The amount of CAFE improvements gained by a manufacturer from using new technology is dependent on: (1) the increase in fuel economy associated with a particular type of technology, and (2) the percent of a manufacturer's fleet which incorporates that technology. Technology-based improvements include such items as weight reduction via downsizing or material substitution, engine and transmission improvements, reduced performance (e.g., acceleration capability), reductions in rolling resistance and aerodynamic drag, improved lubricants, and increased accessory efficiency, among others.

Over the past 10 years, manufacturers have reduced average car weight by 1000 pounds, reduced average engine displacement from 288 CID to 177 CID, increased the use of front-wheel drive from 7 percent to 64 percent, increased the use of transmissions with overdrive and/or lockup from 5 to 84 percent, and increased the use of fuel-injected engines from 5 percent to 54 percent.

The agency notes that some major investments made by manufacturers to improve fuel economy were not successful. For example, GM and Ford made major investments in alternative power plants, such as diesel and direct injection stratified charge engines. Largely due to market conditions, however, including lower-than-expected gasoline prices, a change in the relative price of gasoline and diesel fuel and lower-than-expected consumer acceptance of the diesel engine, sales of passenger cars with diesel engines have virtually collapsed. Mercedes-Benz has experienced similar difficulties in selling diesel engines, with a reduction of from 78 percent to 44 percent of its fleet being so equipped in the last two years. Various efforts by the manufacturers to develop new technologies, such as Ford's experience with the PROCO engine, were unsuccessful. Given the massive undertaking by the industry to virtually double its CAFE in a relatively short period of time, it is not surprising that there would be failures as well as successes. In assessing the manufacturers' efforts to improve their CAFE's, the agency believes it is appropriate to take account of all of the efforts.

Manufacturers have used virtually all the technologies deemed feasible in the agency's 1977 RSP, as well as achieving a number of gains in areas not foreseen at that time. However, not all of those technologies have been installed in as high a percentage of cars in the manufacturers' fleets as was believed feasible. This is particularly true for weight reduction, performance reduction, and transmission improvements.

The agency believes that the lower than anticipated use of these technologies is largely attributable to market conditions. For example, the consumer acceptability of lower performance is relatively easy to achieve in times of short fuel supply and steadily rising fuel prices. However, the real price of gasoline has declined by nearly 35 cents per gallon since the early 1980's and is generally expected to rise less than 4 percent over the next five years. Further, there is currently a petroleum glut. Thus, as discussed in the FRIA, the anticipated performance reductions were achieved as early as 1982, but since that time consumers have been demanding greater engine/vehi-

cle performance. Similarly, consumers have been switching to heavier vehicles over the last few years.

As discussed above, the Cost Savings Act imposed a long-term obligation on manufacturers to achieve CAFE of 27.5 mpg. As of mid-1980, GM and Ford had plans which they believed would not only achieve that level but significantly exceed it. Moreover, during the early 1980's manufacturers not only met the standards set at levels intended to result in steady progress toward 27.5 mpg, but in fact exceeded those standards.

By 1983, however, domestic manufacturers were having difficulty meeting the levels of fuel economy standards. The Nation (and the auto industry in particular) was coming out of a serious economic recession, and, contrary to prior NHTSA and industry expectations, gasoline prices were falling instead of rising. The U.S. city average retail price for unleaded regular gasoline fell from $1.38 in 1981 to $1.30 in 1982 and $1.24 in 1983. (*Monthly Energy Review,* Energy Information Administration,[4] U.S. Department of Energy, January 1984, p. 88) (In 1984 dollars, this decrease was from $1.58 in 1981 to $1.40 in 1982 and $1.29 in 1983.) As a result of these factors, consumer demand was shifting toward larger cars with higher acceleration capabilities. Thus, just as the rise in gasoline prices from 1973 to 1980 contributed to the tremendous increase in fuel efficiency that was achieved in that period and to the projections for significantly exceeding the 27.5 mpg standard in the mid-1980's, so the fall in gasoline prices since 1980 has led to a fall in fuel economy projections.

The effect of consumer demand on CAFE is reflected both by actual market shifts and by the failure of expected market shifts to occur. The percent of total new car sales consisting of subcompact models declined from 46 percent in model year 1980 to 30 percent in model year 1983. Since then, the share appears to be leveling off at approximately 26 percent. For GM, the percent of sales of subcompacts (including two-seaters) declined from 27 percent in model year 1980 to 11 percent in model year 1983. For model year 1985, GM projects that 11 percent share of its cars will be subcompacts (including two-seaters). Seventeen percent of GM's model year 1980 sales were large cars, as compared to 27 percent for model year 1983 and a projection of 27 percent for model year 1985. For Ford, the percent of sales of subcompacts (including minicompacts) declined from 37 percent for model year 1980 to 12 percent for model year 1983. For model year 1985, Ford projects that 9 percent of its cars will be subcompacts (including two-seaters). Sixteen percent of Ford's model year 1980 sales were large cars, as compared to 21 percent for model year 1983 and a projection of 22 percent for model year 1985. For Chrysler, the percent of sales of subcompacts declined from 41 percent in model year 1980 to 12 percent in model year 1983. For model year 1985, Chrysler projects that 20 percent of its cars will be subcompacts.

In addition to these actual market shifts are expected market shifts which did not occur. For example, as indicated above, Ford anticipated in 1980 that it could eliminate large cars by 1985, as compared to its current projection that large cars will comprise 22 percent of its sales. Ford's most fuel-efficient model, the two-seater EXP, was projected in 1980 to capture over 12 percent of its model year 1985 sales. Ford now expects it will take less than two percent of sales. Similarly, GM anticipated in 1980 that the large car share of its model year 1985 sales would be 17 percent, well below its current projection of 27 percent. GM expected its subcompact share to be 18 percent, as compared to its current projection of 11 percent (including two-seaters). The manufacturers' 1980 expectations were overtken by events as gasoline prices began to fall, instead of rising significantly as expected.

MY 1985 projections provided by the manufacturers during the summer of 1983 indicate that they recognized at that time they would not be able to achieve 27.5 mpg CAFE for MY 1985 (although Ford believed until well into 1984 that it would still exceed 27.5 mpg for MY 1986). Given that recognition of difficulties (as opposed to the earlier expectations of significantly exceeding the standard), the issue arises whether manufacturers could or should have done more between then and now to improve their CAFE.

The agency believes several factors are relevant in analyzing that issue. First, the agency has long recognized that the ability to generate the funds necessary to make fuel economy improvements is a critical factor in assessing economic practicability and determining maximum feasible average fuel economy. As discussed in the background section

[4] The Energy Information Administration is a statistical and analytical branch of the Federal Government that is policy independent of the Department of Energy.

of this preamble, NHTSA recognized in its January 1979 Third Annual Report that its feasibility estimates were dependent on the continued financial health of the industry and were subject to being lowered in the event of a severe economic downturn.

The domestic industry was just beginning in 1983 to recover from one of the worst periods of economic difficulty in its history. From a picture of high profitability in the late 1970's, their fortunes had declined such that they encountered their largest losses ever during the 1980-82 period. During those three years, GM, Ford, and Chrysler had combined operating losses of $4.8 billion. Chrysler staved off bankruptcy through corporate restructuring and with the help of Federal loan guarantees, while Ford alone incurred $3.3 billion in losses over that three-year period.

At the same time, the companies were involved in massive efforts to restructure their operations and redesign their fleets. Even though they were encountering operating losses and high inflation in the early 1980's, Ford and GM continued or accelerated their capital investment levels, compared to earlier years. For example, GM's highest two years of actual capital expenditures occurred during 1980-81. Long-term debt greatly increased for GM and Ford during this period, as they could not raise the money they needed for capital expenditures from operations. Given this backdrop of events, it would have been very difficult for GM and Ford to initiate significant further new programs in those years to improve their model year 1986 fuel economy.

Second, it was generally expected that the drop in gasoline prices during the early 1980's was temporary. It is useful to examine past projections of future gasoline prices, using constant dollars to account for the effects of inflation. In the spring of 1983, Data Resources, Inc. (DRI) expected gasoline prices to rise from $1.22 in 1983 to $1.29 in 1986 (after falling and then rising slightly in 1984 and 1985, respectively), $1.34 in 1987, $1.38 in 1988, $1.45 in 1989, and $1.54 in 1990 (all figures expressed in 1984 dollars). In Feburary of 1983, EIA was predicting that gasoline prices would be $1.19 in 1985, $1.30 in 1986, $1.42 in 1987, $1.51 in 1988, $1.55 in 1989 and $1.57 in 1990 (all figures expressed in 1984 dollars). By October of 1983, EIA had reduced its 1986 projection to $1.16 (expressed in 1984 dollars). However, it still expected that gasoline prices after 1986 would quickly rise. DRI still expected in its Winter 1983-84 forecast that the 1986 price of gasoline would be $1.27 (expressed in 1984 dollars). By contrast, EIA currently projects, in its July 1985 forecast, that the 1986 gasoline price will be $1.07 (expressed in 1984 dollars), while DRI projects, in its Summer 1985 forecast, that it will be $1.10). This continued decline (in real terms) of gasoline prices has resulted in relatively less consumer demand for small cars with high fuel efficiency levels than would otherwise have been expected. The virtual collapse in sales of diesel fuel automobiles illustrates this effect.

Third, the manufacturer's projections in recent years indicate that they believed they would still meet the standard for model years 1985 and 1986, using carryforward/carryback credits as permitted by the Cost Savings Act.[5] Indeed, later submissions by both Ford and GM, most notably the carryback plans discussed above, indicate that they did not recognize a CAFE compliance problem until approximately the time they submitted their petititions in March of this year. By that time, it was too late for the manufacturers to make further significant technological changes in their product plans for MY 1986.

Chrysler took issue with several aspects of the agency's consideration of GM's and Ford's compliance efforts. First, that commenter objected to consideration of the manufacturers' financial difficulties during 1980-82, arguing that NHTSA failed to cite instances where GM or Ford had to hold back on some technological improvement because of shortage of capital. NHTSA did not attempt to prove that shortages of capital in the 1983 time period necessarily made the 27.5 mpg standard technologically infeasible for MY 1985 or MY 1986. The agency's argument, as mentioned previously, was that further investments at that time could not be expected given the recent financial difficulties of those manufacturers.

[5]The Cost Savings Act does not require absolute compliance with a standard for each year. Instead, it allows a shortfall in one year to be offset if a manufacturer exceeds the standard for another year. Under the Act, as amended by the Automobile Fuel Efficiency Act of 1980, manufacturers earn credits for exceeding average fuel economy standards which may be carried back for three model years or carried forward for three model years. See section 502(1). In order to use carryback credits in advance of their actually being earned, manufacturers must submit a plan demonstrating that the credits will be earned. Such plans are subject to DOT approval.

Chrysler also objected to the conclusion that GM and Ford could reasonably have expected a quick reversal in the decline of gasoline prices, with a consequent shift back to smaller, more fuel-efficient vehicles. That commenter argued that the agency did not make any effort to determine what particular actions either of those manufacturers may have taken in reliance on such an assumption, nor point to evidence that might have given credence to the assumption. With respect to reliance, the agency notes GM's and Ford's compliance plans, which did not recognize the magnitude of the continuing consumer demand for larger and more powerful cars. With respect to evidence, this preamble compares past forecasts of gasoline prices by EIA and DRI to current forecasts. The comparison indicates that these major forecasts expected in 1983 that the price of gasoline in 1986 would be significantly higher than they now expect. Consistent with the direction of the changed forecasts by EIA and DRI, a comparison of submissions submitted by Ford in August 1983 and February 1985 indicates that its projections of 1985 and 1986 gasoline prices declined over that time by 9 percent and 13 percent, respectively. Comparison of similar submissions by GM indicates that its projections declined by a higher percentage. (The specific percentages for GM are subject to a claim of confidentiality.)

As it had in earlier comments, Chrysler also raised the issue of the reasonableness of GM and Ford changing their product plans over the past few years in a variety of ways that had the effect of decreasing their projected CAFE's. Chrysler cited decisions by those companies to continue selling larger models and engines that had been planned to be cancelled and the continuation of rear-wheel drive models after front-wheel drive "replacements" had been introduced.

The agency notes that Chrysler has stated that it "agrees that consumers have indicated a preference for better performance in recent years . . . ," and that it in fact has done some of the same things as have GM and Ford. It is that company's contention, however, that "what is permissible for Chrysler, who meets the 27.5 mpg standard, should be considered excessive for GM, who does not."

NHTSA cannot agree that product plan changes that decrease CAFE are necessarily inappropriate for companies which are having difficulty meeting the CAFE standards. Given that consumer demands has always been a major determinant of what it is economically practicable for manufacturers to sell, since consumers need not buy what they do not want, it is axiomatic that a change in consumer demand (all other things held constant) will change what is economically practicable for manufacturers to sell. The fact that GM and Ford once believed they could delete certain models or engines without significant adverse economic impacts does not mean that they would be able to do so after conditions have changed, e.g., after fuel prices have ceased to rise and instead begun to fall.

Holding manufacturers to product plans which are no longer consistent with current market conditions would have the same result as requiring product restrictions. As discussed above, the types of product restrictions that would be required to significantly improve GM's and Ford's CAFE's would result in serious harm to the industry and the economy as a whole, and have never been contemplated by NHTSA to be consistent with the statute.

While the agency believes that product plan changes such as those discussed above are consistent with statutory criteria, since they reflect changes in what is economically practicable, manufacturers continue to have an obligation to make all necessary efforts consistent with those statutory criteria to meet CAFE standards. To the extent that changes in product plans result in manufacturers not being able to meet a standard, the manufacturers must pursue additional means, consistent with the factors of section 502(e), to meet the standard. As discussed above, however, by the time GM and Ford recognized that economic forces had created a compliance problem, it was too late to make further significant technological changes to improve their CAFE's for MY 1986.

Chrysler objected to NHTSA's treatment of GM's and Ford's changes in product plans, arguing that the agency did not explain why a strategy that proved successful for it was economically impracticable for them, identify the options that were open to GM and Ford, quantify the economic effects of pursuing one option or another, or ask how great a price GM and Ford would have had to pay to meet the standard. That commenter characterized the agency's analysis as suggesting that GM and Ford are under no obligation to pay any price, forego any profit opportunity, or make any additional investment to meet the CAFE requirement.

Chrysler admitted in a footnote that NHTSA had cited the Department of Commerce study concerning the significant loss of sales and unemployment that would result from the product restrictions that would be needed to bring GM and Ford into compliance, as well as confidential data submitted by GM and Ford regarding those impacts. Chrysler argued that this did not, however, have any bearing on a whole variety of options that would have been available to GM and Ford beginning in 1983. That commenter also argued that the Department of Commerce study was unsupported by any convincing evidence and virtually ignored the argument that a decline in sales of GM's and Ford's least efficient vehicles would mean no loss of jobs but rather a concomitant increase in sales of their newer, fuel-efficient, large vehicles.

As recognized by Chrysler's footnote, NHTSA did consider the options for GM and Ford to comply with the 27.5 mpg standard in MY 1986. As indicated above, the agency concluded that GM and Ford could meet that standard only through product restrictions likely resulting in significant adverse economic impacts, including sales losses well into the hundreds of thousands and job losses well into the tens of thousands, and unreasonable restrictions on consumer choice. This conclusion was not based solely on the Department of Commerce study, but also on the data submitted by GM and Ford and on the agency's own analysis. The agency notes that a study submitted by the Department of Energy supports the same conclusion. The agency does not agree that product restrictions would simply result in increased sales of GM's and Ford's newer, fuel-efficient vehicles, without any effect on employment. While some consumers might purchase other GM and Ford models, to the extent that the manufacturers were able to increase their production of these models, many others would either stay out of the market entirely or shift their purchases to other manufacturers.

The issue of the extent to which the agency must address what GM and Ford could have done since 1983 is largely discussed above. The legislative history of the Cost Savings Act clearly indicates that NHTSA may reduce fuel economy standards up until the beginning of a model year. The determination of maximum feasible average fuel economy level is made as of the time of the amendment. The agency has emphasized, however, that it would not reduce a standard if a current inability to meet the standard simply resulted from manufacturers previously declining to take reasonable steps to improve their average fuel economy as required by the Act.

With respect to Chrysler's question why the approach it adopted to achieve 27.5 mpg CAFE was economically impracticable for GM and Ford to adopt, when changing market conditions overtook GM's and Ford's earlier plans, the agency reiterates that the legislative history of the Cost Savings Act clearly indicates that Congress did not intend to unduly limit consumer choice as to capacity and performance of motor vehicles. As indicated above, the House report stated that "... any regulatory program must be carefully drafted so as to require of the industry what is attainable without either imposing impossible burdens on it or unduly limiting consumer choice as to capacity and performance of motor vehicles." H.R. Rep. No 94-340, 94th Cong., 1st Sess. 87 (1975). The agency believes that GM's and Ford's decisions to continue selling large cars, which account for 20-25 percent of their sales, are fully consistent with the statutory criteria and the legislative history.

The fact that GM and Ford may at one point in time have considered deleting certain models does not commit those manufacturers to now do so. Manufacturers' product plans are constantly changing over time in response to market conditions. As noted above, what is economically practicable at one point in time may not be so at another. NHTSA does not believe that it is now economically practicable for GM and Ford to simply curtail production of 20 percent of their fleets.

The primary reason GM's and Ford's CAFE's are lower than Chrysler's is that Chrysler does not compete in all the market segments in which GM and Ford sell cars. Unlike GM and Ford, Chrysler does not offer any vehicles which are defined by EPA as "large cars" or "large station wagons." These vehicles, which, as noted above, account for 20-25 percent of Ford's and GM's sales, are less fuel-efficient than the cars Chrysler sells. As pointed out by the NPRM, Chrysler's fuel economy is not significantly different from that of GM or Ford for the market segments in which it does compete. Indeed, as demonstrated in the FRIA, Chrysler vehicles tend to have fewer fuel economy-enhancing technologies. Thus, if the sales mixes of all the manufacturers were equivalent, GM and Ford would have higher CAFE's than does Chrysler.

While a particular manufacturer may choose to comply with fuel economy standards by various strategies, including not producing large cars, the agency would not consider standards which require full-line manufacturers to stop producing large cars to be consistent with the statutory criterion of economic practicability.

Contrary to the arguments made by ECC, Chrysler does not have more fuel-efficient technology in its fleet than GM and Ford. ECC cited comparisons showing that for MY 1984 Chrysler had better fuel economy for its curb weight, interior roominess, engine size, and fleet mix.

The three fuel economy ratios (mpg/curb weight, mpg/roominess, and mpg/CID) are not valid measures of efficiency. The high values exhibited by the Chrysler fleet do not indicate whether the high ratio of mpg/curb weight, for instance, is due to very high fuel economy or merely a low average curb weight. For example, the mpg/curb weight ratio would show that a 2000-pound car getting 20 mpg is more fuel-efficient than a 4000-pound car that achieves 20 mpg, when the opposite is obviously true.

A more meaningful analysis would be to use the fleet average ratio of fuel consumption to test weight (or curb weight), to roominess, or to engine displacement. This is a method that was proposed by Chrysler employees in a 1978 Society of Automotive Engineers (SAE) paper, "TFC/IWT," D. K. Samples and R. C. Wiquist, SAE paper #780937. Regarding the ratio of average fuel consumption divided by average test weight, Chrysler has been about midway between GM and Ford in recent years and for MY 1985 has the least efficiency of the three. This is also true of average fuel consumption per cubic inch of engine displacement. Chrysler has, however, been more efficient than GM and Ford in recent years on the basis of average fuel consumption per cubic foot of roominess index.

GM submitted information indicating that in the 13 test weight/transmission classes in which it and Chrysler competed directly, GM had the higher fuel economy car in 11 of the 13 cases. As a result, GM showed that if it had Chrysler's product mix, its CAFE would be 28.5 mpg as compared to Chrysler's 27.5 mpg (without EPA test adjustment credits).

The mix analysis cited by ECC, which was prepared by the Department of Energy, attempts to correct the companies' CAFE's to what they would be if they had the same mix as Chrysler and without two-seaters, small wagons, and large sedans and wagons. This analysis ignores the diversity of models within the GM and Ford fleets, even in the size classes which are the same as Chrysler's. For instance, the Chrysler fleet has only four-cylinder engines except for the mid-size, rear-drive V-8's that make up a small part of their fleet. GM and Ford have six- and/or eight-cylinder offerings in nearly all of their size classes. The compact size class for Chrysler consists of essentially one model – the Omni/Horizon four-door hatchback, while the Ford line includes the two-door and four-door hatchback Escort/Lynx, the Thunderbird/Cougar, and two-door and four-door Tempo/Topaz. The GM compacts in MY 1985 includes J-body, X-body, and GM20 models in a variety of body styles. GM and Ford also offer small wagon versions of some of these models while Chrysler does not. Also, Ford and GM have one or more model offerings in the other EPA size classes not offered by Chrysler – two-seater, large sedan and large wagon.

If GM and Ford were to drop all large sedans and wagons in the MY 1985 fleet while retaining all the other models, their CAFE's would increase by 1.0 mpg for GM and 1.9 mpg for Ford. In Ford's case, this is a significant improvement rather than the loss in CAFE claimed by the Department of Energy analysis for the use of the Chrysler sales mix. In the case of GM, the improvement is the same as the Department of Energy showed for using the Chrysler mix.

The agency rejects Chrysler's characterization of NHTSA's analysis as not requiring GM and Ford to do anything to improve their fuel economy. The context of this rulemaking is responding to manufacturer petitions to reduce a standard in light of changed events, in a time period when there are only a few months remaining before the start of the model year. The agency has emphasized that when a manufacturer discovers its compliance plan is insufficient and it has no prospect of having the necessary amount of credits to offset the shortfall, it must make additional efforts to increase its fuel economy to meet standards. However, there is now insufficient leadtime to make additional technological improvements for the 1986 model year. The agency has also emphasized the need to take into account marketing efforts to improve CAFE, as GM and Ford have been doing.

NHTSA concludes that GM and Ford did make sufficient efforts to improve their fuel economy to comply with the Cost Savings Act and that those efforts were overtaken by unforeseen events whose effects could not be overcome by available means within the time available.

Other Federal Standards

As indicated above, EPA published a final rule in the *Federal Register* (50 FR 27172) on July 1, 1985, to provide CAFE adjustments to compensate for the effects of past test procedure changes. The final rule adopted a formula approach for calculating CAFE adjustments for the 1986 model year.

Manufacturers had argued that changes in EPA test procedures had adverely affected their CAFE values. On December 21, 1983, EPA published a proposal to give a 0.2 mpg credit to all passenger car manufacturers to account for test procedure changes regarding inertia weights, dynamometer controllers, actual distance versus nominal distance traveled in the test, and humidity level. In August 1984, GM requested additional CAFE credit to compensate for changes over time in the properties of test fuels used by EPA and the industry. GM argued that the test fuel adjustment should be an additional 0.02 mpg to 0.32 mpg fuel economy credit, with the value varying by model year. On December 7, 1984, EPA published a supplemental notice requesting comment on the test fuel issue.

Because EPA had issued its proposals prior to this agency's receipt of the GM and Ford petitions, NHTSA considered the effect of the EPA rulemaking throughout its analysis of those petititons and the subsequent rulemaking. Due to the formula approach adopted by EPA, that agency was unable to provide precise calculations concerning how the rule will affect each manufacturer. EPA staff informed NHTSA that they expected GM and Ford to receive credits for the 1986 model year of approximately 0.2 mpg. GM and Ford informed NHTSA that they expected to receive credits of 0.2 mpg and 0.1 mpg, respectively. While the agency does not have specific data concerning how the credits will affect other manufacturers, it believes that the credits will be similar to those for GM and Ford.

As discussed in the FRIA, changes in other Federal standards which may affect CAFE have been made in safety and damageability requirements. These include the May 1982 amendment to the Part 581 Bumper Standard, which permits weight savings; several amendments to the agency's lighting standard, which permit greater aerodynamic efficiency; and the fact that the automatic restraint requirement of Standard No. 208, with its attendant weight penalty, is not in effect for MY 1986 as anticipated in 1977. The potential weight savings permitted by the change in the Bumper Standard could improve CAFE by approximately 0.15 to 0.4 mpg. The agency concluded, however, that continued consumer demand for 5 mph bumpers did not permit the manufacturers to avail themselves of much of those potential weight savings. The net effect of the safety changes was to increase the CAFE capabilities of the manufacturers by approximately 0.3 mpg. BMW noted that it plans to introduce air bags in MY 1986 and will thus incur a weight penalty. The agency notes that the slight weight penalty in that year is not due to the standard's requirements but to that company's voluntary decision to comply early.

The Need to Conserve Energy

Since 1975, when the Energy Policy and Conservation Act was passed, this nation's energy situation has undergone a great deal of change. In particular, oil markets have been deregulated and the Strategic Petroleum Reserve (SPR) has been established.

The United States imported 15 percent of its oil needs in 1955. By 1977, the import share was 46.4 percent and the value of imported crude oil and refined petroleum products was $67 billion (stated as 1984 dollars). While the import share of total petroleum demand declined after that year, the cost continued to rise to a 1980 peak level of $93.2 billion (1984 dollars). By 1984, the import share had declined to 30.9 percent at a cost of $54.2 billion. Thus, the concern over dependence on imported petroleum, as measured by these indicators, has lessened in the past several years.

Moreover, imports from OPEC sources have been declining, from a high of 6.2 million barrels per day and 70.3 percent of all imports in 1977 to 2.0 million barrels per day and 37.6 percent of imports in 1984. Imports from non-OPEC sources have risen slightly from a low of 2.2 million barrels per day or 30.7 percent in 1976, to 3.4 million barrels per day or 62.4 percent in 1984. In 1984, Mexico supplied the U.S. with the largest amount of crude oil and petroleum products, followed by

Canada. As imports have shifted to non-OPEC sources, the United States' supply of petroleum has become less vulnerableto the political instabilities of some OPEC countries, as compared to the situation in the mid-1970's.

Overall, the Nation is much more energy independent than it was a decade ago, when Congress established the MY 1985 and thereafter standard. From 1975 to 1984, energy efficiency in the economy improved by 21 percent. (*1984 Annual Energy Review*, Energy Information Administration, U.S. Department of Energy, p. 47) Passenger car petroleum consumption is actually lower than it was in 1975, even though travel has increased 25 percent since then. Domestic oil production is higher than it was in 1975, total imports have dropped 20 percent since then, the value of the Nation's imported oil bill has declined nearly 40 percent in the last five years (on a net import basis, the value of the Nation's imported oil bill fell nearly 45 percent from 1980 to 1984), and the amount of imported oil from OPEC has dropped by 67 percent since the peak of 1977. As a percentage share of GNP, the net oil import bill fell from 2.8 percent in 1980 to 1.5 percent in 1984. In addition, the price of oil is now fully decontrolled, permitting the market to adjust quickly to changing conditions, and the Strategic Petroleum Reserve is well on its way to being filled. The 451 million barrels in the SPR at year-end 1984 were equal to 141 days or 38.6 percent of non-SPR crude oil imports that year. Thus, by any measure, the Nation is in a stronger energy position than it was a decade ago.

According to Energy Information Administration (EIA) and Data Resources, Inc., projections, however, domestic production is expected to decline from a stable level of 10 MMB/D to about 8.5 MMB/D by 1995. Net imports are expected to rise from 4.5 to 5 MMB/D to about 7.5 (EIA) to 9.0 (DRI) MMB/D by 1995. This would result in imports approaching 50 percent of U.S. petroleum use by 1995. However, future projections about petroleum imports are subject to great uncertainty and may be overtaken by new domestic discoveries. Indeed, oil imports are very difficult to project beyond a year or two. For example, the EIA's *1977 Annual Report to Congress* projected that net oil imports by the United States would, in the "reference case," reach 11 million barrels per day by 1985. Net imports for this year are now forecast to be less than 4.5 million barrels per day, substantially less than half the level predicted in 1977. The agency believes that energy conservation is important but also notes that even with a reduction in the standard MY 1986 passenger cars meeting a 26.0 mpg standard will be considerably more fuel-efficient than the nation's overall vehicle fleet and will thus make a substantial positive contribution to the goal of petroleum conservation.

Determining the 1986 Maximum Feasible Average Fuel Economy Level

As discussed above, section 502(a)(4) provides that the 27.5 mpg standard can be raised or lowered for MY 1985 or any subsequent model year if the agency determines that some other standard represents the maximum feasible average fuel economy level. In making this determination, the agency must consider the four factors of section 502(e): technological feasibility, economic practicability, the effect of other Federal motor vehicle standards in fuel economy, and the need of the Nation to conserve energy.

In the NPRM, the agency stated that, based on dictionary definitions and judicial interpretations of similar language in other statutes, it has interpreted the terms "feasible" and "practicable" to refer to whether something is capable of being done. The NPRM noted that in *American Textile Mfrs. Institute v. Donovan*, 452 U.S. 490, (1981), the Supreme Court interpreted the use of the word "feasible" in a similar statutory context to mean "capable of being done."

CEA urged a reinterpretation of the statutory criteria to permit adoption of what it termed "nonbinding" standards, i.e., standards which permit major automobile manufacturers to produce and price automobiles in response to free market forces, without concern that their competitive production and pricing decisions will cause imposition of CAFE penalties. CEA stated at the beginning of its docket comments that this particular argument was intended to apply to NHTSA's future rulemaking on passenger car standards for model years 1987 and thereafter. Although there is some ambiguity later in CEA's comments as to the applicability of this argument for reinterpretation, NHTSA believes it was CEA's intention that the argument apply only to subsequent rulemaking for model years 1987 and beyond. Moreover, if CEA's argument were applied to the current rulemaking, it would pertain to lowering the standard below 26.0 mpg, which would be outside the scope of this

rulemaking. Therefore, NHTSA has determined that it is unnecessary to respond to this CEA comment in this final rule, and will respond to the argument in the proposed rulemaking for model years 1987 and beyond. Other comments raised in CEA's docket comments, which addressed the model year 1986 rulemaking, are discussed elsewhere in this preamble.

Some commenters raised the issue of how costs and benefits should be taken into account in applying the statutory criteria. AIA argued that in order for a fuel economy standard to be "technologically feasible" and "economically practicable," it is necessary for the benefits of the standard to outweigh the costs. The Department of Energy stated that it believes efforts to reduce energy use serve the Nation's interest only to the extent that they contribute to the broader goals of increased economic growth and improved economic efficiency, and that it does not believe that the "need to conserve energy" requires or justifies the imposition of cost-ineffective product changes or product choice restrictions on consumers and manufacturers.

While both AIA and the Department of Energy supported NHTSA's proposal, the agency notes that it is not adopting the view that the statutory criteria necessarily require fuel economy standards to be cost-beneficial. The agency has addressed this issue at length in the past and determined that while it is appropriate for the agency to consider costs and benefits, the Cost Savings Act does not require benefits necessarily to exceed costs. See 42 FR 33536-33537 (June 30, 1977) and 49 FR 41254 (October 22, 1984).

The agency's traditional interpretation of the statutory criteria, with respect to consideration of economic factors, is that "economic practicability" requires standards to be within the financial capability of the industry, but not so stringent as to threaten substantial economic hardship for the industry. See 42 FR 33537. This final rule is based on the agency's traditional and longstanding interpretation of the statutory criteria.

With respect to determining the maximum feasible average fuel economy level, the Conference Report to the 1975 Act (S. Rep. No. 94-516, 94th Cong., 1st Sess. 154-5 (1975)) states:

> Such determination should therefore take industrywide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the Nation of a higher average fuel economy standard against the difficulties of individual automobile manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic automobile manufacturers that currently exist, and the possible implications for the national economy and for reduced competition association (sic) with a severe strain on any manufacturer. . . .

This language of the Conference Report indicates that standards may at times be set at a level above that of the least capable manufacturer and that some manufacturers may find it necessary to pay penalties. The issue arises of how (and whether) this language should be reconciled with the statutory text indicating that standards must be set at a level that is capable of being done. As a matter of construction, statutory language is controlling over legislative history. Legislative history, however, should be used as an indication of congressional intent in resolving ambiguities in statutory language. The agency believes that the above-quoted language of the Conference Report provides guidance on the meaning of "maximum feasible average fuel economy level."

It is clear from the Conference Report that Congress did not intend that standards simply be set at the level of the least capable manufacturer. Rather, NHTSA must take industrywide considerations into account in determining the maximum feasible average fuel economy level. The focus, thus, must be on the manufacturers' collective ability to meet a standard, rather than any particular manufacturer's ability to meet it.

With respect to light truck standards, NHTSA has consistently taken the position that it has a responsibility to set standards at a level that can be achieved by manufacturers of a substantial share of sales. See 49 FR 41251, October 22, 1984. The agency believes this same criterion is relevant to the setting of passenger car standards, as part of taking industrywide considerations into account. Given the substantial share (more than 60 percent) of car sales by GM and Ford, the agency believes that a standard set at a level above the maximum feasible capability of these manufacturers would by definition not be at the maximum feasible average

fuel economy level for the industry, i.e., such standard would exceed that level.

The least capable manufacturers with major shares of the market are GM and Ford. Taking account of the EPA test adjustment credit, both of those manufacturers project that their MY 1986 CAFE could be as high as 26.3 mpg.

In the section of this preamble entitled "Manufacturer Capabilities for 1986," the agency made several conclusions concerning the manufacturers' abilities to improve their projected CAFE levels. First, given the imminence of the 1986 model year, there is insufficient time now for the manufacturers to make further significant technological changes to their product plans. Therefore, any additional efforts by the manufacturers to increase their MY 1986 CAFE would largely be limited to attempts to change product mixes through increased marketing efforts and/or product restrictions. Second, based on past experience and current competitive conditions, GM and Ford cannot significantly improve their CAFE's by increased marketing efforts. Third, the types of product restrictions that would be required for GM and Ford to significantly improve their CAFE's could result in significant adverse economic impacts and restrict consumer choice to an unreasonable degree. The unacceptability of the resulting product mix to a significant segment of the consuming public would likely result in MY 1986 sales losses well into the hundreds of thousands of units and job losses well into the tens of thousands. The agency considers these effects to be beyond the realm of economic practicability.

While the agency believes that energy conservation is important, it cannot conclude that the possible energy savings associated with maintaining the 27.5 mpg standard for MY 1986 would justify the potential major economic hardships discussed above. The magnitude of possible energy savings is uncertain. If manufacturers restricted the availability of their large cars, consumers might tend to keep their older, less fuel-efficient large cars in service longer or purchase large pickup trucks and vans to obtain the room, power and load-carrying capacity they desire. This could offset in whole or part the apparent energy savings associated with higher passenger car CAFE.

The agency's FRIA indicates that the *maximum* magnitude of any increase in fuel consumption associated with a 26.0 mpg CAFE standard would be 1.54 billion gallons (37 million barrels) over the life of the MY 1986 fleet. The maximum yearly impact on U.S. gasoline consumption would be 210 million gallons, or roughly 0.3 percent of total annual automobile gasoline consumption. In terms of total U.S. petroleum consumption, it would amount to a maximum yearly increase of 0.09 percent. While the agency does not view these figures as insignificant, it does not believe that such hypothetical savings would justify potential sales losses to the industry in the hundreds of thousands, job losses in the tens of thousands, or the unreasonable restriction of consumer choices.

Some commenters argued that greater weight should be placed on the need of the Nation to conserve energy. ECC argued that the agency failed to adequately consider future energy needs and reviewed energy consumption effects without considering that it is the cumulative, long-term effect of steadily increasing standards that produces the energy conservation results that Congress intended.

As discussed above, NHTSA has considered future energy needs and concurs that energy conservation is important. Moreover, the agency agrees with ECC that major improvements in energy conservation result from cumulative smaller improvements made over time. However, this rulemaking is not one where the agency is declining to set future higher standards merely because the required energy conservation improvements would be relatively small. Rather, the agency's action in reducing the MY 1986 standard is being taken in light of all the statutory criteria for determining maximum feasible average fuel economy level. The need to conserve energy is important but does not outweigh the other criteria and, in the agency's judgment, does not justify the severe economic consequences discussed above. NHTSA believes this is particularly true in light of the relatively small and uncertain effect maintaining the 27.5 mpg standard for MY 1986 would have on energy consumption. The agency also notes that industry CAFE, even with a MY 1986 26.0 mpg standard, is likely to be higher than it was in MY 1985, thus contributing to energy conservation.

Some commenters argued that it is improper to reduce a fuel economy standard in light of changed market demand or that the agency placed too much weight on that factor. CFAS argued that the Cost Savings Act was intended to lead the market rather than have the market lead fuel economy standards.

NHTSA has always considered market demand in establishing fuel economy standards as that factor is an implicit part of the consideration of economic practicability. In a free market economy, market demand is one of the primary determinants for what manufacturers will be able to sell. As the agency has noted before, consumers need not purchase what they do not want. A standard set without regard to market demand could be overly stringent and economically impracticable.

Court decisions construing the term "practicability" in sections 103(a) and (f) of the National Traffic and Motor Vehicle Safety Act are instructive here. In *NHTSA v. Brinegar*, 491 F.2d 31, 38 (D.C. Cir. 1974), the court concluded that a standard requiring permanently molded labels on retreaded tires was "impracticable" because it was economically infeasible, in that it would reduce the volume of tire carcasses available for retreading by two-thirds, and would cause severe economic dislocation in the retreaded tire industry. The definition of practicability applied by the court required scrutiny of several economic factors, and the agency had improperly failed to consider the effect of the standard on a large segment of the motoring public, among other factors. Id. at 42.

In *Pacific Legal Foundation v. DOT*, 593 F.2d 1338, 1345 (D.C. Cir. 1979), cert. denied, 444 U.S. 830 (1979), the court concluded that the "practicability" requirement of the Vehicle Safety Act required the Secretary to take public reaction into account in deciding whether to adopt a regulation requiring automatic restraints in passenger cars. The court rejected the view that "public acceptance or rejection . . . is not one of the statutory criteria" to be applied in establishing safety standards.

While NHTSA believes it would be error to fail to take account of market demand in considering economic practicability, that does not mean that the agency's fuel economy standards are based solely or primarily upon market demand. As discussed above, the agency is required to establish standards at the maximum feasible average fuel economy level based upon four factors. Economic practicability is only one of those four factors, and market demand is only one aspect of economic practicability.

The changes in Federal safety and damageability standards discussed above provided some additional flexibility in improving CAFE. However, as discussed above with respect to possible technological changes, the imminence of the 1986 model year precludes significant changes in product designs.

Taking account of the four factors of section 502(e), the agency determines that the maximum feasible average fuel economy level for MY 1986 is 26.0 mpg. This level would be at the maximum capability of GM and Ford, the least capable manufacturers with major shares of the market, taking account of marketing and technological risks. As discussed above, the agency believes it has a responsibility to set standards at a level that can be achieved by such major manufacturers. NHTSA has determined that there are significant risks that GM and Ford may not be able to achieve their highest projected capabilities of 26.3 mpg, and it is in light of those risks that the agency is setting a standard at a level that provides a slight margin for risks.

As discussed above, GM's projected CAFE of 26.3 mpg is subject to marketing risks, including the possibility that Japanese car sales may rise substantially during the 1986 model year, resulting in a corresponding loss in sales of GM's most fuel-efficient cars and a concomitant reduction in its CAFE capability. Ford's maximum projected MY 1986 CAFE of 26.3 mpg is subject to both technological and marketing risks, amounting to 0.5 mpg, resulting in a potential CAFE for Ford of below 26.0 mpg.

The agency notes that the EIA's July 1985 Short-Term Energy Outlook indicates that motor gasoline prices are expected to decline by one cent per gallon during 1985 and to drop by an additional four cents per gallon between 1985 and 1986, mainly as a result of lower crude oil prices. Such a continuing decline in gasoline prices adds considerable uncertainty to whether manufacturers will be able to achieve their projected CAFE's, particularly since the EIA projection was made after the manufacturers submitted their CAFE estimates. Thus, this latest estimate of declining gasoline prices is not included as part of GM's and Ford's considerations.

Subsequent to the EIA estimate, Saudi Arabia indicated plans to raise its petroleum production by at least one million barrels a day starting in October. *The Wall Street Journal* quoted Saudi Oil Minister Ahmed Zaki Yamani as stating that unless other members of the oil cartel hold the line on production and price – something they haven't been doing – prices could conceivably fall by next spring to $18 a barrel from the current market

average of about $26. The newspaper quoted economist Alan Greenspan, the chairman of Townsend-Greenspan & Co., as predicting a weak market in the spring, with oil prices falling at least as far as $22 a barrel. Since these Saudi plans came after GM and Ford prepared their projections, they add another element of uncertainty.

Another factor of uncertainty is the introduction of inexpensive small cars from Yugoslavia, Korea, and Greece. Yugo sales began on August 26, 1985. That company projects it will sell 10,000 cars by the end of the 1985 calendar year and 40,000 cars the first year of sales. Hyundai cars are expected to be introduced into the U.S. market in early 1986. That company plans to sell 100,000 cars the first year. Ford noted that while its 1985 estimates include some consideration of these vehicles, substantial success of such entries presents a further risk to its CAFE. In addition, the Desta, a recently announced Greek import, is also expected to sell up to 40,000 vehicles in its first year.

Experience with uncertainties that may reduce manufacturers' CAFE indicates that there is a substantial risk that such uncertainties may come to fruition. For example, a comparison of manufacturers' CAFE estimates as shown in their pre-model year reports, which are submitted in late December of the then-current model year (i.e., at a time when many vehicles are well into production), with actual CAFE's indicates that the actual CAFE's differed from the estimates by an average of 0.5 mpg, and by as much as 1.2 mpg. Thus, companies such as Ford, GM, Chrysler, and Toyota have difficulty estimating their CAFE closer than 0.5 mpg even at that late a period in time.

NHTSA disagrees with CEA's comment that a standard set at 26.0 mpg is too high and with that commenter's assertion that the NPRM "conceded" that under current market conditions a 26.0 mpg standard is likely to cause a shift of consumer purchases from larger GM and Ford products to models produced by other manufacturers, as well as smaller GM and Ford automobiles.

The agency further disagrees with assertions by CEA that a 26.0 mpg standard will reduce consumer choice and induce automobile purchasers to acquire less desirable models, handicap U.S. manufacturers in their efforts to compete against Japanese and other automobile imports, lead to loss of U.S. jobs in manufacturing sectors where the U.S. retains a comparative advantage in a highly competitive, international market, and increase highway fatalities and casualties by causing automobile consumers to buy automobiles that are smaller and not as safe as those they would purchase under lower CAFE standards.

As discussed above, the agency has concluded that GM and Ford will be able to achieve average fuel economy of 26.0 in MY 1986 without engaging in unreasonable product restrictions. Therefore, the 26.0 mpg standard will not reduce consumer choice or lead to loss of U.S. jobs.

The agency does not believe that there is any basis for concluding that a 26.0, or even a 27.5 mpg standard, would represent any significant increased risk of injury or death for passenger car occupants. It is true that in a crash between cars of different sizes, everything else being equal, the occupants of the smaller cars are at greater risk of injury. However, as large cars are reduced in size, the mass differences between large and small cars diminish, along with the potential for injury. In addition, the agency is taking steps to ensure that smaller vehicles provide sufficient crash protection. Also, small cars may have crash-avoidance advantages compared to heavier vehicles. Passenger car occupant deaths have in fact dropped from 28,200 in 1978 to 23,500 in 1984, a 17 percent decline. This occurred during a time when the average new car's weight was reduced by 1000 pounds.

With respect to CEA's request that the agency adopt a MY 1986 standard below 26.0 mpg, NHTSA also notes that such an amendment would be outside the scope of notice of the NPRM.

With the exception of Jaguar, Mercedes-Benz, and possibly Saab, the agency believes the rest of the industry is capable of meeting the 26.0 mpg standard, although compliance may be close for some of the European manufacturers. NHTSA has concern about setting standards that one or more manufacturers cannot meet, particularly since some of the manufacturers have made great improvements in their fuel economy. As discussed above, however, the Act requires the agency to take industrywide considerations into account in determining the maximum feasible average fuel economy level. A standard set at the level of the least capable European manufacturer would be so far below that of the industry as a whole that it would remove any effect the CAFE program has on improving fuel economy. The agency noted in the NPRM that these manufacturers have chosen to concentrate on a segment of the market that

tends toward lower fuel economy. BMW objected to this characterization, arguing that it implied a wilful choice toward noncompliance. That commenter argued that foreign manufacturers with more than one model usually cannot import all of them into the U.S., which is an extremely competitive marketplace, but can only import the most competitive models. As indicated above, NHTSA recognizes that some of these manufacturers have made significant fuel economy improvements, and the agency was not suggesting criticism of those manufacturers.

In this and other rulemakings, commenters have raised the issue of whether and how penalties and carryforward/carryback credits should be taken into account in setting standards at the maximum feasible average fuel economy level. The agency's analysis of these issues is contained in the FRIA.

Competitive Effects

Chrysler argued that NHTSA must consider the economic impact of a reduced standard on manufacturers which will achieve the 27.5 standard. That commenter argued that a reduced standard will have a deleterious competitive impact on such manufacturers, since they will have no time to reallocate their resources and compete as effectively as possible in the new environment.

The agency recognizes the varying impacts among manufacturers that are involved in revising fuel economy standards. However, the agency must consider the feasibility of its standards for the industry as a whole, as discussed above, in accordance with the four factors provided by section 502(e) of the Act. Indeed, since the Act specifically permits the revision of previously set fuel economy standards, it necessarily contemplates the possibility of different impacts on different manufacturers. Any change in a standard will result in varying impacts, because different manufacturers will be at different stages along varying paths toward complying with the previous standard. The agency notes that the MY 1981 light truck standard was lowered in response to a petition for rulemaking submitted by Chrysler. Thus, that company has requested and received the benefit from the same type of rulemaking action to which it now objects.

The agency also notes that Chrysler has emphasized that it is now earning the greatest profits in its history. This is occurring while its CAFE is above that of GM and Ford. While that company has argued that it could be earning still higher profits if it had known the fuel economy standard would be reduced, it has not shown that reducing the standard to 26.0 mpg will have any demonstrable impacts on its current high level of profitability or on its employment. Moreover, the agency believes that any such relatively minor impacts are heavily outweighed by the possibility of serious adverse economic consequences to the industry and economy as a whole if the standard is not reduced.

Comment Period; Timeliness of Decision

The attorney general of California argued that the 30-day comment period unfairly restricted public comment. That commenter argued that the July 22, 1985, issue of the *Federal Register* did not reach the West Coast until a week or more after the publication date and that the comment period was effectively shortened even further by the time required to obtain various documents referred to by the notice that were in the public docket.

As indicated by the March 1985 notice granting the GM and Ford petitions and requesting comments on those petitions, NHTSA stated that it was focusing its attention on the 1986 model year in view of the possibility of serious economic harm cited by the petitioners and the limited remaining time for amending the 1986 standard. As discussed by the agency in a previous *Federal Register* notice, amendments reducing a standard for a particular model year may be made until the beginning of the model year, but not after that time. See 49 FR 41250, 41254-5 (October 22, 1984). In its March 1985 notice, the agency noted that since model years begin in the fall, a final rule reducing the 1986 standard would have to be issued by this fall. The agency also noted that "(t)he nearness of that deadline would necessitate that each phase of the rulemaking, including the period for commenting on a proposal, be shortened so that the rulemaking could be completed in a timely fashion." 50 FR 12344 (March 28, 1985).

Because of the importance of the issues presented by this rulemaking, which concern possible serious economic harm to GM and Ford and the economy as a whole, coupled with the nearness of the deadline for amending the 1986 model year standard, the agency found good cause for a 30-day comment period. The statute does not establish a specific minimum notice period. Accordingly, the agency established a reasonable comment period,

based on the circumstances. The agency believes that the procedural steps followed by the agency provided a full opportunity for meaningful participation by the public. The agency notes that the public was given advance notice in the March 28, 1985 *Federal Register* publication of a possible shortened comment period and the opportunity to comment on the issues raised by the petitions in advance of NHTSA's decision whether to issue an NPRM.

CFAS argued that it is too late to reduce the MY 1986 standard because the model year has already begun. That commenter cited July 1985 sales of MY 1986 GM N-body cars.

The agency disagrees with that commenter's position. The time when a model year begins is imprecise. Model years may differ for different manufacturers and for different vehicles produced by a manufacturer. The single court to address the issue has stated only that a given model year begins in the fall of the preceding calendar year (e.g., fall 1985 is the beginning of the 1986 model year). See *Center for Auto Safety v. NHTSA*, 710 F.2d 842, 847 (D.C. Cir. 1983). The court did not specify a particular date for the beginning of the model year. Consistent with the court's general view, the agency concludes that this amendment to the MY 1986 standard is timely.

Issued on September 30, 1985

Diane K. Steed
Administrator

50 F.R. 40528
October 4, 1985

PREAMBLE TO AN AMENDMENT TO PART 531

Passenger Automobile Average Fuel Economy Standards
Final Decision to Grant Exemption
(Docket No. LVM 82-01; Notice 6)

ACTION: Final rule granting exemption from average fuel economy standard and establishing an alternative standard.

SUMMARY: This rule is issued in response to a petition filed by Rolls-Royce Motors, Ltd. (Rolls-Royce) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for 1987-1989 model year passenger automobiles, and that a lower alternative standard be established for it. This rule grants Rolls-Royce that exemption and establishes an alternative standard of 11.2 mpg for Rolls-Royce for years 1987-1989.

EFFECTIVE DATE: This exemption and alternative standard apply to Rolls-Royce for model years 1987-1989.

SUPPLEMENTARY INFORMATION: NHTSA is exempting Rolls-Royce from the generally applicable average fuel economy standard for 1987-1989 model year passenger automobiles and establishing an alternative standard applicable to Rolls-Royce for those model years. This exemption is issued under the authority of section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended ("the Act") (15 U.S.C. 2002(c)). Section 502(c) provides that a passenger automobile manufacturer which manufactures fewer than 10,000 vehicles annually may be exempted from the generally applicable average fuel economy standard for a particular model year if that standard is greater than the low volume manufacturer's maximum feasible average fuel economy and if NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Section 502(e) of the Act (15 U.S.C. 2002(e)) requires NHTSA, in determining maximum feasible average fuel economy, to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

This final decision was preceded by a proposed decision announcing the agency's tentative conclusion that Rolls-Royce should be exempted from the generally applicable 1987-1989 passenger automobile average fuel economy standards, and that an alternative standard of 11.2 mpg should be established for Rolls-Royce in those model years, 50 FR 23738, June 5, 1985. No comments were received on the proposed decision.

The agency is adopting the tentative conclusions set forth in the proposed decision as its final conclusions, for the reasons set forth in the proposed decision. Based on the conclusions that the maximum feasible average fuel economy level for Rolls-Royce in years 1987-1989 is 11.2 mpg, that other Federal motor vehicle standards will not affect achievable fuel economy beyond the extent considered in the proposed decision, and that the national effort to conserve energy will not be affected by granting this requested exemption, NHTSA hereby exempts Rolls-Royce from the generally applicable passenger automobile average fuel economy standard for the 1987-1989 model years and establishes an alternative standard of 11.2 mpg for Rolls-Royce in those years.

NHTSA has analyzed this decision, and determined that neither Executive Order 12291 nor the Department of Transportation regulatory policies and procedures apply, because this decision is not a "rule," which term is defined as "an agency statement of general applicability and future effect." This exemption is not generally applicable, since it applies only to Rolls-Royce. If the Executive Order and the Department policies and procedures were applicable, the agency would have determined that this action

is neither "major" nor "significant." The principal impact of this exemption is that Rolls-Royce will not be required to pay civil penalties if it achieves its maximum feasible average fuel economy, and purchasers of its vehicles will not have to bear the burden of those civil penalties in the form of higher prices. Since this decision sets an alternative standard at the level determined to be Rolls-Royce's maximum feasible average fuel economy, no fuel would be saved by establishing a higher alternative standard. The impacts for the public at large will be minimal.

In consideration of the foregoing, 49 CFR Part 531 is amended by revising § 531.5(b)(2) to read as follows:

* * * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * * *

(2) Rolls-Royce Motors, Inc.

Model Year	*Average fuel economy standard (miles per gallon)*
1978	10.7
1979	10.8
1980	11.1
1981	10.7
1982	10.6
1983	9.9
1984	10.0
1985	10.0
1986	11.0
1987	11.2
1988	11.2
1989	11.2

Issued on: April 9, 1986

Diane K. Steed
Administrator

51 F.R. 12855
April 16, 1986

PREAMBLE TO AN AMENDMENT TO PART 531

Passenger Automobile Average Fuel Economy Standards
Model Years 1987-1988
(Docket No. FE-85-01; Notice 6)

ACTION: Final rule.

SUMMARY: This notice amends the average fuel economy standards applicable to passenger automobiles manufactured for model years (MY) 1987 and 1988 by reducing the standards from 27.5 mpg to 26.0 mpg. This rulemaking was initiated in response to petitions for rulemaking submitted by General Motors (GM) and Ford. The agency earlier reduced the MY 1986 standard from 27.5 mpg to 26.0 mpg as part of the rulemaking related to those petitions. Based on all available information, including public comments, NHTSA has concluded that GM and Ford, constituting a substantial part of the industry, took or planned appropriate steps to meet the 27.5 mpg standard for MY 1987-88 and made significant progress toward doing so, but have been prevented from fully implementing those steps by unforeseen events. Among other things, there has been a substantial shift in expected consumer demand toward larger cars and engines, and away from the more fuel-efficient sales mixes anticipated for MY 1987-88 by GM and Ford when they developed their product plans. This shift is largely attributable to a decline in gasoline prices, which has stimulated consumer demand for the new mix. Also, a number of technological improvements planned by GM and Ford did not achieve the full fuel economy benefit that was anticipated by those manufacturers. The agency's analysis further indicates that the only actions now available to those manufacturers to raise the fuel economy of their domestic fleets to 27.5 mpg in MY 1987-88 would involve a combination of (1) product restrictions likely resulting in significant adverse economic impacts, including substantial job losses and sales losses and unreasonable restrictions on consumer choice, and (2) transferral of the production of large cars outside of the United States, thereby costing American jobs, while having absolutely no energy conservation benefits. Such actions could also severely exacerbate the U.S. trade deficit.

DATES: The amendments made by this rule to the Code of Federal Regulations are effective November 5, 1986.

SUPPLEMENTARY INFORMATION:

Background

A. The Energy Policy and Conservation Act

1. *Overview*

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973-74, the Congress enacted the Energy Policy and Conservation Act (EPCA). Congress included a provision in that Act establishing the automotive fuel economy regulatory program. That provision added a new title, Title V, "Improving Automotive Efficiency," to the Motor Vehicle Information and Cost Savings Act.

Title V specified corporate average fuel economy (CAFE) standards for cars of 18, 19, and 20 mpg for model years 1978, 1979, and 1980, respectively, and 27.5 mpg for 1985 and thereafter. The Secretary of Transportation was required to establish standards for model years 1981-84. Section 502(a)(3) required that the standards for each of those model years be set at a level which (1) was the maximum feasible average fuel economy level and (2) would result in steady progress toward meeting the 27.5 mpg standard for model year 1985.

Although Congress clearly established the 27.5 mpg value as a goal to strive for (27.5 mpg is roughly twice the MY 1974 CAFE), it recognized that such long-term goals are subject to considerable uncertainty. As discussed below, the Act permits, but does not require, the Department to change the standard based on up-to-date information and changing trends and assumptions.

When EPCA was enacted, Congress declared its long-term purpose to be to "decrease dependence upon foreign imports, enhance national security,

achieve the efficient utilization of scarce resources, and guarantee the availability of domestic energy supplies at prices consumers can afford." Conference Report (S. Rep. No. 94-516, 94th Cong., 1st Sess. (1975)) at p. 117. In considering EPCA, Congress predicted that the nation's dependence on foreign oil could be "nearly 12 million barrels per day in 1985," and expressed concern about the adverse effect of such a level of imports on the international balance of trade. (H.R. Rep. No. 94-221, 94th Cong., 1st Sess. (1975)) It was noted that the cost of foreign oil had risen from about $7 billion to $25 billion between 1973 and 1974 and could easily increase to $60 billion in 1985 (in constant dollars).

EPCA was passed in an environment of congressional concern about a weak economy and a desire by Congress to encourage energy conservation without causing adverse economic and employment consequences. See H.R. Rep. No. 94-221, 94th Cong., 1st Sess. (1975) at pp. 14-15, and H.R. Rep. No. 94-340, 94th Cong., 1st Sess. (1975) at pp. 9-11, 87-88. The legislative history of amendments to EPCA that were enacted in 1980 also indicates congressional concern about jobs. Indeed, one of the stated purposes of the 1980 amendments was "to encourage full employment in the domestic automobile manufacturing sector." See section 2 of the Act.

Congress' goal of energy conservation by improved automotive fuel efficiency has largely been realized. By 1985, U.S. imports of oil were less than when EPCA was enacted, and the cost in constant 1974 dollars was not the $60 billion feared by Congress but instead approximately $24 billion. In MY 1986, for the first time, the average fuel economy of the total fleet of new cars will in fact exceed 27.5 mpg. In addition, not only has the average fuel economy for all cars sold reached the basic congressional goal, but consumers now have wide choice in purchasing fuel-efficient cars of all types and sizes.

While EPCA's energy conservation goals have largely been realized, NHTSA confronts a record in this rulemaking which indicates that EPCA's secondary concern of ensuring that the fuel economy program does not result in losses of American jobs is at risk. As discussed below, the only actions available to GM and Ford in the near-term to achieve fuel economy levels of 27.5 mpg, i.e., for MY 1987-88, would involve a combination of (1) product restrictions likely resulting in significant adverse economic impacts, including substantial job losses and sales losses and unreasonable restrictions on consumer choice, and (2) transferring the production of large cars outside of the United States, thereby costing American jobs while having absolutely no energy conservation benefits. Indeed, it should be noted that this could severely exacerbate the U.S. trade deficit, which, as noted above, was one of Congress' concerns when it enacted EPCA. In 1975, Congress was concerned about the effect of increased oil imports on the U.S. balance of trade. The agency notes that the trade deficit is now at an all-time high, due in large measure to the increase in automobile imports.

A major reason that GM and Ford are having difficulty achieving a CAFE of 27.5 mpg, in addition, as discussed below, to an unexpected drop in gasoline prices since their MY 1987-88 product plans were developed, relates to major changes which have occurred in the structure of the automotive industry since EPCA was passed. Due to major cost advantages in producing small cars abroad, imports comprise an increasing share of U.S. car sales. For example, while imports represented between 15 and 20 percent of all cars sold in the U.S. between 1973 and 1977, they are expected to comprise 35 percent of sales in 1987-88. Since imports are concentrated in the smaller, most fuel-efficient market segment, the rising share of imports makes it more difficult for the full-line domestic manufacturers to achieve CAFE of 27.5 mpg, since their cars are concentrated more in the mid-size and larger market segment.

Moreover, as discussed below, although GM and Ford themselves can attempt to solve the problem of their small car production cost disadvantage by importing small cars, they cannot count the imports toward their domestic CAFE for purposes of meeting CAFE standards. NHTSA notes that the Japanese manufacturers find it easy to meet CAFE standards due to their concentration on the smaller car market. Similarly, GM's import fleet will easily surpass CAFE of 27.5 mpg during MY 1987-88, as will Ford's by MY 1988. Thus, the present difficulties faced by the full-line manufacturers in complying with CAFE standards are in fact largely limited to an artificial subset of their cars. The agency notes that not only will the average fuel economy of the total fleet of new cars exceed 27.5 mpg during MY 1987-88, but GM's total fleet, including domestic, imports, and joint, venture cars, is expected to be 27.5 mpg by MY 1988.

The provision in EPCA which prevents manufacturers from averaging their import and domestic cars for purposes of complying with CAFE standards was, as discussed below, intended to discourage manufacturers from meeting CAFE standards by increasing imports of small cars. Ironically, that same provision now creates an incentive for the domestic manufacturers to meet standards by producing their larger, less fuel-efficient cars outside the U.S., since the larger cars could then be averaged with small car imports, rather than with mid-size domestic cars.

As indicated above, Congress recognized the difficulties in predicting CAFE levels a decade in advance and, therefore, permitted the Department to amend CAFE standards. Section 502(a)(4) provides that the Secretary of Transportation may raise or lower the 27.5 mpg standard for model year 1985 or for any subsequent model year if he or she determines that some other standard represents the maximum feasible average fuel economy level. In determining maximum feasible average fuel economy, the Secretary is required under section 502(e) of the Act to consider four factors: technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy. (Responsibility for the automotive fuel economy programs was delegated by the Secretary of Transportation to the Administrator of NHTSA (41 FR 25015, June 22, 1976).)

While compliance with fuel economy standards is determined by averaging, enabling manufacturers to produce vehicles with fuel economy below the level of the standard if they produce sufficient numbers of vehicles with fuel economy above the level of the standard, manufacturers may not average their imported cars together with their domestically manufactured cars. Instead, manufacturers must meet fuel economy standards separately for their imported and domestically manufactured fleets. (See section 503.) Cars are considered to be domestically manufactured if they have at least 75 percent domestic content. Conversely, cars are considered to be imports, or as the statute characterizes them, "not domestically manufactured," if they have less than 75 percent domestic content.

While a separate fuel economy standard is set for each model year, the Cost Savings Act does not require absolute achievement of the standard within each year. Instead, it allows a shortfall in one year to be offset if a manufacturer exceeds the standard for another year or years. Under the Act, as amended by the Automobile Fuel Efficiency Act of 1980, manufacturers earn credits for exceeding average fuel economy standards which may be carried back for three model years or carried forward for three model years.

2. *Congressional intent*

While the Congress established a goal of 27.5 mpg, it also recognized the need for flexibility and authorized the Department to adjust the standards to the maximum feasible level.

The report accompanying H.R. 7014, the bill containing the House version of the fuel economy provisions (which would have specified a 28.0 mpg standard for 1985 and thereafter), stated that "the automobile industry has a central role in our national economy and that any regulatory program must be carefully drafted so as to require of the industry what is attainable without either imposing impossible burdens on it or unduly limiting consumer choice as to capacity and performance of motor vehicles." H.R. Rep. No. 94-340, 94th Cong., 1st Sess. 87 (1975). As another indication of the congressional view of the need for flexibility, the report recognized the difficulty in establishing goals ten years in the future by stating that "(t)he 1985 average fuel economy standard presented a different problem [than establishing standards for MY's 1979-80] because of the high level of uncertainty which attends any attempt to predict technological feasibility a decade into the future." Id. at 88. The Committee also stated that although the 1985 standard was a "clear target," it also provided DOT the authority to amend that target so as to provide the program "with the necessary flexibility." *Ibid.*

It is noteworthy that the Secretary was given authority to lower the standard for MY 1985 or for any subsequent year to 26.0 mpg without such action being subject to a one-house veto. Conversely, any action to raise the standard above 27.5 mpg or to lower it below 26.0 mpg was subject to that form of congressional review and disapproval. While such legislative vetoes have since been declared unconstitutional, the separate treatment in the original legislation of action to lower the standard to any level between 26.0 mpg and 27.5 mpg appears to reflect Congress' view of the likelihood of such events and its willingness to accept—without formal review—Departmental actions making slight reductions in the long-term goal established by the Act.

B. Setting the 1981-84 Standards

On June 30, 1977, NHTSA published in the *Federal Register* (42 FR 33534) a final rule establishing the 1981-84 passenger automobile CAFE standards. The selected standards were 22 mpg for 1981, 24 mpg for 1982, 26 mpg for 1983, and 27 mpg for 1984.

As part of establishing the 1981-84 standards, the agency developed estimates of the maximum feasible fuel economy for each manufacturer for model years 1981 through 1985. The agency's conclusion at the time was that "levels of average fuel economy in excess of 27.5 mpg are achievable in the 1985 time frame." 42 FR 33552. The agency believed that it was feasible in model year 1985 for General Motors to achieve an average fuel economy level of 28.9 mpg, Ford 27.9 mpg, and Chrysler 28.7 mpg. See 1977

Rulemaking Support Paper (RSP), p. 5-38 (Table 5.11). Those levels were based on a number of assumptions, including the ability of manufacturers to maintain a rapid rate of introduction of technology, consumer acceptance of a 10 percent reduction in vehicle acceleration, and significant use of a widespread range of technological options, including weight reduction, improved transmissions and lubricants, reduced aerodynamic drag, reduced accessory losses, and reduced tire rolling resistance.

The agency's estimates did not assume a downward mix shift in automobile sizes or the use of diesel engines. The agency concluded that a standard set at a level that required substantial mix shifts would not be economically practicable due to the risk that a significant number of consumers might defer purchasing new automobiles, resulting in a substantial sales drop. However, these techniques were viewed in the 1977 rule as "constituting a safety margin" for manufacturers in the event that other technological improvements did not result in sufficient CAFE improvements. 42 FR 33545, June 30, 1977. The agency also noted that some manufacturers might decide to use some of those measures in place of some of the ones assumed by the agency's estimates. 42 FR 33545.

As to foreign manufacturers, the 1977 RSP projected that all but three of them could improve their average fuel economy levels, without expanded use of diesel engines, sufficiently to meet the 27.5 mpg standard. With fleet fuel economy improvements from additional diesels included in the foreign fleet projections, only one manufacturer, Mercedes-Benz, was projected to fall below the 1985 standard.

It should be emphasized that the agency's 1977 estimates were intended to demonstrate the feasibility of achieving the 27.5 mpg standard and not to predict what specific actions the manufacturers would actually take to achieve that standard. The agency's estimates were based on one scenario of what the agency believed manufacturers could do to achieve an average fuel economy level of 27.5 mpg by 1985. Manufacturers were free to pursue other courses of action to achieve the 27.5 mpg fuel economy level.

C. Events From 1977 to 1984

In January 1979, NHTSA presented new feasibility estimates for each manufacturer for model years 1980 through 1985 in its *Third Annual Report to the Congress on the Automotive Fuel Economy Program* (44 FR 5742, January 29, 1979). The agency stated that "(o)n balance, the conclusions reached during the 1981-84 rulemaking...are similar to those resulting from the most recent assessments. These assessments indicate that all domestic manufacturers can exceed the scheduled standards for each year through 1985." 44 FR 5757.

NHTSA recognized in its *Third Annual Report* that the changes in vehicle design necessary to meet the fuel economy projections would require tremendous outlays of capital. The agency also recognized that its feasibility estimates were dependent on the continued financial health of the industry and could be subject to change in the event of a severe economic downturn.

The *Third Annual Report* noted that a number of manufacturers did not agree with the agency's conclusion that "(t)he technology is available that will enable manufacturers to achieve an average fuel economy of 27.5 mpg without reducing vehicle interior space or significantly affecting performance and without changing the mix of size classes."

Between January and May of 1979, NHTSA received a number of submissions from Ford and General Motors on the 1981-84 fuel economy standards for passenger automobiles asserting that those standards should be reduced. In response to these submissions, the agency published a document entitled *Report on Requests by General Motors and Ford to Reduce Fuel Economy Standards for MY 1981-85 Passenger Automobiles,* DOT HS-804 731, June 1979. The report concluded that the standards were technologically feasible and economically practicable and noted that both companies had submitted product plans for meeting the standards. Report, p. 14.

Shortly thereafter, the nation was in the midst of another energy crisis, brought on by events in Iran. Gasoline prices were rising rapidly, creating significantly increased consumer demand for small cars. The U.S. city average retail price for unleaded gasoline rose from 90 cents per gallon in 1979 to $1.25 in 1980. (In 1985 dollars, this increase would have been from $1.28 in 1979 to $1.63 in 1980.) In light of these changed conditions, the industry announced that it would significantly exceed the 27.5 mpg standard for 1985. Both Ford and GM, as well as Chrysler and American Motors, indicated that they expected to achieve average fuel economy in excess of 30 mpg for that model year. Product plans submitted to NHTSA by those companies indicated that the projections assumed significant mix shifts toward smaller cars and rapid introduction of new technology. A letter submitted to the agency by Ford in July 1980, however, cautioned that "it is important to emphasize that the affordability of many of these programs is dependent upon substantial improvement in the market and economic conditions."

On January 26, 1981, NHTSA published an advance notice of proposed rulemaking (ANPRM) in the

Federal Register (46 FR 8056) which addressed the issue of passenger automobile fuel economy standards for model year 1985 and beyond. That notice and an accompanying paper entitled *Analysis of Post-1985 Fuel Economy* assumed that manufacturers would achieve their announced average fuel economy goals of over 30 mpg for 1985. The notice also took note, however, of a deepening economic crisis then facing the auto industry and possible effects on financing investments for improving fuel economy.

On April 16, 1981, NHTSA published in the *Federal Register* (46 FR 22243) a notice withdrawing the ANPRM. The notice stated that "(t)his action is being taken in recognition of market pressures which are creating strong consumer demand for fuel-efficient vehicles and sending clear signals to the vehicle manufacturers to produce such vehicles. It is expected that the market will continue to act as a powerful catalyst. . . ."

Conditions affecting fuel economy changed dramatically after 1981, following completing of decontrol of domestic oil and other external factors increasing available supplies. Gasoline prices did not rise as they had in the 1970's but instead declined over time. This, combined with economic recovery, caused actual consumer demand to shift back toward larger cars and larger engines. Data submitted to the agency by GM and Ford in mid-1983 indicated that instead of achieving fuel economy well in excess of the 27.5 mpg standard for MY 1985, they would be unable to meet the level prescribed by the standard.

Petitions

In July 1984, NHTSA received a petition for rulemaking from the Center for Auto Safety (CFAS) and the Environmental Policy Institute (EPI) requesting that the MY 1987-90 passenger automobile average fuel economy standards be increased. The agency granted the CFAS/EPI petition in a notice published in the *Federal Register* (49 FR 46770) on November 28, 1984. The agency stated that it believed the issues raised by the petition should be analyzed in the context of rulemaking and granted the petition to that extent.

In March 1985, both GM and Ford submitted petitions for rulemaking requesting that NHTSA reduce the passenger automobile average fuel economy standard for the 1986 model year and beyond from 27.5 mpg to 26.0 mpg. The petitioners stated that factors beyond their control, including lower gasoline prices and resultant greater consumer demand for larger cars and engines, had reduced their fuel economy capability. NHTSA granted the GM and Ford petitions in a notice published in the *Federal Register* (50 FR 12344) on March 28, 1985, and requested public comments. The agency noted that it was already considering the CFAS/EPI petition with respect to model years 1987 and thereafter.

MY 1986 Standard

On September 30, 1985, NHTSA issued a final rule which reduced the MY 1986 standard from 27.5 mpg to 26.0 mpg (50 FR 40528, October 4, 1985).

In developing the MY 1986 final rule, NHTSA proceeded from the premise that because the Cost Savings Act had imposed a long-term obligation on manufacturers to achieve a 27.5 mpg fuel economy level, it would be inappropriate to exercise its discretion to reduce the standard if a current inability to meet the standard simply resulted from manufacturers previously declining to take appropriate steps to improve their average fuel economy as required by the Act. The agency therefore evaluated the manufacturers' past efforts to achieve higher levels of fuel economy as well as their immediate capabilities.

Based on all available information, including the public comments received in response to the March 1985 *Federal Register* notice and a subsequent NPRM (50 FR 22912, July 22, 1985), NHTSA concluded that GM and Ford, constituting a substantial part of the industry, had taken or planned appropriate steps to meet the 27.5 mpg standard in MY 1986 and made significant progress toward doing so, but were prevented from fully implementing those steps by unforeseen events. A decline in gasoline prices which began in 1982 had been expected to be temporary and quickly reverse, but instead continued. The agency concluded in the MY 1986 rulemaking that, among other things, there had been a substantial shift in expected consumer demand toward larger cars and engines, and away from the more fuel-efficient sales mixes recently anticipated for MY 1986 by GM and Ford. The agency's analysis indicated that this shift was largely attributable to the continuing decline in gasoline prices. NHTSA's analysis further indicated that the only actions then available to those manufacturers to improve their fuel economy for MY 1986 would have involved product restrictions likely resulting in significant adverse economic impacts, including sales losses well into the hundreds of thousands and job losses well into to the tens of thousands, and unreasonable restrictions on consumer choice. Based on its analysis of the relevant statutory criteria, NHTSA determined that the maximum feasible average fuel economy level for MY 1986 was 26.0 mpg.

NPRM for MY 1987-88

On January 22, 1986, NHTSA published in the *Federal Register* (51 FR 2912) an NPRM to amend the MY 1987-88 passenger automobile average fuel economy standard, within a range of 26.0 mpg to 27.5 for each model year. The agency invited both written and oral comments on the proposal. A public meeting was held on February 19, 1986, in Washington, D.C., to receive oral comments.

Public Comments

Comments were received both from parties strongly supporting a reduction in the MY 1987-88 passenger automobile CAFE standards and parties strongly opposing such action. Many of the parties took positions similar to those taken in the MY 1986 proceeding.

Both of the petitioners, GM and Ford, continued to urge that the standards be reduced to 26.0 mpg. GM argued that it had met or exceeded EPCA's technological objectives, and that changed circumstances over the past decade support a determination that the standards for the 1987-88 model years must be amended to a level no higher than 26.0 mpg. That company stated that any higher standard would threaten substantial production curtailments, job losses, limitations on consumer choice, and other economically impracticable consequences that far outweigh any marginal energy conservation benefit of a higher CAFE standard. GM emphasized that its current MY 1987-88 CAFE projections are subject to uncertainties, and urged that the standards be set at levels to enable it to generate sufficient carryback credits to cover unanticipated shortfalls with respect to the MY 1985 standard.

Ford argued that a 26.0 mpg standard for both model years is consistent with the uncertainties in predicting consumer demand and market conditions, the fuel economy benefits associated with its new products, and technology and fuel prices. While emphasizing the steps it has taken to improve its fuel economy, Ford stated that it believes an analysis of the relevant statutory factors demonstrates that the same major changes in market conditions which led NHTSA to amend the MY 1986 CAFE standard from 27.5 mpg to 26.0 mpg have an even greater impact on the ability of full line manufacturers to comply with the existing MY 1987-88 standards. That company emphasized the continuing decline in fuel prices, which it stated is expected to encourage further shifts toward larger cars and engines, and the increasing market share of Japanese and other imports in the small car market. Like GM, Ford argued that any impact on petroleum consumption associated with reducing the MY 1987-88 standards to 26.0 mpg would be minimal.

Professor Robert Leone of Harvard University, commenting on behalf of the Automobile Importers of America (AIA), presented an analysis concluding that MY 1987-88 standards above 26.0 mpg are not feasible because of constraints on manufacturers' attempts to pursue competitive strategies consistent with the globalization of the auto industry, not efficient because of the excessive costs incurred as a consequence of restrictions on consumer diversification options, and not sound energy policy because of possible adverse effects on energy consumption and economic efficiency that result from regulation-induced market distortions.

The National Automobile Dealers Association (NADA) urged that the MY 1987-88 standards be set at 26.0, arguing that higher standards would result in manufacturers restricting the availability of larger, less fuel-efficient vehicles. According to NADA, such product restrictions would send an "economic shock-wave" from dealers to manufacturers and through the economy in general.

The Recreational Vehicle Industry Association (RVIA) supported MY 1987-88 standards of 26.0 mpg, arguing that any increase beyond that level could result in a lack of available tow vehicles to pull safety the four million travel trailers presently on the road.

As in the MY 1986 proceeding, individual European manufacturers supported lowering the standards for both model years to 26.0 mpg, citing the significant steps they have taken to improve fuel economy, increased market demand for larger cars and engines, and the difficulty that limited-line manufacturers have in achieving higher average fuel economy if they do not produce small cars whose fuel economy can be averaged in with that of their larger cars.

The U.S. Department of Commerce (DOC) urged that the MY 1987-88 standards be reduced to 26.0 mpg, stating that based on its analyses of the short- and long-term competitive challenges facing the U.S. automobile industry, the changed energy outlook, and the industry's progress in developing and applying new technology to improve fuel economy, a CAFE standard of 27.5 mpg no longer appears to be the maximum feasible level attainable for those model years. That Department stated that a large part of the U.S. automobile industry will not be able to exceed the current CAFE standards by a margin sufficient to carry back credits to meet an expected shortfall in MY 1985 unless it reduces its domestic fleet product offerings and adjusts its output mix. DOC stated that its analysis indicates that such changes in product mix and reduced product offerings could

result in significantly reduced automobile production and employment, and could have economically damaging consequences for producers, workers, and consumers.

The Bureau of Consumer Protection, Competition, and Economics of the Federal Trade Commission (FTC Staff) submitted a theoretical model and analysis assessing the economic consequences of a 27.5 mpg standard for MY 1987-88. The FTC Staff analysis concluded the following:

> . . . in the short-term, the costs borne by society if the 27.5 mpg standard is imposed would be substantial. The price of large cars may rise by as much as 22 percent as large-car production drops by 1.7 million units. While small-car production may rise by an amount between 350,000 and 670,000 units, total domestic car production nonetheless may fall by more than 900,000 units. The short-term employment effects are substantial: over 130,000 jobs in the domestic automobile industry will disappear. Overall, the sum of the deadweight loss to consumers and producers and the output losses caused by the temporary unemployment generated by the higher CAFE standard would range between a low of $3.0 billion and a high of $3.5 billion. . . .

Based on its analysis, the FTC Staff urged NHTSA to set the MY 1987-88 standards at 26.0 mpg.

The U.S. Department of Energy (DOE) submitted a comment focusing on three areas: market uncertainty, technology marketability and cost-effectiveness, and manufacturers' fuel economy capabilities. That Department stated that its analysis shows that market uncertainty has not been a decisive factor by itself with respect to year-to-year changes in new car CAFE. DOE commented that the industrywide car size mix has been relatively stable over the past few years as fuel prices have continued to decline, but what has happened is that the mix failed to further shift toward smaller cars to the degree some manufacturers had anticipated. With respect to technology marketability and cost-effectiveness, DOE stated that its analysis of the cost-effectiveness of a range of fuel economy technologies found that all those that it examined were cost-effective at a fuel cost $1.00/gallon and all were either cost-effective or neutral at $.75 a gallon. DOE stated that it does not find any reason to believe that consumers are rejecting the concept of technology-based fuel economy improvements. That Department stated that its analysis of technology has shown that most cost-effective technologies have already been adopted by both Ford and GM in their subcompacts and compacts, but many technologies that are cost-effective to the consumer have not been introduced in several models in the large and intermediate size classes. DOE commented that NHTSA should evaluate the economic feasibility of GM and Ford introducing such technologies in MY 1987-88. DOE stated that it estimates Ford and GM could achieve CAFE of between 27 mpg and 27.3 mpg in 1987 and above 27.5 mpg in 1988, although these estimates are subject to uncertainties about a number of market-related factors. DOE did not recommend specific values for the MY 1987-88 standards, but emphasized its opposition to setting standards at a level that would require product restrictions.

Several civil rights organizations and other groups and individuals interested in minorities urged that the MY 1987-88 standards be reduced to 26.0 mpg. The Reverend Jesse Jackson of the National Rainbow Coalition commented that a reduction is needed as "it will be necessary to drop from production many family line vehicles, and the consequent layoffs would have a severe adverse impact in the black communities." Rev. Jackson stated that "(a)s one in every five assembly line production workers in the auto industry is black and some 204 dealerships comprising over 35 percent of the top businesses listed in Black Enterprise 100 are an integral part of the black economy, these workers and dealerships contribute measurably to the economic stability and growth of the black community." According to that commenter, "(t)he imposition of the 27.5 mpg standards could seriously threaten that growth by removing thousands of workers from auto assembly lines." Benjamin Hooks, Executive Director of the National Association for the Advancement of Colored People (NAACP), commented that "(w)ith the minority community reeling from double digit unemployment, some caused by the massive layoffs in the automobile industry, we are cognizant of the fact that unless efforts are made to strengthen our domestic industries, there is a great likelihood that we will experience additional increases [in] unemployment." That commenter stated that while the NAACP shares "the nation's goal of decreasing gas consumption and decreasing our dependence on foreign petroleum products, it is our belief that decreasing gas consumption would not compensate for the possible job loss if the American automobile industry is forced to comply with the 27.5 mpg standards." John E. Jacob, President of the National Urban League, commented that "(o)ur greatest concern is that abandoning the 26 mpg standard could encourage American manufacturers to drop or restrict production of family-size cars, resulting in further job losses in an industry that has already experienced wrenching unemploy-

ment problems." That commenter added that "the industry and its suppliers are major employers of black and minority workers and rules that retard employment in the industry will harm a black economy impacted by 15 percent unemployment rates." Other organizations supporting standards of 26.0 mpg include the National Urban Coalition, the United Negro College Fund, the Labor Council for Latin American Advancement, and the Ibero-American Chamber of Commerce.

The Heritage Foundation urged that the MY 1987-88 standards be reduced to 26.0 mpg, arguing that the single most important factor affecting the domestic manufacturers' CAFE, the price of oil, is beyond the manufacturers' control, that few benefits would result from enforcing standards of 27.5 mpg, and that 27.5 mpg standards would result in significant economic harm to the domestic industry and the nation as a whole.

The Insurance Institute for Highway Safety (IIHS) argued that CAFE standards can have a potentially adverse effect on vehicle safety, since vehicle size is an extremely important factor in safety. That commenter urged that the agency consider this issue when choosing an appropriate CAFE target.

The Competitive Enterprise Institute argued that the MY 1987-88 standards should be reduced to a "non-forcing level," which it suggested might be 22 mpg. That commenter argued that fuel economy standards result both in economic disruptions to the American economy and in additional fatalities as the car fleet changes toward smaller cars.

Numerous other commenters, including automotive suppliers; dealers, employees, and stockholders of GM and Ford; States and local governments; almost 100 members of Congress; and private individuals also supported standards of 26.0 mpg for MY 1987-88. The States and local governments included the Kentucky State Senate and House of Representatives, the Governor of Kansas, and a number of mayors and city councils.

Standing in sharp contrast to the comments favoring a reduction in the MY 1987-88 standards were those urging that the standards be left at 27.5 mpg. Chrysler argued that NHTSA has two options: enforcing the law as Congress wrote it or cutting the ground out from under a vital energy conservation program by granting an unwarranted reduction in the standards. That commenter argued that the changes in market conditions on which GM and Ford base their present CAFE difficulties were plainly in evidence as long ago as 1982, and that there is no reasonable basis on which the agency could now find that those companies were unable to respond to these changes by the 1987 and 1988 model years. Chrysler alleged that GM and Ford chose corporate strategies that emphasized short-term profit maximization over a longer-term strategy of meeting the law. That company cited past and current decisions by GM and Ford to continue selling what it termed "older technology rear wheel drive cars," and listed a number of technological improvements which it argued GM and Ford could have taken to meet the standards within the available time.

The Center for Auto Safety (CFAS) argued that Ford and GM can attain 27.5 mpg in MY 1987-88; that the agency has grossly overestimated market uncertainty, particularly with respect to how falling gasoline prices and foreign competition may affect CAFE; and that the recent drop in oil prices increases the chance of yet another energy disruption and underscores the urgent necessity of maintaining the current fuel economy standards. With respect to the issue of possible job losses, CFAS argued that the job losses NHTSA should really consider are those associated with Ford and GM moving production of their small cars outside the United States. That commenter noted that Ward's Auto World has reported that Ford is already planning to outsource 400,000 to 450,000 small cars by 1988, and argued that with lower fuel economy standards for MY 1987-88, Ford and GM would take the opportunity to further export American small car jobs to foreign countries.

The Americans for Energy Independence stated that the current condition of abundant oil and plummeting prices is temporary and that in the circumstances of today's oil market public policy, including CAFE standards, is needed to compensate for market signals that favor cheap oil.

The State of California, the cities of Los Angeles and New York, and the Southern California Association of Governments argued that a reduction in the MY 1987-88 standards would have a significant adverse impact on the environment and that the agency is required to prepare a full Environmental Impact Statement instead of an Environmental Assessment for this rulemaking.

Numerous other commenters, including private individuals and a few members of Congress, also urged that the standards remain at 27.5 mpg.

Supplemental NPRM

On July 30, 1986, NHTSA published in the *Federal Register* (51 FR 27224) a supplemental NPRM (SNPRM) concerning the argument put forth by GM that the agency may (or indeed, must) consider a company's need for carryback credits in determining the maximum feasible average fuel economy level. The

notice requested comment on a tentative conclusion by the agency that the argument should be rejected, and also asked commenters to address whether their position on the issue would differ if adoption of the GM argument would necessitate establishing the standard below 26.0 mpg for either or both model years.

Agency's Analytical Approach

NHTSA is following the same basic analytical approach it adopted for the MY 1986 rulemaking. In that rulemaking, the agency explained its approach as follows:

"...section 502(a)(4) provides that if NHTSA determines that a level other than 27.5 mpg is the maximum feasible average fuel economy for 1985 or any subsequent model year, the agency may change the standard for that year to that level. If NHTSA were writing on a blank slate and establishing the MY 1986 standard for the first time, it would simply evaluate the current average fuel economy levels of the manufacturers and determine what improvements could be made in those levels between now and the end of MY 1986. This would involve taking into account the capabilities of each manufacturer and considering the four factors listed in section 501(e), i.e., technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy.

"The agency agrees with Chrysler and other commenters, however, that the issue is not solely whether manufacturers are not capable of meeting the 27.5 mpg standard. Since the Cost Savings Act imposed a long-term obligation on manufacturers to achieve a 27.5 mpg fuel economy level, it would be inappropriate to reduce the standard if a current inability to meet the standard simply resulted from manufacturers previously declining to take appropriate steps to improve their average fuel economy as required by the Act. Therefore, the agency must evaluate the manufacturers' past efforts to achieve higher levels of fuel economy as well as their current capabilities.

"On the other hand, the agency does not consider it appropriate to judge each and every manufacturer product action by 20-20 hindsight. In assessing the sufficiency of manufacturers' fuel economy efforts, it is necessary to take account of the information available to manufacturers at the time product decisions were being made.

"Manufacturers had an obligation to take whatever steps were necessary, consistent with the factors of section 502(e), to meet the 27.5 mpg standard. To the extent that manufacturers had plans to meet the standard which subsequently became infeasible due to unforeseen events, NHTSA does not believe the manufacturers should be charged with a failure to make a sufficient effort.

"The agency's analytical approach thus consists of first evaluating the maximum feasible average fuel economy level that manufacturers are now capable of achieving in MY 1986, taking into account the four factors of section 502(e) and second, to the extent that level is determined to be below 27.5 mpg, assessing the sufficiency of manufacturers' efforts to meet the 27.5 mpg standard, in light of the information available to manufacturers at the time fuel economy product decisions were being made and the four factors of section 502(e)."

GM stated in its comments on the NPRM for MY 1987-88 that it "agrees...that such an approach generally reflects a reasonable interpretation of EPCA and the Agency's authority to set amended standards." However, that company also commented that the "sufficiency" assessment is not required by the statute and is unnecessary for accomplishment of the legislative goals. GM argued that the significance of the original 27.5 mpg standard adopted by Congress should not be "overstated" and that neither NHTSA nor the manufacturers are compelled to present a special justification or "defense" for the finding that the actual "maximum feasible" level is now less than 27.5 mpg. That company also commented that the agency's finding in the MY 1986 rulemaking concerning the sufficiency of original product plans need not be reopened and could be considered final for purposes of this proceeding as well.

NHTSA believes that evaluating the sufficiency of efforts to date by the manufacturers to achieve 27.5 mpg CAFE is required under EPCA and the Administrative Procedure Act (APA). EPCA's basic statutory scheme consists of mandatory CAFE standards, set in advance of a model year in order to provide the manufacturers time to bring their fleets into compliance, and civil penalties for failure to meet the standards. Manufacturers thus have a legal obligation to pursue over time all feasible means, consistent with the factors of section 502(e), necessary to

meet CAFE standards. The primary significance of the 27.5 mpg level with respect to amending standards is that it is the law unless and until it is amended by NHTSA. The agency's amendment authority is discretionary. Under the APA, a reviewing court would examine whether the agency had abused its discretion in exercising that authority. Given the overall statutory scheme, NHTSA believes, and thinks that a court would likely find, that it would be an abuse of discretion for the agency to reduce a CAFE standard if a current inability to meet such standard simply resulted from the regulated industry previously declining to take reasonable steps to meet the standard.

Moreover, while NHTSA agrees that its evaluation of this issue in the MY 1986 rulemaking is relevant to the current rulemaking, it believes that sufficiency of past efforts must specifically be considered for MY 1987-88. The agency's determinations in the MY 1986 rulemaking with respect to both sufficiency of efforts made through September 1985 and maximum feasible average fuel economy level were not necessarily determinative with respect to MY 1987-88. While the agency determined in the MY 1986 rulemaking that manufacturers had made sufficient efforts to achieve 27.5 mpg for that model year, which had been overtaken by unforeseen events, it also acknowledged that with 20-20 hindsight it was possible to point to various additional actions that manufacturers could have taken to improve their fuel economy, e.g., greater penetration of certain fuel-efficient technologies. The agency also emphasized that while changes in product plans which may, as an unintended effect, reduce CAFE are consistent with the statutory criteria to the extent that they reflect changes in what is economically practicable, manufacturers recognizing the consequences of such changes must then pursue additional means, consistent with the factors of section 502(e), to meet standards.

Manufacturer Capabilities for MY 1987-88

As part of its consideration of technological feasibility and economic practicability, the agency has evaluated the manufacturers' fuel economy capabilities for MY 1987-88. In making this evaluation, the agency has analyzed the manufacturers' current projections and underlying product plans and has considered what, if any, additional economically practicable actions the manufacturers could take to improve their fuel economy.

A. Manufacturer Projections

GM and Ford have submitted a number of different projections of their MY 1987-88 CAFE levels over the past several years, reflecting changing product plans. This section focuses on the manufacturers' latest projections, since those projections reflect the manufacturers' current product plans. The current MY 1987-88 projections of both GM and Ford are lower than earlier projections. The differences between those manufacturers' current product plans and earlier ones are discussed below in the section entitled "Manufacturer Compliance Efforts."

The agency notes that one factor which complicates a discussion of manufacturer projections is Environmental Protection Agency (EPA) test adjustment credits. Between 1983 and 1985, EPA was engaged in rulemaking to provide CAFE adjustments to compensate for the effects of past test procedure changes. During this time, some but not all manufacturers included CAFE adjustments in their projections based on what they expected EPA to do. EPA ultimately adopted a formula approach for calculating CAFE adjustments. While the CAFE adjustment differs among manufacturers due to their different vehicle mixes, a typical adjustment during the MY 1987-88 time period is 0.1 or 0.2 mpg. In the discussion of manufacturer projections in this notice, the projections include the EPA test credit adjustment unless it is noted otherwise.

GM projected in July 1986 that it could achieve a CAFE no higher than 26.3 mpg in MY 1987 and 26.9 mpg in MY 1988. Based on GM's pre-model year report, NHTSA used a MY 1986 baseline of 26.4 mpg in analyzing that company's projections. GM's mid-model year report, submitted on July 31, 1986, confirmed that GM's MY 1986 CAFE will be about 26.4 mpg.

While there are a number of changes in GM's fleet between MY 1986 and MY 1987, they largely cancel each other out for CAFE calculation purposes. A number of mix effects reduce the company's CAFE by 0.2 mpg. An additional decline of about 0.1 mpg is attributable to test results, related to EPA testing. There is also a slight decline related to a draft EPA Advisory Circular concerning coastdown requirements. Largely offsetting these declines are various technological improvements, a number of which are engine improvements.

(The details of the changes are subject to a claim of confidentiality as confidential business information whose release could cause competitive harm. This is also true with respect to this notice's discussion of other manufacturer projections.)

For MY 1988, GM itself projects a CAFE increase of 0.6 mpg, to 26.9 mpg. More favorable model and engine mixes result in 0.5 mpg of this projected gain. A number of technological actions, related to engines and transmissions, result in a 0.2 mpg gain. Among other things, as GM testified at the February 1986 public meeting, a new 4-cylinder, 16-valve engine "will provide a major advance in fuel economy." GM stated that this 4-cyclinder engine in fact outperforms the 6-cyclinder engine and that it will replace both 6-cylinder and 8-cylinder engines. The agency notes that GM's projection assumes full consumer acceptance of this new engine and the fact that technical difficulties will not arise that could delay introduction of the engine. Past experience, however, indicates that there are significant uncertainties associated with major new products, particularly those incorporating new technology. For example, GM experienced problems related to consumer acceptance and/or technical difficulties for its diesel engine and its V8-6-4 engine. Should GM experience technical difficulties that delay introduction of its new engine, or should there be a lag in consumer acceptance of the engine, there would be a decline in GM's projected MY 1988 CAFE. GM's expected CAFE gains are partially offset by another change related to improving performance in response to anticipated consumer demand.

Ford projected in May 1986 that it could achieve a CAFE level between 26.3 mpg and 27.1 mpg in MY 1987, and between 25.5 mpg to 26.3 mpg in MY 1988. The material supporting the Ford submission indicates that Ford considers the high ends of its projected ranges to be its most likely CAFE levels. The high ends are based on Ford's estimates of probable consumer demand conditions and incorporate certain technical risks which Ford considers likely to occur. The lower ends represent additional risks, relating to possible sales mix shifts, beyond what Ford has already incorporated based on its primary estimate of consumer demand conditions. These additional risks include potential increases in larger car sales, due to drops in gasoline prices, and the possibility of increasing Korean and Japanese car sales. Ford's projections do not include the significant usage of extraordinary marketing and incentive programs.

Based on Ford's 1986 pre-model year report and sales data during the model year, NHTSA used a MY 1986 baseline of 26.8 mpg in analyzing that company's projections. The general magnitude of this number was confirmed in Ford's mid-model year report, submitted on July 29, 1986, which indicated that Ford's MY 1986 CAFE would be between 26.8 mpg and 27.0 mpg. The 26.8 number is 0.5 mpg higher than the Ford projection NHTSA cited in the MY 1986 proceeding. In that proceeding, NHTSA indicated that Ford's maximum projected MY 1986 CAFE was 26.3 mpg, which was subject to risks amounting to 0.5 mpg. See 50 FR 40547 (October 4, 1985). Ford indicated in its mid-model year report that increased sales of fuel-efficient models/powertrains had significantly increased its CAFE. A number of other factors, each having a relatively small impact on Ford's CAFE, also affected that company's CAFE.

Ford's high end MY 1987 projection of 27.1 mpg would represent a 0.3 mpg increase over its MY 1986 CAFE. There are a number of changes expected in Ford's fleet for MY 1987. Changing sales mix, including completion of the replacement of the rear-drive LTD/Marquis mid-size sedans and station wagons with the more fuel-efficient Taurus/Sable front-drive cars, accounts for a CAFE gain of 0.3 mpg. Technological improvements relating to transmissions and engines account for an additional 0.3 mpg gain. Partially offsetting these gains, resulting in a 0.3 mpg loss, are certain changes designed to enhance consumer acceptability of particular products.

Ford's high end MY 1988 projection of 26.3 mpg would represent a 0.8 mpg drop in its CAFE as compared to MY 1987. Changing sales mix accounts for a CAFE decline of 0.9 mpg. The changing sales mix reflects, among other things, fewer sales of domestically produced smaller cars as Ford sells larger numbers of imported small cars, and the timing of model years. Certain added technical risks account for an additional 0.1 mpg decline. Partially offsetting these losses, by 0.2 mpg, are technological improvements in a number of areas.

Chrysler: Chrysler projects that, not including the EPA test credit adjustment, it will achieve a CAFE of 27.5 mpg in 1987 and 28.6 mpg in MY 1988. By comparison, Chrysler projects that it will achieve a CAFE of 27.4 mpg in MY 1986 (again not including the EPA adjustment).

For MY 1987, Chrysler's CAFE projection is almost identical to its MY 1986 projection. Chrysler projects minor mix shifts and the introduction of the Shadow/Sundance "upscale" compacts.

For MY 1988, Chrysler's CAFE projection increases by 1.1 mpg. The primary reasons for this increase are technological improvements and model changes.

Chrysler's projected technological improvements are comparable to those already used by other manufacturers. As discussed in the MY 1986 proceeding, the primary reason Chrysler's CAFE is higher than that of GM and Ford is that Chrysler does not com-

pete in all the market segments in which GM and Ford sell cars.

Other Manufacturers: As part of its analysis for this rulemaking, NHTSA asked four import car manufacturers to provide their latest CAFE projections for MY 1987-88, as well as lists of planned technological improvements for those model years. The import companies are Toyota and Honda, which are the two largest selling imports, and Volvo and Mercedes-Benz, which are among the largest selling European imports. Both Volvo and Mercedes-Benz produce a relatively narrow range of models in the larger and heavier size classes. In the discussion which follows, none of the projections includes EPA adjustments.

Both Toyota and Honda project reductions in their MY 1987-88 CAFE levels as compared to MY 1986, although they will continue to remain well above 27.5 mpg due to their emphasis on smaller cars. Toyota projects that its CAFE will decline from 32.2 mpg in MY 1986 to 31.8 mpg in MY 1987 and 31.7 mpg in MY 1988. Honda projects that its CAFE will decline from 34.2 mpg in MY 1986 to 32.2 mpg in MY 1987 and 32.0 mpg in MY 1988. One reason accounting for the decline in Honda's CAFE is the introduction of the Acura Legend, which is less fuel-efficient than Honda's other cars. Since that car was introduced midway through MY 1986, Honda's CAFE projection for that year does not reflect full year sales of that car. Both companies project CAFE declines attributable to mix shifts toward less fuel-efficient cars, which are partially offset by technological improvements.

Volvo projects that its CAFE will decline from 26.5 mpg in MY 1986 to 26.2 mpg in MY 1987 and MY 1988. Mercedes-Benz projects that its CAFE will rise from 21.1 mpg in MY 1986 to 22.7 in MY 1987, and then decline slightly to 22.5 mpg in MY 1988. Since Mercedes introduced a more fuel-efficient, 300 series diesel late in MY 1986, that company's MY 1986 projection does not reflect full-year sales of that car.

None of the four import manufacturers which provided detailed information to NHTSA projects any dramatic changes in CAFE due to improved technology or model offerings for MY 1987 and 1988. Technology developments are generally typical of those already used or projected to be used by the rest of the industry. The differing CAFE levels are primarily attributable to the different market segments served by the manufacturers.

NHTSA has less detailed information for other manufacturers. American Motors and Volkswagen, however, are expected to easily exceed 27.5 mpg for MY 1987-88. Other European manufacturers, including BMW, Peugeot, Saab, and Jaguar, are expected, like Volvo and Mercedes-Benz, to be below the 27.5 mpg level for MY 1987-88. By way of example, BMW and Peugeot projected in their MY 1986 mid-model year reports that they would achieve a CAFE of 25.7 and 24.8 mpg, respectively, for that model year, and Saab and Jaguar projected in their MY 1986 pre-model year reports that they would achieve a CAFE of 26.0 mpg and 19.1 mpg, respectively, for that model year.

In analyzing the manufacturers' fuel economy projections and underlying product plans, NHTSA has considered the reasonableness of mix assumptions. The agency has particularly focused on GM's and Ford's assumptions in this area, since, as discussed below, those companies' MY 1987-88 projections have declined in recent years due to changed expectations concerning mix.

Given the dynamic and interactive nature of (1) an individual manufacturer's product plan, (2) the product plans of the manufacturer's competitors, and (3) consumer demand, analyzing mix assumptions is a highly complex matter. The agency notes that since many factors affect mix, sales mix changes between model years for a particular manufacturer may relate to several factors and may or may not indicate a trend with respect to overall consumer demand. For example, if a manufacturer introduces a new model, the high level of sales ordinarily associated with a new model may result in increased sales of whatever size class the vehicle happens to be, thereby altering the mix. Similarly, the deletion of particular models or the gradual aging and resultant reduced popularity of particular models may also result in mix effects. The agency also notes that, for GM and Ford, the mix effects generally discussed in this notice reflect only changes in those companies' domestic production and not mix effects for their sales as a whole, which include captive imports. For all of these reasons, mix effects between model years for a particular manufacturer, which can have substantial effects on the manufacturer's CAFE level, need not result from a change in overall consumer demand. Thus, even if total industrywide consumer demand for larger cars is not increasing, a variety of other economic factors can adversely affect GM's and Ford's year-to-year CAFE capabilities.

In analyzing specific manufacturer capabilities below, the agency has considered whether particular expectations concerning sales of various models are reasonable.

CFAS argued in its comment that GM's and Ford's current projections "undoubtedly" assume an excessive sales mix for the large-car segment. That commenter argued that the assumption that falling oil prices will have a substantial impact on automakers' CAFE in 1987 and 1988 is speculative, illogical,

ignores current market data and contradicts the most recent statistical data from the Department of Energy and Oak Ridge National Laboratory. CFAS cited a DOE report which stated that the large-car share does not appear to have been affected by the drop in the real price of gasoline over the past four years. That commenter stated that Ward's Automotive Reports indicates that the large-car segment has eroded by 30 percent from just one year ago. CFAS argued that market trends demonstrate low actual market demand for rear-wheel-drive cars, and submitted an article headlined "Rear-Wheel Big Cars Slipping," which it contended supported its position. That commenter also argued that consumer demand for larger engines has decreased since 1981, based on statistics showing that the sales weighted engine size in terms of CID has dropped for both large and mid-size cars.

NHTSA has analyzed GM's and Ford's MY 1987-88 projections and concluded that they do not assume an excessive sales mix for the large-car segment. In making this conclusion, the agency has compared GM's and Ford's projections with the sales experience for MY 1986. GM and Ford are not assuming significantly higher sales of large cars. Similarly, the agency has concluded that the projections do not assume an excessive sales mix for rear-wheel-drive cars. Both manufacturers' product plans for MY 1987-88 indicate a higher percentage of front-wheel-drive cars than for MY 1986.

With respect to CFAS's argument that it is illogical that falling oil prices will have a substantial impact on GM's and Ford's CAFE in MY 1987 and 1988, the agency agrees that the impact is relatively small as compared to the CAFE achieved in MY 1986. However, as discussed below, the impact is substantial as compared to earlier product plans for MY 1987-88 that were made based on expectations of significantly rising gasoline prices.

CFAS's argument about consumer demand for larger engines is incorrect to the extent it suggests that manufacturers have been aided by a drop in demand for larger engines. It is true that engine size in terms of CID has decreased for large and mid-size cars as those cars have been downsized. One of the potential fuel economy benefits of downsizing is that a smaller engine can be substituted without a reduction in performance. However, consumer demand for performance has increased over the past several years, resulting in higher than expected sales of optional, larger engines, and reducing the fuel economy benefits that would otherwise have resulted from downsizing. GM provided data indicating that its performance, as measured by horsepower-to-weight ratio, increased each year between MY 1982 to MY 1986.

As in the MY 1986 proceeding, CFAS also argued that GM's and Ford's projections incorporate "accounting tricks" to lower their CAFE levels. That commenter alleged that EPA test information indicates that a number of car models achieve higher CAFE than projected by those manufacturers.

NHTSA has concluded that there is no basis for CFAS's allegation that GM and Ford have "artificially" lowered their MY 1987-88 CAFE projections by means of "accounting tricks." Among other things, NHTSA requested that EPA review CFAS's claims relating to EPA test data. EPA noted that a number of fuel economy values reported by CFAS were approximately equal to unadjusted label values which use early 1986 model year EPA test car list data. However, EPA pointed out that these values were determined at the start of the model year and that the fuel economy of a model type may change between the time of initial labeling and the time when a CAFE value is calculated. According to EPA, such change may be due to one or all of the following factors: (1) additional vehicle testing is completed after initial labels have been approved, (2) vehicle running changes are implemented throughout the course of the model year, and (3) initial values are calculated based on projected model type sales. Thus, by the time the manufacturer's CAFE is calculated, additional vehicle fuel economy data may have been generated which may affect the model type fuel economy. EPA also stated that differences in data requirements between label and CAFE calculations may also result in discrepancies between fuel economy label values and those fuel economy values used in CAFE calculations. EPA noted that while model type fuel economies require only one set of test data to represent a broad range of vehicles within a model type, a CAFE calculation requires test data which represent at least 90 percent of a manufacturer's total vehicle sales. EPA also indicated that, until the model year in question has ended, only the manufacturer has access to the potential effects of increased testing, running changes and actual customer demand on their final CAFE value. Thus, EPA concluded that "(i)t is quite possible that the manufacturer's projection is more accurate, due to this information, than a projected CAFE based on label values."

NHTSA has used data provided by the manufacturers in all of its CAFE proceedings and knows of no instance where a manufacturer has knowingly provided inaccurate or misleading information. The agency notes that as GM and Ford have updated their

CAFE projections during this rulemaking proceeding to reflect the latest available information, they have taken account of new information or plans which improve their CAFE, as well as new information or plans which result in lower CAFE.

B. Possible Actions to Improve MY 1987-88 CAFE

The possible additional actions which manufacturers can take to improve their MY 1987-88 CAFE above the levels which are currently projected may be divided into four categories: further technological changes (beyond what is contained in their product plans), increased marketing efforts, restricting the sale of their less fuel-efficient cars and engines, and transferring the production of their less fuel-efficient vehicles, or parts of those vehicles, outside of the United States. As discussed below, this fourth possible action would have no effect on overall industry CAFE or on energy conservation, but would raise the manufacturer's domestic CAFE.

1. *Further technological changes*

The ability to improve CAFE by further technological changes to product plans is dependent on the availability of fuel-efficiency enhancing technologies which can be applied by available means within available time.

GM commented that leadtime and other constraints preclude significant technological advances for the 1987 and 1988 model years. Ford similarly commented that introduction of additional technological improvements beyond those presently planned through the late 1980's may not be achievable because of the short leadtimes. It stated that it believes the plans presently in place accurately reflect its CAFE capabilities through the rest of the decade. Chrysler stated that it agrees that it is essentially too late for meaningful technological changes to be effected for even the 1988 model year.

At the outset, NHTSA notes the substantial technological progress that has been made by GM and Ford since EPCA was passed. As the MY 1986 preamble noted, manufacturers have over the past decade reduced average car weight by 1000 pounds, reduced average engine displacement from 288 CID to 177 CID, increased the use of front-wheel drive from 7 percent to 64 percent, increased the use of transmissions with overdrive and/or lockup from 5 percent to 84 percent, and increased the use of fuel-injected engines from 5 percent to 54 percent.

Now, in light of limited leadtime, NHTSA agrees that it is too late to initiate further major technological improvements for MY 1987-88. For example, once a new design is established and tested as feasible for production, the leadtime necessary to design, tool, and test components such as new body sheet-metal subsystems for mass production is typically 22 to 29 months. Other potential major changes often take longer. Leadtimes for new vehicles are typically at least three years.

In analyzing specific manufacturer capabilities below, however, the agency has considered whether manufacturers have available capacity to increase the penetration of particular technologies.

2. *Increased marketing efforts*

NHTSA addressed the issue of improving fuel economy by additional marketing efforts in the MY 1986 rulemaking. The agency concluded, based on its analysis, that GM and Ford have in the past been, and are now, making efforts to improve the sales of fuel-efficient cars. The agency determined that the manufacturers have undertaken extensive and significant marketing efforts to shift consumers toward their more fuel-efficient vehicles and options. Both GM and Ford have undertaken pricing actions to discourage large-car sales and the purchase of optional, less fuel-efficient engines. Below-market financing offerings, cash discounts, and noncash consumer and dealer incentives were some of the other measures undertaken by Ford and GM to increase their CAFE through marketing actions.

Chrysler commented that GM and Ford have the option of adopting marketing measures to boost sales of their smaller, more efficient vehicles, and shift sales from their older, less efficient models to their more efficient and equally large newer products.

The agency has consistently noted that the ability to improve CAFE by additional marketing efforts, beyond what the manufacturers have already been doing, is relatively small. As a practical matter, marketing efforts to improve CAFE are largely limited to techniques which either make fuel-efficient cars less expensive or less fuel-efficient cars more expensive. Moreover, the ability to increase sales of fuel-efficient cars relates in part to either increasing market share at the expense of competitors or pulling ahead a manufacturer's own sales from the future. A factor which makes it particularly difficult for the domestic manufacturers to increase sales of fuel-efficient cars is the strong competition in that market from the Japanese and other foreign manufacturers. The domestic industry is currently facing new competition in small cars from Yugoslavia, Korea, and Brazil. The Japanese, Korean, and other foreign manufacturers enjoy a significant cost advantage over the domestic manufacturers. This cost advantage

limits the ability of the domestic manufacturers to increase sales of small cars through price reductions, since the Japanese, Korean, and other foreign manufacturers will be able to match or exceed any price reduction.

The agency also notes that the fuel efficiency of modern large cars makes it more difficult for full-line manufacturers to sell smaller cars. The reason for this is that there are diminishing returns in terms of fuel economy from purchasing small cars as the fuel efficiency of larger cars increases. Similarly, as gasoline prices have declined, there are diminishing returns from purchasing more fuel-efficient vehicles.

A problem with pulling ahead sales is that the manufacturer's CAFE for subsequent years is reduced. For example, if a manufacturer increases its MY 1987 CAFE by pulling ahead sales of fuel-efficient cars from MY 1988, the MY 1988 CAFE will decrease, compared with the level it would have been in the absence of any pull-ahead sales attributable to marketing efforts. For this reason, a manufacturer cannot continually improve its CAFE simply by pulling ahead sales.

Ford indicated in its MY 1986 mid-model year report that its increased sales of fuel-efficient models/powertrains, beyond what it had earlier projected, was largely attributable to incentive, marketing, and pricing programs that were designed to increase its CAFE. In light of Ford's MY 1986 experience, the agency has considered whether additional marketing efforts, beyond what Ford is already planning, should be considered as part of "economic practicability" in setting the MY 1987-88 standards. Among other things, the agency analyzed confidential data provided by Ford concerning the costs and potential fuel economy benefits of extraordinary marketing efforts. Given the enormous costs and relatively small and uncertain potential impact on Ford's CAFE levels, NHTSA has concluded that extraordinary marketing efforts of the type identified by Ford to improve its MY 1987-88 CAFE levels would be inconsistent with economic practicability. This is particularly true since the relative costs for Ford of improving its CAFE by this means would be six times that of improving its domestic CAFE level by converting large cars to imports, a subject which is discussed below. The agency notes here that such outsourcing would result in absolutely no energy conservation benefits but would reduce American jobs. With respect to the incentives facing Ford for meeting CAFE standards, however, improving its domestic CAFE by outsourcing would not only be far less expensive than extraordinary marketing efforts, but the benefits to its domestic CAFE level would also be certain. Thus, the agency is concerned, based on the factual record of this specific proceeding, that including the potential CAFE effect of the extraordinary marketing programs for MY 1987-88 could encourage Ford to outsource larger car models, thereby reducing U.S. employment.

3. *Product restrictions*

Manufacturers could improve their CAFE by restricting their product offerings, e.g., cutting or dropping production of less fuel-efficient car lines or higher performance engines. However, as discussed in the preamble to the MY 1986 final rule, such product restrictions could have significant adverse economic impacts on the industry and the economy as a whole, and could run counter to the congressional intent that the CAFE program not unduly limit consumer choice. The agency took account of similar concerns in 1977, concluding that standards should not be set so high as to necessitate the manufacturers using compliance methods that would result in a substantial sales drop. See 42 FR 33544-45, June 30, 1977.

A number of commenters provided estimates of job losses and cited other deleterious economic effects that they believe would occur if the MY 1987-88 standards remained at 27.5 mpg. For example, the FTC Staff analysis concluded that over 130,000 jobs in the domestic economy would disappear if the standards remained at 27.5 mpg. This conclusion was based on the assumption that GM and Ford can attain CAFE of only 25.9 mpg, other than by product restrictions, and that the two manufacturers could meet the 27.5 mpg standard only by restricting the sales of their large cars in order to make up the difference between 25.9 mpg and 27.5 mpg.

The agency agrees with the FTC Staff analysis that serious economic consequences, including significant job losses, would result if GM and Ford restricted large car production in order to make significant improvements in CAFE.

As in the MY 1986 proceeding, the agency also notes that there is no sharp dividing line between marketing efforts and product restrictions. GM and Ford have already raised the prices of their larger cars and engines as part of their efforts to improve CAFE, although sales of larger, optional engines continued to increase, even as prices have risen. While very large price increases would likely reduce sales of less fuel-efficient vehicles significantly, such increases would amount to product restrictions. The agency believes that expecting manufacturers to make such very large price increases would be inconsistent with Congress' intent that consumer choice not be unduly limited and with the statutory criterion of "economic practicability."

4. *Transferring production of less fuel-efficient cars abroad.*

As discussed above, manufaturers must meet fuel economy standards separately for their imported and domestically manufactured fleets. Cars are considered to be domestically manufactured if they have at least 75 percent domestic content. The purpose of this requirement was to attempt to prevent the fuel economy program from directly encouraging the importation of small, fuel-efficient, foreign-produced cars. At the time EPCA was passed, the domestic manufacturers were already importing some fuel-efficient cars, and Congress was concerned that the manufacturers might decide to meet fuel economy standards largely by increasing such imports.

Today, the domestic manufacturers are importing or planning to import substantial numbers of smaller, fuel-efficient cars for reasons unrelated to CAFE. However, the manufacturers could improve their domestic CAFE by transferring the production of their larger, less fuel-efficient vehicles to production facilities outside of the United States, while still maintaining relatively high import CAFE by virtue of their fuel-efficient captive imports.

Ford commented that it has identified an alternative compliance program for MY 1988 by which it could improve its domestic CAFE by 0.6 mpg by sourcing sufficient LTD Crown Victoria and Mercury Grand Marquis components outside the United States to transfer these vehicles into its import CAFE fleet. In Ford's import fleet, those cars would be averaged in with new small cars Ford is planning to introduce, enabling Ford to meet or exceed 27.5 mpg for its import fleet. GM has also indicated that it is considering outsourcing some of its less fuel-efficient cars.

Transferring the production of less fuel-efficient cars abroad would reduce the number of American jobs while having no effect on improving actual fuel economy. As discussed in the NPRM, given the complete absence of energy conservation benefits and in light of a clear congressional intent to avoid having fuel economy standards directly induce manufacturers to increase their importation of foreign-produced cars, NHTSA will not include such actions as part of its consideration of the actions manufacturers could reasonably take to improve their CAFE.

C. Uncertainties

Consistent with its two prior passenger car CAFE proceedings, the agency believes it is appropriate to consider the significant uncertainties that surround the establishment of CAFE standards and the assessment of projected manufacturer CAFE. Whether it is characterized as "allowance for unforeseen contingencies" (see 42 FR 33548, June 30, 1977) or "providing a slight margin for risks" (see 50 FR 40547, October 4, 1985), NHTSA has traditionally accounted for uncertainties by providing a slight downward adjustment to the CAFE levels that seem achievable in advance of the model years. This is particularly appropriate when these uncertainties result from events that are outside the control of the full-line manufacturers, such as the price of oil, the effect of new tax laws on consumer and business purchasing decisions, and increased imports of small cars by foreign manufacturers. These and other uncertainties are discussed later in this notice.

GM submitted an economic study which concluded that unexpected changes in the price of gasoline and import sales statistically explain approximately two-thirds of that company's past CAFE forecast error. GM argued that this study shows that the most recent declines in gasoline prices could cause its CAFE to fall as low as 25.0 mpg in MY 1987 and 25.5 mpg in MY 1988, and that if errors in forecasting import volumes are also taken into account, its CAFE could fall to 24.8 mpg in MY 1987 and 25.2 mpg in MY 1988. That company stated that if its current CAFE estimates for MY 1987-88 are affected by gas price changes to the same degree as previous one- and two-year forecasts, its CAFE will deteriorate to 25.4 mpg in MY 1987 and 25.8 mpg in MY 1988.

As indicated above, Ford provided ranges of CAFE projections for MY 1987-88, with the lower ends of the ranges reflecting risks. Ford's low end MY 1987 projection of 26.3 mpg and low end MY 1988 projection of 25.5 mpg reflect potential sales mix shifts. These include potential increases in larger-car sales, due to drops in gasoline prices, and the possibility of increasing Korean and Japanese car sales. Ford submitted the results of an economic study of fuel price forecast errors and errors in the estimation of the small car market share for the industry which concluded that a 20 percent error in fuel price is typically associated with a 9 percent error in small-car share of the market. Ford stated that a shift of this magnitude could affect its MY 1987-88 CAFE projections by approximately 0.5 mpg.

CFAS argued that NHTSA has grossly overestimated market uncertainty with respect to consumer demand and falling gasoline prices and the impact of foreign competition. CFAS's comments discussed above with respect to the market mix assumed by GM's and Ford's projections also relate to this issue. With respect to foreign competition, CFAS argued that the rising value of the yen against the dollar has begun to substantially raise the price of Japanese

cars, reducing the Japanese cost advantage. CFAS also argued that imports from Korea and Yugoslavia will not have a significant market penetration in the 1987-88 model years.

As discussed in the section of this preamble entitled "Determining the Levels of the (see PRE 127) MY 1987-88 Standards," NHTSA recognizes that manufacturer CAFE projections are subject to uncertainties. In the timeframe of this rulemaking, the major uncertainty relates to market mix.

While NHTSA believes the economic models submitted by GM and Ford are useful in analyzing the historical effects of lower gasoline prices and increased imports on CAFE, and in demonstrating that these factors can result in lower CAFE, it does not consider the analyses to be valid for predicting specific MY 1987-88 CAFE values. Among other things, the agency notes that the MY 1986 experience demonstrates that the models are unreliable as predictive tools. Both models would have predicted that GM and Ford would achieve much lower CAFE in MY 1986 than they projected, due to the lower-than-expected gasoline prices. As discussed above, however, this did not occur. Also, the GM model shows that when examining estimates of import sales for the succeeding one-to-two-year time period, there was no statistical significance between errors in forecasts of import sales and of CAFE levels.

The agency also notes that the models are inaccurate in that other factors may have a constraining effect on CAFE changes. For example, very substantial changes in passenger car mix, beyond present plant capacity, would be required for reductions of the magnitude cited by GM to occur.

In addition, there are several shortcomings with GM's statistical model. First, as the author cautions, the data include multiple estimates within calendar years and model years. Therefore, the basic assumption of independent, normally distributed errors for significance testing is not met. Also, there is a question as to whether data consisting of "errors in estimation" are actually amenable to standard statistical analysis. Estimates of future gas prices and of import sales several years hence are of necessity based on a large degree of subjective judgment. Such data lack objectivity and may embody systematic biases.

Finally, the agency notes that GM's latest projections and underlying product plans for MY 1987-88, submitted to the agency in July 1986, were made at a time after the substantial drop in gasoline prices had occurred and thus reflect the current very low price of gasoline, and expectations that prices will remain low for at least the next couple of years.

While NHTSA does not believe that the GM and Ford models are reliable for predicting specific CAFE values, the directional conclusions of the models are clearly correct. As gasoline prices decrease, the costs of operating larger cars and of greater performance decrease. Thus, all other things being equal, consumer demand for larger cars and greater performance increases. Similarly, as sales of smaller, more fuel-efficient imports increase, sales of domestic smaller cars decrease. NHTSA believes that the GM and Ford models do help show the sensitivity of CAFE estimates to changes in certain variables, particularly gasoline prices, everything else being equal.

D. Manufacturer-Specific CAFE Capabilities

In analyzing manufacturer-specific CAFE capabilities, the agency has focused on GM and Ford, because they have the lowest projected MY 1987-88 CAFE levels among manufacturers with a substantial share of the market.

As discussed above, GM projects that it can achieve CAFE levels no higher than 26.3 mpg for MY 1987 and 26.9 mpg for MY 1988, and Ford projects that it can achieve CAFE levels no higher than 27.1 mpg in MY 1987 and 26.3 mpg in MY 1988. Since Ford's stated maximum capability for MY 1987 is 0.8 mpg higher than that of GM, the agency focused on GM in determining the maximum feasible average fuel economy level for that model year. Conversely, since GM's stated maximum capability for MY 1988 is 0.6 mpg higher than that of Ford, the agency focused on Ford in determining the maximum feasible average fuel economy level for that model year. As discussed in the section of the preamble entitled "Determining the Levels of the MY 1987-88 Standards," the agency believes that setting standards above the capabilities of either Ford or GM would not be in keeping with Congress' direction that standards be set based on industrywide considerations, given the large market share of each company.

GM: NHTSA has analyzed GM's MY 1987 maximum CAFE projection and underlying product plan. The only additional technological action identified by the agency that GM could take to improve its CAFE within the available leadtime would be to increase the installation rates of 4-speed automatic transmissions. GM has available capacity to install a higher number of 4-speed automatic transmissions in certain mid-size cars, and the agency has concluded that doing so would not have a significant effect on sales. However, such increases in 4-speed automatic transmission usage would add less than 0.1 mpg to GM's MY 1987 CAFE. The agency has concluded that other changes, consistent with consumer acceptability, to improve fuel economy are not feasible for GM's MY 1987 fleet. Therefore, NHTSA concludes that

GM's maximum CAFE capability is no higher than 26.3 mpg to 26.4 mpg. As discussed elsewhere in this preamble, that figure is subject to uncertainties which could lower GM's MY 1987 CAFE level.

Since NHTSA focused on Ford in determining the maximum feasible average fuel economy level for MY 1988, the agency did not calculate a specific CAFE capability for GM. However, the agency does conclude that GM's MY 1988 CAFE capability exceeds that of Ford.

Ford: NHTSA has analyzed Ford's MY 1988 maximum CAFE projection and underlying product plan. One of the reasons Ford's projected CAFE declines between MY 1987 and MY 1988 relates to the timing of model years. Under the statute and applicable regulations, manufacturers have a degree of flexibility concerning the timing of model years for individual models. Thus, the model year for different models may vary in length. The agency emphasizes that there is nothing wrong with manufacturers utilizing this flexibility, whether for competitive reasons, i.e., the timing of new models, or for compliance flexibility. For purposes of considering amending an existing standard, however, NHTSA does not believe it would be appropriate to consider extended production runs. While extended production runs for certain vehicles can result in lower or higher CAFE levels for a particular model year, those effects are offset in the opposite directions in the preceding or subsequent model year. Thus, changes in CAFE attributable to extended production runs do not reflect a manufacturer's CAFE capability but are instead simply a matter of accounting within the control of the manufacturer. Just as the agency does not consider the ability of manufacturers to improve their CAFE by extending the model year of their more fuel-efficient cars, the agency will not consider decisions by manufacturers to extend the model year of their less fuel-efficient cars as indicating a reduction in their fuel economy capabilities.

For purposes of analyzing Ford's MY 1987-88 capabilities in the context of standard-setting, NHTSA is thus adjusting that company's projections to "normalize" the timing of the model years. In doing so, the agency emphasizes that (1) there is nothing wrong with Ford's planned actions in this area, and (2) that Ford actually can, if it chooses to do so, specify the model year for the vehicles in question consistent with the agency's adjustment. The effect of the adjustment is to lower Ford's MY 1987 projection by 0.2 mpg to 26.9 mpg and to raise Ford's MY 1988 projection by 0.1 mpg to 26.4 mpg.

Since NHTSA focused on GM in determining the maximum feasible average fuel economy level for MY 1987, the agency did not calculate a specific CAFE capability for Ford. However, taking account of the model year adjustment discussed above, the agency does conclude that Ford's MY 1987 capability exceeds that of GM.

For MY 1988, the agency has not identified any additional technological actions that Ford could take within the available leadtime to improve its CAFE level. No other changes, consistent with consumer acceptability, to improve fuel economy are feasible for Ford's MY 1988 fleet. Therefore, NHTSA concludes that Ford's maximum MY 1988 fuel economy capability is no higher than 26.4 mpg. As discussed elsewhere in this preamble, that figure is subject to uncertainties which could lower Ford's MY 1988 CAFE level.

DOE commented that it views a number of technologies as cost-effective for MY 1987-88, and that NHTSA should evaluate the possibility of additional uses of these technologies in the MY 1987-88 timeframe. These include front-wheel drive, aerodynamic improvements, material substitution, four-speed automatic transmissions, and fuel injection.

With respect to front-wheel drive, DOE stated that this technology has been adopted in both large and intermediate cars by GM, but that company has continued sales of older rear-wheel-drive models and is expected to retain most of these models through 1988. DOE stated that Ford has no front-wheel-drive models in the large size class. DOE commented that conversion to front-wheel-drive could provide a 12 percent increase in fuel economy for a vehicle of constant interior volume and that at $1.00 a gallon for gasoline the technology appears cost-effective, and at $0.75 approximately cost-neutral. That commenter asserted that consumer acceptance of front-wheel drive has been very favorable, stating that where both rear- and front-wheel-drive models of similar size have been offered by GM, the front-wheel-drive model has been strongly favored. DOE indicated that one aspect of front-wheel drive that could limit its acceptability is trailer towing, and suggested that NHTSA develop data concerning how many large cars are used for towing.

NHTSA requested that GM and Ford provide data concerning large car towing use. GM stated that it does not offer trailer hitches or optional trailer-towing packages on passenger cars as factory installed equipment and that it was unaware of data defining the percentage of passenger cars or trucks that tow trailers. Ford submitted the results of a study indicating that less than 1 percent of its small-car owners report trailer towing usage, while 3 percent of Crown Victoria buyers and 5 percent of Grand Marquis buyers report trailer towing. With respect to optional trailer-towing packages, Ford

reported MY 1985 factory installation rates of 0.1 to 0.2 percent on mid-size Thunderbirds and Cougars and installation rates of 2.3 to 3.3 percent on large cars. Thus, the limited data available to NHTSA indicate that trailer towing is not a significant purchase consideration for the great majority of larger car buyers.

GM commented that front-wheel drive provides little or no direct fuel economy benefit but merely facilitates "downsizing." GM argued that since it has already downsized all of its mid-size and full-size sedans, including the rear-wheel drive "B," "D," and "G" cars, the conversion of these cars to front-wheel drive would yield at best a relatively modest fuel economy benefit. That company provided comparisons between several cars with different engines and transmissions in arguing that the fuel economy benefit of front-wheel-drive is overshadowed by other factors such as engine size. NHTSA does not agree with GM's assertion that conversion of cars to front-wheel drive yields at best a relatively modest fuel economy benefit. When front-wheel-drive vehicles are compared to rear-wheel-drive vehicles of equal interior roominess, performance and transmission class on a systematic basis, the front-wheel-drive vehicles achieve 10 to 15 percent greater fuel efficiency.

GM and Ford product plans indicate a higher percentage of front-wheel drive cars for MY 1987-88 than for MY 1986. While the figures for MY 1987-88 are subject to a claim of confidentiality, the agency can state that GM's front-wheel-drive usage in MY 1986 is approximately 69 percent while Ford's is 55 percent. Given that application of front-wheel drive entails entire redesigns of cars, NHTSA believes that front-drive usage beyond planned levels would not be feasible for GM and Ford in MY 1987-88.

With respect to aerodynamic improvements, DOE commented that this technology provides a 2- to 3-percent benefit in fuel economy for a 10-percent reduction in drag coefficient, while being very cost-effective even at fuel prices of $0.75 a gallon. DOE stated that while Ford has converted all but the Panther (Crown Victoria/Grand Marquis/Town Car) series of cars to aerodynamic designs, GM's large and intermediate cars have relatively high drag coefficients, leaving room for improvement.

In general, both GM and Ford plan additional aerodynamic improvements as new car designs are introduced or significant sheet metal changes are made. Using average dynamometer power absorber unit (PAU) values as a surrogate for aerodynamic drag, both manufacturers project improvements in this area by MY 1988. Since significant aerodynamic drag reductions are generally achieved only when new cars are introduced or major sheet metal changes are made, the agency concludes that it is not feasible for GM and Ford to introduce significant additional improvements in this area beyond those that are already planned.

DOE commented that the current technologically feasible level of material substitution requires use of high strength low alloy steel (HSLA) and, in some applications, plastics. DOE stated that material substitution is cost-effective with gasoline at $1.00 a gallon but marginal at $0.75 a gallon. DOE asserted that Ford lags behind GM in this technological area, arguing that both the Panther and Taurus/Sable are approximately 8 percent heavier than their counterparts from GM and Chrysler. According to DOE, a 250-pound weight reduction in the Ford Panther would result in a 3.9 percent benefit to fuel economy, while a 250-pound weight reduction in the Taurus/Sable would result in a fuel economy benefit of 5 percent.

While Ford may be able to improve its CAFE by additional material substitution in the future, there is insufficient leadtime to make sufficient improvements in this area to significantly affect CAFE for MY 1987-88.

DOE also commented that four-speed automatic transmissions and fuel injection are already in use in several models at both Ford and GM, indicating that both technologies are economically practicable and accepted by the consumer. DOE indicated that GM has stated that these technologies will be used in only a few additional models in the large and intermediate size classes in MY 1987-88, while Ford is expected to use both technologies in all applicable large and intermediate cars. DOE stated that NHTSA should consider the ability of GM to introduce these technologies on the remainder of their large/intermediate cars in setting standards for MY 1987-88.

In general, both GM and Ford are rapidly replacing carburetors with either throttle-body fuel injection or individual port fuel injection in their fleets. With respect to four-speed transmissions, the agency concludes, as it did in the MY 1986 proceeding, that the additional cost of four-speed transmissions over three-speed designs would significantly exacerbate the production cost differential between domestic and Japanese small cars, and therefore be impracticable. As indicated above, however, the agency has considered GM's ability to increase the penetration of this technology for their large/intermediate cars in MY 1987-88.

GM commented that every one of its full-size and mid-size cars is available with a four-speed automatic transmission, but argued that in the mid-size class four-speed transmissions may not always be cost-effective for the consumer. In support of this assertion,

GM did not provide data concerning the actual costs and benefits of its four-speed transmissions but instead mixed a variety of estimates from NHTSA and itself concerning factors relevant to costs and benefits. Based on these various estimates, GM concluded that the average owner would save about $108 in fuel expenses over the expected lifetime of the car, as compared to costs of $115 to $165 for a four-speed automatic transmission.

The agency continues to believe that four-speed transmissions are cost-effective. The cost figures used in the PRIA and cited by GM were based on manufacturer data submitted during the late 1970's. While the agency has not conducted an independent analysis of the cost of four-speed transmissions, it has sponsored research showing that the consumer cost for a three-speed transmission alone for a 1980 Chevrolet Citation is $284 in 1982 dollars. The agency does not believe that the addition of a fourth gear could increase the cost of the transmission by more than 50 percent. The agency also notes that the four-speed offers other advantages, including reduced noise and vibration at highway speed and enhanced acceleration (as currently being applied). Moreover, NHTSA notes that this technology has long been identified by the agency to be an economically practicable method of improving fuel efficiency.

While, as discussed above, NHTSA has concluded that GM can install a higher number of 4-speed transmissions in certain mid-size cars for MY 1987, inclusion of this factor in GM's capability adds less than 0.1 mpg to that company's CAFE.

DOE submitted a report prepared by one of its contractors, Energy and Environmental Analysis, Inc. (EEA), which included projections of GM's and Ford's MY 1987-88 CAFE levels. The November 1985 report projected that GM could achieve MY 1987-88 CAFE levels of 27.8 mpg and 29.2 mpg, respectively, and Ford 27.75 mpg and 28.05 mpg.

DOE revised these projections to account for the following four factors: (1) fuel prices could be in the $0.70 to $0.90 per gallon range in 1987 and 1988, (2) the Japanese voluntary import agreement may continue through MY 1988, (3) GM, Ford, and Chrysler are pursuing aggressive captive import strategies that may cause declines in domestic small car sales, and (4) product plan revisions may cause shifts in strategy for specific carlines. DOE concluded that the fuel price decline would primarily increase consumer demand for acceleration performance, rather than significantly affecting size class mix. DOE estimated the change in fuel price projections would reduce manufacturers' CAFE levels by 0.5 to 0.7 mpg. With regard to continued export restraint by Japanese manufacturers, DOE concluded that the potential domestic manufacturer CAFE increases due to capturing a larger share of the small car market will be offset by "aggressive" captive import strategies. On the issue of product plan changes, DOE stated that Ford is moving to reclassify its large cars as imports for MY 1988, which will increase that company's CAFE by 1.4 mpg. DOE also stated that GM "has delayed its GM-10 body coupe for 1988 reducing fuel economy by 0.3–0.4 mpg." With all of these changes, DOE concluded that GM can achieve CAFE of 27.1 to 27.3 mpg in MY 1987 and 28.1 to 28.4 mpg in MY 1988, and that Ford can achieve CAFE of 27.0 to 27.2 mpg in MY 1987 and 28.9 to 29.1 mpg in MY 1988. DOE noted that the GM estimates include the GM-Toyota joint venture car (the Chevrolet Nova) as a domestic car.

NHTSA has analyzed the EEA report and concluded that it does not provide a basis for determining that GM and Ford have higher CAFE capabilities than those discussed above. As part of this analysis, the agency compared the EEA projections to those of the manufacturers.

For GM, NHTSA compared the EEA MY 1987-88 projections to those made by GM in April 1986. Since, as discussed below, the agency separately considered the reasonableness of the reductions in GM's projections between April 1986 and July 1986, it concluded that it was unnecessary to re-perform the analysis and directly compare the EEA projections to GM's July 1986 projections. Thus, the GM projections discussed in this section below represent that company's April 1986 projections rather than the July 1986 projections discussed above.

EEA's MY 1987 projections of 27.1 to 27.3 mpg for GM is higher than that company's April 1986 projection of 26.4 mpg. One reason for the difference is that EEA assumes that the GM-Toyota joint venture car produced by New United Motor Manufacturing, Inc. (NUMMI), the Chevrolet Nova, is included in GM's domestic fleet. Currently, NUMMI reports its CAFE separately from GM's domestic fleet. For the same reasons discussed in the MY 1986 proceeding, NHTSA concludes that it would be too speculative for the agency to count this vehicle in GM's domestic CAFE. See 50 FR 40534-40535. Removing these vehicles from the EEA projection would reduce it by 0.3 mpg. Differences in EEA's and GM's assumptions concerning model mix account for another 0.1 mpg of the difference. The remaining 0.3 to 0.5 mpg difference between the GM and EEA projections is due primarily to GM projecting lower carline fuel economy levels than EEA.

EEA's MY 1988 projection of 28.1 to 28.4 mpg for GM is also higher than that company's April 1986 projection of 27.4 mpg. As in the case of MY 1987,

one reason for the difference is that EEA assumes the Nova is included in GM's domestic fleet. Removing these vehicles from the EEA projection would reduce it by 0.3 mpg. Differences in assumptions concerning the GM-10 car account for 0.2 to 0.3 mpg of the difference. GM's April 1986 projection reflected a sales mix biased more toward fuel-efficient models than the EEA sales mix. The impact of this assumption would raise the EEA CAFE projection by 0.2 mpg. The remaining 0.4 to 0.6 mpg difference between the two projections primarily reflects GM projecting lower carline fuel economy levels than EEA.

For Ford, the EEA MY 1987 projection of 27.0 to 27.2 mpg is essentially the same as Ford's high end projection. However, there are a number of differences in the underlying product plans. Among other things, Ford's projected sales mix among models results in a 0.3 mpg higher CAFE level than the assumed EEA mix. The different sales mix is partially attributable to the model year timing issue, discussed above. This 0.3 mpg gain is offset, however, by other factors. For one thing, EEA assumed that an adjustment it made to Ford's MY 1986 CAFE, raising Ford's CAFE by 0.16 mpg, carries over into MY 1987. The adjustment in question involved reducing Ford's stated technological risk by half. As discussed in the MY 1986 proceeding, NHTSA evaluated Ford's MY 1986 risks and saw no reason to arbitrarily reduce them by half. Moreover, it is incorrect to assume that any 0.16 mpg "gain" through reducing risks associated with MY 1986 CAFE projections carry forward into subsequent years. For example, some of Ford's MY 1986 risk related to likely delays in the introduction of certain technology, which has now been introduced and which is already reflected in Ford's MY 1987 projection. Ford's MY 1987 projection and underlying product plan also reflect a number of factors not taken into account by EEA.

EEA's MY 1988 projection of 28.9 to 29.1 mpg for Ford is substantially above Ford's high end MY 1988 projection of 26.3 mpg. The largest reason for the difference is that EEA assumes that Ford will reduce the domestic content of its Panther cars, i.e., Crown Victoria, Grand Marquis, and Town Car, in order to include the cars in its import fleet. While, as indicated above, Ford is considering such outsourcing of the Crown Victoria and Grand Marquis as part of an alternative compliance program for MY 1988, it has not made the decision to carry out that program. Moreover, Ford has never indicated that it is considering outsourcing the Town Car. Another reason for the difference in the EEA and Ford projections is different sales mix assumptions, in part reflecting the model year timing issue. Other differences between the EEA and Ford projections include EEA's continuing to carry forward the 0.16 adjustment it made with respect to mix, a slight difference in the EPA test adjustment credit, additional technological risks identified by Ford that were not taken into account by EEA, and the projection by Ford of lower fuel economy levels for each carline than EEA. Among other things, the EEA projection does not reflect a decision by Ford not to continue a certain technological change, for reasons related to consumer acceptability.

NHTSA's analysis of EEA's projections does not indicate any additional means by which GM and Ford could improve their MY 1987-88 CAFE levels, beyond those already taken into account above, or any reason why the manufacturers' assumptions concerning such things as carline fuel economy levels or mix are incorrect. The agency notes that much of the difference between EEA's and GM's and Ford's projections reflects the fact that the companies have more up-to-date data concerning the fuel economies their various carlines will achieve.

Manufacturer Compliance Efforts

While there is now insufficient leadtime for GM and Ford to initiate further significant technological improvements to achieve CAFE of 27.5 mpg in MY 1987-88, the standards have been in existence since 1975. Thus, as part of deciding whether to exercise its discretion to reduce the standards to the maximum feasible average fuel economy level, NHTSA has evaluated whether the manufacturers made sufficient efforts through September 1986 to meet the standard.

As discussed in the MY 1986 proceeding and noted above, the agency does not consider it appropriate to judge each and every manufacturer product action by 20-20 hindsight. Rather, in assessing the sufficiency of the manufacturers' fuel economy efforts, it is necessary to take account of the information available to the manufacturers at the time product decisions were being made.

Much of the analysis NHTSA conducted with respect to this issue in the MY 1986 rulemaking is relevant to this proceeding. Among other things, the agency discussed the impressive progress GM and Ford have made since the mid-1970's in improving their fuel economy. The agency concluded for purposes of the MY 1986 standard that GM and Ford had made sufficient efforts through September 1985 to improve their fuel economy to comply with the Cost Savings Act, but that those efforts had been overtaken by unforeseen events whose effects could not be overcome by available means within the time available. In particular, due to unexpected declines in the

price of gasoline, there had been a substantial shift in expected consumer demand toward larger cars and larger engines, and away from the sales mixes that had been anticipated by GM and Ford for that model year.

As indicated above, the agency's determinations in the MY 1986 proceeding concerning sufficiency of efforts are not determinative with respect to MY 1987-88. Thus, the agency has evaluated this issue for those model years.

As part of evaluating whether GM and Ford made sufficient efforts to achieve a 27.5 mpg CAFE, the agency has evaluated changes in MY 1987-88 projections submitted to it by GM and Ford since late 1983. NHTSA used the 1983 projections as the baseline for its evaluation for several reasons. First, both companies projected in 1983 that they would exceed 27.5 mpg CAFE in MY 1987-88. Thus, the agency wanted to determine why the companies are now unable to implement their earlier product plans. Also, by late 1983, gasoline prices had been declining for two years, and the distribution of vehicle sales was roughly comparable to today's levels. Thus, sales patterns at that time did not reflect the high consumer demand for smaller cars and cars with less performance that was typical of the 1980-81 period when fuel prices and consumer demand for fuel efficiency were at their peak.

The approach taken by NHTSA in evaluating the changes in fuel economy projections is similar to that recommended by DOE. That commenter suggested using the 1983 projections as a reference, "since both Ford and GM had forecasts exceeding 27.5 mpg in 1987 and 1988," and "the 1983 submissions also provide adequate lead time for introducing new technologies as products in 1987 and 1988."

In conducting its evaluation, NHTSA selected several major projections for MY 1987-88 submitted by GM and Ford since 1983. While GM and Ford submitted several other projections as well, the agency concluded that the ones it selected would enable it to understand the major trends and reasons for the decline in projected CAFE.

For purposes of consistency, the agency deleted EPA test credit adjustments in analyzing the different projections, since slightly different assumptions about the magnitude of the adjustments were made by GM and Ford at different times. Thus, the projections discussed in this section, below, are slightly lower (by 0.1 to 0.3 mpg) than the numbers in the manufacturers' submissions.

GM: GM projected in December 1983 that it could achieve a CAFE of 27.6 mpg for MY 1987. In a carryback plan dated November 1984, GM raised its MY 1987 projection to 28.1 mpg. A mix shift toward more fuel-efficient models accounts for 0.3 mpg of the increase. A certain product plan change accounts for the other 0.2 mpg increase.

Between November 1984 and February 1985, GM lowered its MY 1987 projection by 0.2 mpg, to 27.9 mpg. Mix effects account for 0.1 mpg of the decline, while a product plan change and miscellaneous reasons account for the other 0.1 mpg decline.

GM lowered its MY 1987 projection by an additional 1.7 mpg between February 1985 and April 1986. Almost half, about 0.8 mpg, of the decline relates to changes in vehicle mix. Model mix changes account for 0.5 mpg of the decline, while engine mix changes account for 0.3 mpg of the decline. The remaining 0.9 mpg CAFE decline is distributed among a large number of items. About 0.4 mpg is due to GM achieving lower-than-anticipated fuel economy levels on certain engines, 0.1 mpg is due to GM not achieving expected gains related to a certain technology, 0.1 mpg is associated with increased axle ratios on several carlines, and 0.1 mpg relates to a one-year deferral of a technological change due to an inability to complete tooling in a timely manner. The remaining 0.2 mpg decline is attributable to a number of minor factors, each affecting GM's CAFE by well under 0.1 mpg.

Between April 1986 and July 1986, GM lowered its MY 1987 projection by an additional 0.1 mpg, due to a number of reasons, each of which has only a small impact on CAFE.

For MY 1988, GM projected in December 1983 that it could achieve a CAFE of 29.3 mpg. While the agency does not have a November 1984 projection from GM for MY 1988 as it does for MY 1987, GM's February 1985 projection for MY 1988 was still as high as 29.2 mpg. Thus, as with GM's MY 1987 projection, the major decline in GM's projected MY 1988 CAFE occurred after February 1985.

Between February 1985 and April 1986, GM lowered its MY 1988 projection by 2.0 mpg. Relatively little of this change relates to mix effects. There is only a slight loss, 0.1 mpg, due to engine mix changes. A certain product plan change accounts for a 0.2 mpg decline in CAFE, minor changes in average test weights result in a 0.1 mpg decline, lower-than-expected gains related to transmissions result in a 0.1 mpg decline, lower-than-expected gains related to tires result in a 0.1 mpg decline, increased axle ratios result in a 0.2 mpg decline, deferring certain plans relating to technology due to, among other things, durability concerns, results in a 0.2 mpg decline, a slowdown in the application of a certain technology to avoid disrupting production capacity results in a 0.1 mpg decline, and miscellaneous technical changes result in a 0.1 mpg decline. The remaining 0.8 mpg

decline appears to be due almost exclusively to engines achieving lower than anticipated fuel economy levels.

Between April 1986 and July 1986, GM lowered its MY 1988 projection by an additional 0.5 mpg. The most significant factors accounting for this reduction include mix changes, the inability to make certain product plan changes as fast as once thought possible, increased test weight for certain cars, and changes related to increasing performance.

Ford: For MY 1987, Ford projected in October 1983 that it could achieve a CAFE of 29.3 mpg. Between October 1983 and December 1984, Ford lowered its projection by 0.8 mpg, to 28.5 mpg. Only about 0.1 mpg of the drop is attributable to carline mix shifts. Failure to achieve anticipated gains from engine programs accounts for 0.4 mpg of the decline, and weight increases in certain planned carlines contribute 0.3 mpg to the decline. Net increases in average dynamometer power absorber settings account for a 0.1 mpg decline. Minor shifts in engine mix and applications offset 0.1 mpg of the decline.

In February 1985, Ford projected a MY 1987 CAFE of 28.6 mpg. While this projection was only slightly different from its December 1984 projection, 0.1 mpg higher, there were a number of major changes in Ford's product plan. One product plan change accounts for a 0.1 mpg gain, certain marketing actions account for a 0.3 mpg gain, miscellaneous reasons account for another 0.1 mpg gain, a deletion of technology in certain cars accounts for a 0.2 mpg loss, and a change related to model year timing results in a 0.2 mpg loss.

Between February 1985 and May 1986, Ford lowered its MY 1987 projection by 1.7 mpg, to 26.9 mpg. Mix shifts, including engine mix shifts, account for 0.6 mpg of the decline. Changes in dynamometer power absorber settings, attributable to both new test information and a draft EPA advisory circular concerning coastdown testing, account for an additional 0.5 mpg decline. A decision by Ford not to include the potential efforts of extraordinary marketing and incentive programs in its basic projections accounts for 0.3 mpg of the decline. Newer assessments of fuel economy data account for another 0.3 mpg of the decline. A number of other minor changes, each having an impact of less than 0.1 mpg, offset each other. These include minor losses due to test weight increases, losses due to axle and transmission final drive ratio changes, and gains due to reductions in anticipated technical risks.

For MY 1988, Ford projected in October 1983 that it could achieve a CAFE of 29.0 mpg. Between October 1983 and December 1984, Ford lowered its projection by 1.5 mpg, to 27.5 mpg. The most significant reason for this decline, causing a 1.0 mpg decline, is a mix shift away from smaller cars toward larger cars. This is attributable to certain product plan changes and model year timing. Increased weight on certain planned carlines accounts for an additional 0.3 mpg decline. Increases in projected dynamometer power absorber settings cause a 0.2 mpg fuel economy decline. Lower-than-anticipated fuel economy gains on certain engines cause a 0.3 mpg decline. Minor engine mix shifts and changes in engine applications offset part of these declines, by 0.1 mpg. Also, a number of miscellaneous changes also partially offset the declines, adding 0.2 mpg to Ford's CAFE.

Between December 1984 and February 1985, Ford raised its MY 1988 projection by 0.1 mpg, to 27.6 mpg. A product plan change adds 0.1 mpg to Ford's CAFE, and certain marketing actions add 0.2 mpg. These gains are partially offset by a deletion of technology, which causes a 0.2 mpg decline.

Between February 1985 and May 1986, Ford lowered its MY 1988 projection by 1.4 mpg, to 26.2 mpg. Mix effects cause a 0.2 mpg decline, changes in dynamometer power absorber values account for a 0.4 mpg decline, Ford's decision not to include the potential effects of extraordinary marketing and incentive programs in its projections accounts for a 0.2 mpg decline, and newer assessments of fuel economy data account for a 0.3 mpg decline. An additional 0.1 mpg decline is attributable to slight increases in weight on certain vehicles. Minor changes in axle ratio and transmission final drive ratios cause a 0.1 mpg decline. The remaining 0.1 mpg CAFE decline is caused by a number of miscellaneous factors.

In evaluating the reasons for changes in GM's and Ford's MY 1987-88 CAFE projections since late 1983, it is apparent that both manufacturers are generally still planning to apply the same technologies to their fleets as planned in late 1983. The two major reasons for the decline in GM's CAFE projections have been net engine and model mix shifts, and engine and transmission improvement programs not yielding projected gains. The great majority of the factors reducing Ford's CAFE projections have been due to net shifts in projected sales for models and engines, engine efficiency improvements not yielding projected gains, and new models not meeting initial weight targets. Thus, the major reasons for the decline in both GM's and Ford's MY 1987-88 CAFE projections have largely been beyond those companies' control.

As indicated above, Chrysler alleged that GM and Ford chose corporate strategies that emphasized short-term profit maximizations over a longer-term strategy of meeting the law. That company cited past and current decisions by GM and Ford to continue selling what it termed "older technology rear wheel

drive cars," and listed a number of technological improvements which it argued GM and Ford could have taken to meet the standards within the available time. Chrysler specifically cited, in part from the PRIA, refinement of the basic discrete ratio automatic transmission and its further penetration into the fleet, additional weight savings, material substitution, refinement of aerodynamic drag, engine modifications, and additional front-wheel drive. That commenter argued that the agency had not addressed "the reasons why GM and Ford failed to make the technological improvements identified as feasible by the agency," or clearly acknowledged that "the question is whether the changes were economically practicable if begun on a timely basis, not whether they are still practicable today." Chrysler also argued that its experience demonstrates that a 27.5 mpg standard is feasible, and that a prudent manufacturer would build a margin of error into its product plans for unforeseen circumstances.

Many of the issues raised by Chrysler were also raised by that company in the MY 1986 proceeding. Much of the agency's discussion of Chrysler's comments in that proceeding remains relevant.

First, the legislative history of the Cost Savings Act clearly indicates that NHTSA has the authority to reduce fuel economy standards. The determination of maximum feasible average fuel economy level is made as of the time of the amendment. The agency has emphasized, however, that it would not reduce a standard if a current inability to meet the standard simply resulted from manufacturers previously declining to take reasonable steps to improve their average fuel economy as required by the Act.

With respect to Chrysler's argument that its experience demonstrates that a 27.5 mpg standard is feasible, the primary reason that GM's and Ford's CAFE's are lower than Chrysler's is that Chrysler does not compete in all the market segments in which GM and Ford sell cars. Unlike GM and Ford, Chrysler does not offer any vehicles that are defined by EPA as "large cars" or "large station wagons." These vehicles, which account for 20 to 25 percent of Ford's and GM's sales, are generally less fuel-efficient than the size cars Chrysler sells. As discussed in the MY 1986 proceeding, Chrysler vehicles often have fewer fuel economy enhancing technologies than those of GM or Ford. While a particular manufacturer may choose to comply with fuel economy standards by various strategies, including not producing large cars, the agency would not consider standards which require full-line manufacturers to stop producing large cars to be consistent with the statutory criterion of economic practicability, since such standards would unduly restrict consumer choice.

In February 1985, both GM and Ford projected that they would meet or exceed a 27.5 mpg CAFE in MY 1987-88. Since that time, both manufacturers' CAFE projections have fallen, for reasons largely beyond their control. Given the timing, the manufacturers have had insufficient leadtime to make major technological changes in their product plans to offset the declines in their projected CAFE. For example, Chrysler's comment stated that "(i)t is important to recognize that the leadtime required to implement these improvements in engines, transmissions, aerodynamics and rolling resistance, is usually three to four years."

CFAS, as well as Chrysler, focused on decisions by GM and Ford to continue selling cars that they once planned to delete. As the agency stated in the MY 1986 proceeding, the fact that GM and Ford may at one time have considered deleting certain models does not commit those manufacturers to now do so. Manufacturers' product plans are constantly changing over time in response to market conditions. Given the dynamic nature of the market, what is economically practicable at one time may not be so at another.

While Chrysler argued that the changes in market conditions on which GM and Ford base their present CAFE difficulties were plainly in evidence as long ago as 1982, the record is clear, as discussed in the MY 1986 proceeding, that the drop in gasoline prices during the early 1980's was expected to be temporary. See 50 FR 40541-40542. For example, converting past gasoline price forecasts to constant 1985 dollars, Data Resources, Inc. (DRI) forecast in the spring of 1983 that gasoline would cost $1.35 in 1986, $1.41 in 1987, and $1.45 in 1988. In the winter of 1983-84, DRI was still forecasting that gasoline would cost as high as $1.33 in 1986 and 1987, and $1.38 in 1988. By comparison, DRI forecast in May of 1986 that gasoline would cost $0.91 in 1987 and $0.92 in 1988.

NHTSA has not concluded, however, that a decision by a manufacturer to continue selling certain cars indefinitely, without redesigning the cars to incorporate new technology, is reasonable under all circumstances. As a general matter, if application of fuel efficiency enhancing technology is required to meet fuel economy standards and is economically practicable and not inconsistent with the other factors of section 502(e), the manufacturers must make such changes.

The agency believes, however, that several factors are relevant to GM's and Ford's decisions to continue the sale of models that they once planned to delete. First, GM and Ford did not rely on the discontinuation of models to avoid making technological changes

and then request that the CAFE standards be reduced in order to avoid having to carry out their plans. Rather, as is clear in the record, GM and Ford made their decisions in response to changes in consumer demand. Indeed, as noted in the preamble for the MY 1986 final rule, Chrysler has acknowledged doing the same type of thing.

Second, by the time GM and Ford made their decisions to continue the sale of certain models, there was insufficient time to design new replacement models or make significant technological improvements to the older models. In some instances, the manufacturers had nothing in their product plans to replace the vehicles. In other instances, the older vehicles offered a variety of attributes which significant numbers of consumers prefer to newer models which were once intended as replacement vehicles. GM commented, for example, that some of its customers prefer a 5 percent larger passenger compartment (comparing its "G" car to its "A" car) or a 30 percent larger trunk (comparing its "B" car to its "H" car).

Third, as discussed above, both GM and Ford have continued to make significant technological improvements in their fleets and have had reasonable plans to meet CAFE standards. In a situation where unforeseen events, including changes in consumer demand or changes in the competition's product offerings, overtake a manufacturer's reasonable product plan to comply with a standard, the agency does not consider it consistent with the Act to "hold" the manufacturer to carrying out a product plan that has become economically impracticable. GM noted that the cars that CFAS has argued should be discontinued accounted for more than 25 percent of its production last year, or 14.8 percent of total U.S. passenger car production.

On the other hand, as it becomes apparent that additional application of technology, such as further penetration of front-wheel drive or additional use of material substitution, is necessary to meet CAFE standards, manufacturers must initiate efforts to redesign and replace their older cars as necessary to meet such standards. Given the leadtime required to make significant technological improvements, however, it is not surprising that the dramatic change in consumer demand which has taken place has affected GM's and Ford's ability to comply with the 27.5 mpg standard for more than one model year.

With respect to Chrysler's comment that a prudent manufacturer would build a margin of error into its product plans for unforeseen circumstances, the agency notes that at the time GM and Ford planned their basic MY 1987-88 fleets, they reasonably projected CAFE's exceeding 27.5 mpg by a comfortable margin.

One other issue which is relevant to considering the sufficiency of manufacturer efforts to meet the 27.5 mpg standard relates to captive imports. DOE commented that one factor limiting GM's and Ford's ability to improve their CAFE is their "aggressive" captive import strategies. NHTSA notes first that such captive import strategies have no effect on energy conservation. While GM's and Ford's domestic CAFE levels are affected by whether a particular car they sell is an import or not, the country of origin of the car does not affect the amount of gasoline it consumes. Moreover, GM and Ford are pursuing their captive import strategies due to market conditions that have nothing to do with CAFE. Due to substantial cost advantages of producing small cars abroad, imports comprise a large portion of the small car fleet. GM's and Ford's captive import strategies are primarily in response to vigorous competition from abroad. Indeed, if GM and Ford did not import particular small cars, other manufacturers would likely import additional small cars. For all of these reasons, the agency does not believe that GM's and Ford's captive import strategies are unreasonable with respect to their efforts to meet CAFE standards for their domestically produced cars.

Other Federal Standards

EPA published a final rule in the *Federal Register* (50 FR 27172) on July 1, 1985, to provide CAFE adjustments for the effects of past test procedure changes. The final rule adopted a formula approach for calculating CAFE adjustments. As indicated above, the manufacturer projections discussed in this notice include the effect of the EPA adjustment credit, unless noted otherwise. Due to the formula approach, the specific value of the credit may vary for different model years and among manufacturers. A typical credit for the MY 1987-88 time period would be 0.1 or 0.2 mpg.

Another issue related to EPA's test procedure concerns dynamometer power absorber (DPA) values. Both GM and Ford commented that their CAFE projections have declined as a result of higher DPA values under a draft Advisory Circular (A/C 55C) issued by EPA. NHTSA contacted EPA concerning this issue. EPA indicated in a letter dated August 8, 1986, that, as a result of its increased oversight and enforcement concerning vehicle road-load horsepower specifications, manufacturers' projected CAFE levels could decline. EPA indicated that as part of reminding the manufacturers of what it believes their responsibility has been all along under the regulations it is considering revisions to its advisory Circular No. 55B which deals with the general subject of road-load determination. That agency noted, however,

that it expects to continue its increased enforcement whether or not it updates its advisory guidance. NHTSA has accounted for a CAFE decline due to revised road-load values in assessing manufacturers' capabilities. The latest projections provided by GM and Ford include the effects of the revised road-load values.

EPA has not announced any plans to modify its current exhaust emission control requirements, applicable to cars, for hydrocarbons, carbon monoxide, and oxides of nitrogen. Therefore, the agency has not considered any further impacts on fuel economy from control of these pollutants. The agency has previously analyzed the effects of the current requirements on fuel economy.

EPA added a requirement for control of particulate matter in MY 1985, which will be tightened in MY 1987. While this requirement applies to all vehicles, the only current production engine which will have difficulty meeting this requirement is the diesel. EPA has indicated that there is a 1 to 2 percent fuel economy penalty for diesel-powered vehicles which require a particulate trap to comply with the standard. However, it is believed that only a very small fraction of diesel vehicles will need traps for compliance.

GM has discontinued production of its larger domestically produced diesels, which comprised less than 1 percent of its total MY 1985 sales, and Ford does not offer a domestically produced diesel. While both of these manufacturers offer cars with imported diesel engines, the sales of the vehicles are very small. Also, the engines are of small displacement and therefore will probably not require the use of a particulate trap for compliance. Therefore, the more stringent particulate standard is not expected to have any significant effect on their CAFE levels.

Mercedes-Benz and BMW have argued that the particulate standard is affecting their CAFE capability. BMW stated that the 1986 California Air Resources Board standard for particulates prevented it from selling any diesel cars in California, a loss of approximately 30 percent of total California sales. Mercedes asserts that the California standard and the 1987 Federal standard would require the use of diesel engine trap technology in order to achieve compliance. Mercedes argued that Federal and state emissions regulations that became effective in the past several years and will become more stringent in MY 1987 and 1989 have forced technological changes that were and will be very detrimental to the fuel efficiency of the diesel engine. That company argued that the impact on fuel economy is much more significant than projected by EPA. According to Mercedes, there is a penalty of 3.9 mpg, which is a 13 percent penalty rather than the one to two percent penalty estimated by EPA. Mercedes did not provide any data in support of its position.

NHTSA notes that diesel sales have fallen drastically in recent years, declining from a peak of 6.0 percent of the total fleet in 1981 to 0.9 percent of the fleet in 1985. This decline has been primarily due to declining gasoline prices and a decline in the price advantage of diesel fuel as compared to unleaded gasoline. The decline in the popularity of diesels has little or nothing to do with emissions standards. However, the more stringent particulate standard does result in additional development and certification expenses for those manufacturers that choose to use diesels.

The agency is not aware of any plans on the part of EPA to promulgate noise regulations during the MY 1987-88 time period and therefore does not anticipate any attendant fuel economy penalties.

As discussed in the FRIA, several relatively recent changes in Federal safety and damageability requirements may affect CAFE. These include a May 1982 amendment to the Part 581 Bumper Standard reducing the standard's impact protection requirements and thereby permitting weight savings; several amendments to the agency's lighting standard, which permit greater aerodynamic efficiency; and the fact that the automatic restraint requirements of standard No. 208, with attendant adverse weight and fuel economy penalties, are being phased in beginning in MY 1987.

The FRIA concludes that the potential weight savings associated with the Bumper Standard amendment could produce a gain of 0.2 to 0.5 mpg. However, both GM and Ford have indicated that market demand has led them to retain 5 mph bumper systems (generally Phase I) on most of their product lines. Consequently, relatively little weight has been removed from the GM and Ford fleets due to the change in the standard. The agency endorses the voluntary use of 5 mph bumper systems as consistent with congressional intent in enacting Title I of the Motor Vehicle Information and Cost Saving Act, Bumper Standards. Accordingly, the agency will not consider the possible 0.2 to 0.5 mpg gain associated with potentially lighter bumpers as part of its consideration of "technological feasibility."

With respect to the amendments to the agency's lighting standard, the FRIA concludes that the 2 to 3 percent improvement in aerodynamic drag associated with the new headlamp assemblies now permitted by the standard could produce a 0.4 to 0.9 percent improvement in fuel economy. For a 27.5 mpg fleet, this would equate to a 0.11 to 0.25 mpg improvement in CAFE if all vehicles in the fleet employed the new lamp designs. Several manufacturers are utilizing

these headlamps. For MY 1986, Ford is using aero headlamps on its Taurus/Sable, Escort, Tempo, SVO Mustang, and Lincoln Mark VII. Similarly, GM is also making extensive use of composite headlamps and Type LF/UF sealed beam headlamps for MY 1986. The fuel economy benefits from these new headlamp assemblies are factored into the manufacturers' CAFE projections.

The FRIA concludes that the weight penalty associated with the phase-in of the automatic restraint requirements is likely to be 2.2 to 3.0 pounds in MY 1987 and 5.5 to 7.5 pounds in MY 1988. This assumes that the principal means of compliance, at least initially, will be through the use of automatic belts. The estimated weight penalty is for illustration purposes, since the impact on an individual manufacturer will depend on the choice of occupant protection system, weight efficiency of the particular design, size of vehicle, and other factors. The weight penalty is expected to have only a very minor impact on CAFE.

Safety Considerations

CEI argued that NHTSA should set the MY 1987-88 standards at what it termed a "non-forcing level," perhaps 22 mpg, based on safety considerations. That commenter argued that a standard of 27.5 mpg, as compared to one of 26.0 mpg, would result in an increase of 300 to 400 fatalities per year. In making this argument, CEI assumed, among other things, that GM and Ford would need to reduce the weight of their cars by an average of 200 pounds, or 6.5 percent, to improve fuel economy from 26.0 to 27.5 mpg. CEI argued further that NHTSA should consider safety effects from a market-based baseline rather than from 26.0 mpg. That commenter suggested that 22.0 mpg would be a reasonable market-based baseline, citing an estimate by Robert W. Crandall of the Brookings Institution that CAFE did not begin to affect the market until MY 1981, when the standard was 22.0 mpg. According to CEI, a 27.5 mpg standard might entail considerably more than 1,000 additional fatalities per year as compared to a 22.0 mpg standard.

IIHS also commented on the relationship of CAFE standards and safety, arguing that CAFE standards can have a potentially adverse effect on vehicle safety because vehicle size is an important factor in safety. IIHS stated that occupants of smaller cars are at much greater risk of death and injury than occupants of larger cars, citing data from Maryland and the agency's Fatal Accident Reporting System.

Failure Analysis Associates also submitted a comment on safety, arguing, among other things, that downsizing has resulted in missed opportunities to avoid significant numbers of passenger car injuries and fatalities. That commenter stated that further "enforced" downsizing through more stringent CAFE standards would cause an additional toll in fatalities and injury compared to the alternative of maintaining the current size/weight sales picture.

NHTSA agrees that there is a relationship between safety and car size and weight, in a crash. The relationship is a very complex one, however. For example, while it is true that smaller cars are generally less crashworthy for their occupants than larger ones, everything else being equal, they are also less aggressive to occupants of other vehicles. Both effects must be considered in order to determine the effect on fatalities if the market share of smaller vehicles increases. Moreover, in analyzing accident data, it is extremely difficult to adequately separate out relevant factors other than car size and weight that affect safety. These include both vehicle differences, i.e., vehicle factors related to safety other than size and weight, and driver differences, e.g., age differences, etc.

While the agency recognizes the relationship between safety and vehicle size and weight, in a crash, it nonetheless concludes that CAFE standards in the range of 26.0 mpg to 27.5 mpg need not have a significant effect on safety. In the MY 1986 proceeding, NHTSA addressed the issue of safety as follows:

> The agency does not believe that there is any basis for concluding that a 26.0, or even a 27.5 mpg standard, would represent any significant increased risk of injury or death for passenger car occupants. It is true that in a crash between cars of different sizes, everything else being equal, the occupants of the smaller car are at greater risk of injury. However, as large cars are reduced in size, the mass differences between large and small cars diminish, along with the potential for injury. In addition, the agency is taking steps to ensure that smaller vehicles provide sufficient crash protection. Also, small cars may have crash-avoidance advantages compared to heavier vehicles. Passenger car occupant deaths have in fact dropped from 28,200 in 1978 to 23,500 in 1984, a 17 percent decline. This occurred during a time when the average new car's weight was reduced by 1000 pounds. 50 FR 40547 to 40548.

The agency notes first that CEI's arugment that CAFE standards higher than 26.0 mpg will result in decreased safety is premised on the assumption that GM and Ford can achieve CAFE higher than 26.0 mpg only by "forcing" consumers to purchase a higher-than-preferred percentage of smaller cars. Similarly, IIHS's and Failure Analysis Associates'

concern that CAFE standards may affect safety assumes that CAFE standards will require consumers to purchase smaller cars.

During the MY 1987-88 time period, GM and Ford are largely improving their fuel economy through technological improvements other than weight reduction. Between 1986 and 1988, GM's fleet is expected to be reduced in average weight by only 1.5 percent while Ford's is expected to increase in average weight by 3 percent.

There are a number of specific methodological shortcomings to CEI's analysis. First, CEI assumes that fuel economy is improved only by reducing weight, and thus does not account for improved technology. Thus, the weight differences between a 26.0 mpg fleet and a 27.5 mpg fleet are exaggerated. Second, CEI applies the weight differences, along with other factors, to the total of highway fatalities, including pedestrian fatalities, bicyclist deaths, single vehicle heavy truck accidents, etc. Clearly, a reduction in passenger car weight will not result in a greater likelihood of death for pedestrians, bicyclists, and occupants of tractor-trailers which run off the road. At most, CEI should have applied its factors to only passenger car occupant deaths, a number which is approximately one-half of that used by CEI. Third, the CEI estimate of 300 additional fatalities is predicated on a model used in a recent Brookings Institution publication, *Regulating the Automobile.* This model shows a statistically significant effect for a change in passenger car weight on pedestrian, bicyclist, and other nonpassenger car occupant fatalities. However, the model shows that the effect on passenger car occupant fatalities is not statistically significant. In addition to being counterintuitive, the model argues against the very premise of CEI's claim, that vehicle weight will be a major determinant of highway fatalities.

Moreover, while manufacturers have used and are generally planning to continue to use weight reduction as a means of improving fuel efficiency, NHTSA believes that this weight reduction is largely related to consumer demand. CEI itself stated that in the absence of CAFE standards, "the general downsizing of the American passenger car fleet. . . accompanied by improved energy efficiency. . . for cars in all size categories would have occurred in any case." While it is true that consumers place less emphasis on fuel economy and more emphasis on such things as size and performance when gasoline prices are low, fuel efficiency remains an important factor in consumers' purchasing decisions. For example, GM commented that a recent market research program shows that even though stabilization of fuel prices had caused new car intenders to shift their preferences toward more acceleration performance, their preference toward expected fuel economy increases had also risen. Thus, even if there were no CAFE standards, there is no reasons to assume that consumers would return to larger and heavier cars.

For all of these reasons, NHTSA concludes that there is no basis for the fatality estimates provided by CEI. While the agency has concluded that CAFE standards in the 26.0 mpg to 27.5 mpg range need not have a significant effect on safety, it recognizes that to the extent that manufacturers may in the short run, be able to improve their CAFE only by product restrictions, individual consumers could be denied the opportunity to purchase the larger, safer cars that they may desire. Moreover, it is possible CAFE standards above 27.5 mpg could have a significant effect on safety, even in the longer run, to the extent that they might "force" consumers into significantly smaller and lighter cars. Thus, were NHTSA to consider setting standards above 27.5 mpg in the future, it agrees that the issue of safety would warrant further attention.

The Need to Conserve Energy

Since 1975, when the Energy Policy and Conservation Act was passed, this nation's energy situation has undergone a great deal of change. In particular, oil markets have been deregulated and the Strategic Petroleum Reserve (SPR) has been established.

The United States imported 15 percent of its oil needs in 1955. By 1977, the import share was 46.4 percent and the value of imported crude oil and refined petroleum products was $67 billion (stated in 1984 dollars). While the import share of total petroleum demand declined after that year, the cost continued to rise to a 1980 peak level of $93.2 billion (1984 dollars). By 1985, the import share had declined to 28.7 percent at a cost of $48.3 billion (1984 dollars).

Through 1985, imports from OPEC sources declined, from a high of 6.2 million barrels per day and 70.3 percent of all imports in 1977 to 1.8 billion barrels per day and 36.2 percent of imports in 1985. As imports have shifted to non-OPEC sources, the United States' supply of petroleum has become less vulnerable to the political instabilities of some OPEC countries, as compared to the situation in the mid-1970's.

By 1985, the U.S. was much more energy independent than it was a decade ago, when Congress established the fuel economy standards program. From 1976 to 1984, energy efficiency in the U.S. economy improved by 21 percent (1984 Annual Energy Review, Energy Information Administration, U.S. Department of Energy, p. 41) and passenger car petroleum consumption was actually lower than it

was in 1975, even though travel has increased 25 percent since then. Domestic oil production was higher in 1985 than it was in 1975, total imports have dropped 18 percent, and on a net import basis the value of the nation's imported oil bill fell nearly 50 percent from 1980 to 1985. The amount of imported oil from OPEC has dropped by 71 percent since the peak of 1977. As a percentage share of GNP, the net oil import bill fell from 2.8 percent in 1980 to 1.2 percent in 1985. In addition, the price of oil is now fully decontrolled, permitting the market to adjust quickly to changing conditions, and the SPR is well on its way to being filled. The 451 million barrels in the SPR at year-end 1984 were equal to 141 days or 38.6 percent of non-SPR crude oil imports that year. Thus, by any measure, the nation is currently in a stronger energy position than it was a decade ago.

According to Energy Information Administration (EIA) and Data Resources, Inc. (DRI), projections, however, domestic production is expected to decline from a stable level of 10.6 MMB/D to between 7.5 MMB/D (DRI) and 8.3 MMB/D (EIA) by 1995. Net imports are expected to rise from 4.2 MMB/D to between 7.7 MMB/D (EIA) and 9.9 MMB/D (DRI) by 1995. NHTSA thus recognizes that available projections indicate a general consensus that imports may approach or exceed 50 percent of U.S. petroleum use by 1995. Future projections about petroleum imports are, of course, subject to great uncertainty. Indeed, oil imports are very difficult to project beyond a year or two. For example, the EIA's 1977 Annual Report to Congress projected that net oil imports by the U.S. would, in the "reference case," reach 11 million barrels per day by 1985. Net imports in 1985 actually turned out to be 4.2 million barrels per day, less than half the level predicted in 1977.

Chrysler argued that long-term risks remain with respect to the nation's need to conserve energy and alleged that NHTSA is apparently prepared to act on the assumption that America no longer has an energy problem and no longer needs to worry about conservation. That commenter argued that abundant supplies and falling prices are killing all incentive for oil exploration and energy conservation, and quoted former Energy Secretary James R. Schlesinger as saying that "(t)he United States is now in the process of creating a substantially increased oil dependency for the 1990's. . . . We are sowing the seeds of the next oil crisis." Chrysler also argued that it is no answer that the nation can trust the market because oil prices have been decontrolled. That commenter stated that in 1975, when the Act was passed, Congress was concerned that artificially low prices would send the wrong signals about long-term conservation needs. Chrysler argued that oil prices are again artificially low—to a large extent because one major foreign supplier has decided to "swamp" the market with supply in an effort to discipline other producers, thereby hoping to restore the conditions that produced two previous oil crises.

The Center for Auto Safety argued that the recent drop in oil prices clearly increases the chance of yet another energy disruption and underscores the urgent necessity of maintaining the current fuel economy standards. That commenter also argued that the agency had overemphasized the added security provided by the current level of the SPR. CFAS quoted a report prepared by the National Academy of Sciences for the U.S. Department of Energy as indicating that given the demand and production rates projected for the 1990's, the SPR will provide only a 50 days supply instead of the current 100 days supply.

GM commented that the risk of increased imports does not imply any increased vulnerability to a new energy crisis. That commenter stated that it is not at all certain, or even likely, that the primary source of these increased imports would be Persian Gulf oil, noting that the potential exists for further increases in supply from non-OPEC countries such as Mexico, Norway, Columbia, India, and others.

NHTSA agrees with GM that if imports do once again reach the 50 percent level, the nation will remain in a much stronger energy position than was the case in the mid-1970's. The nation's sources of oil imports are more diverse and less vulnerable to disruption, the nation's energy efficiency is much higher, there is greater ability to substitute alternative sources of energy, and the absence of price controls permits the market to more easily respond to changes in supply and demand.

As discussed below, the need to conserve energy is only one of four factors that NHTSA is required to consider in establishing fuel economy standards at the maximum feasible level. NHTSA rejects Chrysler's allegation, however, that the agency assumes that America no longer has an energy problem and no longer needs to worry about conservation. The prospect of increasing oil imports does raise concerns about national security and balance of payments difficulties. Moreover, quite apart from the issue of whether oil imports are likely to increase in the next decade, petroleum is a vital natural resource which is nonrenewable.

While the agency agrees that the need to conserve energy is important, it also notes that Congress' goal of energy conservation by improved automotive fuel efficiency has largely been realized. In MY 1986, for the first time, the average fuel economy of the total fleet of new cars will in fact exceed 27.5 mpg. A major

reason that GM and Ford are having difficulty achieving CAFE of 27.5 mpg, apart from the unexpected drop in gasoline prices since their MY 1987-88 product plans were developed, is that the smallest, most fuel-efficient GM and Ford cars are largely imports, which cannot be included in their domestic CAFE. The reason for producing small cars abroad relates to cost advantages, rather than anything having to do with CAFE. However, with respect to the need to conserve energy, it makes no difference whether a manufacturer produces a fuel-efficient car abroad or in the United States.

Amending the MY 1987-88 Standards

As discussed above, section 502(a)(4) provides that the 27.5 mpg standard can be amended if the agency determines that some other standard represents the maximum feasible average fuel economy level. In making this determination, the agency must consider the four factors of section 502(e): technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy.

A. Interpretation of "Feasible"

Based on dictionary definitions and judicial interpretations of similar language in other statutes, the agency has traditionally interpreted "feasible" to refer to whether something is capable of being done, taking into account the four statutory criteria: technology, economic practicability, the effect of other Federal standards, and the need of the nation to conserve energy. The statute does not elevate any one of these criteria above the others, nor does it provide guidance to the agency on weighing any of these criteria more heavily than any others. For example, the agency's determination of the "maximum feasible" standard cannot be that level which is merely the maximum technologically feasible without regard to the economic practicability of such a level. Also, as discussed elsewhere in this notice, the agency has traditionally included a small margin to account for technological and economic risks when establishing CAFE standards, and believes this is consistent with the statutory instruction to consider and balance all four criteria.

B. Industrywide Considerations

The statute does not expressly state whether the concept of feasibility is to be determined on a manufacturer-by-manufacturer basis or on an industrywide basis. Legislative history may be used as an indication of congressional intent in resolving ambiguities in statutory language. The agency believes that the Conference Report to the 1975 Act, quoted below, provides guidance on the meaning of "maximum feasible average fuel economy level." In the recent case of *Center for Auto Safety v. NHTSA,* upholding the MY 1985-86 light truck fuel economy standards, the United States Court of Appeals (D.C. Circuit) indicated that this language is relevant to determining congressional intent concerning the setting of fuel economy standards. (D.C. Cir. No. 85-1231, June 20, 1986, slip op. at p. 34)

The Conference Report to the 1975 Act (S. Rep. No. 94-516, 94th Cong., 1st Sess. 154-5 (1975)), states:

> Such determination [of maximum feasible average fuel economy level] should therefore take industrywide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic manufacturers that currently exist, and the possible implications for the national economy and for reduced competition association [sic] with a severe strain on any manufacturer. . . .

It is clear from the Conference Report that Congress did not intend that standards simply be set at the level of the least capable manufacturer, regardless of market share. Rather, NHTSA must take industrywide considerations into account in determining maximum feasible average fuel economy level. On the other hand, the Conference Report indicates that the circumstances of the domestic manufacturers are to be given appropriate weight in assessing "industrywide considerations."

C. The MY 1987-88 Standards—Overview

Based on the analysis discussed above, NHTSA has determined that GM can achieve a MY 1987 CAFE no higher than 26.3 mpg to 26.4 mpg, and Ford can achieve a MY 1988 CAFE no higher than 26.4 mpg. These figures are subject to a number of uncertainties not already accounted for. Ford's MY 1987 capability is somewhat higher than GM's, while GM's MY 1988 capability is somewhat higher than Ford's.

Chrysler, American Motors, Volkswagen, Hyundai, and the Japanese manufacturers are expected to

achieve CAFE levels above 27.5 mpg, due to the mix of vehicles they sell. The European manufacturers, including Mercedes-Benz, Volvo, BMW, Peugeot, Saab, and Jaguar will generally achieve CAFE levels below those achievable by GM and Ford in MY 1987-88.

In proceeding from an analysis of manufacturer CAFE capabilities to the setting of standards, NHTSA notes that the setting of maximum feasible average fuel economy standards, based on the consideration of the four required factors of section 502(e), is not a mere mathematical exercise but is a matter of agency judgment that takes account of many considerations relevant to those factors, including uncertainties. NHTSA has concluded that 26.0 mpg is the maximum feasible average fuel economy level for the 1987-88 model years. This level balances the small potential petroleum savings associated with higher standards against the substantial difficulties of individual manufacturers, especially domestic manufacturers, facing potentially higher standards and the impacts of such standards on the automotive industry and the economy as a whole.

D. Economic Impacts of Not Amending the 27.5 mpg Standard

NHTSA's analysis indicates that the only actions available to GM and Ford in the near-term to achieve CAFE levels of 27.5 mpg, i.e., for MY 1987-88, would involve a combination of drastic product restrictions and foreign outsourcing of their larger cars. Such product restrictions would result in significant adverse economic impacts and restrict consumer choice to an unreasonable degree.

The unacceptability of the product mix that would result from GM and Ford achieving 27.5 mpg CAFE in MY 1987-88 from product restrictions would likely result in sales losses well into the hundreds of thousands of units and resultant job losses well into the tens of thousands. The agency considers these effects to be beyond the realm of economic practicability. To the extent that these economic impacts could be partially offset by the foreign outsourcing of larger cars, there would be absolutely no energy conservation benefits, but American workers would lose jobs.

Moreover, any combination of such product restrictions and foreign outsourcing would significantly increase an already serious U.S. balance of trade problem. The U.S. trade deficit reached $148.5 billion in 1985 and is running at an annualized rate of $175 billion for 1986. Through the first seven months of 1986 the imbalance in trade in passenger cars accounted for 22.5 percent of the total U.S. trade deficit. While foreign outsourcing would involve a direct transfer of U.S. jobs overseas, product restrictions would permit foreign manufacturers, which achieve higher CAFE due to their emphasis on smaller cars, to substantially increase their penetration of the larger car market at the expense of the domestic manufacturers.

E. Determining the Levels of the MY 1987-88 Standards

In setting the standard at 26.0 mpg for both model years, NHTSA has followed its traditional approach of setting standards at the level achievable by the least capable manufacturer with a substantial share of sales, and considering risks in determining that level. For MY 1987, GM is the least capable manufacturer, with a capability no higher than 26.3 mpg to 26.4 mpg. For MY 1988, Ford is the least capable manufacturer, with a capability no higher than 26.4 mpg.

1. *Consideration of risks*

In determining the levels of the MY 1987-88 standards, NHTSA considered the appropriate margin, if any, to account for risks beyond the manufacturers' control. Standards set at 26.0 mpg provide a small margin, i.e., 0.3 mpg to 0.4 mpg, to account for risks. This is similar in magnitude to the risk factor adopted by NHTSA in setting the MY 1986 standard, and substantially smaller than the downward adjustments provided in 1977 for the MY 1981 standard. In light of differences in this record when compared to the MY 1986 rulemaking, the agency considered whether a smaller risk factor, or no risk factor at all, should be provided. While there was a significant risk in the MY 1986 rulemaking that gasoline prices would continue to fall, that risk is smaller now. Also, despite the unexpectedly large magnitude of the drop in gasoline prices that did occur during MY 1986, GM and Ford were able to achieve or exceed their projected CAFE levels. Another difference in the record is the risk of increased Japanese imports. That risk is lower now than in the MY 1986 rulemaking given the decline in the value of the dollar that has occurred, although, as discussed below, currency values could change again.

While NHTSA recognizes the differences in the record, it also recognizes the inherent difficulties in evaluating the potential impact of the uncertainties that do exist. It, therefore, concludes that a small, i.e., 0.3–0.4 mpg, risk factor should continue to be provided. NHTSA has traditionally provided a small margin for risks related to uncertainties and believes

it is appropriate to continue to do so for MY 1987-88. In setting the MY 1981-84 standards, for example, NHTSA specifically provided an allowance for unforseen contingencies. See 42 FR 33548, June 30, 1977. The agency noted then that this approach was consistent with that of the Senate Commerce Committee in establishing the 1980 average fuel economy standard. That committee concluded that a fuel economy goal of 21 mpg, representing a 50 percent improvement over 1974, was reasonable. In reaching this decision, the committee considered a report indicating that up to a 63 percent improvement was possible. The committee concluded, however, that calling for a 50 percent improvement would provide "ample cushion for unforeseen contingencies." See S. Rep. No. 94-179, 94th Cong., 1st Sess. 10 (1975).

It is true, of course, that in amending the MY 1987 standard just prior to the start of the model year and the MY 1988 standard approximately a year before the start of the model year, there is less technological uncertainty than when standards are set several years in advance. On the other hand, there is now little or no opportunity for the manufacturers to plan further technological changes as a margin of safety to rely on if unforeseen contingencies arise. Thus, if such events did occur, the manufacturers might only be able to achieve the levels of the standards by product restrictions.

Past experience clearly indicates that there is a significant risk that unexpected uncertainties may occur, which could lower expected CAFE values. A comparison of manufacturers' CAFE estimates as shown in their pre-model year reports, which are submitted in late December of the then-current model year (i.e., at a time when many vehicles are well into production), and their mid-model year reports, which are submitted in late July, near the end of the model year, illustrates the difficulties in predicting CAFE values even at the beginning of a particular model year. For example, GM's and Ford's MY 1982-83 CAFE levels declined by an average of 0.7 mpg between the pre-model year report and the mid-model year report. While GM's and Ford's CAFE levels have not declined between those two reports for the last two model years, past experience nonetheless indicates the risk that such declines may occur.

Similarly, manufacturers are unable to predict sales levels for particular carlines or for their overall fleets with precision, even at the start of the model year. For example, in Ford's MY 1986 fleet, Crown Victoria/Grand Marquis sales were 10 percent higher than expected, Mustang/Capri sales were 12 percent higher than expected, Thunderbird/Cougar sales were almost 16 percent higher than planned, and EXP sales were almost 16 percent below pre-model year report projections. In GM's MY 1985 fleet, G-special (e.g., Buick Regal) sales were 9 percent higher than projected in the pre-model year report, and P-body (Pontiac Fiero) sales were lower than projected by more than 11 percent.

The primary risk affecting GM's and Ford's MY 1987-88 CAFE projections is that their car and engine mix assumptions could turn out to be incorrect. NHTSA's analysis indicates that potential mix shifts could reduce GM's MY 1987 CAFE to 26.0 mpg. As discussed below, such mix shifts could be triggered by events beyond GM's control. For example, 10 to 25 percent increases in sales of less fuel-efficient carlines and 10–20 percent decreases in sales of more fuel-efficient carlines, ranges consistent with those experienced recently, could result in a 26.0 mpg CAFE for GM's MY 1987 fleet. Such shifts are consistent with GM's capacity constraints. This scenario is based on the assumption that average fuel economy for each carline remains unchanged from GM's basic projection. If there were shifts toward less fuel-efficient engines within many of these carlines, a mix shift of even lesser magnitude could result in CAFE of 26.0 mpg for GM's MY 1987 fleet. Ford has provided data indicating that mix shifts could reduce its MY 1988 CAFE to below 26.0 mpg.

Outside events, beyond the manufacturers' control, could change consumer demand, resulting in the mix shifts toward larger cars and larger engines postulated above. Should gasoline prices fall below the values estimated by the manufacturers, there could be a downward effect on CAFE. While industry analysts are not currently projecting lower gasoline prices, these same analysts have been unable to accurately predict gasoline prices for the past several years. Moreover, while consumers have not responded as strongly as might have been expected to the fall in gasoline prices during 1986, there could be a lag in consumer response to a fall of that magnitude, e.g., consumers may have expected a compensating upward trend, which has not materialized, or they may hold off purchasing a less fuel-efficient car until they feel more certain fuel prices will stay relatively low. The agency notes that Ford's gasoline price projections are somewhat higher than those of GM. Thus, should GM's estimates prove correct, there will be a downward pressure on Ford's projected CAFE.

Another uncertainty related to consumer demand is how MY 1987-88 sales may be affected by the extremely low interest rates offered by the manufacturers toward the end of MY 1986. For example, some consumers who would have purchased MY 1987-88 cars may have made their purchases earlier as a result of the low financing, while other consumers might delay purchasing cars in the hope that such financing plans will be offered again.

Still another uncertainty is how car buyers may respond to expected changes in the tax code. Changes of particular relevance include the lower individual tax rates and repeal of deductions of sales taxes and interest on auto loans. It is very difficult to predict the impacts of these changes on consumer demand for cars. With respect to the overall impacts of the legislation, Senate Finance Committee Chairman Robert Packwood, the tax bill's chief Senate author, recently commented that he had rejected a proposal for extensive hearings on the bill, noting that "(y)ou could hold three or four weeks of hearings and have 15 economists in to testify and we still wouldn't know the effect of it." See *Washington Post*, September 14, 1986, p. K7. The tax bill does create economic uncertainties, however, which could affect consumer demand for cars and thus CAFE. For example, the lower tax rates for individuals could increase after-tax income and thereby stimulate consumer demand for more expensive, less fuel-efficient cars, resulting in lower CAFE. Or, the repeal of deductions on interest for car loans and sales taxes on car purchases could have a disproportionate impact on sales of economy cars, whose buyers may be more sensitive to the overall costs of purchasing and operating a car, and more expensive cars, whose buyers may be less sensitive to such costs. As with many of the other uncertainties, NHTSA is not attempting to predict any particular impact from the tax bill with respect to consumer demand for cars in general or CAFE in particular, but is instead pointing out the kinds of market uncertainties that could have an impact on CAFE. The agency also notes that, quite apart from how consumer demand may change in response to particular events, consumer demand is by its nature highly uncertain, since it is largely dependent on changing tastes and preferences that may defy precise analysis.

GM and Ford may also face greater than expected competition from foreign manufacturers of small cars, which could reduce the sales of the domestic manufacturers' more fuel efficient cars, thereby lowering their CAFE levels. While the yen has been rising in value against the dollar, currency values are always subject to fluctuation, and that trend could reverse. Also, the Japanese manufacturers may adjust to the currency changes and, in light of their still significant cost advantage, compete more aggressively in the U.S. market despite a higher yen. The agency notes that Toyota has recently called for the end of restraints on Japanese car exports and also suggested that by 1988 it could compete at an exchange rate of 140 yen to the dollar as compared to the current 155 rate. See *Washington Post,* August 28, 1986; *Wall Street Journal,* September 9, 1986. Finally, Korea could sell more cars than expected. Hyundai, which became the leading Canadian import within two years of introduction into that country, is selling well during the first year of sales in the United States. While Hyundai was a late introduction for the 1986 model year, it has recently been selling ars at a rate of about 20,000 units per month. It was reported in the July 7, 1986, issue of *Automotive News,* p. 20, that, after just four months in the United States, Hyundai sold the most cars sold by any importer in the first six months of operations. The same issue of *Automotive News,* at p. 20, reported the following with respect to total expected Korean vehicle production:

> "The Korean government is predicting a 60 percent increase in capacity over 1985 to 600,000 units this year. Next year, capacity will increase by another 60 percent to nearly 1 million units, according to S. Kim Song, commodity manager of GM's Purchasing Activities Staff.
>
> "In a presentation for the Sixth United States-Japan Auto Industry Conference at the University of Michigan, Song estimated that Hyundai would have capacity for 450,000 units, Daewoo, 300,000 and Kia, 200,000. Hyundai has since upped its estimate to 600,000 units."

In addition, quite apart from changes in the competitive environment, the manufacturers' CAFE projections are dependent on numerous assumptions relating to production of the cars they plan to sell. Even relatively minor difficulties, beyond the manufacturers' control, relating to such things as delays in start-up times for new plants or equipment, technical or labor difficulties of particular suppliers, etc., could adversely affect the manufacturers' CAFE.

NHTSA concludes that in choosing between standards incorporating a risk factor and not doing so, the potential harms of setting the standard too high are far outweighed by any risks of setting it too low. In reaching this conclusion, NHTSA recognizes that some uncertainties can go in both directions. However, if the agency changed its past practice and did not include a risk factor in setting the MY 1987-88 CAFE standards, the occurrence of even relatively minor uncertainties could place the manufacturers in a position of being able to achieve the levels of the standards only by product restrictions. On the other hand, the record indicates that GM and Ford are continuing to make reasonable efforts to achieve and, to the extent possible, exceed CAFE standards, particularly in light of their desire to earn credits. Thus, providing a small risk factor will not provide any incentive for GM and Ford to do

anything other than achieve their highest possible CAFE levels.

2. *Consideration of standards above GM's and/or Ford's capability*

As part of taking industrywide considerations into account, NHTSA has considered whether a standard could or should be set at levels above the capabilities of GM and/or Ford. As indicated above, the Conference Report states that the "Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers," and that "(s)uch difficulties should be given appropriate weight in setting the standard in light of the small number of domestic manufacturers that currently exist, and the possible implications for the national economy and for reduced competition association [sic] with a severe strain on any manufacturer."

With respect to light truck standards, NHTSA has consistently taken the position that it has a responsibility to set standards at a level that can be achieved by manufacturers of a substantial share of sales. See 49 FR 41251; October 22, 1984. The agency once set the MY 1982 light truck standards at a level which it recognized might be above the maximum feasible average fuel economy capability of Chrysler, based on the conclusion that the energy savings benefits associated with the higher standard would outweigh the harm to Chrysler. See 45 FR 20871, 20876; March 31, 1980. Although the House Committee on Interstate and Foreign Commerce later stated that it "generally agreed with DOT," (see House Report No. 96-1026; May 16, 1980; p. 17), the Congress swiftly enacted special provisions for adjusting the MY 1982 light truck fuel economy standards to provide greater flexibility in dealing with the kinds of potential problems then faced by Chrysler, in part responding to Chrysler's arguments that it should not be forced to choose between paying millions of dollars in fines for violating the law and closing plants in order to meet the law.

NHTSA believes its practice of setting standards at a level that can be achieved by manufacturers of a substantial share of sales is consistent with its obligation to take industrywide considerations into account. Since GM produces more than 40 percent, and Ford approximately 18 percent, of all cars sold in the United States, the agency believes that CAFE standards set at the level of the least capable of these manufacturers represents an appropriate balancing of "the benefits to the nation of a higher average fuel economy stnadard against the difficulties of individual manufacturers." Given GM's very large market share, the agency does not believe that a standard set about its level would be consistent with the requirement that industrywide considerations be taken into account. Moreover, given Ford's market share, which is larger than Chrysler's share of the light truck market in 1982, the agency believes that a standard set at a level above its capability would be inconsistent with that requirement.

Therefore, NHTSA concludes that any benefits of a higher standard would not outweigh the difficulties that would face GM and Ford. While NHTSA believes that energy conservation is important, it concludes that the possible small energy savings associated with maintaining the 27.5 mpg standard for MY 1987-88 (discussed below) do not justify the potential major economic hardships discussed above. Moreover, as indicated above, given GM's and Ford's desire to earn credits in the MY 1987-88 time period, setting the standard at 26.0 mpg versus some level slightly above 26.0 mpg does not create any incentive for GM and Ford to achieve other than their highest possible CAFE levels.

3. *Economic impacts of standards set at 26.0 mpg*

As discussed above, the agency has concluded that GM and Ford can both meet the 26.0 mpg MY 1987-88 standards without engaging in harmful product restrictions and without any significant restrictions on consumer choice. Thus, no job losses will result from GM and Ford meeting these standards, and there will be no adverse economic impacts on automobile dealers, suppliers, or automotive employees, including minorities.

NHTSA recognizes that the 26.0 mpg standard for MY 1987-88 is above the capabilities of some European manufacturers. For Jaguar and Mercedes-Benz, the standard is several mpg above those companies' capabilities.

Some of the European companies may thus be limited to two options: paying the statutory penalties associated with failure to comply with fuel economy standards or drastic product actions which, in the case of some, could require radical changes in the mix of cars they import. While the agency appreciates these difficulties, it also concludes that amending the MY 1987-88 standards to levels below 26.0 mpg would be inconsistent with a determination of maximum feasibility that takes industrywide considerations into account. Both the individual market share of each European manufacturer and the combined market share of all the European manufacturers is very small. For example, for January to May 1986 sales, Mercedes-Benz accounted for only 0.8 percent of U.S. sales, and Volvo accounted for only 1.1 percent.

4. *Potential impacts on energy conservation*

In analyzing the potential energy savings associated with standards within a range of 26.0 mpg to 27.5 mpg, the agency believes that it is appropriate to focus on GM and Ford. Since the Japanese manufacturers have CAFE levels well above 27.5 mpg, as a result of focusing on smaller cars, a reduction in the MY 1987-88 standards does not create an incentive for those companies to change their product plans. Similarly, given Chrysler's current CAFE projections and its MY 1986 experience, the agency has no reason to assume that company would change its product plans as a result of reduced standards. Finally, the agency does not have any reason to assume that the European manufacturers would change their product plans as a result of reduced standards. While some of those manufacturers project MY 1987-88 CAFE levels not only below 27.5 mpg but also below 26.0 mpg, they have not indicated any plans to attempt to achieve higher CAFE levels in order to meet the standards.

The precise magnitude of the energy savings, if any, which could result from maintaining the 27.5 mpg standard is uncertain, although a maximum bound can be calculated. As discussed above, GM and Ford could achieve CAFE of 27.5 mpg only by (1) restricting the sale of their larger cars and engines, and/or (2) transferring the production of large cars outside the United States.

To the extent that GM and Ford restricted the availability of their larger cars and engines, some consumers would likely keep their older, less fuel-efficient cars in service longer or purchase large pickup trucks and vans to obtain the room, power, and load-carrying capacity they desire. Professor Leone presented an analysis in the MY 1986 proceeding demonstrating that if as a result of product restrictions one consumer in five purchased a light truck, specialty vehicle or van, or decided to keep driving an old 18 mpg vehicle, gasoline consumption for the fleet as a whole would remain the same or even increase.

As discussed above, to the extent that GM and Ford improved their CAFE by transferring the production of large cars or parts of large cars outside of the United States, there would be absolutely no energy conservation benefits associated with their higher domestic CAFE levels. Given the severe economic impacts associated with product restrictions, NHTSA believes that such outsourcing is the most likely first option manufacturers would take in an effort to comply with overly stringent CAFE standards, to the extent that there is available leadtime to take such action. As indicated above, Ford has indicated that it could take such action to improve its MY 1988 CAFE by 0.6 mpg.

The maximum hypothetical difference in gasoline consumption between GM and Ford achieving 26.0 mpg in MY 1987-88, as compared to those companies achieving 27.5 mpg, would be 3.28 billion gallons over the 20-year life of the MY 1987-88 fleets. This would represent 0.29 percent of projected national passenger car gasoline consumption over that time period. As indicated above, the agency cannot conclude that such savings would justify the potential sales losses and job losses associated with maintaining the 27.5 mpg standard for those two model years. Moreover, the agency concludes, for the reasons discussed above, that actual gasoline savings would be much lower than the above figures suggest, and possibly so low as to be negligible. The calculated maximum hypothetical difference in gasoline consumption assumes that GM and Ford would achieve CAFE levels of 27.5 mpg in MY 1987-88 by means whereby the higher domestic CAFE levels are fully translated into gasoline savings. As discussed above, however, this is not the case for product restrictions and outsourcing of larger cars and engines, the only two means by which GM and Ford could achieve a 27.5 mpg CAFE in those model years.

NHTSA has considered the potential energy savings of standards higher than 26.0 mpg but lower than 27.5 mpg. The agency does not believe that any such savings would justify the potential economic hardships. As indicated above, the record indicates that GM and Ford are continuing to make efforts to achieve and, to the extent possible, exceed CAFE standards, particularly in light of their desire to earn credits. Thus, setting standards at 26.0 mpg does not provide any incentive for GM and Ford to do anything other than achieve their highest possible CAFE levels.

5. *Credits/penalties*

In determining the maximum feasible average fuel economy levels for MY 1987-88, and hence the standards, NHTSA has followed its consistent approach of analyzing the ability of manufacturers to *meet* the standards. It has not included as part of its calculation of standards the ability to pay penalties for not meeting the standards, or the availability of, or need for, credits.

An industrywide standard set at a level above the capabilities of the major manufacturers would by definition not be capable of being done and would thus not meet the requirement that standards be feasible. In the MY 1985-86 light truck fuel economy rulemaking, NHTSA rejected the suggestion that it set standards that would require the payment of penalties. The agency emphasized that in assessing

economic practicability, it must consider the ability to meet a standard rather than the ability to pay the penalties for not meeting a standard. See 50 FR 11164, March 20, 1985. This approach was upheld by the U.S. Court of Appeals (D.C. Circuit) in *Center for Auto Safety v. NHTSA,* No. 85-1231, slip op. at 39-40 (June 20, 1986).

The agency does not, however, believe it should depart from its normal practice of accounting for uncertainties in an attempt to prevent the earning of credits. In establishing the credit provisions, Congress was necessarily aware of the tension between "maximum feasible" standards and manufacturers exceeding such standards in order to earn credits. A particular manufacturer may be able to exceed a "maximum feasible" industrywide standard for a particular model year because its CAFE is higher than that of the least capable manufacturer for that model year. For example, the agency recognizes that Ford may earn some credits in MY 1987 because its capability is higher than the standard, i.e., the level of least capable manufacturer with a substantial share of sales, GM. GM may do the same for MY 1988. It is also possible that a manufacturer may be able to exceed the "maximum feasible" level by taking certain actions that are not taken into account by the agency as part of "economic practicability," e.g., actions that may be so expensive in relation to CAFE benefit, or so uncertain, that the agency would not factor them into its determination of a manufacturer's CAFE capability. For example, in one of its comments to the docket, GM indicated that if the standards were set at 26.0 mpg, it might be able to generate enough credits to remain in compliance by taking measures it characterized as "very costly and contrary to expected consumer demand."

If GM is successful in its extraordinary efforts to offset its MY 1985 shortfall by exceeding MY 1987-88 standards, the credit provisions would have the effect intended by Congress of encouraging manufacturers to do more to improve fuel economy than they otherwise might. Moreover, NHTSA concludes that it would be particularly inappropriate to change its traditional method of setting standards at this time, for the purpose of somehow preventing particular manufacturers from earning credits. As discussed above and in the MY 1986 proceeding, GM and Ford failed to achieve a CAFE level of 27.5 mpg by MY 1985, and thus incurred the shortfalls, because their reasonable plans to meet the standard were overtaken by events beyond their control.

In this rulemaking, GM specifically argued that NHTSA should take into account the industry's need to earn carryback credits to offset MY 1984-85 shortfalls in determining the maximum feasible average fuel economy levels for MY 1987-88. As noted above, NHTSA published an SNPRM requesting comment on a tentative conclusion by the agency that GM's argument concerning credits should be rejected. However, since NHTSA is basing this decision to establish the MY 1987-88 standards at 26.0 mpg on other grounds, the arguments set forth by GM do not need to be addressed here. The agency notes that if it did include GM's desire to earn carryback credits to offset its MY 1985 shortfall as part of the calculation of the MY 1987-88 standards, the record would dictate standards below 26.0 mpg for both model years.

NHTSA also notes that both GM and Ford argued as part of their comments on the SNPRM that the agency has the authority to retroactively amend the MY 1984-85 CAFE standards to the maximum feasible level, and urged the agency to consider doing so. The requests to retroactively amend the MY 1984-85 standards are not being addressed in this notice.

6. *Other issues*

CFAS argued that NHTSA should consider the issue of job losses associated with GM and Ford exporting American small car jobs to foreign countries. According to that commenter, higher CAFE standards could prevent such job losses.

As discussed above, in enacting EPCA, Congress was concerned that the fuel economy program could have directly encouraged increased importation of small, fuel-efficient cars. The domestic manufacturers were already importing some fuel-efficient cars, and Congress was concerned that the manufacturers might decide to meet fuel economy standards largely by increasing such imports. Therefore, Congress included the provision in EPCA requiring manufacturers to meet fuel economy standards separately for their imported and domestically manufactured fleets. While Congress did not want the fuel economy program to encourage imports directly, however, it also did not intend that CAFE standards could or should be set artificially high as a means of direct protectionism.

Moreover, the record does not support CFAS's argument that maintaining the 27.5 mpg standard for MY 1987-88 would increase American jobs. The economic reality is that small car jobs have been lost due to competition from foreign manufacturers which enjoy large cost advantages. Higher CAFE standards would not bring those jobs back. The domestic manufacturers are importing or planning to import additional small cars in response to that competition. If GM and Ford did not import particular small cars, other import manufacturers would likely import additional such cars. It is generally recognized, for

example, that as the Japanese manufacturers concentrated on larger cars as a response to export restraints, Korean manufacturers moved into the smaller car market. Far from increasing American jobs, the agency's analysis indicates, as discussed above, that the actions GM and Ford would need to take to achieve CAFE of 27.5 mpg in MY 1987-88 would result in enormous job losses. NHTSA notes that even if some particular small car jobs could somehow be saved by a 27.5 mpg standard, the number of such jobs would be outweighed many times over by the job losses associated with restricting sales of larger cars and transferring production of larger cars outside the United States.

CEI argued that NHTSA has failed to consider the fact that as energy costs drop, the value of energy conservation also declines. That commenter suggested that the agency should estimate the cost per gallon saved as a percentage of fuel costs to illustrate what it called the "increasing absurdity of mandated savings of an increasingly inexpensive commodity." While, as discussed in the MY 1986 and earlier proceedings, the agency does not believe that the statutory criteria necessarily require fuel economy standards to be cost-beneficial, it has traditionally considered costs and benefits. As gasoline prices decline, it is true that the cost effectiveness of improving fuel economy also declines. However, as illustrated by DOE's comments, virtually all the fuel-efficiency-enhancing technologies being used by the manufacturers to improve their fuel economy remain cost effective, or at least cost neutral, even with the current very low price of gasoline.

As in the MY 1986 proceeding, Chrysler argued that reducing the MY 1987-88 standards is anticompetitive to those companies which are able to meet the standards. NHTSA recognizes the equity issues involved in amending fuel economy standards and has considered this factor. However, the agency must consider the feasibility of the standards for the industry as a whole, as discussed above, in accordance with the statutory criteria. Indeed, since the Act specifically permits the amendment of its previously set fuel economy standards, it necessarily contemplates the possibility of differing impacts on different manufacturers. Any change in a standard will result in varying impacts, because different manufacturers will be at different stages along varying paths toward complying with the previous standard. As in the MY 1986 proceeding, NHTSA believes that any impacts on Chrysler are heavily outweighed by the possibility of serious adverse economic consequences to the industry and economy as a whole if the standards were not reduced. The agency notes that the MY 1981 light truck standard was lowered in response to a petition for rulemaking submitted by Chrysler. Thus, that company has requested and received the benefit from the same type of rulemaking action to which it now objects.

Impact Analyses

1. *Economic impacts*

The agency considered the economic implications of the amendments to the fuel economy standards made by this rule and determined that the rule is major within the meaning of Executive Order 12291, and significant within the meaning of the Department's regulatory procedures. The agency's detailed analysis of the economic effects is set forth in a final regulatory impact analysis, copies of which are available from the Docket Section. The contents of that analysis are generally described above.

2. *Environmental impacts*

The agency has considered the environmental implications of these amendments to the MY 1987-88 passenger automobile average fuel economy standards in accordance with the National Environmental Policy Act of 1969 and determined that the amendment will not significantly affect the human environment. An Environmental Assessment (EA) was prepared and placed in the public docket in connection with the NPRM. A Supplement to the Environmental Assessment has been prepared, which responds to the comments received concerning the EA. Based on the agency's review of the comments and all available information, the agency has determined that this rulemaking action will not have a significant effect upon the environment.

3. *Impacts on small entities*

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking action will have on small entities. I certify that this action will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. No passenger car manufacturer subject to the amended passenger automobile average fuel economy standards would be classified as a "small business" under the Regulatory Flexibility Act. In the case of small businesses, small organizations, and small governmental units which purchase passenger cars, the amendments will not affect the availability of fuel-efficient passenger cars or have a significant effect on the overall cost of purchasing and operating passenger cars.

Department of Energy Review

In accordance with section 502(j) of the Cost Savings Act, the agency submitted this final rule to the Department of Energy for review. There were no unaccommodated comments.

List of Subjects in 49 CFR Part 531

Energy conservation, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 531 is amended as follows:

1. The authority citation for Part 531 is revised to read as follows:

Authority: 15 U.S.C. 2002, delegation of authority at 49 CFR 1.50.

The table in § 531.5(a) is revised to read as follows:

§ 531.5 *Fuel economy standards.*

(a) * * *

Model	Average fuel economy standard (miles per gallon)
1978	18.0
1979	19.0
1980	20.0
1981	22.0
1982	24.0
1983	26.0
1984	27.0
1985	27.5
1986	26.0
1987	26.0
1988	26.0
1989 and thereafter	27.5

Issued on Oct. 1 1986

Diane K. Steed
Administrator

51 F.R. 35594
October 6, 1986

PREAMBLE TO AN AMENDMENT TO PART 531

Passenger Automobile Average Fuel Economy Standards for Model Year 1989

(Docket No. FE-88-01; Notice 3)
(RIN No. 2127-AB75)

ACTION: Final rule.

SUMMARY: The Department of Transportation's National Highway Traffic Safety Administration is setting the passenger automobile average fuel economy standard for Model Year (MY) 1989 at 26.5 miles per gallon (mpg), an increase of 0.5 mpg over the 1988 level. NHTSA is taking this action because it has determined that 26.5 mpg is the "maximum feasible average fuel economy level," after balancing the statutory criteria of economic practicability, technological feasibility, the effect of other Federal motor vehicle standards, and the need of the Nation to conserve energy. The standard is a decrease of 1.0 mpg from the statutory level.

EFFECTIVE DATE: The amendments made by this rule to the Code of Federal Regulations are effective November 7, 1988. The standard is applicable to the 1989 model year.

SUPPLEMENTARY INFORMATION:

Contents

I. Overview of Decision

In each of the last three years, the Department of Transportation has closely examined the effects of the corporate average fuel economy (CAFE) standard on the U.S. auto industry. We concluded that a standard of 27.5 mpg for MYs 1986–1988 posed a threat to the

jobs of U.S. auto workers, workers in industries that supply parts and equipment to the auto industry, and employees of the auto dealerships. On the other hand, we concluded that the energy conservation benefits of a higher standard were speculative and small. After balancing these and other considerations, we set the standard for each of those years at 26.0 mpg.

Those rulemaking actions as well as this one should be considered in light of the fact that the fleet of new cars sold in the United States has never been more fuel efficient. Congress' statutory goal of reaching an average fuel economy of 27.5 mpg for new cars has been met and exceeded. In MY 1988, the average fuel economy of the combined new car fleet of all manufacturers was 28.7 mpg. The domestic automobile industry has spent billions of dollars to achieve this goal, while continuing to provide a wide variety of vehicles to meet consumer demands. Yet, despite this remarkable industrywide improvement in fuel economy, a CAFE standard of 27.5 mpg for MY 1989 poses significant threats to the competitiveness of U.S. manufacturers, which in turn raises serious, continuing concerns about retaining jobs at those companies.

The threat to American jobs arises primarily because of two provisions of the CAFE law: first, the requirement that compliance be demonstrated on a corporate fleet average basis, and second, the requirement that U.S. manufacturers separate their fleets into two categories—domestic and "not domestically manufactured," or imported.

The first of these, the fleet averaging requirement, was originally intended to ensure that manufacturers could continue to offer consumers a wide choice of makes and models, because compliance with the standard would be measured on a fleet average basis. In other words, a manufacturer could continue to offer models that achieved fuel economy levels below the standard, as long as it sold a sufficient number of models that exceeded the standard. While intended as a means to preserve consumer choice, the provision gives a real advantage to Asian and some European manufacturers that generally have not been manufacturing large, family-size, or luxury vehicles. The setting of the standards largely based on the capabilities of the major domestic manufacturers results in standards that are well below the capabilities of these foreign manufacturers, giving them substantial latitude in designing and introducing new models to take advantage of changing consumer preferences. While the full-line U.S. manufacturers must struggle to adjust their fleet mixes to meet the standard on a fleet average basis, these other companies are manufacturing fleets that are automatically more fuel efficient by virtue of their sales mix, but not by virtue of any inherent fuel efficiency superiority of their individual models. Thus, they need not be concerned with the adverse CAFE effects of their new, higher performing, less fuel-efficient models that the market now demands. And, as discussed below, they are actively entering the larger and luxury car markets in the U.S., posing a real competitive threat to the U.S. manufacturers in this segment.

The second provision that seriously threatens U.S. competitiveness is the "domestic content" provision, also known as the "two-fleet rule." This provision was originally intended to protect U.S. jobs, but now perversely threatens them by providing a positive incentive to ship U.S. jobs out of the country. As noted briefly above, the law requires U.S. manufacturers to separate their fleets into two categories for compliance purposes: a "domestic" fleet and a "not domestically manufactured" (or, import) fleet. In fact, the law's definition of "domestically manufactured" is so strict that many cars assembled in the U.S. (including all U.S.-built Japanese models and all models built at U.S.-Asian joint venture plants) fail to qualify as "domestically manufactured." The result is that each Asian and European manufacturer has only one CAFE fleet (an imported fleet), while each U.S. manufacturer has a domestic fleet and an imported fleet, each of which has to meet the CAFE standard separately. Thus, while the two-fleet rule theoretically applies to all manufacturers, as a practical matter, only the U.S. manufacturers are subject to the two-fleet rule and suffer its perverse consequences.

As we have noted in several previous CAFE rulemaking proceedings, this "domestic content" provision encourages auto makers to move production of their larger models, or parts of those cars, out of the U.S. in order to average those models with their smaller models. This action is known as "outsourcing." In his comments to us on this proceeding, Mr. Owen Bieber, the president of the United Auto Workers, characterized this incentive to outsource as the statute "stood on its head." He urged us to consider that outsourcing threatens "good paying jobs. . . for American workers with no improvements in overall fuel economy or environmental benefits." NHTSA concurs with Mr. Bieber's assessment of the adverse impact of outsourcing due to the two-fleet rule. However, the agency is unable to change the practice, because it is mandated by the statute.

The adverse competitive effects of the two-fleet rule are all the harder to accept when one observes that GM would *exceed* the 27.5 mpg level if it could combine its domestic and import fleets. However, the agency has no authority to permit it to do so, since the two-fleet rule is statutorily mandated. Nevertheless, it is important to remember that this entire proceeding is focusing on a statutorily created, artificial subset of the new car fleet: the domestic fleet of the two largest U.S. manufacturers.

After separating the fleets, each manufacturer's fleet must meet the CAFE standard separately. However, for the reasons described above, the U.S. manufacturers cannot average together their own imported cars (which are generally more fuel-efficient than the average U.S.-made cars) with their U.S.-made cars, although GM would easily comply with the standard if it could do so. As an example, the Chevrolet Sprint (Geo Metro) is rated by the Environmental Protection Agency as the most fuel-efficient car sold in the United States, but GM cannot average its fuel economy with larger domestic cars because the Sprint must be classified as part of GM's import fleet.

The Japanese manufacturers, however, can average together their smallest, most fuel-efficient models (e.g., the Honda CRX, Toyota Corolla, or Nissan Sentra) with their higher-performance or luxury models (such as the Acura Legend and the upcoming Infiniti and Lexus) because the two-fleet rule does not affect them except to the extent that one of their models exceeds 75 percent domestic content. This places U.S manufacturers at a relative disadvantage. As Congressman Bob Carr testified during the public hearing in this proceeding, "If I were a Japanese auto manufacturer, and I wanted to write a law in the United States that would help me and hinder American automobile manufacturers, I couldn't have written a better law than the CAFE law that we have today."

Since the Japanese and other Asian manufacturers can freely introduce new, higher-performance large or luxury models (with lower fuel economy) without fear of CAFE noncompliance, they are free to adopt strategies that attempt to secure their position in the marketplace for these luxury cars. According to the comments submitted by the Department of Commerce, it is likely that the Japanese will aggressively seek to expand market share in the segments in which they compete. And the wave of new introductions into this market segment is expected to continue. The trade press is widely reporting that Nissan and Toyota are planning to introduce new luxury car models in the next few years, some of which are planned to be larger than the full-size Oldsmobile 98 offered today by General Motors. Based on the past practices of these companies, it is likely that they will seek to capture a significant portion of the market segment for these new models.

The comments of the Department of Commerce, Bureau of Economics at the Federal Trade Commission, and the Council of Economic Advisors explain that when the U.S. manufacturers are forced to respond to high CAFE standards, they must consider adopting pricing and marketing strategies on their models which distort consumer demand, in order to discourage buyers from the larger or luxury models with lower fuel economy and encourage the purchase of the smaller, more fuel-efficient models. The Commerce Department notes that CAFE-induced price increases on larger (or higher performance) domestic cars may well result in further market share loss for U.S. manufacturers because it will tend to shift consumers toward competing models from foreign manufacturers who are not forced to impose CAFE price hikes. Perversely, the CAFE law affirmatively encourages consumers to buy foreign models and discourages them from buying U.S.-made cars. As a result, the competitiveness of American manufacturers is harmed and jobs in domestic auto manufacturing are reduced.

Based on its concerns about adverse competitive effects, the Department has recommended repeal of the CAFE law. However, unless and until Congress acts, NHTSA must and will continue to administer the CAFE law in its current form and to be faithful to the intent of Congress.

As discussed above, we have closely studied the adverse effects of the CAFE program on the U.S. auto industry. We have attempted to administer the statute entrusted to our care by taking seriously the congressional directive to ensure that the program does not threaten U.S. jobs or the health of the U.S. auto industry while still meeting the needs of energy conservation. After balancing these concerns, we set the standard for MYs 1986-1988 at 26.0 mpg. We did this in accordance with a methodology that we believe is faithful to the statutory purposes. As noted herein, this methodology includes a review of whether the manufacturers had made "reasonable efforts" to reach the statutorily set level of 27.5 mpg, and a review of what the "maximum feasible" CAFE level is, taking into account the four statutory criteria. This methodology also includes analyzing the technologi-

cal and economic capabilities of the manufacturers, considering the effects of major changes in consumer demand, and weighing the outcome of that analysis against the need of the Nation to conserve energy. This methodology was affirmed in general by the U.S. Circuit Court of Appeals for the D.C. Circuit when it recently upheld our decision to set the 1986 standard at 26.0 mpg. The court noted that Congress had provided no "precise balancing formula for the agency to apply" to the four statutory criteria, leaving that balancing to the agency's judgment. *Public Citizen v. NHTSA,* 848 F.2d 256, 265 (D.C.Cir. 1988). *See* Section II-A *infra.*

The U.S. auto industry, and GM in particular, continues to be faced with the significant competitive threat of foreign, particularly Asian, manufacturers. The Department of Commerce estimates that U.S. producer sales in the small car segment of the market will decline from an estimated 590,000 vehicles in 1988 to 350,000 in 1990, with the Asian manufacturers gaining the difference with small cars they plan to build in the United States. Further, the Department of Commerce estimates that U.S. auto manufacturers will face growing foreign competition in the mid-size car segment and large/luxury car segment during 1989 and 1990. At the same time, it appears that the larger car segment of the market is shrinking in absolute terms, due in part to the growth of demand for luxury mid-size and compact models. As a result of a shrinking larger car market overall, and a shrinking share of small car sales for U.S. manufacturers, it appears that the U.S. manufacturers must increase their share of the compact and mid-size segments if they are to remain fully competitive in the total automotive market. Of course, these are the market segments where the Asian manufacturers have either recently demonstrated considerable strength, or where they plan additional market penetration with new luxury, "high" performance models (which generally have low fuel efficiency). Although U.S. manufacturers plan new products in this market segment, they will face significantly more competitive pressure than they anticipated when the models were first conceived several years ago. Accordingly, the manufacturers must be able to accommodate consumer demand for such attributes as larger engines, better performance, and larger interior space. These actions come at a CAFE price, however, since they generally reduce the fuel efficiency of the model.

At the same time that the domestic manufacturers must gear up for this increased pressure from the foreign manufacturers in a market segment now dominated by the Asians, GM is entering this period after *losing* substantial market share in most market segments. GM argues strenuously that much of its lost market share is attributable to the CAFE law. In order to generate enough fuel economy credits to offset a substantial shortfall from MY 1985, GM argues that it had to exceed substantially the applicable CAFE standard in each of MYs 1986-1988. GM believes that many of its product decisions for those years to improve their overall fuel economy went beyond the bounds of what should be considered "reasonable."

Although U.S. auto employment in the aggregate remained approximately the same in 1986-1988, a closer look reveals a significant trend in the U.S. employment picture: the workers are now being employed in larger and larger numbers by the U.S. outposts of Asian companies, and the number of auto workers employed by U.S. auto makers (particularly GM) is shrinking. At the same time, those workers remaining in the U.S. industry are being told by their employers that their jobs are threatened by the CAFE program. GM has revealed in this proceeding that the jobs of workers at the GM plant in Arlington, Texas, among other plants, may be in danger if the CAFE standard is set at 27.5 mpg. GM has stated that the Arlington plant, which makes the largest cars sold by GM, might be targeted for product restriction or possible closure, if GM is compelled to achieve a 27.5 mpg standard for MY 1989. Several thousand workers, retirees, and family members from that plant have written to the agency, urging that the standard be set at 26.5 mpg in order to let them keep their jobs.

It is significant that GM's achievement of 27.6 mpg in MY 1988 can be traced in part to its smaller share of the large car market. While the market share loss may have occurred for a variety of reasons, the results were nonetheless dramatic. The decline in market share led both to a high CAFE last year and to the laying off of thousands of workers, estimated by GM to be a loss of 75,000 workers in the past three years.

In contrast, as GM lost market share in the larger car segment, Ford Motor Company stood ready with the capacity to pick up some substantial amount of the mid/large car market segment. Although it is true that the segment is shrinking overall, it is growing substantially as a share of Ford's domestic fleet. Ford's comment noted that while mid/large cars as a percentage of GM's fleet fell from 65.4 percent in 1986 to 59.7 percent in 1988, Ford's fleet showed an

increase in those cars from 49.6 percent to 56.3 percent over the same time period. However, just as GM's market loss produced a CAFE gain, Ford's market gain prevented CAFE improvement: Ford projects a CAFE of only 26.4 mpg for MY 1988 and 26.5 mpg for MY 1989.

In point of fact, it is likely that GM plant closings and the other GM product decisions over the past few years are due in part to overcapacity in the auto industry generally and in part to the market converging on the medium, "compact" car. It is widely reported in the trade press that the Arlington, Texas, plant (and other GM plants that make larger cars) are also slated for closure or cutbacks as a result of overcapacity in the larger car market segment. That is, any decisions to close plants may be independent of CAFE concerns. But, the larger car market, while shrinking, is not disappearing in the short term, and it is clear from Ford's experience that the CAFE of a company that serves that market segment will be lower than if the company does not serve that market. This is the segment where the U.S. manufacturers have traditionally been the strongest, but the experience of both Ford and GM over the last few years proves that there is a CAFE price to pay for serving that market, and a price in reduced competitiveness for not serving that market.

This year, we are faced with the possibility of significant erosion in the U.S. industrial base as the manufacturers must compete on the unlevel playing field of an auto market in which U.S. manufacturers, but few foreign manufacturers, must price and market their cars against their own interests, just to achieve a particular CAFE level.

Although NHTSA has been concerned about the competitiveness issues raised by the CAFE program for several years, this concern was underscored by Congress in the recent enactment of the Omnibus Trade and Competitiveness Act of 1988, a bill characterized as the "most comprehensive restructuring of basic U.S. trade policy since . . . 1974." (House Report 100-40, 100th Cong., 1st Sess., 1987.) There, Congress directed that Federal agencies place the highest priority on considering the trade and competitiveness implications of its programs. The House report describes the law as a "response to the serious decline in United States competitiveness." The committee noted the serious damage that has already been done to our economy as a result of shrinking markets for American products and rapid increases in imports of products into the U.S. In this regard, the committee stated that

> "even more troubling is the apparent decline in the international competitiveness of American products. . . . This reflects a number of disturbing developments—ranging from domestic policy failures to foreign trade barriers and distortions—but its ramifications for the future are indeed disturbing. If the United States is unsuccessful in restoring its international competitiveness, we will almost certainly experience a dramatic decline in our living standards and a lessening of our influence throughout the globe to promote American free market values." House report at page 3.

Although the committee was mindful of the generally good condition of the U.S. economy—noting as examples the low interest rates and inflation rate of the past several years—the report states that "these positive signs belie a clear and present danger confronting this country." The danger, the committee said, is that today's trade deficit must be repaid through future trade surpluses of significant size, and the current competitive posture of the U.S. industrial sector is so weak that it will be difficult or impossible to generate a trade surplus. On this point, the committee noted,

> "Many of the markets already lost to U.S. firms will be jealously protected by our foreign competitors—protected, if necessary, with the help of government resources. Most of our trading partners are now accustomed to running large and persistent trade surpluses with the United States, and they may invoke extreme measures to protect that advantage even in the face of a weakened dollar." House report at page 5.

The committee report concludes with these observations:

> "Ultimately, the trade policy of this country should be designed to ensure economic prosperity, to guarantee a stable industrial and agricultural base, to promote a competitive world economy in which American workers and firms have fair opportunities to compete. . . . This legislation is a recognition of the fact that our Federal Government bears an obligation to protect the rights of its industries and workers in a highly mercantilist world economy. That obligation cannot be discharged by ignoring the difficult decisions. It must be met through assertive but fair actions which will guarantee reciprocal trade around the world." House report at p. 6.

In the first section of the legislation itself, the Congress found that

"...it is essential, and should be the *highest priority* of the United States Government, to pursue a broad array of domestic and international policies—

(A) to *prevent future declines* in the United States economy and standards of living,

(B) to ensure future stability in external trade of the United Stats, and

(C) to *guarantee the continued vitality* of the technological, industrial, and agricultural base of the United States." Section 1001(a)(4), emphasis supplied.

We have taken this congressional guidance seriously and believe it is consistent with Congress' intentions in enacting the trade law that we redouble our efforts to ensure that the CAFE program does not have adverse consequences for American competitiveness. We also believe that our consideration of the competitiveness effects is entirely consistent with our treatment of this issue in the past several years, which has been to evaluate it in the context of "economic practicability." We believe that a standard of 26.5 mpg strikes the proper balance, pursuing energy conservation while taking into account the anti-competitive effects of a higher standard, consistent with our past practice and the newest congressional guidance.

II. Background

II-A. Corporate average fuel economy statutory provisions

In December 1975, Congress enacted the Energy Policy and Conservation Act (EPCA). One provision of EPCA established an automotive fuel economy regulatory program and was added as a new Title V to the existing Motor Vehicle Information and Cost Savings Act (the Act, 15 U.S.C. §2001 *et seq.*). The program includes corporate average fuel economy (CAFE) standards for passenger automobiles.

Title V specified CAFE standards for passenger automobiles of 18, 19, and 20 mpg, for MY 1978, 1979, and 1980, respectively. The Secretary of Transportation (as delegated to the NHTSA Administrator) was required to establish standards for MYs 1981-1984. For MY 1985 and thereafter, Title V specifies a standard of 27.5 mpg.

However, the Act specifically authorizes the Secretary to amend the CAFE standard "to a level which *he determines* is the maximum feasible average fuel economy level" for each model year. 15 U.S.C. §2002(a)(4) (emphasis added). In determining the "maximum feasible average fuel economy level," the agency is required by section 503(e) of the Act to consider the following four factors: (1) technological feasibility; (2) economic practicability; (3) the effect of other Federal motor vehicle standards on fuel economy; and (4) the need of the Nation to conserve energy.

The statute contains no guidance about whether or how the agency should amend a CAFE standard, except that the newly set level must satisfy the four statutory criteria. However, it is clear that the statute vests wide discretion in the Department to set a CAFE standard at a level other than 27.5 mpg. As the United States Court of Appeals for the District of Columbia Circuit stated in upholding the agency's MY 1985 light truck fuel economy standard, "(t)he agency's interpretation of the statutory requirements is due considerable deference and must be found adequate if it falls within the range of permissible constructions." *Center for Auto Safety v. NHTSA,* 793 F.2d 1322, 1338 (D.C. Cir. 1986). The court described the setting of the standard as "the result of a balancing process specifically committed to the agency by Congress." 793 F.2d at 1341.

Again in its recent opinion upholding the Department's passenger car CAFE standard for MY 1986, the court stated:

> "Congress 'specifically delegated the process of setting...fuel economy standards with *broad* guidelines concerning the factors that the agency must consider.' (Emphasis in original). Had Congress offered a more precise balancing formula for the agency to apply to the four § 2002(e) factors, we could more confidently discern the agency's compliance with the congressional mandate. In the absence of a sharper congressional delineation, we are unable to conclude that NHTSA's decision did not represent a 'reasonable accommodation of conflicting policies that were committed to the agency's care by the statute' or was 'not one that Congress would have sanctioned.'" *Public Citizen v. NHTSA,* 848 F.2d 256, 265 (D.C. Cir. 1988) (citations omitted).

While compliance with fuel economy standards is determined by averaging the various models produced by each manufacturer, enabling them to produce vehicles with fuel economy below the level of the standard if they produce sufficient numbers of

vehicles with fuel economy above the level of the standard, manufacturers may not average their imported cars together with their domestically manufactured cars. Instead, as noted above, manufacturers must meet fuel economy standards separately for their imported and domestically manufactured fleets. (See section 503 of the Act.) Cars are considered to be domestically manufactured if they have at least 75 percent domestic content. Conversely, cars are considered to be imports, or as the statute characterizes them, "not domestically manufactured," if they have less than 75 percent domestic content. One result of this provision is that domestic automakers are unable to take advantage of the higher fuel economy of smaller imported vehicles which they sell, for purposes of CAFE compliance of their domestic fleets.

While a separate fuel economy standard is set for each model year, the Cost Savings Act does not require absolute achievement of the standard by manufacturers within each year. Instead, it allows a shortfall in one year (or years) to be offset if a manufacturer exceeds the standard for another year (or years). Under the Act, as amended by the Automobile Fuel Efficiency Act of 1980, manufacturers earn credits for exceeding average fuel economy standards which may be carried back for three model years or carried forward for three model years. If a manufacturer still does not meet the standard, after taking credits into account, it has committed "unlawful conduct" under section 508 of the Act, and is liable to the Federal government for civil penalties.

In recent years, the Department increasingly has become aware of—and concerned by—the discriminatory effects and adverse impacts of the CAFE program, and of its limited effect on *real* fuel economy. On August 5, 1987, the Secretary of Transportation submitted to Congress draft legislation that would repeal the corporate average fuel economy standards for new model years. The bill would also retain and update the Environmental Protection Agency's (EPA) fuel economy labeling requirements, and revise EPA's automotive fuel economy testing procedures to require that results simulate conditions of actual use.

The Congress has not yet taken any action on the Department's legislative proposal. Unless and until the draft legislation becomes law, NHTSA must continue to administer the law as it is currently written and as it has been construed by the courts. Thus, today's notice is based on that existing law.

II-B. Setting and implementing the MY 1981-84 standards

On June 30, 1977, NHTSA published in the *Federal Register* (42 FR 33534) a final rule establishing the MY 1981-1984 passenger automobile CAFE standrds. The selected standards were 22.0 mpg for 1981, 24.0 mpg for 1982, 26.0 mpg for MY 1983, and 27.0 mpg for MY 1984. For a description of the analysis underlying those standards, see the August 1988 NPRM. 53 FR 33080, August 29, 1988.

Between January and May of 1979, NHTSA received a number of submissions from Ford and General Motors on the 1981-1984 fuel economy standards for passenger automobiles asserting that those standards should be reduced. In response to these submissions, the agency published a document entitled "Report on Requests by General Motors and Ford to Reduce Fuel Economy Standards for MY 1981-85 Passenger Automobiles," DOT HS-804 731, June 1979. The report concluded that the standards were technologically feasible and economically practicable and noted that both companies had submitted product plans for meeting the standards. Report, p. 14.

One year later, the Nation was in the midst of another energy crisis, brought on by events in Iran. Gasoline prices were rising rapidly, creating significantly increased consumer demand for small cars. The U.S. city average retail price for gasoline rose from 88 cents per gallon in 1979 to $1.22 in 1980. (In 1986 dollars, this increase was from $1.33 in 1979 to $1.63 in 1980.) In light of these changed conditions, the industry announced plans to significantly exceed the 27.5 mpg standard for 1985. Both Ford and GM, as well as Chrysler and American Motors (now a part of Chrysler), indicated that they expected to achieve average fuel economy in excess of 30 mpg for that model year. Product plans submitted to NHTSA by those companies indicated that the projections assumed significant mix shifts toward smaller cars and rapid introduction of new technology.

Conditions affecting fuel economy changed dramatically in the early 1980's, following completion of decontrol of domestic oil and other external factors increasing available supplies. Gasoline prices did not continue to rise but instead declined over time. This, combined with economic recovery, caused consumer demand to shift back toward larger cars and larger engines. Data submitted to the agency by GM and Ford in mid-1983 indicated that instead of achieving fuel economy well in excess of the 27.5 mpg stand-

ard for MY 1985, they would be unable to meet the level prescribed by the standard.

II-C. Rulemakings to amend the MYs 1986-1988 CAFE standards

In response to petitions from GM and Ford, the agency exercised its statutory discretion and in two separate rulemakings set the MY 1986 and MY 1987-88 passenger automobile CAFE standards at the maximum feasible level, 26.0 mpg. (For MY 1986, see 50 FR 40528, October 4, 1985; for MY 1987-88, see 51 FR 35594, October 6, 1986.) (The agency denied petitions by Mercedes-Benz and GM to amend retroactively the MYs 1984-85 passenger automobile CAFE standards. (See 53 FR 15241, April 28, 1988))

The rulemakings reducing the MY 1986-1988 CAFE standards were consistent with the Cost Savings Act and its legislative history, both of which clearly indicate that NHTSA has the authority to reduce fuel economy standards. The determination of maximum feasible average fuel economy level is made as of the time of the amendment. The agency has emphasized, however, that it could not reduce a standard under the Act if a current inability to meet the standard resulted from manufacturers previously declining to take reasonable steps to improve their average fuel economy as required by the Act.

For MY 1986, the agency evaluated the manufacturers' past efforts to achieve higher levels of fuel economy as well as their immediate capabilities. Based on the information received, the agency concluded that Ford and GM, constituting a substantial part of the industry, had taken or planned appropriate steps to meet the 27.5 mpg standard in MY 1986 and made significant progress toward doing so, but were prevented from fully implementing those steps by unforeseen events. The decline in gasoline prices, which began in 1982, had been expected to be temporary and quickly reversed, but instead continued. The agency concluded that, among other things, there had been a substantial shift in expected consumer demand toward larger cars and engines, and away from the more fuel-efficient sales mixes previously anticipated by GM and Ford. The agency's analysis indicated that this shift was largely attributable to the continuing decline in gasoline prices and that the only actions available to those manufacturers to improve their fuel economy in the remaining time for MY 1986 would have involved product restrictions likely resulting in significant adverse economic impacts, including sales losses well into the hundreds of thousands and job losses well into the tens of thousands, and unreasonable restrictions on consumer choice. That action was recently upheld by the D.C. Circuit Court of Appeals as consistent with the provisions of the Act and within the agency's discretion. *Public Citizen v. NHTSA,* 848 F.2d 256, 264 (D.C. Cir. 1988).

For MY 1987-88, the agency set the standards at 26.0 mpg. The agency determined that manufacturers had made reasonable efforts at compliance, but that these efforts had been overtaken by unforeseen events, whose effects could not be overcome by available means within the time available. NHTSA stated: "[B]oth GM and Ford have continued to make significant technological improvements in their fleets and have had reasonable plans to meet CAFE standards. In a situation where unforeseen events, including changes in consumer demand or changes in the competition's product offerings, overtake a manufacturer's reasonable product plan, the agency does not consider it consistent with the Act to "hold" the manufacturer to carrying out a product plan that has become economically impracticable." (51 FR 35611)

In evaluating the reasons for GM's and Ford's declining MY 1987-88 CAFE projections, the agency noted that the companies appeared to be applying the same technologies as planned in late 1983. In the case of GM, NHTSA stated that the two major reasons for the decline in GM's CAFE projections were net engine and model mix shifts and engine and transmission improvement programs not yielding projected gains, The great majority of the factors reducing Ford's CAFE projections were due to net shifts in projected sales for models and engines, engine efficiency improvements not yielding projected gains, and new models not meeting initial weight targets. The agency thus concluded that the major reasons for the decline in both GM's and Ford's MY 1987-88 CAFE projections were largely beyond those companies' control. (51 FR 35610) NHTSA's analysis further indicated that the only actions then available to those manufacturers to raise the fuel economy of their domestic fleets to 27.5 mpg in MY 1987-88 would involve a combination of (1) product restrictions likely resulting in significant adverse economic impacts, including substantial job losses and sales losses and unreasonable restrictions on consumer choice, and (2) transfer of the production of large cars outside of the United States, thereby costing American jobs, while having no energy conservation benefits. (51 FR 35594)

II-D. Petitions to amend the MY 1989-90 CAFE standards

The agency received five petitions to amend the passenger car CAFE standards for MY 1989-90. The petitioners included the Automobile Importers of America, Inc. (AIA), GM, Mercedes-Benz, Austin Rover, and the Competitive Enterprise Institute (CEI). All of the petitioners sought rulemaking to set those CAFE standards below 27.5 mpg, with four of them requesting a lower standard based on the reported prospective inability of automobile manufacturers to meet the statutorily set standard of 27.5 mpg. The fifth petitioner requested a lower standard based on the contention that the CAFE program has caused an increase in motor vehicle fatalities.

III. NPRM for MYs 1989-90

On August 29, 1988, NHTSA published in the *Federal Register* (53 FR 33080) an NPRM to amend the MY 1989-90 passenger automobile average fuel economy standards, within a range of 26.5 mpg to 27.5 mpg for each model year. The agency invited and received both written and oral comments on the proposal. A public meeting was held on September 14, 1988, in Washington, D.C., to receive the oral comments. Among other things, the NPRM summarized, and responded to, the five petitions cited above.

Due to limited remaining time for amending the MY 1989 standard following its receipt of important additional manufacturer submissions in early August, NHTSA provided an abbreviated comment period for the proposed MY 1989 standard, which closed on September 15, 1988. The agency provided a 60-day comment period for the proposed MY 1990 standard, which closes on October 28, 1988.

IV. Public Comments

Comments were received from numerous commenters, including Federal agencies, vehicle manufacturers, vehicle dealers, manufacturer associations, unions, members of Congress and State legislatures, and members of the general public. Some parties strongly supported a reduction in the MY 1989 passenger automobile CAFE standard, while others strongly opposed such action.

Petitioner GM urged the agency to amend the MY 1989 CAFE standard to 26.5 mpg "so as to lessen the competitive distortions and inevitably severe consequences for American workers that would accompany attaining the statutory 27.5 mpg level." GM said that market conditions it faces today are more intractable than in earlier years. According to GM, it has become an "overachiever" in response to the competitive distortions caused by the CAFE program, which has resulted in loss of market share and volume to competitors. GM emphasized that, while it improved the fuel efficiency of its fleet during MY 1986-88, its continued CAFE progress results from "random testing benefits on top of 'ultra-reasonable' efforts" which GM stated cannot be sustained indefinitely without further jeopardizing GM production and jobs. GM urged the agency to realize that GM's CAFE improvements during recent years do not disprove the reasonableness of its competitors' efforts. In discussing the potential impact of retaining a standard of 27.5 mpg, GM drew a distinction between "compliance" with the statute, which may involve the use of credits to make up the difference between the CAFE of a manufacturer's fleet of cars and the standard, and "meeting the standard," which necessitates producing a fleet that year whose CAFE at least equals the standard without reference to credits. GM noted that while its compliance plan was based in part on applying credits, but not on closing any plants, its producing a fleet of cars that actually achieved 27.5 mpg in MY 1989 would necessitate such closings. GM stated that even without plant closings, jobs losses were possible to the extent that its compliance plan included measures that resulted in "competitive distortions."

In its comment supporting a lowering of the CAFE standard, Ford said that it projects its 1989 CAFE level to be about 26.5 mpg. Ford said its inability to meet the 27.5 mpg CAFE standard for 1989 is not because of lack of effort, but instead is due to substantial market and economic changes. According to Ford, it did not anticipate the market conditions, i.e., lower gasoline prices and interest rates, that have contributed to today's popularity of larger cars and higher-performance engines. Ford said that the company realized in 1986 that it might not be able to achieve the 27.5 mpg standard for MY 1989. However, Ford stated that the actions necessary to raise its projected 26.5 mpg CAFE level did not accord with its product development lead time requirements, nor were such actions economically practical. Ford emphasized that the CAFE standard limits the company's ability to improve customer satisfaction and meet market demand. Ford said that exercise of this ability, which is responsible for much of the company's recent success, could be constrained so that foreign manufacturers will gain competitive advantages in the large and luxury car market.

The Automobile Importers of America (AIA) urged NHTSA to expand the scope of its inquiry in determining whether manufacturers made reasonable efforts to meet the CAFE standard. In particular, AIA asked that NHTSA consider "the significant market segment which encompasses larger, better performing cars" in the agency's assessment of reasonable efforts, instead of only that market segment that represents a substantial share of the industry. AIA also said that the agency should provide "adequate notice" to manufacturers of any changes in the reasonable efforts test so that they can conform their actions to the agency's expectations.

AIA's belief that NHTSA should consider the efforts of limited line manufacturers to meet the CAFE standard was shared by several European manufacturers. In urging NHTSA to set the standard at 26.0 mpg in this rulemaking, BMW said that limited line European manufacturers such as itself have "particular. . . compliance difficulties" in meeting the CAFE standards due to the demand for high performance vehicles in BMW's market "niche" in this country. Volvo supported a reduction of the standard to 26.5 mpg. It said that it has already introduced almost all the fuel economy-related improvements envisioned by Congress in 1975, and that it is not possible to make major changes that could significantly improve the fuel economy of its MY 1989 vehicles given the relatively long lead times that are needed to create or significantly alter its product lines. Volvo also noted its fuel economy was affected by the weight not only of the safety features added in compliance with the Federal motor vehicle safety standards, but also of the safety features voluntarily added.

In its comments, Mercedes-Benz stated that NHTSA has misinterpreted the term "industrywide considerations." Mercedes said that Congress "did not intend. . . that the Agency's assessment of technological and economic capability should turn on a model mix analysis that is inherently biased in favor of a few large manufacturers." Instead, stated Mercedes, NHTSA is obliged to consider the capabilities of "the entire universe of manufacturers" when setting an "industrywide" standard. Mercedes said that NHTSA did not adequately explain why the agency would decline to base a determination of reasonable efforts or maximum feasible level solely on a market segment that does not represent a substantial share of the market. Mercedes argued that unless NHTSA imposes a standard that is attainable by limited line manufacturers, the agency will be acting in an arbitrary and capricious manner in penalizing those manufacturers that have no small cars to balance against their large cars.

The National Automobile Dealers Association (NADA) supported a reduction in the 1989 standard to a level that will "assure continued consumer choice through unimpeded product availability." While NADA did not recommend a particular level at which NHTSA should set the 1989 standard, NADA stated that the CAFE level should "preserve the ability of consumers to purchase and dealers to sell those large or more powerful vehicles demanded by consumers." Mr. William Hancock of Autochoice shared the view expressed by many other commenters that customers today are more interested in comfort and performance than in fuel economy, and that consumer demand has made it difficult for the domestic automobile industry to meet a 27.5 mpg standard.

The Recreational Vehicle Industry Association (RVIA) and several other commenters stated that continuation of the 27.5 mpg standard could create a lack of tow vehicles to safely pull travel trailers and other items of equipment. The American Motorcyclist Association believed that a lowering of the standard could facilitate the manufacture of a "modestly priced, decently powered" automobile suitable for towing motorcycles on trailers.

The Department of Energy's (DOE) comments focused on whether General Motors could achieve the 27.5 mpg standard in MY 1989. However, DOE also said it "remains unconvinced that the [CAFE] standards are useful in actually achieving energy savings in today's market." DOE analyzed GM's 1989 fuel economy capability. GM achieved a CAFE of 27.6 mpg in 1988. Since GM is continuing to improve its products, DOE expected GM's CAFE to reach or exceed 27.6 mpg in 1989. DOE noted that GM's projected inability to meet even the 27.5 mpg standard in 1989 appeared to be largely a result of decreasing projected fuel economy at the detail level of model/engine/transmission. Based on the information presented in the NPRM, DOE commented that it appeared that although the majority of the project CAFE decline is due to decreasing CAFE estimates for existing makes and engines, the reasons for this phenomenon were not explained in the NPRM.

DOE disagreed with NHTSA's analysis of fuel economy technology that had concluded that "no great amount of new technologies is expected to be available between now and 1990." DOE stated that there are proven technologies in widespread use not considered in the NPRM that could have been used

by GM to improve fuel economy beyond present levels. Two important technologies are the four valve engine and engine friction reduction. DOE estimated that these two technologies alone can improve automotive fuel economy by an estimated 20 percent. In any event, according to DOE, the fact that GM will exceed 27.5 mpg by 0.1 mpg in 1988 demonstrates the technological feasibility of the MY 1989 standard.

DOE further noted that the trade-off between fuel economy and vehicle performance is germane to the NPRM, but the information and analysis presented are insufficient to determine the impact of increased consumer demand for performance on fuel economy. DOE cited an analysis of the Environmental Protection Agency showing that with technology remaining constant, a 10 percent increase in horsepower will cause a 2–3 percent loss of fuel economy. DOE said that it needs to be shown how much impact increased horsepower will have on GM's capability to meet the existing standard for MY 1989. A second important issue is whether vehicles with slightly lower performance and slightly higher mpg would cause a significant loss in market share or sales for GM.

DOE also commented on transportation's role in U.S. oil use and the importance of rising fuel efficiency. DOE noted that the transportation sector is crucial to the Nation's energy security problem since its petroleum use exceeds total domestic production. Excluding petroleum used as an industrial feedstock, the 11 MMB/D of motor fuel use comprises 80 percent of total U.S. oil use and 90 percent of light product use. Oil demand forecasts referenced in the NPRM assume continued new car and light truck fuel economy improvement. Without this improvement, DOE said that future oil consumption and the problems of oil import dependence will be greater.

While the Council of Economic Advisors (CEA) indicated its support for the Secretary's proposal to repeal the CAFE standards for all new model years, the CEA recognized that NHTSA is required to administer the CAFE statute as it currently exists. CEA accordingly recommended that NHTSA set the MY 1989 CAFE standard at 26.5 mpg since the commenter believed setting the standard at this level would "reduce the aggregate economic cost." CEA argued that a CAFE standard of 27.5 mpg would have an economically impracticable impact on the productivity and competitiveness of the U.S. automobile industry and on the level of employment in that industry. CEA also emphasized its belief that safety is adversely affected by shifts to smaller, more fuel-efficient automobiles. It cited an article by Robert Crandall and John Graham (*see* discussion of CEI petition, *infra*) to support CEA's contention that increased fatalities and injuries result from manufacturers' responses to CAFE standards. CEA argued that the increased fatalities and injuries make the standards economically impracticable. CEA said this was particularly so since fuel savings and any associated emissions reductions are of questionable magnitude. CEA said that NHTSA should make clear what economic value NHTSA is imputing to the alleged adverse safety consequences in the agency's analysis of economic practicability. CEA noted that setting the standard at 26.5 mpg instead of 27.5 mpg "would, if Crandall and Graham are correct, result in between 600 and 1,100 fewer deaths and between 3,100 and 5,600 fewer serious injuries over" the lifetime of the MY 1989 autos.

The Bureau of Economics of the Federal Trade Commission (FTC staff) submitted a theoretical model that estimates the production shifts, price changes, employment, and fuel consumption effects that would result from a 27.5 mpg CAFE standard. The FTC Staff analysis concluded the following:

> "We estimate that imposing a 27.5 MPG standard instead of a 26.6 MPG standard in MY 1989 would cost consumers almost $650 million (because of increased prices for large cars with low MPG ratings) in MY 1989. Domestic auto industry profits would fall by about $1.553 billion that same year. Total employment in domestic auto and auto-related industries would likely decline about 11,500 jobs. Meanwhile, we estimate that the higher standard would, by decreasing the retirement rate for existing large cars and increasing the rates of production and utilization of new small cars, actually increase gasoline consumption by a total of approximately 245 million gallons over the next 15 year period following the imposition of the standard."

NHTSA notes that one of the assumptions of the FTC staff analysis was that "(a)bsent the standard, GM expects to reach 26.86 mpg in MY 1989. . . ." That agency also stated that "(s)hould GM prevail in its current court challenge, and win additional CAFE mileage credits, it expects to reach 27.1 mpg in MY 1989. . . ." NHTSA notes that the difference between the 26.86 mpg and 27.1 mpg figures cited by FTC appears to be the Environmental Protection Agency test adjustment credits. As discussed below, the test adjustment credits are provided to compensate for the effects of past test procedure changes. The credits for MY 1989 were not dependent on GM prevailing in its

court challenge, which NHTSA assumes refers to the case of *Center for Auto Safety v. Thomas.* GM's current MY 1989 projection is in fact 27.2 mpg, a figure which includes the test adjustment credits. NHTSA also notes that it is not correct to characterize GM's projection as what it would achieve "absent the standard," since GM's projection reflects a product plan that was devised in response to the 27.5 mpg standard. A further discussion of this issue is provided below.

The U.S. Department of Commerce (DOC) believed that the 1989 MY standard should be set at 26.5 mpg, stating that retaining a 27.5 mpg standard would have a significant adverse effect on the competitiveness of the U.S. auto industry and on employment in this country. DOC said that its analysis showed that a large part of the U.S. automobile industry will be unable to produce a fleet of cars that achieves the 27.5 mpg standard unless it reduces its domestic fleet product offerings and adjusts its output mix, which in turn would have economically damaging consequences for U.S. automobile producers, workers, and consumers. DOC said that these compliance difficulties arise in part from the fact that the manufacturers "face a market strongly influenced by significantly reduced gasoline prices. Today's real price of gasoline is lower than at any time since the mid-1970's." DOC estimates that severe competition in the small car market will cause U.S. producer sales to decline from an estimated 590,000 vehicles in 1988 to 350,000 in 1990, and will limit the ability of full-line U.S. producers to use price incentives to stimulate small car sales to meet a 27.5 mpg standard for their domestic fleet. Further, DOC said that U.S. manufacturers will also face increasing foreign competition in the midsize/intermediate and large/luxury car markets during 1989 and 1990, and it will become increasingly difficult for full-line manufacturers to use price discounting of their smaller cars to shift effective consumer demand in the direction of small, domestically manufactured cars. DOC believes U.S. producers need greater freedom to compete in the extremely competitive automobile market that it forecasts than would be permitted by a 27.5 mpg standard. That department also believes that maintaining a 27.5 mpg CAFE standard would not produce important benefits for the country's energy security.

A variety of other groups urged that the MY 1989 CAFE standard be reduced. Consumer Alert urged relaxation of CAFE standards, although it did not suggest any specific level. That group's primary concern was that higher CAFE standards lead to smaller cars, which inevitably lead to increased highway fatalities. They urged NHTSA to disclose the number of fatalities resulting from the imposition of 26.5 mpg or 27.5 mpg for MY 1989.

The National Safety Council did not state an opinion whether the CAFE standard should be amended. Expressing concern about the effect of CAFE standards on car weight and safety and about the possibility that a lower CAFE standard would lead to more high-performance, high-speed cars, that group urged NHTSA to conduct a comprehensive analysis of the safety question.

The Competitive Enterprise Institute (CEI) cited reports and safety literature to support its assertion that large cars are safer than small cars. Particular reliance was placed on the work of Robert Crandall and John Graham. The CEI argued that CAFE standards produce a reduction in weight of the vehicle population and thereby increase the number of highway deaths and injuries. That group dismissed as speculative the possibility that less stringent CAFE standards would lead to a resurgence of "performance" cars which will adversely affect safety. The CEI further commented that the fleet of performance cars was too small to serve as an offsetting factor in discussing CAFE's net impact on traffic safety.

Testimony was presented by Robert W. Crandall of the Brookings Institution and John D. Graham, associate professor at the Harvard School of Public Health, who coauthored an often-cited study that found excessive fuel economy standards can adversely affect automobile safety. Their study was submitted as an attachment to CEI's rulemaking petition earlier this year and is part of the record of this rulemaking.

Robert Crandall testified in opposition to any CAFE standard other than one at the level of CAFE which would be produced by a free market. He summarized his research with Graham, which suggested that a 1989 CAFE standard of 27.5 mpg would increase occupant fatalities by 14 to 27 percent, assuming 1985 gasoline price expectations were fulfilled. In contrast, a 26.5 mpg CAFE standard would lead to an increase in occupant fatalities of 8 to 16 percent, assuming that vehicle producers have sufficient time to adjust their vehicle designs. Crandall noted that designs for 1989-1990 passenger car weights were already locked into place, but argued that adoption of the higher CAFE standard would lead manufacturers to raise prices on large cars and reduce prices on small cars in order to meet the standard. He said that such government-imposed distortion in vehicle offerings

would lower new car sales, while drivers of older gas guzzlers, unaffected by CAFE, would continue to buy more gasoline. Finally, Crandall said that the Nation's need to conserve energy was declining and said that the Secretary of Transportation may reduce CAFE standards if he makes such a determination about the national need to conserve.

John D. Graham spoke as a public health professional with concerns about the adverse effects of fuel economy standards on the incidence and severity of crash-related injuries. He supplemented Crandall's comments with three points. First, he recommended that DOT use this rulemaking proceeding to publicly acknowledge the adverse effects of CAFE standards on vehicle safety. If DOT does not believe CAFE adversely affects safety, he said that it should publish the rationale for that conviction. Second, safety is an important consideration in determining the proper standards for 1989 and 1990. He asserted that a stricter standard will force manufacturers to manipulate marketing and pricing programs in favor of lighter, less crashworthy vehicles. Third, he argued that there is no scientific basis for believing that CAFE will make beneficial contributions to vehicle safety. Finally, he noted that the Crandall-Graham study predicts that CAFE will be responsible for 2,200 to 3,900 additional fatalities over the life of 1989 models.

The Insurance Institute for Highway Safety (IIHS) examined the relationship between CAFE standards and vehicle safety. The IIHS urged NHTSA to evaluate the overall safety effect of CAFE requirements, and not, as was done in the past, assume that these requirements had no significant effect on future deaths and injuries in motor vehicle crashes. The IIHS comments concluded that the present CAFE standard imposes constraints on car manufacturers, and these constraints affect safety. To the extent that these constraints increase the production of cars that are small (in terms of size, not weight), that effect is negative, but if the standard also restricts the production of high performance cars, that effect is positive. IIHS did not express a judgment as to which effect would be greater.

Two staff members of the Heritage Foundation, writing to express their personal opinions, urged NHTSA not to allow the CAFE standard to rise to 27.5 mpg. In addition to generally restricting consumer choice, they stated that the higher standard could trigger a loss of tens of thousands of jobs in the U.S. automobile industry. In determining "maximum feasible" average fuel economy, they argued NHTSA should consider safety in considering technological feasibility and economic practicability. They felt it NHTSA's duty to estimate the likely safety effect of any CAFE level selected, including, if possible, the number of lives placed at risk. Although this did not mean NHTSA could not adopt a standard with a negative effect on safety, they said that the agency should, in such a case, describe why safety would be outweighed by other considerations.

The United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) supported continued efforts to conserve nonrenewable resources such as fossil fuels. At the same time, it expressed concern about the employment implications of requiring compliance with the statutory 27.5 mpg standard for MY 1989. (See the discussion above of the testimony of UAW President Bieber regarding the incentive created by the law for the domestic manufacturers to outsource production of their larger cars.)

Other groups opposed any reduction in the MY 1989 standard from the 27.5 mpg statutory level. The American Council for an Energy-Efficient Economy (ACEEE) opposed any rollback in the CAFE standard. ACEEE argued that reducing CAFE standards would lead to higher oil consumption and imports, which in turn would reduce national security, increase the trade deficit, increase air pollution levels, and generate more climatic change. Because of recent experience and developments within the auto industry, ACEEE said that there is no reason why GM and other domestic manufacturers could not meet a 27.5 mpg CAFE standard in MY 1989, given reasonable efforts. The organization stated that maintaining a 27.5 mpg CAFE standard could help protect jobs in the United States, and would not have to be at the expense of auto safety.

The Center for Auto Safety (CFAS) argued that strong CAFE standards save American jobs and that relaxation of the 27.5 mpg CAFE standard would cost jobs. The Center estimated that when CAFE standards were set at 26.0 mpg for 1986-1988, GM and Ford exported production of over 500,000 small cars annually at a loss of 175,000 jobs in the U.S.

The Americans for Energy Independence (AEI) argued that a reduction in CAFE standards is bad policy. Their major concern was that oil consumption levels in the U.S. thwarted energy independence. As the transportation sector accounted for 60 percent of American oil consumption, the AEI argued that conservation gains in transportation could be enough to offset oil production losses in the 1990's. Because cars

account for most of the oil consumption in transportation, AEI said that more must be done to conserve oil consumption in cars.

The Energy Conservation Coalition (ECC) strongly opposed any reduction of the CAFE standards. The ECC questioned NHTSA's determination that a standard below 27.5 mpg would be the "maximum feasible" level.

The Natural Resources Defense Council (NRDC) strongly urged that the CAFE standard for MY 1989 remain at the 27.5 mpg level. They expressed strong disagreement with NHTSA's determination that the proposed action will result in "insignificant" environmental impacts, and that no Environmental Impact Statement was necessary. Most of NRDC's comment focused on NHTSA's alleged failure to comply with the National Environmental Policy Act and on the perceived inadequacies of the Environmental Assessment.

The Fossil Fuels Policy Action Institute endorsed the comments of NRDC, ECC, and CFAS, while noting concern for the safety arguments raised by CEI.

Congressional correspondents were divided on the proposal. Senate Majority Leader Byrd, House Speaker Wright, and more than 50 other members of Congress wrote letters in support of lowering the CAFE standard for MY 1989, stating that the CAFE program has created some serious problems for domestic manufacturers of full-line automobiles. Congressman Carr testified at the public hearing in this proceeding, and Congressman Oxley submitted written testimony, in support of reducing the standard. These members believe that CAFE is jeopardizing the production of many popular American-made, family-size sedans and station wagons, threatens the loss of American jobs, restricts consumer choices, and can also adversely affect automotive safety. In addition, Congressman Dingell, chairman of the House Committee, on Energy and Commerce, supported reduction of the MY 1989 standard, saying that such action would "help preserve U.S. jobs in the auto industry and its suppliers consistent with the Congressional objectives of the U.S. Trade legislation recently enacted into law, particularly section 1001(a)(4)." Chairman Dingell raised several other issues, noting reports that large cars are generally safer than small ones and suggesting that any possible contribution of this fuel economy rulemaking to the greenhouse phenomenon was too remote and small to be relevant.

Senator Wirth submitted written testimony opposing the proposed lowering of the fuel economy standard, citing a need to promote the efficient use of fuels in order to trim this country's growing dependence on oil imports and begin addressing major environmental problems facing our nation and the rest of the world. Approximately 20 other members of Congress expressed strong opposition to lower CAFE standards for MY 1989. In light of rising oil imports, a severe trade deficit, and the threat of catastrophic global climatic change due to the burning of fossil fuels, several members urged this agency to raise CAFE standards above 27.5 mpg, not lower them.

Sixty-four state legislators, eight mayors, eight State officials, and the governors of Indiana, Michigan, Missouri, Tennessee, and Wisconsin also wrote to Secretary Burnley urging a CAFE standard of 26.5 mpg for MY 1989.

Finally, thousands of letters were received from the general public and from GM employees, the majority of them supporting a 26.5 mpg standard.

V. Agency's Analytic Approach

The agency is following the same basic analytic approach it used in the MY 1986 and MY 1987-88 rulemaking proceedings when it also considered setting the standard below 27.5 mpg. This approach can be described as a two-prong analysis. First, the agency assesses whether the industry (or a company representng a substantial share of the industry) has taken reasonable steps to achieve the statutory goal of 27.5 mpg, the standard that would apply in the absence of an amendment by this agency. This assessment, which GM describes in its comments as "an auditing device," is used by the agency to help it determine whether there is any reason why it should exercise its discretion to amend the statutory standard. If the agency is satisfied that manufacturers did make reasonable efforts to achieve 27.5 mpg, then the agency focuses on the second prong of the analysis: setting the standard at the "maximum feasible" fuel economy level, taking into account the four statutory criteria: technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy. To the extent that the "reasonable efforts" test is met, and the "maximum feasible" level is below 27.5 mpg, the standard would be reduced to the new, maximum feasible level. This methodology and comments specifically addressing the methodology will be discussed in this section. Comments directed to the application of the methodology

(such as opinions about the sufficiency of manufacturer efforts to achieve 27.5 mpg or views regarding the maximum feasible level) will be addressed elsewhere in this decision.

V-A. The "reasonable efforts" test

In the model year 1986 proceeding, the agency described the "reasonable efforts" test as follows:

> ". . . Since the Cost Savings Act imposed a long-term obligation on manufacturers to achieve a 27.5 mpg fuel economy level, it would be inappropriate to reduce the standard if a current inability to meet the standard simply resulted from manufacturers previously declining to take appropriate steps to improve their average fuel economy as required by the Act. Therefore, the agency must evaluate the manufacturers' past efforts to achieve higher levels of fuel economy as well as their current capabilities.
>
> "On the other hand, the agency does not consider it appropriate to judge each and every manufacturer product action by 20-20 hindsight. In assessing the sufficiency of manufacturers' fuel economy efforts, it is necessary to take account of the information available to manufacturers at the time product decisions were being made.
>
> "Manufacturers had an obligation to take whatever steps were necessary, consistent with the factors of section 502(e), to meet the 27.5 mpg standard. To the extent that manufacturers had plans to meet the standard which subsequently became infeasible due to unforeseen events, NHTSA does not believe the manufacturers should be charged with a failure to make a sufficient effort." 50 FR 40533 (October 4, 1985; quoted in MY 87-88 rule at 51 FR 35599 (October 6, 1986)).

As noted above, this approach was affirmed recently by the U.S. Court of Appeals (D.C. Cir). *Public Citizen v. NHTSA,* op. cit.

Several commenters addressed the methodology of the agency's "reasonable efforts" test. GM urges the agency to take account of the four statutory criteria, including "economic practicability," when assessing whether manufacturers have made reasonable efforts. GM also believes that a manufacturer's declining CAFE performance does not, by itself, dictate a conclusion that the manufacturer failed to make reasonable efforts to achieve 27.5 mpg. In GM's view, the agency should consider the reasonableness of the manufacturers' efforts over the long term, taking into account the enormous improvements in automobile fuel efficiency of the past decade, because these large improvements make it more difficult for manufacturers to continue to make further improvements. GM specifically urged NHTSA to "take care not to abandon the methodology that was developed in its first passenger car amendment proceeding."

GM emphasizes that it has focused on the "sequencing" of the two steps of NHTSA's analysis as articulated in the first passenger car amendment proceeding. In other words, GM placed great importance on the *order* in which NHTSA conducts the two-prong analysis, noting that the "reasonable efforts test should not be a "threshold condition that presumes the validity of a standard whose maximum feasibility has never been determined." GM urges NHTSA to conclude that " 'reasonable efforts' to improve fuel economy do not become unreasonable simply due to the passage of time." GM also urges NHTSA to conclude that, once manufacturer efforts are found to be reasonable, "*no* additional actions should be expected of them," regardless of the timing of the manufacturer's identification of compliance difficulties. GM expresses puzzlement about the agency's references to a "second round of investments or product decisions." In sum, GM urges NHTSA to remain faithful to the analytic approach it articulated in the MY 1986 proceeding.

Ford's comments imply a continuing fundamental disagreement with the application of the "reasonable efforts" test, noting that such a requirement "is not found in the statute." Ford argues that setting a standard above the capacity of a manufacturer in a given model year could violate congressional intent, whether or not the capacity is affected by the prior efforts of that manufacturer. Ford analogizes the "reasonable efforts" test to an "exercise in second guessing based on hindsight," which Ford believes is inappropriate. Ford also complains that there are "no stated guidelines used in applying this test," rendering the test "undefined" and "subjective."

The Automobile Importers of America complain that the "reasonable efforts" test as articulated in the NPRM for MY 1989-1990 departed in some material way from the "sufficient efforts" test described in the agency's first rulemaking proceeding to reduce a passenger car CAFE standard (MY 1986). AIA argues that there is no requirement in the statute or the legislative history for NHTSA to examine manufacturers' efforts under a "reasonable efforts" test. AIA also complains about the lack of an "articulate stand-

ard of what constitutes reasonable efforts." AIA also objects that NHTSA appears to have elevated the "reasonable efforts" test to a "threshold question" that would govern "even the institution of a Model Year 1989 rulemaking." This, maintains AIA, would be a change from prior year proceedings. AIA would like the agency to define the test as "reasonable efforts to improve the fuel efficiency of a vehicle in light of consumer demand and normal business considerations."

Responding first to the general comment of GM and AIA that NHTSA may have changed its view of the "reasonable efforts" test since the MY 1986 proceeding, NHTSA assures the commenters that it neither changed its methodology, nor did intend to signal any change in it. In that regard, NHTSA agrees with both GM and AIA that the original methodology need not be changed, since in our view, it has served well. While we acknowledge that some terminology has shifted, that is due as much to others (such as the D.C. Circuit Court of Appeals) using different words as it is to NHTSA's own differing terminology. The agency neither sees nor intends any difference among terms such as "reasonable efforts," "sufficient efforts," or "reasonable plans to achieve 27.5 mpg." The agency means no difference by the different terms, and does not intend to imply any change in the methodology it articulated in the MY 1986 proceeding.

With respect to GM and AIA's concerns about the sequencing of the two prongs of the analysis, the agency does not agree that there is any substantive significance to the sequence of the analyses, and therefore does not agree that there is any importance to be attached to the apparent "elevation" of the "reasonable efforts" test in this proceeding. In fact, the agency continues to place great importance on both prongs of the analytic approach, and notes that the sequence of conducting the two analyses should make no difference at all in the outcome of the proceeding. On the other hand, there is potentially a significant savings in NHTSA resources as well as resources of the public that elects to comment on our proceedings, if we first conduct the analysis that appears less likely to support an amendment of the standard. Then, if the analysis turns out to support an amendment, the second prong of the analytic approach is conducted. Under some factual settings, the "reasonable efforts" test may appear at first glance to be the one less likely to yield a result that supports amendments; in other cases, the "maximum feasible" evaluation may appear to be less likely to support a value different from 27.5 mpg. In any event, NHTSA intended no substantive change by suggesting that the sequence of the analyses could be reversed, since our traditional approach has always made clear that a negative result under either prong of the analysis would result in no amendment to the standard.

GM specifically, and Ford implicitly, seek a judgment by the agency that it is sufficient to have once made "reasonable efforts" to achieve 27.5 mpg. The agency cannot agree with this suggestion stated as broadly as GM would have it; however, the agency does agree with both companies that there are limits to the doctrine of "reasonable efforts." For example, the levels of investment which manufacturers must make to remain in compliance with the 27.5 mpg level is limited by "economic practicability." With respect to the notion that a single "reasonable effort" is all that is required by the law, the agency simply does not agree. As we have consistently observed since first articulating the "reasonable efforts" test, we believe that the statute imposes a long-term obligation on manufacturers to attempt to comply with the statute, including its prescribed level of 27.5 mpg for model years 1985 and thereafter.

We do agree with GM that the "reasonableness" of a manufacturer's plans to comply must be judged with consideration of factors such as the economic practicability of the elements of the plan. Clearly, the agency does not intend to impose an obligation on a manufacturer to *carry out* a compliance plan, no matter how costly. However, the agency does believe that the statute compels the manufacturers to *have* a compliance plan and, if it is not to be implemented for reasons of cost or feasibility, the manufacturer must pursue additional compliance plans, unless there is no reasonable, alternative compliance plan available in the same time period. And, given the agency's obligation to review (or audit) the compliance plans of the manufacturers, there may be instances when the agency will not agree with a manufacturer about the reasonableness of the compliance plan, either because it projected compliance on the basis of unreasonable assumptions, or because it would not have achieved compliance, even if carried out. Also, the agency may disagree with the manufacturer about the reasonableness of its decision to drop the plan. We do not believe that such disagreements are tantamount to "20-20 hindsight," which we agree is inappropriate in the CAFE regulatory context. However, there is a middle ground between the inappropriate exercise of "20-20 hindsight" and the mere "rubber stamping" of a manufacturer's statement of its previous intentions to comply. We believe that we have correctly discerned that middle ground

in our previous articulation of our view of the "reasonable efforts" test, and we reaffirm that position today.

As to GM's suggestion that a one-time-only compliance plan is sufficient, we do not agree for the reasons stated above. If that plan is stale or overtaken by changing events, and sufficient time reasonably remains for the manufacturer to develop a new compliance plan to achieve the statutory 27.5 mpg goal, we believe that the statute contemplates that the manufacturer will do so.

This view, that manufacturers must continue to make efforts to reach 27.5 mpg, is entirely consistent with the approach described in the MY 1986 decision. In that rule, the agency observed:

> "While the agency believes that [certain] product plan changes...are consistent with statutory criteria, since they reflect changes in what is economically practicable, manufacturers continue to have an obligation to make all necessary efforts consistent with those statutory criteria to meet CAFE standards. To the extent that changes in product plans result in manufacturers not being able to meet a standard, the manufacturers *must pursue additional means,* consistent with the factors of section 502(e) *to meet* the standard." (Emphasis supplied.) 50 FR 40542, October 4, 1985.

A similar discussion was included in the preamble to the final rule amending the MY 1987-1988 standard, and today's decision reiterates this principle, consistent with the language as it was articulated in 1985.

The agency does not agree with AIA that the agency should examine only the efforts made by a company to improve the fuel efficiency of its vehicles without regard to the target fuel economy of that company. Since the rule reducing the MY '86 standard, we have clearly articulated our view that the agency's assessment of reasonable efforts is viewed in terms of the company's efforts to achieve the statutory target of 27.5 mpg. We do not believe that we could reasonably exercise our discretion to amend the 27.5 mpg standard, if we could not find a company with a lower CAFE projection that was reasonably trying to achieve the 27.5 standard. NHTSA recognizes that several AIA member companies (e.g., limited-line European manufacturers) face severe obstacles in achieving the 27.5 level, not unlike the problems of full-line U.S. manufacturers. That is the result of the fleet averaging requirement, which the agency believes is a fundamental flaw of the statute. However, NHTSA has no choice but to carry out the law as it is written.

Both Ford and AIA object to the subjectivity of the "reasonable efforts" test, suggesting that there are no standards to govern the manufacturers' decisions. Ford suggests that such standards could be developed in a rulemaking proceeding, while AIA makes a similar suggestion that manufacturers should be given some notice of the agency's expectations. However, AIA also acknowledged during the public meeting on this rulemaking proceeding that manufacturers have an obligation—independent of NHTSA's "reasonable efforts" test—to try to comply with the statute, which sets the standard at 27.5 mpg in the absence of a regulatory amendment. AIA also agreed that they have had notice at least since 1985 of NHTSA's intention to review the sufficiency of the manufacturers' plans for reaching 27.5 mpg, which is just another way of describing the "reasonable efforts" test.

As to objective standards for such an audit, NHTSA does not agree that it is desirable or necessary (or even practical) to articulate such standards, since the product decisions under review will, in the first place, have been made by the manufacturer. A decision to delete a product or add a less fuel-efficient option may be reasonable for one manufacturer that needs to respond to certain competitive demands, and be unreasonable for another manufacturer. The agency fully agrees with the commenters that the agency should conduct the "reasonable efforts" test by placing itself in the shoes of the manufacturer at the time the product decisions were made, and making a judgment about whether those decisions were reasonable at the time. That is not 20-20 hindsight; however, it does involve a judgment that, as noted above, could differ from the judgment made by the manufacturer about the reasonableness of the product action. But, this "test" is reviewing nothing more than the manufacturer's progress toward trying to meet the statutory standard, an obligation that existed prior to NHTSA's articulation of a "reasonable efforts" test. It is important to keep in mind that NHTSA's "reasonable efforts" test is conducted for a very limited purpose: to decide whether to exercise our discretion to amend the statutorily set standard. We do this in order to demonstrate to the public and a reviewing court that we exercised our limited discretion under the statute rationally and reasonably.

V-B. The maximum feasible determination

The second prong of the agency's analysis is the determination of "maximum feasible" fuel economy. The agency has always followed the same approach of considering separately each of the four statutory criteria: economic practicability, technological feasibility, the effect of other Federal motor vehicle standards on fuel economy, and the need of the Nation to conserve energy. The factors will have different influences on the outcome. Some factors tend to suggest a higher "maximum feasible" level, while others tend to suggest a lower level. Since Congress provided no guidance on the weight to be given any of the factors, we have exercised judgment in order to accommodate the conflicting policies of the statute. And, the weight we give any factor will depend on the circumstances in the Nation at the time the decision is made, both with respect to economic health and energy conservation needs. Although many commenters offered opinions about the weight to be given one or more of the factors, no commenter offered substantive opinions about the manner in which the agency has conducted this prong of its analysis. The comments that discuss the weighting of the factors will be addressed in another section of this decision.

In the NPRM, the agency requested comments on the possible situation involving one company that made reasonable efforts, and another company (that had not made reasonable efforts) that has a lower current CAFE capability than the company that did make reasonable efforts. GM suggested that NHTSA should determine the CAFE level that would have been achievable by the company that did not make reasonable efforts, calculated as if it had made reasonable efforts, and compare that level to the level achievable by the company that did make reasonable efforts. GM suggests that the CAFE level should then be set at the lower of the two levels. Ford commented that the agency could violate congressional intent if it set a standard above the capacity of a major manufacturer, without regard to the question of whether that company made reasonable efforts. Since it happens that we will not be setting the standard higher than the capability of a substantial share manufacturer, we need not resolve here the methodological question.

VI. Manufacturer Capabilities for MY 1989

As part of its consideration of technological feasibility and economic practicability, NHTSA has evaluated the manufacturers' fuel economy capabilities for MY 1989. In past fuel economy rulemakings, the agency has focused on the manufacturers' current projections and underlying product plans, using the CAFE levels actually achieved in the most recent model year(s) as a baseline. The agency has then considered what, if any, additional economically practicable actions the manufacturers could take to improve their fuel economy, given the available leadtime.

While NHTSA believes that this type of analysis should be part of the evaluation of manufacturer capabilities, it believes that a focus on current CAFE projections and recent CAFE achievements can be overly narrow in some circumstances. In particular, as discussed below, NHTSA is concerned that too narrow a focus on GM's MY 1988 CAFE achievement could have the effect of casting in concrete a significant loss in market share which that company has experienced over the past several years, and the significant job losses which accompanied that market loss. The same result could occur from too narrow a focus on GM's MY 1989 CAFE projection, which reflects a product plan devised in light of a 27.5 mpg CAFE standard. The agency believes that it should also look at the broader picture of how the standard could affect product availability, jobs, and the competitiveness of U.S. manufacturers.

VI-A. Manufacturer projections

GM and Ford have submitted a number of different projections of their MY 1989 CAFE levels over the past several years, reflecting changing product plans and market conditions. This section addresses the manufacturers' latest projections, since those projections reflect the manufacturers' current product plans. The current MY 1989 projections of both GM and Ford are lower than earlier projections. The reasons for the change are discussed below in the section entitled "Manufacturer Compliance Efforts."

The agency notes that one factor that complicates a discussion of manufacturer projections is Environmental Protection Agency (EPA) test adjustment credits. Between 1983 and 1985, EPA engaged in rulemaking to provide CAFE adjustments to compensate for the effects of past test procedure changes, ultimately adopting a formula approach for calculating CAFE adjustments. While the CAFE adjustment differs among manufacturers due to their different vehicle mixes, a typical adjustment for MY 1989 is 0.2 or 0.3 mpg. In the discussion of manufacturer projections in this notice, the projections include

the EPA test credit adjustment unless it is noted otherwise.

1. General Motors

GM indicated in its September 1988 comment that its current product plan is expected to result in a MY 1989 CAFE level of 27.2 mpg. GM's projection is the same as that provided to the agency in April 1988.

GM's comment, as well as its mid-model year report for 1988, indicates that its MY 1988 CAFE will be 27.6 mpg. Thus, that company expects its CAFE to decline by 0.4 mpg between MY 1988 and MY 1989. GM provided detailed information explaining the expected decline. The information showed that much of the decline is due to the uncertain effects on fuel economy of new hardware introduced to improve customer satisfaction with that company's 2.8 and 2.5L engines in MY 1989. The information also showed that another reason for the decline is that GM does not expect to replicate better-than-expected 1988 test results on its 2.8L and 3.8L engines, which is attributable to test-to-test variability.

The record for this rulemaking indicates that GM's 27.6 mpg CAFE for MY 1988 is in part due to adverse mix shifts, reflecting lower-than-anticipated sales of that company's larger and luxury cars, and a significant loss in overall market share for that company. GM noted in its August 8, 1988, submission that its share of total U.S. passenger car sales fell three points between 1984 to 1986, and another six points between 1986 to 1988. That company also noted that major contributors to this decline came in its traditionally strong luxury and mid-size market segments. GM stated that this loss of market share caused its active hourly workforce to decline by over 75,000 workers between June 1986 and June 1988, and that total jobs lost at GM and its suppliers due to this decline in market share may have been in excess of 200,000.

Between MY 1985 and MY 1988, the time GM was losing market share, that company's CAFE rose from 25.8 mpg to 27.6 mpg. By contrast, Ford's MY 1988 CAFE level is very similar to its MY 1985 level (a period of rising market share), 26.4 mpg versus 26.6 mpg. In the same period, a number of import manufacturers' CAFE levels also declined. While the decline in some of the import manufacturers' CAFE levels was relatively small, BMW's CAFE declined from 26.4 mpg in MY 1985 to 21.6 mpg in MY 1988.

GM argued in its August 8, 1988, submission that while the contribution to its lost market share and job losses resulting from efforts to comply with CAFE may be impossible to isolate and quantify, it is no mere coincidence that, during the period when its CAFE performance and projections have been increasing as those of its principal domestic and foreign competitors have been directionally opposite, its percentage of total industry sales has declined. GM stated in its September 1988 comment that as gas prices continued to decline during 1986, the demand for larger cars and for engines with improved performance and driveability continued unabated. That company noted that despite this favorable sales environment, it suffered both an absolute volume decline in full-size and mid-size car production during MY 1986-88 and a substantial loss of market share to its less fuel-efficient competitors. GM observed that its production of full-size cars, which reached more than 1.1 million units in MY 1985, was off by nearly 300,000 units in MY 1988. GM also noted that it introduced two new full-size carlines during this period, among the most fuel-efficient in their class, but sales of its downsized models languished far below projected levels.

GM also suggested that some of its cars, most notably the third-generation E/K models introduced in MY 1986, may have pushed too far in the direction of downsizing and fuel-efficiency at the expense of other attributes considered more important by the consumer. That company added that, ironically, the lost volume of these fuel-efficient larger cars had the effect of improving GM's CAFE still further, while depressing the CAFE of other manufacturers whose share of less fuel-efficient models increased.

NHTSA notes that, for CAFE purposes, GM's MY 1986-88 market behavior does not merely reflect the 26.0 mpg level to which those standards were eventually amended. As indicated above, GM's initial product plans for those model years were made in light of the statutory 27.5 mpg standard expected to be in place. In addition, GM was making every effort during those model years to exceed the 26.0 mpg standard in order to earn sufficient carryback credits to offset a substantial MY 1985 shortfall. Thus, for CAFE *compliance* purposes, GM did not enjoy the flexibility of being content with achieving a CAFE of only 26.0 mpg for MYs 1986-88, since that could well have resulted in insufficient carryback credits and thus a final determination of noncompliance and a finding of "unlawful conduct" under section 508 of the Act.

GM's current MY 1989 plan, which would likely result in a CAFE of 27.2 mpg, again reflects the company's expectation of the statutory 27.5 mpg standard that would be in effect unless changed through this rulemaking. That company indicated in its August

1988 submission that, looking to the future, it hopes to increase sales of its mid-size, larger, and luxury models and restore employment with restylings and driveability improvements, albeit while trying to minimize the CAFE penalty that will occur with those changes. GM also indicated at the September 14, 1988, public hearing that it is doing everything it can to try and get its lost market share back, but that it is seriously constrained by CAFE standards in doing that. While GM's current MY 1989 product plan does reflect some technological improvements to improve customer satisfaction, the agency does not believe that it reflects the kinds of actions GM might wish to take to restore market share and jobs if it were not constrained by the 27.5 mpg standard.

2. Ford

Ford indicated in its September 1988 comment it could achieve a MY 1989 CAFE level of "about 26.5 mpg." As noted in the NPRM, Ford estimated in April 1988 that it could achieve a MY 1989 CAFE level of 26.6 mpg. Thus, Ford currently projects essentially the same CAFE level as it did earlier this year. Ford's mid-model year report for 1988 indicates that its MY 1988 CAFE will be 26.4 mpg, or almost the same as it projects for MY 1989.

While GM's MY 1988 CAFE achievement of 27.6 mpg in part reflects a significant loss in market share since 1985, Ford increased its market share during that time period. Ford's comment indicated that its overall market share in 1988 is 21.4 percent, up from 19.7 percent in 1985.

3. Chrysler

Chrysler projected in April 1988 that it would achieve a CAFE of 27.6 for MY 1989. At that time, Chrysler projected a MY 1988 CAFE of 27.8 mpg. In its July 1988 mid-model year report, however, Chrysler indicated that it will achieve a MY 1988 CAFE of 28.4 mpg. NHTSA notes that, as discussed in the MY 1986 and MY 1987-88 CAFE proceedings, Chrysler's CAFE has been higher than that of GM and Ford in recent years primarily because it does not compete in all the market segments in which GM and Ford sell cars (i.e., no "large" cars, which have lower fuel economy ratings than other size classes).

4. Other manufacturers

The Japanese and other Asian manufacturers are expected to easily exceed the current 27.5 mpg standard for MY 1989, in light of their traditional strength in smaller cars. Also, all of these manufacturers' cars, whether more or less fuel-efficient, are considered imports under the statute, since their domestic content is less than 75 percent, even for those models produced at U.S. plants. Therefore, unlike the domestic manufacturers, the least fuel-efficient cars of the Asian manufacturers are not, for CAFE purposes, in a different fleet from their most fuel-efficient cars. Thus, the fleet averaging requirements of the CAFE law allows those companies to use the higher fuel economy ratings of small cars to offset those with lower ratings.

Nissan projects a MY 1989 CAFE level of 29.5 mpg to 29.7 mpg. While the agency does not have MY 1989 CAFE projections for the other Asian manufacturers, their MY 1988 CAFE levels, as reported in their mid-model year reports, are well above 27.5 mpg. Daihatsu will achieve a MY 1988 CAFE of about 46.5 mpg, Honda 32.0 mpg, Hyundai 35.0 mpg, Isuzu 32.6 mpg, Mazda 28.7 mpg, Mitsubishi 29.8 mpg, Subaru 31.8 mpg, Suzuki 50.3 mpg, and Toyota 32.6 mpg. The agency notes that some of the Japanese manufacturers have experienced decreases in their fuel economy during recent years as they have begun to sell larger, more performance-oriented vehicles, e.g., Honda, which began marketing the Acura Legend in 1986 in the U.S., has dropped from 34.5 mpg in 1985 to 32.0 mpg in 1988.

The import fleets of GM, Ford, and Chrysler are also expected to easily exceed 27.5 mpg for MY 1989. GM projects a MY 1989 CAFE level of 39.3 mpg for its import fleet, and Ford projects a CAFE level of 31.6 mpg. While the agency does not have a MY 1989 CAFE projection for Chrysler's import fleet, that company's mid-model year report indicated that its import fleet will achieve a CAFE level of 30.3 mpg for MY 1988. But as noted previously, the two-fleet rule of the statute prevents the three U.S. companies from using those higher fuel economy ratings to offset the lower ratings of the rest of their fleets.

Most of the European manufacturers are expected to be below the 27.5 mpg level for MY 1989. Austin Rover projects a MY 1989 CAFE level of 23.5 mpg, BMW 21.9 mpg, Jaguar 21.7 mpg, Mercedes-Benz 21.0 mpg, Peugeot 24.5 mpg, Porsche 23.5 mpg, Saab 26.6 mpg, and Volvo 25.7 mpg. The agency does not have MY 1989 projections for Alfa-Romeo, Volkswagen, or Yugo. Those companies' mid-model year reports indicated that their MY 1988 CAFE levels will be 25.6 mpg, 30.3 mpg, and 33.8 mpg, respectively.

VI-B. Possible actions to improve MY 1989 CAFE

The possible additional actions that manufacturers might be able to take to improve their projected CAFE

may be divided into four categories: further technological changes (beyond what is contained in their product plans), increased marketing efforts for their more fuel-efficient cars, restricting the sale of their less fuel-efficient cars and engines, and transferring the production of their less fuel-efficient vehicles, or parts of those vehicles, outside of the United States. GM and Ford have indicated in the past that they might outsource some of their less fuel-efficient cars to enable those cars to be averaged in with their highly fuel-efficient captive imports.

Since the 1989 model year begins this fall, there is insufficient time for the manufacturers to make further significant technological changes in their product plans. For example, once a new design is established and tested as feasible for production, the leadtime necessary to design, tool, and test components such as new body sheet-metal systems for mass production is typically 22 to 29 months. Other potential major changes often take longer.

Similarly, there is insufficient time to transfer the production of less fuel-efficient vehicles, or significant parts of those vehicles, outside the United States before the beginning of MY 1989. However, manufacturers could begin the steps necessary to outsource large car production in a later model year. NHTSA has previously noted that there is a complete absence of energy conservation benefits to the U.S. from outsourcing. In addition, Congress has spoken clearly about its desire that fuel economy standards should not induce manufacturers to increase their importation of foreign-produced cars. Thus, NHTSA has said that it does not consider outsourcing for CAFE purposes to be reasonable and will not require manufacturers to consider outsourcing as part of their "reasonable efforts" to achieve 27.5 mpg. See 51 FR 35604, October 6, 1986.

As to marketing efforts, the agency in the past has concluded that GM and Ford both have made efforts to promote the sales of fuel-efficient cars and determined that the manufacturers have undertaken extensive and significant marketing efforts to shift consumers toward their more fuel-efficient vehicles and options. The agency also has stated previously that it believes that the ability to improve CAFE by additional marketing effors is relatively small. As a practical matter, marketing efforts to improve CAFE are largely limited to techniques which either make fuel-efficient cars less expensive or less fuel-efficient cars more expensive. Moreover, the ability to increase sales of fuel-efficient cars largely relates to either increasing market share at the expense of competitors or pulling ahead a manufacturer's own sales from the future. Neither approach produces net energy savings for the U.S. A factor that makes it difficult for the domestic manufacturers to sell domestically produced, fuel-efficient cars is the growing competition of lower-priced small cars from countries such as Yugoslavia and South Korea, which have significant cost advantages.

Another consideration in this area is that the manufacturer's success in improving the fuel efficiency of large cars has itself made it more difficult to sell smaller cars. The reason for this is that there are diminishing returns in terms of greater fuel economy from purchasing small cars as the fuel efficiency of larger cars increases. Similarly, as gasoline prices have declined, there are diminishing returns to the consumer from purchasing more fuel-efficient vehicles. Under current gasoline projections, a one mpg increase in fuel economy from 15 to 16 mpg would decrease lifetime operating costs by about $371. By contrast, at a CAFE level of 26.5 mpg, the corresponding potential decrease in operating costs is $122.

There is a problem with pulling ahead sales, as mentioned above, which consists of the manufacturer's CAFE for subsequent years being reduced. For example, if a manufacturer increases its MY 1989 CAFE by pulling ahead sales of fuel-efficient cars from MY 1990, the MY 1990 CAFE will decrease, compared with the level it would have been in the absence of any pull-ahead sales attributable to marketing efforts. For this reason, a manufacturer cannot continually improve its CAFE simply by pulling ahead sales.

As indicated in the NPRM, Ford and GM have both provided specific information concerning their marketing programs. GM indicated that its total cost for numerous incentive programs for its fuel-efficient cars during MY 1987-88 was over $2.0 billion. Ford indicated that its expenditures for its marketing program approached $3.0 billion for the years 1982-1988. Ford also stated that its marketing support costs are disproportionately greater for its fuel-efficient models than its large/luxury models.

NHTSA notes that the Department of Commerce (DOC) commented that due to severe competition, it expects U.S. producer sales in the small car segment will decline from an estimated 590,000 vehicles in 1988 to 445,000 in 1989 and 350,000 in 1990. That Department stated that this competition will limit the ability of full-line U.S. manufacturers to use price incentives to stimulate small car sales. DOC com-

mented further that U.S. automobile manufacturers will also face growing foreign competition in the mid-size and large/luxury car markets during 1989 and 1990, and that in this intensely competitive market for larger as well as small cars, profit margins in all lines will be under intense competitive pressure. That Department concluded that it will thus become increasingly difficult for full-line manufacturers to use price discounting of their smaller cars to shift effective consumer demand in that direction.

For all of the reasons discussed above, and in light of the expected market conditions described by DOC, NHTSA does not believe that GM and Ford can significantly improve their CAFE levels by increased marketing efforts of domestic fuel-efficient models beyond what they have already been doing.

Any additional efforts by the manufacturers to increase their MY 1989 CAFE, therefore, would be limited largely to attempts to change product mixes through product restrictions.

In looking at the potential methods for improving CAFE, the agency also has recognized in the past that manufacturers could improve their CAFE by restricting their product offerings, e.g., deleting less fuel-efficient car lines or dropping higher performance engines. However, as discussed in previous rulemakings, such product restrictions undoubtedly will have significant adverse economic impacts on jobs, the industry, and the economy as a whole—effects which would run counter to the statutory criterion of economic practicability and the congressional intent that the CAFE program not unduly limit consumer choice.

VI-C. Manufacturer-specific CAFE capabilities

In analyzing manufacturer-specific CAFE capabilities, the agency has focused on the domestic fleets of GM and Ford, because they have the lowest individual projected MY 1989 CAFE levels among manufacturers with a substantial share of the market, and no combination of manufacturers with lower projected CAFE levels would constitute a substantial share of the market.

1. GM: NHTSA has analyzed GM's MY 1989 CAFE projection and underlying plan. As discussed above, GM indicated in its September 1988 comment that its current product plan is expected to result in a MY 1989 CAFE level of 27.2 mpg. If NHTSA focused narrowly on GM's MY 1989 CARE projection and its MY 1988 CAFE achievement, it would presumably conclude that GM's MY 1989 capability is above that of Ford. While manufacturer product plans are subject to risks, GM's 27.2 mpg projection reflects that company's best estimate of its MY 1989 CAFE, in light of its current product plan.

As discussed above, however, NHTSA believes that too narrow a focus on GM's MY 1988 CAFE achievement and MY 1989 CAFE projection could have the effect of ratifying the significant loss in market share that company has experienced over the past several years and the significant job losses that accompanied that market loss. The agency believes that its analysis of GM's capability should also consider the CAFE level that company might achieve if it more aggressively seeks to regain, in MY 1989, a portion of its lost market share. As indicated above, GM's current product plan reflects the constraints of a 27.5 mpg standard, and the agency does not believe that it reflects the kinds of actions GM might wish to take to restore market share and jobs if there were a lower MY 1989 CAFE standard.

NHTSA recognizes that it is difficult to estimate what GM's CAFE capability would be under a scenario of seeking to regain lost market share and jobs. Ford's recent CAFE experience suggests that a full-line manufacturer can achieve approximately 26.5 mpg, while remaining fully competitive in all market segments. The agency has analyzed GM's product plan and concluded that efforts by that company to restore its market share in less fuel-efficient market segments could, consistent with its capacity restraints, result in a MY 1989 CAFE of 26.5 mpg or below. These efforts could include pricing and other actions to promote sales of compact, intermediate, and luxury cars. In light of Ford's experience and NHTSA's analysis of the kinds of actions GM might take to restore lost market share and jobs, the agency concludes that 26.5 mpg appropriately represents GM's MY 1989 CAFE capability.

NHTSA notes that the Department of Energy commented that it is its judgment that the 27.5 mpg standard is achievable by GM in MY 1989. This conclusion was largely based on the fact that GM achieved a CAFE of 27.6 mpg in MY 1988. Several other commenters also cited GM's MY 1988 achievement as evidence that GM can achieve 27.5 mpg in MY 1989. DOE suggested that some of the decreases in GM's MY 1989 CAFE were unexplained. However, NHTSA believes that GM's August 1988 and September 1988 submissions fully explain the expected decline in its MY 1989 CAFE, as compared to MY 1988. The agency believes that GM's MY 1989 CAFE projection of 27.2 mpg reasonably reflects that company's current product plan. While NHTSA does

not agree that GM could necessarily achieve 27.5 mpg CAFE in MY 1989 without some product restrictions, it does agree with DOE and other commenters that, using GM's MY 1988 experience as a baseline, that company could achieve a CAFE above 26.5 mpg (and might well experience further losses in market share and jobs as well). However, as discussed above, NHTSA believes that the approach of narrowly focusing on GM's MY 1988 CAFE achievement and MY 1989 CAFE projection could have the effect of casting in concrete the signficant loss in market share that company has experienced over the past several years, and the significant job losses which accompanied that market loss.

The Natural Resources Defense Council (NRDC) also cited GM's MY 1988 CAFE performance, and argued that GM's claim that its CAFE will drop should be viewed skeptically, especially since that company asserts that its lagging large cars sales are an aberration even though they reflect a nationwide trend toward smaller vehicles. That commenter argued that GM's loss in market share is not due to CAFE.

As discussed above, NHTSA acknowledges that the larger car segment of the market has been shrinking in absolute terms. Between MY 1984 and MY 1987, the share of sales taken by mid-size and larger cars declined from 42.7 percent of the market to 36.4 percent. During this time period, the smallest car segment also declined. The share captured by subcompact and smaller models fell from 29.4 percent in MY 1984 to 23.6 percent in MY 1987. The growth has been in the compact segment, as its share grew from 27.9 percent to 40.0 percent over the same time period.

However, NHTSA believes that in order for GM to be able to adequately compete in today's intensely competitive market, it must be able to accommodate consumer demand for such attributes as larger engines and larger interior space. These actions come at a CAFE price, however, since they generally reduce the fuel efficiency of a model. To the extent that GM is able to so accommodate consumer demand or otherwise increase the sales of its less fuel-efficient vehicles, including less fuel-efficient compacts as well as larger vehicles, its CAFE will decline, relative to what it achieved in MY 1988. This decline is in addition to that portion of the decline that reflects unexpectedly high EPA test results in MY 1988.

2. *Ford:* NHTSA has analyzed Ford's MY 1989 CAFE projection and underlying product plan. As indicated above, Ford stated in its September 1988 comment that it projects its 1989 model year CAFE level at about 26.5 mpg. Ford indicated further at the September 14, 1988, public hearing that while there is a set of assumptions with its product plan, it projects achieving the 26.5 mpg level for MY 1989 with some level of confidence.

In light of Ford's statements and the agency's analysis of Ford's product plan, NHTSA has concluded that 26.5 mpg represents Ford's MY 1989 CAFE capability, taking account of possible uncertainties. In reaching this conclusion, the agency notes that Ford achieved a similar level, 26.4 mpg, in Model Years 1987-88, and that it did so while generally increasing its market share of larger cars and remaining fully competitive in all market segments. Ford was able to hold its CAFE about steady while increasing its market share of large cars, but only by taking a number of offsetting fuel-efficiency enhancing actions.

VII. Manufacturer Compliance Efforts

While there is now insufficient leadtime for GM and Ford to initiate further significant technological improvements to achieve CAFE of 27.5 mpg in MY 1989, the standards have been in existence since 1975. Thus, as part of deciding whether to exercise its discretion to reduce the standards to the maximum feasible average fuel economy level, NHTSA has evaluated whether the manufacturers made sufficient efforts through September 1988 to meet the standard.

As discussed in the MY 1986 and MY 1987-88 proceedings and noted above, the agency does not consider it appropriate to judge each and every manufacturer product action by 20-20 hindsight. Rather, in assessing the sufficiency of the manufacturers' fuel economy efforts, it is necessary to take account of the information available at the time product decisions were being made.

For MY 1986, and again for MY 1987-88, the agency determined that GM and Ford had plans adequate to meet the 27.5 mpg standard, but that these plans were overtaken by unforeseen events in the early 1980's. The agency identified a number of factors which led to lower-than-expected CAFE levels, including the declining price of gasoline and a related increase in expected consumer demand for larger and more powerful cars. The agency concluded that the manufacturers did not have time to offset the impact of these unexpected events by developing and implementing supplementary or alternate plans for meeting the CAFE standard of 27.5 mpg for MY 1986-88.

NHTSA observed in the NPRM for this proceeding that given the passage of time since those unforeseen events in the early 1980's, coupled with the agency's understanding of traditional auto industry leadtimes to introduce new technologies or new vehicles, the agency could not reasonably base an exercise of its discretion to amend the MY 1989 standard on the same set of facts that supported the reduction of the MY 1986-88 standards. NHTSA explained that it would need to know whether, and to what extent, the industry as a whole made new reasonable plans to comply with the 27.5 mpg standard after the unanticipated events of the early 1980's overtook the previous plans.

As part of evaluating whether GM and Ford made sufficient efforts to achieve a 27.5 mpg CAFE for MY 1989, the agency has evaluated the manufacturer's MY 1989 CAFE projections and product plans submitted to the agency over time.

GM projected in February 1985 that it could achieve a CAFE of 30.1 mpg for MY 1989. Between February 1985 and August 1985, GM lowered its projection by 1.5 mpg, to 28.6 mpg.

Ford projected in February 1985 that it could achieve a CAFE of 28.3 mpg for MY 1989. Between February 1985 and August 1985, Ford lowered its projection by 1.5 mpg, to 26.8 mpg. In October 1985, however, Ford projected that it could achieve 27.6 mpg.

In this proceeding, both GM and Ford cited substantial unforeseen changes in market conditions which occurred *after* the early 1980's, including a precipitous unexpected drop in gasoline prices during 1986, as the primary cause for their MY 1989 CAFE projections falling below 27.5 mpg after 1985. Between 1981 and 1985, real gasoline prices dropped a total of 25 percent, from $1.63 per gallon to $1.22 (1986 dollars). During 1986, however, gasoline prices unexpectedly dropped *another* 24 percent, to $0.93 (1986 dollars), and have remained at a low level.

Ford indicated that it recognized by early 1986 that its earlier product plan to achieve 27.5 mpg for MY 1989 had been overtaken by events. GM indicated that it recognized by mid-1986 that its earlier product plan to achieve 27.5 mpg for MY 1989 had been overtaken by events.

NHTSA believes that the events described by the manufacturers raise three basic issues: (1) whether GM and Ford had reasonable plans to achieve 27.5 mpg CAFE for MY 1989 *prior* to 1986, (2) whether the fall in gasoline prices and other events cited by the manufacturers were of a nature that overtook the manufacturers' previous product plans, and (3) whether the manufacturers made sufficient efforts, under the statute, to achieve 27.5 mpg after early to mid-1986. Each of these issues is addressed below.

The first of the three issues is whether GM and Ford had reasonable plans to achieve 27.5 mpg CAFE for MY 1989 prior to 1986, i.e., before the occurrence of events which the manufacturers assert overtook their plans. Based on its review of GM's August 1985 product plan for MY 1989, the agency believes that GM's plan was reasonably calculated, as of that time, to meet the 27.5 mpg standard. NHTSA notes that GM expected to exceed the 27.5 mpg by more than 1.0 mpg, an amount which, among other things, may be viewed as representing a margin of safety for meeting the standard.

The agency does not have as detailed information regarding Ford's 1985 product plans for MY 1989. Among other things, it does not have detailed information concerning why Ford revised its estimates downward in August 1985 and back upward in October 1985. As always, however, the agency would not be judging any such plan with 20-20 hindsight. Instead, the agency would consider whether the product decisions were reasonable when they were made.

Examination of the reasonableness of manufacturer plans in this proceeding includes consideration of whether the fall in gasoline prices and other events cited by the manufacturers were in fact unexpected, in light of the manufacturers' reliance on this argument to explain the change in their projections. NHTSA believes that a *second* drop in gasoline prices of this magnitude was unexpected at the time manufacturers were first developing their MY 1989 product plans. For example, during the fall of 1983, the Energy Information Administration (EIA) was forecasting essentially constant gasoline prices between 1985 and 1986, $1.22 per gallon in 1985 and $1.20 in 1986 (1985 dollars). Similarly, during the winter of 1983-84, Data Resources, Inc. (DRI) was forecasting essentially constant gasoline prices between 1985 and 1986, $1.30 per gallon in 1985 and $1.31 in 1986 (1985 dollars). While EIA and DRI both expected by the summer of 1985 that gasoline prices would decline between 1985 and 1986, even at that late date they did not anticipate the magnitude of the decline. EIA forecast in July 1985 that gasoline prices would decline from $1.19 per gallon in 1985 to $1.11 in 1986 (1985 dollars). DRI forecast in the summer of 1985 that gasoline prices would decline from $1.20

in 1985 to $1.14 in 1986 (1985 dollars). By comparison, the actual decline in gasoline prices between 1985 and 1986 was from $1.20 per gallon to $0.91 (1985 dollars).

NHTSA also believes it is clear that the magnitude of the changes in the competitive market facing GM was also unexpected. The agency notes that GM's July 1986 product plan for MY 1988 forecast total GM production of nearly 4.6 million cars, while that company now expects to produce fewer than 3.5 million cars. This change in expected volume reflects GM's loss in market share since 1985.

As to Ford, NHTSA believes that company has made significant attempts over time to improve its CAFE. Ford commented that for MY 1987 through 1989, it will have spent $3 billion on programs that will improve fuel economy. According to that company, this figure exceeds the level submitted to the agency in 1985 by more than $500 million and includes more than 60 product improvement actions that have had a beneficial effect on fuel economy. Ford also indicated that from 1986 to 1988, it will have spent nearly $2 billion on marketing actions alone to improve sales of its fuel-efficient car lines. The agency notes that Ford's significant attempts to improve CAFE have enabled it to hold its CAFE level essentially constant in recent model years despite experiencing significant mix shifts toward larger, higher performance cars that are less fuel efficient.

The second of the three issues is whether the fall in gasoline prices and other events cited by the manufacturers were of a nature that overtook the manufacturers' previous product plans. NHTSA agrees that the precipitous fall in gasoline prices during 1986 did result in a substantial shift in consumer demand toward less fuel-efficient vehicles, overtaking GM's and Ford's earlier MY 1989 product plans. As gasoline prices decrease, the costs of operating cars that are larger or have more performance decrease. Therefore, all other things being equal, consumer demand for larger cars and higher performance increases. The Department of Commerce noted that the latest (1987) J. D. Power survey of consumer purchasing attitudes indicated that performance ranks above fuel economy by twelve percentage points. Moreover, both Ford and GM provided data showing an increase in customer satisfaction as performance increases.

GM and Ford also cited other unexpected events which contributed to the decline in their MY 1989 CAFE levels. GM indicated that competitive pressures, affecting both its product and engine lineups as well as capital spending programs, also impacted its plan. That company stated that anticipated further increases in consumer demand for improved powertrains led to product changes. GM stated that in substantial part due to the investment needed to accomplish these necessary changes, other previously planned new vehicles and engine programs had to be deferred or cancelled.

NHTSA notes that the Department of Commerce commented that the domestic manufacturers face an intensely competitive market for larger as well as smaller cars and that Japanese manufacturers will be making a strong push into the compact, intermediate, and luxury segments during the next five years. A July 4, 1988, *Automotive News* article, cited by GM, indicates that Japanese automakers are preparing a massive onslaught of new products for the U.S. market over the next four years, especially in performance-luxury and other segments traditionally dominated by the domestics.

NHTSA agrees that the competitive pressures facing GM have contributed to the decline in its expected MY 1989 CAFE. In order to be competitive, GM has needed to make some changes in its product plan to increase performance, with some negative impact on CAFE. Also, given those pressures, that company has needed to focus its limited capital resources on meeting the competition.

Ford stated that interest rates have had a negative impact on its MY 1989 CAFE level. That company stated that in 1985 it was forecasted that interest rates would be 11.8 percent in both 1988 and 1989. However, interest rates are now predicted to be 9.4 percent in 1988. Ford stated that lower finance costs shift some additional sales to larger cars.

The last of the three issues is whether the manufacturers made sufficient efforts, under the statute, to achieve 27.5 mpg after early to mid-1986, the times GM and Ford indicated that they recognized their earlier plans had been overtaken by events.

NHTSA believes it is clear that GM made sufficient efforts after mid-1986, the time it recognized its MY 1989 CAFE would be below 27.5 mpg, to meet that standard.

First, GM reexamined its product plans in an effort to identify fuel economy improvements, beyond those already planned, that might be implemented within the available leadtime. GM then made the changes it found feasible. For example, in the fall of 1986, GM made a product plan change to reduce aerodynamic drag of certain cars. In the spring of 1987 and fall of 1988, GM revised certain product plans to obtain

lower rolling resistance for tires. Following its July 1986 forecast, GM implemented another technological change to improve fuel economy, but the projected benefit was not obtained. GM also made a number of product plan changes related to engine utilization and powertrains, although one of the changes needed to be rescinded in response to negative press and customer reaction regarding performance.

Second, GM planned a number of market forcing actions to improve CAFE, including plans to increase smaller car sales via incentives and to increase the penetration of 4-cylinder engines and 4-speed automatic transmissions in certain cars. GM implemented its plan until May 1988, the time it submitted its petition for rulemaking, when the combined effects of a number of developments led to further necessary adjustments to its plan.

NHTSA concludes that GM had a plan to meet the 27.5 mpg standard for MY 1988, but that plan was overtaken by events beyond GM's control that occurred during the time period beginning in late 1985 through mid-1986. Among other things, a substantial shift in consumer demand occurred toward cars with better performance. The agency also concludes that after GM recognized in mid-1986 that its plan had been overtaken by events, that company took appropriate compensating actions in a continuing effort to meet the 27.5 mpg standard.

With respect to whether Ford made reasonable efforts to achieve 27.5 mpg CAFE after early 1986, the time it recognized its MY 1989 CAFE would be below that level, NHTSA notes that the availability of credits makes it difficult to analyze the sufficiency of that manufacturer's efforts. The agency notes that Ford expected during much of the period from 1986 to 1988 to have substantial credits that could be carried forward to MY 1989. (GM's credit situation was much more uncertain during this period.) While the statutory 27.5 mpg CAFE standard for future model years creates a continuing duty for manufacturers to achieve 27.5 mpg CAFE in the long run, the statute also permits manufacturers to use credits to comply with the standard for a particular model year. We note that the obligation under the statute for a particular model year is *compliance,* rather than producing a fleet in that year which achieves the level of the standard for that year and, thus, the existence of credits may influence manufacturer decisions about CAFE compliance.

To the extent that Ford expected through most of the 1986 to 1988 time period to be able to meet the MY 1989 standard by using credits, that company in fact had no legal *duty* to make additional efforts to achieve 27.5 mpg. Since the concept of "reasonable" or "sufficient" efforts ultimately owes its existence to a legal duty, the concept has little meaning where a manufacturer does not have a duty, due to credits.

NHTSA observed in the NPRM that Ford, in an earlier submission, indicated that its compliance with the statute would be achieved by using credits earned by exceeding the standard in other years. The agency noted that *if* that company decided not to make product-related efforts to achieve 27.5 mpg in MY 1989-90 in light of credits from other years, such a decision would be acceptable under the statute. The agency also observed, however, that if a manufacturer chooses, in light of the flexibility offered by the credit provisions, not to make the efforts necessary to achieve the level of a standard for a particular model year, it would be inconsistent with the statutory scheme for the agency then to exercise its discretion to lower the standard solely on the basis of that manufacturer's inability to meet the standard.

NHTSA is not exercising its discretion to lower the standard solely on the basis of Ford's capability. Therefore, there is no need to resolve the issue of how to analyze the "reasonableness" of a manufacturer's efforts to achieve 27.5 mpg in light of the availability of credits. NHTSA notes again, however, that Ford has made significant progress in trying to improve its CAFE, especially in the last few years.

VIII. The Effect of Fuel Economy Standards on Safety

One of the petitions filed in this proceeding was from the Competitive Enterprise Institute (CEI), asking the agency to reduce the CAFE standards for model years 1989 and 1990 to 24.0 mpg, the fuel economy level CEI asserts would be achieved if there had never been any fuel economy standards and would be none in future years. The basis for this request is CEI's further contention that CAFE standards that exceed 24.0 mpg would have adverse safety consequences.

After the agency's proposal was published for comment, CEI and several other commenters again asked the agency to conclude that CAFE standards result in vehicle downsizing, and that downsizing, in turn, degrades safety. CEI and the other commenters advocate a CAFE standard around 24.0 mpg, which they believe would be the CAFE level of the fleet in the absence of CAFE standards.

CEI's argument is based on finding a direct relationship between vehicle weight and vehicle safety and saying that the CAFE program has caused manufacturers to reduce vehicle size. CEI claims that a standard set at 26.5 mpg will cause 1,500–2,800 excess fatalities in the MY 1989 fleet as compared to the fatalities that would have occurred in the absence of the CAFE standards.

CEI relies on the premise that heavier cars are generally safer for vehicle occupants than smaller cars, other things being equal. CEI then notes that downsizing (reducing vehicle weight and exterior dimensions) has been extensively used by the manufacturers as a means of improving CAFE. CEI states that these reductions in car size and weight have resulted in less protection for occupants of these cars. CEI concludes that the CAFE standards are responsible for current car sizes and weights and thus, the CAFE standards are also responsible for a reduction in the level of safety otherwise available to the vehicle occupants. CEI further concludes that if there were no CAFE standards, or if the standard were set so low as to be the substantial equivalent of no standard, the size and weight of current cars would be significantly greater.

In support for these assertions, CEI attached a copy of a paper entitled "The Effect of Fuel Economy Standards on Automobile Safety" by Robert W. Crandall and John D. Graham (1988). For convenience, this paper is referred to as "Crandall/Graham" throughout the remainder of this discussion. Crandall/Graham estimated that a 27.5 mpg standard for the 1989 model year would result in 2,200 to 3,900 additional occupant fatalities and 11,000 to 19,500 additional serious injuries to occupants, as compared to expected fatalities and serious injuries absent any CAFE standard.

CEI concluded its argument with the following statement of its position:

> "Neither Congress nor this agency has made any express determination that energy conservation under CAFE should require the loss of human life. It is CEI's position that, absent such a determination, a CAFE standard which *does* result in the loss of life is impracticable and is beyond the "need of the Nation to conserve energy" under [15 U.S.C.] subsection 2002(e). In short, such a standard has no statutory authorization." (Emphasis in original.)

Other commenters and participants at the public meeting also addressed the question of whether there would be safety impacts associated with the 1989 model year CAFE standards. Most of the other commenters that addressed the safety issue associated themselves with the Crandall/Graham theory. These commenters included Consumer Alert, the Heritage Foundation, and the Council of Economic Advisors.

Making a similar point, but based on different information, was the Insurance Institute for Highway Safety (IIHS). IIHS claimed that car size (defined as wheelbase length), as opposed to weight, is an important factor in the protection afforded to vehicle occupants, because large cars, due to their larger crush space, offer greater occupant protection than small cars. IIHS asked the agency to carefully evaluate the effects of the CAFE standard for the 1989 model year, to ensure that the CAFE standard will not degrade the level of occupant protection offered in 1989 cars by forcing manufacturers to decrease the size of those cars. The IIHS testimony at the public hearing stated:

> ". . . there is a point beyond which weight cannot be reduced without making vehicles smaller and thereby compromising safety. Furthermore, it seems probable that much of the potential weight reduction possible from the use of lighter weight materials has already been accomplished. Therefore, NHTSA must carefully evaluate the regulatory effects of the fuel economy standards to ensure that they do not degrade safety by forcing decreases in car size. At this time, it seems certain that any toughening of the CAFE requirements would lead to smaller and therefore less safe cars."

Conversely, IIHS suggested that safety could be affected negatively by a lower CAFE standard for 1989, if a lower standard results in larger numbers of larger displacement, high performance engines. IIHS suggested that larger engines would lead to greater performance, and that increases in performance increase the chances of a car being in a crash and the chances of the occupants being killed or injured. The National Safety Council filed comments making points similar to those raised by IIHS.

The Center for Auto Safety (CFAS), on the other hand, stated at the public meeting that there is no evidence that CAFE standards have a negative impact on the safety of vehicle occupants. CFAS stated that, in 1975, when the average fuel economy of the new car fleet was about 14 mpg, there were 3.6 fatalities per 100 million vehicle miles traveled. In 1988, when the average fuel economy of the new car fleet was about 28.4 mpg, fatalities per 100 million

vehicle miles traveled had decreased to 2.4. According to CFAS, these statistics suggest that manufacturers can improve both safety and fuel economy at the same time.

CEI's comments on the NPRM for the 1989 model year CAFE standard made two additional points about the safety implications of CAFE standards. First, CEI alleged that smaller cars are less compatible with roadside objects, such as guardrails and break-away light poles, that were designed for a heavier vehicle population. CEI suggested that this poses additional hazards to occupants of smaller cars. Second, CEI stated that it knew of no evidence to suggest that cars with higher performance, because of larger engines, negatively affect the safety of occupants. Moreover, CEI argued that even if high performance cars present a real safety hazard in their own right, such cars would have little impact on overall safety because of their small market share.

In its comments on the NPRM, CFAS stated that it disagreed with CEI's basic thesis that CAFE standards have a negative impact on safety by forcing manufacturers to sell less safe, smaller cars. According to CFAS, fuel-efficient large cars can be and have been built, while small cars with very effective occupant protection can be and have been built. Further, CFAS suggested that any reduction of the CAFE standard for the 1989 model year would result only in higher performance and bigger engines in existing car designs, which would negatively affect occupant safety, instead of resulting in larger vehicles.

NHTSA notes that it has previously considered and rejected a similar contention by CEI with respect to the safety conseqences of the CAFE standards for the 1987-1988 model year CAFE standards. *See* 51 FR 35612-35613. While the new CEI arguments are very similar to the arguments they made in the previous proceeding, CEI now relies on the Crandall/Graham analysis discussed above.

The Crandall/Graham study relies on the assumption that the CAFE program has forced the downsizing of the fleet and is responsible for the fact that the current fleet of new cars is lighter than it would have been in the absence of CAFE. The agency agrees that cars in the new car fleet are, on average, about 1,000 pounds lighter now than they were in 1975. But, as the agency has noted several times in the past, this downsizing occurred primarily as a result of consumer demand for more fuel-efficient models, rather than a result of the CAFE standards. See, e.g., the preamble to the final rule for MY 1987-1988, 51 FR 35613. And, most downsizing occurred in the 1970's, when manufacturers were easily exceeding the applicable CAFE standards. The agency also observes that the weight of the new car fleet has not changed appreciably since the early 1980's, although the average fuel economy has improved each year. Thus, the agency does not agree that the CAFE program is the primary reason for the fact that the average new car is lighter than it was a decade ago.

On the other hand, NHTSA has noted in the past the possibility that higher CAFE standards could have an adverse effect on safety. For example, in the preamble to the final rule for MY 1987-1988, the agency stated,

> "Moreover, it is possible CAFE standards above 27.5 mpg could have a significant effect on safety, even in the longer run, to the extent that they might 'force' consumers into significantly smaller and lighter cars. Thus, were NHTSA to consier setting standards above 27.5 mpg in the future, it agrees that the issue of safety would warrant further attention." 51 FR 35613 (October 6, 1986).

Thus, while we do not agree with Crandall/Graham about the historic influence of the CAFE program on downsizing, we do agree with the assertion that in crashes involving vehicles of different sizes, with everything else being equal, the occupants of the smaller vehicle are at greater risk of serious injury than the occupants of the larger vehicle in multi-vehicle crashes. The agency also agrees that significant amounts of further downsizing could raise safety implications that should be considered if the agency were to consider higher CAFE standards in the future.

With regard to this proceeding, however, NHTSA concludes, for the reasons discussed below, that there is no evidence demonstrating adverse safety consequences that would be associated with a CAFE standard for the 1989 model year in the range of 26.5 mpg to 27.5 mpg.

First, it is clear that there is not a direct, linear relationship between a manufacturer's CAFE and the average weight of his fleet. For example, in Model Year 1988, the average weight of the GM fleet was 3,329 pounds, at a CAFE of 27.6 mpg, while the Ford fleet weighed an average of 3,248 pounds, with a CAFE of 26.5 mpg. This example illustrates the point that not all CAFE gains come at a price of reducing weight. Further, the new car fleet as a whole can illustrate the same point. The overall new car fleet (all domestics and imports combined) had an average fuel

economy of 28.2 mpg in MY 1987; yet, the average weight of a new car in MY 1987 was 3,100 pounds, a two pound *increase* in weight over the average weight of a 1982 new car, when the overall fleet average fuel economy was 26.6 mpg. Thus, it is clear that there are methods of improving fuel economy that do not depend on downsizing or weight reduction.

Second, based on the record of this proceeding, NHTSA concludes that the large manufacturers are unlikely to take any actions to add weight to the models already planned for sale during MY 1989. While the agency does anticipate mix shifts as a result of this proceeding, these shifts should occur as a result of the larger manufacturers capturing sales of comparably sized vehicles that would otherwise have been made by other manufacturers. Also, the standard set at 26.5 mpg should permit manufacturers to retain passenger car customers that might otherwise have purchased a light truck or van. This conclusion is consistent with the agency's overall conclusion that this decision will have a negligible effect on energy consumption, because consumers will be shifting their purchases from one car manufacturer to another or from the light truck (minivan) fleet back to the passenger car fleet. So, if the market shifts result in a heavier fleet for the company that gains the sales in the larger/luxury car segment, those shifts would also result in a lighter fleet for the company that loses the sales. The overall net effect on the average vehicle weight for the new car fleet for MY 1989 should be negligible.

This conclusion is supported in the record by the testimony of the large car manufacturers, both of which testified at the hearing that they would not make design changes (such as adding or deleting weight) to their MY 1989 models as a result of this rulemaking. The manufacturers also strongly agree with the agency's conclusions about mix shifting, because they have experienced such shifts. They believe that consumers who intend to purchase a larger vehicle will do so; they will not be "forced" into a smaller vehicle than wanted. If GM and Ford cannot produce such a vehicle, due to CAFE, then the consumer will buy a large car from another manufacturer, or will buy a minivan, or will keep his older, large car. One of those outcomes is more likely than the possibility that the consumer will buy a smaller car than he wanted to buy.

While the agency generally agrees with the principle that, in multi-vehicle crashes, heavier cars are safer than lighter cars, other things being equal, we also believe that any implications of that principle for the CAFE program are appropriately considered in the longer term, not the short, one-year time frame of this rulemaking proceeding. This agency would closely examine the safety consequences of any regulatory proposal to raise the CAFE standard if the effect of a standard set too high were to force drastic mix shifts for the fleet *as a whole* toward very small cars. If the agency concluded that such a shift would be adverse to safety, it would not set the standard at that level.

In response to the CEI comment that neither this agency nor Congress has considered the potential safety consequences of the CAFE standards, the agency notes that it has considered the safety impacts of CAFE standards in its rulemaking actions since the beginning of the CAFE program. The agency's first final rule on CAFE established passenger car standards for the 1981-1984 model years included a discussion of the safety impact of the standards. *See* 42 FR 33534, at 33551, June 30, 1977. The relationship between safety and fuel economy standards was also discussed in the final rule amending the passenger car fuel economy standards for the 1986 model year (50 FR 40547-40548, October 4, 1985), and in the final rule amending the 1987-88 passenger car fuel economy standards (51 FR 35612-35613, October 6, 1986). Hence, the agency does not agree with the contention that it has not considered the safety issue in issuing CAFE standards. As to congressional consideration of the safety consequences of CAFE, the agency points to the 1974 report to Congress from the Department of Transportation and the Environmental Protection Agency entitled "Potential for Motor Vehicle Fuel Economy Improvements: Report to the Congress," October 24, 1974. This report, which was considered by Congress during the decision to enact the CAFE program, contained a discussion of the possible trade-offs in the areas of improved fuel economy, lower emissions, and increased occupant safety. The report summary noted that a sustained or increased shift to small cars, without a concurrent upgrading of their occupant protection capability, would likely lead to an increase in the rate of highway deaths and serious injuries. Thus, the agency cannot agree that Congress was unaware of the potential safety consequences of a downsized fleet of cars.

In response to the CFAS comment that there are a number of improved safety technologies that could offer better crash protection to occupants of some small cars than is afforded in some larger cars currently on the road, the agency does not disagree. However, if those same technologies were installed

on the larger cars, as well, then the occupants of the larger car would be safer than the occupants of the equally equipped smaller car in a multi-vehicle crash.

In sum, the agency agrees with the commenters that NHTSA should consider whether there would be adverse effects on safety of a CAFE standard that forced manufacturers to do substantial additional downsizing of the passenger car fleet. Consistent with its past regulatory practices, the agency would carefully evaluate whether there were any such adverse effects in future CAFE rulemakings, and would not tolerate any CAFE standard that presented significant threats to safety.

IX. The Effect of Other Federal Standards on Fuel Economy

In determining the maximum feasible fuel economy level, the agency must take into consideration the potential effects of other Federal standards. The following section discusses: (a) other government regulations, both in process and recently completed, that may have an impact on fuel economy capability; and (b) comments received on this issue. As to the latter, the agency notes that this general area generated relatively few comments as compared to other areas addressed by the NPRM. Mercedes commented generally that the CAFE law can have a significant adverse effect on innovation in vehicle design, including safety aspects. While this commenter said airbags and antilock braking systems "add to vehicle weight and handicap achievement of the required CAFE," Mercedes did not provide specific information in its discussion that would enable the agency to ascertain exactly what those negative effects would be. Ford and GM commented briefly on certain issues in this area.

IX-A. NHTSA standards

As discussed in both the FRIA and NPRM, several relatively recent changes in Federal safety and damageability requirements could have an effect on CAFE. These include an amendment to the agency's lighting standard, which permits greater aerodynamic efficiency and implementation of automatic restraint requirements.

1. Lighting: With respect to the amendments to Federal Motor Vehicle Safety Standard 108, *Lamps, Reflective Devices, and Associated Equipment,* to permit the use of replaceable light source headlamps, smaller sealed beam headlamps, and lower headlamp mounting height, the FRIA concludes that the 2 to 3 percent improvement in aerodynamic drag associated with the new headlamp assemblies could produce a 0.4 to 0.9 percent improvement in fuel economy. For a 27.5 mpg fleet, this would equate to a 0.11 mpg to 0.25 mpg improvement in CAFE if all vehicles in that fleet employed the new lamp designs. Both Ford and GM are making extensive use of this new flexibility, and NHTSA estimates that there could be some slight gain (probably less than 0.1 mpg on a fleet average basis) in fuel economy from previous projections.

Related to this issue is the NPRM's reference to an assertion made by GM in its August 1988 docket submission that composite headlamps have been partially responsible for its "C" and "H" carlines moving into a higher EPA test weight category, producing a negative CAFE effect. NHTSA notes that in its September 14, 1988, testimony and in its September 15, 1988, docket submission, GM stated that the aerodynamic improvements made possible by the use of composite headlamps would produce a CAFE benefit in most cases. GM's latter statements accord with the agency's belief (that was formulated based on data supplied in 1983 by Ford relating to the amendment of Standard No. 108) that the new headlamps would produce a CAFE benefit.

2. Automatic occupant crash protection: A July 1984 amendment to Federal Motor Vehicle Safety Standard 208, *Occupant Crash Protection,* specified the phase-in of automatic protection requirements beginning in model year 1987, with 40 percent phased in by MY 1989 and 100 percent implementation by MY 1990. The agency has developed its own estimate of the average incremental weight of automatic restraint systems. As noted in the FRIA, the agency's current best estimates of typical system incremental primary weights over manual belts are as follows: front seat airbag, approximately 21 pounds; non-motorized automatic belts, approximately 11 pounds; and motorized automatic belts, approximately 15 pounds. Neither GM nor Ford claimed during the Standard No. 208 rulemaking a specific weight penalty associated with these 208 requirements. Both stated, however, that there would be weight increases, and depending on the success or failure of weight-reducing efforts, as well as some weight-increasing pressures (options packages), that it is not unlikely that certain vehicles equipped with automatic restraints could result in the vehicle being placed in the next higher EPA test weight class. This would have a negative effect on EPA fuel economy rating for these vehicles and thus on the manufacturer's CAFE levels as well.

In its comment on the present rulemaking, Ford said that passive restraints on its 1987 Escort and 1988 Tempo/Topaz added significant weight (approximately 26-27 pounds). However, Ford did not provide any basis for this estimation that could help explain the marked difference between the agency's estimate of the average weight of a motorized automatic belt system and Ford's estimated weight of its system. Accordingly, since the agency's 15 pound figure is an average based on teardown studies of various motorized belt systems, NHTSA believes it is the best estimate of a typical system and an appropriate measure to use when calculating the average effect of the passive restraint requirement on the weight of the 1989 MY fleet.

Ford did not provide the agency with specific information on the type and quantity of the passive restraints it will use to certify its vehicles to Standard No. 208 in MY 1989. However, since only 40 percent of the 1989 MY fleet need meet the automatic restraint requirements and because information available to the agency indicates that the principal means of compliance with those requirements will be through automatic belts, the FRIA estimates the fleet average weight effect of Standard No. 208 for the 1989 MY fleet would be approximately 6 pounds (.4 × 15 pounds). That weight penalty is expected to have only a very minor impact on CAFE. For those vehicles equipped with air bags, the penalty will be somewhat higher.

3. Rear seat lap/shoulder belts: On June 16, 1987, the agency published an advance notice of proposed rulemaking (52 FR 22818) requesting comments on the possible requirement to install lap/shoulder belts in rear seating positions of passenger cars, multipurpose vehicles and small buses. In its Preliminary Regulatory Analysis for the ANPRM, the agency estimated that each single outboard seating position would incur a marginal weight increase of 0.6 pounds for attaching hardware and belt webbing. The marginal weight increase for each center seating position was estimated to be 2.4 pounds since a reinforcement plate and retractor and housing would also be required. However, for models that are near the limit of an EPA test weight class, even this relatively small change could move some vehicles into a higher weight class, decreasing its measured fuel economy. The agency notes that GM expects all of its carlines to have such restraints installed in MY 1989.

4. Side impact protection: On January 27, 1988, the agency published a proposed rule (53 FR 2239) to upgrade its test procedures and performance requirements for side impact protection for passenger cars. The agency is focusing on two ways of improving the side impact performance of passenger cars: adding padding on the door and increased structure to reduce intrusion. Specific weight penalties are not known yet, and will depend on such factors as final performance requirements, chosen countermeasure, and baseline vehicle performance. The agency has not considered any negative effect of this proposed standard on CAFE performance, since any final rule on this subject would not apply to the MY 1989 under consideration in this rulemaking.

5. New car assessment program: Title II of the Cost Savings Act requires NHTSA to develop and disseminate comparative information on the crashworthiness, damage susceptibility and ease of diagnosis and repair of motor vehicles. The agency's experimental New Car Assessment Program (NCAP) addresses the crashworthiness aspect of Title II by providing comparative frontal crashworthiness safety performance information, in the form of dummy injury measurements, on selected vehicles which are crashed head-on into a fixed barrier at 35 mph. Due to the very nature of NCAP that encourages consumers to compare products, and because the vehicles tested in NCAP are subjected to a crash that is approximately 36 percent more severe than the 30 mph crash required by Standard No. 208, the agency believes that the program induces many manufacturers to make voluntary improvements in front end design and occupant compartment protection features. One such feature is the air bags, which has a weight penalty.

6. Voluntarily installed safety features: The agency notes that manufacturers are also increasing the weight of their vehicles, at the cost of losing CAFE, by voluntarily installing safety features in their cars. The use of airbags in place of automatic safety belts and the production of rear seat shoulder belts and antilock brakes are items of safety equipment that improve occupant safety while adding weight to the vehicle. GM, for example, is the leader in installing rear seat shoulder belts (all of its MY 1989 cars will have them as standard equipment) and offering antilock brakes (offered on 8 carlines in MY 1988). In addition, other safety devices could be added to vehicles were it not for CAFE constraints. For example, GM told the agency it could not offer daytime running lamps on its cars because their CAFE would decline by almost 0.3 mpg as a result. The agency is concerned that overly stringent CAFE standards might discourage manufacturers from these and other voluntary safety actions.

IX-B. EPA standards

1. Noise standards

The agency is not aware of any plans on the part of the Environmental Protection Agency to promulgate noise regulations during the time period under discussion. Accordingly, no fuel economy penalties from noise regulations have been forecast.

2. Emissions standards

EPA has not announced any plans to modify its current exhaust emission control requirements for hydrocarbons, carbon monoxide, and oxides of nitrogen. Therefore, the agency has not considered any further impacts on fuel economy from control of these pollutants. As discussed in the FRIA, the agency has analyzed previously the effects of the current requirements on fuel economy.

Also discussed in the FRIA is EPA's tightening control of particulate matter that became effective in MY 1987. While this requirement applies to all vehicles, the only current production powerplant which will have difficulty meeting this requirement is the diesel engine. EPA has indicated that there is a 1 to 2 percent fuel economy penalty for diesel powered vehicles that require a particulate trap to comply with the standard; however, the agency believes that only a very small fraction of the diesel vehicles (those with larger displacement engines) will need traps for compliance. GM and Ford have both discontinued all domestically produced diesels. Thus, the more stringent particulate standard will not have an impact on the CAFE capability of these two manufacturers.

In July 1987, EPA issued a proposed rule on the on-board control of refueling emissions. The proposal would limit gasoline vapor emissions to 0.10 grams of vapor per gallon of dispensed fuel. The agency has not taken this future rulemaking into its estimates of CAFE levels for two reasons. First, it is still only a proposal. NHTSA and others have expressed safety concerns, which must be resolved before a final decision is made on whether to require such systems. Second, the final rule, if and when issued, would not take effect until at least two model years after that point, which is beyond the model years that are the subject of this rulemaking.

The California Air Resources Board (CARB) has adopted a new requirement that will require 50 percent of all MY 1989 light duty passenger cars and 90 percent of MY 1990 passenger cars to meet a 0.4 gm/mi NOx standard. GM has indicated that this requirement will result in a 4 to 5 percent negative impact on the fuel economy of approximately 300,000 of its vehicles. Ford has not claimed specific CAFE losses due to the California NOx requirements. Half of all vehicles certified to the Federal NOx standard are already below the California standard of 0.4 gm/mi level. While they may not be far enough below to ensure compliance, CARB believes that its standard can be met with little or no degradation in fuel economy using refined emission control technology calibrations and higher catalyst loadings. NHTSA has accepted GM's assertion of a CAFE reduction in this area for MY 1989, since more stringent emission standards generally have a more pronounced impact during the first few years following their implementation. The agency notes, however, that data from CARB and EPA indicate that it is unlikely this penalty will last past a several year period during which manufacturers will be gaining experience certifying at the new CARB level.

3. Fuel economy test procedure

The Environmental Protection Agency published a final rule on July 1, 1985, providing CAFE adjustments to compensate for the effects of past test procedure changes (See 50 FR 27172). The final rule adopted a formula approach for calculating CAFE adjustments. The manufacturer projections discussed above include the effect of the EPA test adjustment credit. Due to the formula approach, the specific value of the credit may vary for different model years and among manufacturers. A typical credit for the model years in question would be 0.2–0.3 mpg.

X. The Need of the Nation to Conserve Energy

Since 1975, when the Energy Policy and Conservation Act was passed, this Nation's energy situation has changed significantly. Oil markets were deregulated in 1981, permitting consumers to make choices in response to market signals and allowing the market to adjust quickly to changing conditions. The U.S. Strategic Petroleum Reserve (SPR) was built to ensure a supply of oil during any major supply disruption. In July 1988, the SPR contained 551 million barrels of oil, stored principally in underground caverns, that could be pumped back to the surface if needed.

The United States imported 15 percent of its oil needs in 1955. The import share had reached 36.8 percent by 1975, and peaked at 46.4 percent in 1977, at a cost of $71 billion (stated in 1986 dollars). While the import share of total petroleum supply declined after

that year, the cost continued to rise to a 1980 peak level of $99 billion (1986 dollars). By 1985, the import share had declined to 28.7 percent at a cost of $52 billion (1986 dollars). In addition, imports from OPEC sources declined through 1985, from a high of 6.2 million barrels per day (MMB/D) and 70.3 percent of all imports in 1977 to 1.8 MMB/D and 36.2 percent of imports in 1985.

Since 1985, the import share of petroleum supply has been increasing. Between 1985 and 1986, net imports rose from 28.7 percent of the U.S. petroleum supply to 34.6 percent. In 1987 that figure was 37.1 percent, and for the first six months of 1988, net imports accounted for 38.1 percent of total supply. Due to sharply lower petroleum prices, however, the value of imports declined from 1985 to 1987, from $52 billion to $43 billion (1986 dollars).

Imports from OPEC sources have also increased. Between 1985 and 1986, imports from OPEC rose from 36.2 percent of all imports to 45.6 percent. In 1987 that figure was 45.8 percent, and for the first six months of 1988, imports from OPEC accounted for 47 percent of all imports.

In its comment to the docket, which neither supported nor opposed NHTSA's proposal, the Department of Energy (DOE) expressed concurrence with NHTSA's description of the current energy situation, but DOE emphasized several issues about transportation's role in U.S. oil use and the importance of rising fuel efficiency. DOE said that the 11 MMB/D used by the transportation sector in 1986 is almost 80% of total U.S. fuel use of oil and over 90% of the critical light product use. Thus, DOE wanted NHTSA to consider that any significant moderation in growing oil demand will require large transportation efficiency improvements. DOE also emphasized that the 1987 Energy Information Administration's (EIA) oil demand forecasts used in the NPRM assume that average new car efficiency will continue to improve, which DOE said does not seem likely given fuel economy trends (at least to the levels assumed by EIA), and that even with these projected increases in fuel efficiency U.S. oil demand is projected to increase over 1.5 MMB/D by 2000.

Several other commenters also expessed concerns about the need of the Nation to conserve energy. The American Council for an Energy-Efficient Economy (ACEEE) opposed the agency's proposal based on the commenter's concerns that reducing the CAFE standard would lead to higher oil consumption and imports, with an attendant reduction in national security and increases in the trade deficit, air pollution levels, and environmental change. The Americans for Energy Independence (AEI) opposed a reduction, stating that oil consumption levels in the U.S. thwarted energy independence and that conservation gains in transportation could be enough to offset oil production losses in the 1990's. The Natural Resources Defense Council (NRDC) said that NHTSA should increase and not decrease the 1989 MY CAFE standard due to an "overriding economic national security and environmental importance."

NHTSA concurs with the commenters that the current energy situation and emerging trends illustrate the continued importance of oil conservation. As explained in the NPRM, oil continues to account for well over 40 percent of U.S. energy use, and 97 percent of the energy consumed in the transportation sector. While the U.S. is the second-largest oil producer, it contains only 3 percent of the world's proved oil reserves. Moreover, proved reserves have declined from a peak of 39.0 billion barrels in 1970 to 26.9 billion barrels in 1986. The NPRM also referenced 1987 Energy Information Administration (EIA) projections which found a decline in domestic production of oil and an increase in net imports. (*See,* 53 FR 33089 and NHTSA's final regulatory impact analysis which has been placed in the agency's docket section.) That discussion of the EIA projections was a subject of concern for DOE, which wanted to make clear NHTSA's understanding that the EIA forecasts assumed continued improvements in average new car efficiency. NHTSA acknowledges DOE's remark and notes that the comment reinforces NHTSA's belief that the level of oil imports, and the Nation's need to conserve energy, remains an issue for the Nation as a whole.

While the agency has concluded that there is a continuing need for the Nation to conserve energy, NHTSA would like to emphasize the following five points in light of their importance for this rulemaking action. First, future projections about petroleum imports are subject to great uncertainty. For example, the EIA's 1977 Annual Report to Congress projected that net oil imports by the U.S. would, in the "reference case," reach 11 MMB/D by 1985. Net imports in 1986 actually were 5.4 MMB/D, less than half the level predicted in 1977.

Second, related to the above, the agency believes that the Nation is in a stronger energy position than was the case in the mid-1970's. The Nation's sources of oil imports are more diverse and less vulnerable to disruption, the Nation's energy efficiency is much higher, and the absence of price controls permits the

market to more easily respond to changes in supply and demand.

Third, NHTSA must balance the need to conserve energy with three other factors in determining the maximum feasible level for the 1989 MY fuel economy standard. However, as noted above, Congress has given the Department wide latitude in balancing these conflicting policies. Thus, the agency cannot deem this or any other factor to be the "overriding" one, as suggested implicitly by NRDC. As the court noted in affirming the agency's MY 1985 light truck CAFE standard,

> "[I]t would clearly be impermissible for NHTSA to rely on consumer demand to such an extent that it ignored the overarching goal of fuel conservation. At the other extreme, a standard with harsh economic consequences for the auto industry also would represent an unreasonable balancing of EPCA's policies." *Center for Auto Safety v. NHTSA,* 793 F.2d at 1340.

Fourth, while NHTSA agrees that the need to conserve energy is important, the agency believes that Congress' quantified goal of energy conservation through improved automotive fuel efficiency has been realized (even though much of that improvement appears to be the result of market forces, instead of the operation of the CAFE law). The FRIA finds that passenger automobile fuel consumption decreased from an estimated 5.13 MMB/D in 1973 to 4.64 MMB/D in 1986, a 10 percent reduction. The passenger automobile share of total highway fuel consumption decreased from 71.2 percent in 1973 to 56.8 percent in 1986. The passenger automobile portion of total transportation oil consumption decreased from 56.7 percent in 1973 to 49.0 percent in 1980 and 45.5 percent in 1986. The passenger automobile fleet's share of total oil consumption declined slightly from 29.6 percent in 1973 to 28.5 percent in 1986. (The fuel economy of the total new car fleet is now even higher than the goal set by Congress—28.7 mpg for MY 1989, compared to the 27.5 mpg target in the statute.) These decreases in actual fuel consumption and in the passenger automobile fleet's share of fuel consumption took place even as the number of passenger automobiles registered increased from 102 million in 1973 to 135 million in 1986, and total travel increased from 1.05 trillion miles to 1.30 trillion miles.

Fifth, to the extent there is still a "need" to stimulate further fuel efficiency and energy conservation, the CAFE mechanism is largely ineffective. As discussed previously, the likely effect of a higher standard in MY 1989 would be to shift sales and jobs away from domestic manufacturers and toward foreign manufacturers, with little or no improvements in actual fuel economy. As the Department of Energy noted in its comments: "the Department is completely unconvinced that the standards are useful in actually achieving energy savings in today's market."

XI. Amending the MY 1989 Standard

As discussed above, section 502(a)(4) gives the Department considerable discretion in setting a CAFE standard below 27.5 mpg. *Public Citizen v. NHTSA,* 848 F.2d 256 (D.C. Cir. 1988); *Center for Auto Safety v. NHTSA,* 793 F.2d 1322 (D.C. Cir. 1986). In determining the maximum feasible average fuel economy level, and hence the level of the standard, section 502(e) requires the agency to consider four factors: technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the Nation to conserve energy.

XI-A. Interpretation of "feasible" and "economic practicability"

In the August NPRM, the agency noted that it has traditionally interpreted "feasible" to refer to "whether something is capable of being done, taking into account the four statutory criteria mentioned above." As discussed several times in this notice, the statute does not elevate any one of these criteria above the others, nor does it provide guidance to the agency in weighing any of these criteria more heavily than any others. Rather, the standard set is "the result of a balancing process specifically committed to the agency by Congress." *Center for Auto Safety v. NHTSA,* 793 F.2d 1322, 1341 (D.C. Cir. 1986). For example, the agency's determination of the "maximum feasible" standard cannot be that level which is merely that maximum technologically feasible without regard to the economic practicability of such a level.

In the final rule reducing the MY 1986 CAFE standard for cars, the agency stated the following about "economic practicability":

> "NHTSA has always considered market demand in establishing CAFE standards as that factor is an implicit part of the consideration of economic practicability. In a free market economy, market demand is one of the primary determinants of what manufacturers will be able to sell. As the agency has noted before, consumers need not purchase what they do not want. A standard set without regard to market

demand could be overly stringent and economically practicable." 50 FR 40546, October 4, 1985.

And the Circuit Court upheld this view against suggestions that the agency "improperly elevated consideration of market forces and consumer demand, and impermissibly subordinated the statute's 'technology-forcing' design." *Public Citizen v. NHTSA,* 848 F.2d 256, 259 (D.C. Cir. 1988).

Again this year we believe that understanding the significance of market trends in assessing "economic practicability" is crucial to this rulemaking and the current competitive posture of the U.S. auto industry. This concern is underscored by Congress' recent enactment of the Omnibus Trade and Competitiveness Act discussed above. The major domestic manufacturers are confronting serious competitive forces. Among the most striking aspects of these forces are the decreases in the mid-size and large car size classes, the two classes in which the domestic manufacturers have been strongest and increases in the compact class, largely as a result of increased sales of compact cars manufactured by Asian manufacturers abroad or in this country. The shrinking large car sales jeopardize one of the domestic manufacturers' principal sources of income and earnings, as well as jobs in that segment. These funds will be needed to help finance the actions necessary to attempt to bolster sales of compact, mid-size and large cars, as well as to finance research into new technologies for safety, fuel economy, performance, and customer comfort and convenience. It is anticipated that the domestic manufacturers will have to supplement their efforts to accommodate consumer demand and to respond to competitive pressures from foreign manufacturers through new model offerings with increased performance and luxury options. Taking these steps will necessitate that the CAFE standard for MY 1989 provide latitude for the domestic manufacturers since the steps will adversely affect their CAFE (although not overall energy consumption as explained below).

XI-B. Industrywide considerations

In the NPRM, the agency noted that setting the CAFE standards must be based on "industrywide considerations." As the courts have found, "[s]tandards have an industry-wide effect and must take account of industry-wide concerns." *Center for Auto Safety v. NHTSA,* 793 F.2d 1322, 1339 (D.C. Cir. 1986).

The CAFE statute requires that, for each model year, there be a single standard for all passenger automobile manufacturers not exempted under section 502(c). Section 502 does not state expressly whether the concept of feasibility is to be determined in setting passenger automobile standards on a manufacturer-by-manufacturer basis or on an industrywide basis. The agency has therefore long interpreted this section in a manner that is consistent with the legislative history of Title V. The conference report accompanying Title V states, with respect to determining the maximum feasible average fuel economy level:

> "Such determinations should therefore take industrywide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the [Administrator] must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual automobile manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic automobile manufacturers that currently exist, and the possible implications for the national economy and for reduced competition association (sic) with a severe strain on any manufacturer. However, it should also be noted that provision has been made for granting relief from penalties under section 508(b) in situations where competition will suffer significantly if penalties are imposed." (S. Rep. No. 94-516, 94th Cong., 1st Sess. 154-5 (1975))

In the NPRM, the agency explained the term "industrywide considerations," and the conference report discussion cited above, as follows:

> "This language expresses two themes: first, a Congressional goal of improved fuel economy for the nation and second, fuel economy standards which are set at the maximum feasible level. NHTSA has construed this language many times. For example, as the agency stated in the 1977 notice establishing the MYs 1981-84 standards for passenger automobiles, Congress did not intend that standards simply be set at the level of the single least capable manufacturer. Setting standards in that fashion would have vitiated the CAFE program. This point can be illustrated by considering the effects of setting a standard at 19.0 mpg, based on the capability of a single manufacturer with a market share

of less than one percent. Such a standard would have no possible impact on the balance of the manufacturers which, together produce more than 99 percent of all cars and have higher average fuel economies.

"Since this initial interpretation, the agency has expanded its position, noting that the statute comtemplated that standards should not be set above the capability of manufacturers whose sales represent a substantial share of the market. (50 FR 29912, 29923) This would apply either to a single larger such manufacturer or to a combination of smaller manufacturers constituting together a substantial share of the market. In the final rule reducing the MYs 1987-88 standards, the agency concluded that the particular compliance difficulties of several of the European manufacturers, whose combined market share is relatively small, was not legally sufficient to justify a standard set far below the capabilities of the other manufacturers. (51 FR 35617)

"The agency does not believe that Congress intended the CAFE standards to be governed by the abilities of a single, narrow segment of the industry, such as the projected 0.8 percent market share of Mercedes in MY 1988, or even the 6.7 percent combined market share of European manufacturers in that model year. (It also should be noted that the 6.7 percent reflects all European manufacturers; 3.2 of those 6.7 percentage points represent European manufacturers that already achieve or exceed 27.5 mpg, i.e., Volkswagen/Audi and Yugo.)" 53 FR 33085.

Mercedes-Benz and AIA took exception to the agency's position regarding "industrywide considerations" and the setting of CAFE standards. Mercedes-Benz stated that although limited line manufacturers like itself have taken all feasible measures to improve fuel economy, consumer demand prevents such manufacturers not only from meeting the existing standard of 27.5 mpg for MY 1989, but also the lowest proposed standard of 26.5 mpg. Mercedes argued that the CAFE standards were irrelevant and discourage safety innovation and that therefore the balancing of competing considerations dictated that the agency should set a standard attainable by limited line manufacturers. Mercedes stated in its petition that such a standard would be approximately 22 mpg. Mercedes argued there that NHTSA had the authority to promulgate a standard of 22 mpg, citing *Immigration and Nationalization Service v. Chadha,* 462 U.S. 919 (1983) and *Gulf Oil Corp. v. Dyke,* 734 F.2d 797, 802 (T.E.C.A. 1984) *cert. den., Dyke v. Gulf Oil Corp.* 469 U.S. 852 (1984). The latter case, involving provisions of EPCA relating to decontrol of crude oil, residual fuel oil, or any refined petroleum product, held the legislative veto provision in section 551 of EPCA to be severable from the rest of the statute. Mercedes argued alternatively, focusing on the language in section 502 of EPCA regarding the legislative veto, that Congress would have preferred a statute providing for improved motor vehicle energy efficiency and permitting reduction of the 27.5 mpg goal as necessary to no statute at all.

Mercedes argued that NHTSA's current approach to taking industrywide considerations into account focuses only on the two large, multi-line manufacturers, Ford and General Motors. This approach, according to Mercedes, confers a competitive advantage for those large manufacturers, and results in standards whose effect is not to produce additional energy savings, but only to impose penalties on limited line manufacturers.

AIA, which represents most of the limited line manufacturers which are the focus of Mercedes' comments, also argued against the agency's approach to "industrywide considerations." AIA said that approach "conflicts with both the technological feasibility and the economic practicability factors because it gives insufficient weight to consumer demand." If the standard were set based on proper consideration of the limited line manufacturers, AIA said that the standard would be less than 26 mpg. However, AIA believes that NHTSA is barred from setting a standard below 26 mpg because, in its view, the agency's authority to do so is inseverable from the legislative veto to which the exercise of that authority was subject before *Chadha.*

The agency believes that its approach to industrywide considerations is fully consistent with EPCA. Although the conference report on EPCA clearly states a congressional interest that NHTSA be particularly mindful of the effects of implementing the CAFE program on the domestic manufacturers (S. Rep. No. 94-516, 94th Cong., 1st Sess. 154-5 (1975)), the agency's analysis is not limited to those manufacturers. NHTSA's approach involves consideration of the capabilities of 100 percent of the manufacturers and the energy savings and compliance difficulties associated with different levels of standards. The approach results in the selection of a

standard achievable by virtually all U.S. and Asian manufacturers and some European manufacturers that together represent over 95 percent of all cars sold in this country. Only certain European manufacturers, which concentrate on the production of larger, generally high-performance luxury cars and represent approximately 3.5 percent of all cars sold in this country, have not been projected to be capable of meeting the standards in recent years.

NHTSA believes that setting the standards at the level achievable by the least capable of the manufacturers (or group of manufacturers) with a substantial share of the market instead of the level of the limited line manufacturers of larger, luxury cars is most consistent with the energy saving goals of EPCA. While the agency believes that the bulk of the fuel economy improvements over the last decade were due to market forces (rising fuel prices, changing consumer demand, and greater foreign competition), the goal of the statute was to provide an additional incentive for the manufacturers to achieve and maintain levels of CAFE reflecting their maximum capabilities. Even if the contribution of CAFE standards to energy conservation appear to have been slight, EPCA reflects a congressional judgment about the value of standards making such contributions. This agency is bound by that judgment. Setting the standards at the level requested by Mercedes would vitiate the fuel economy program and require NHTSA to disregard Congress' judgment regarding the CAFE standards.

XI-C. Determining the level of the MY 1989 standard

Taking account of the four factors of section 502(e), NHTSA determines that the maximum feasible average fuel economy level for MY 1989 is 26.5 mpg. This level balances the small potential petroleum savings, discussed elsewhere in this notice, associated with higher standards against the substantial difficulties of individual manufacturers, especially domestic manufacturers, facing potentially higher standards and the impacts of such standards on the automotive industry and the economy as a whole.

In making this determination, the agency has followed its consistent approach of analyzing the ability of manufacturers to meet the standard. It has not included as part of its calculation of the standard the ability to pay penalties for not meeting the standard, or the availability of, or need for, credits.

NHTSA recognizes, however, that the record of this rulemaking indicates that the availability of credits is relevant to how at least one manufacturer, Ford, is likely to respond to an amended MY 1989 standard. As indicated earlier, there is a distinction between *meeting* a standard for a given model year, i.e., achieving the level of the standard for that model year, and *complying* with the standard. Ford stated at the September 14 public hearing that it would not do anything different if the standard remained at 27.5 mpg than if it were reduced, since it has a compliance plan using credits. The credits in question are carryforward credits that have already been earned during MY 1986-88. The MY 1986 credits will expire if they are not used during MY 1989.

The issue of whether GM would have any carryforward credits available for MY 1989 was dependent throughout much of this proceeding on the outcome of a case before the U.S. Court of Apeals for the D.C. Circuit, *Center for Auto Safety v. Thomas,* which was decided on September 16, 1988. Now that the *en banc* court has vacated its opinion and judgment of May 17, 1988, denying the original petition for review and leaving EPA's decision in effect, GM will have some carryforward credits earned in MY 1988 that could be applied against a MY 1989, MY 1990, and/or MY 1991 shortfall. Thus, GM, like Ford, could comply with a 27.5 mpg standard for MY 1989 by use of carryforward credits that have already been earned, even if it achieves a MY 1989 CAFE level somewhat under 27.5 mpg. The agency assumes that GM would prefer to retain its MY 1988 credits as insurance against possible shortfalls in MY 1990-91, rather than to use them in MY 1989. NHTSA also notes that there could be further appeal of *Center for Auto Safety v. Thomas,* and that litigation is pending that challenges NHTSA's reduction of the MY 1987-88 passenger car CAFE standards, which raises at least some possibility that those MY 1988 credits may not be available.

As discussed above, NHTSA has concluded that the 26.5 mpg level represents the MY 1989 CAFE capabilities of both GM and Ford in their domestic fleets. Since GM produces about 36 percent and Ford about 21 percent of all cars sold in the U.S., and since the manufacturers responsible for most of the balance of the cars sold in the U.S. achieve higher CAFE's, the agency believes that CAFE standards set at the level of the least capable of the two major domestic manufacturers ensures that the standards can be met by manufacturers representing a very high percentage of the total car production for the U.S. In light of the language of the conference report, cited above, the agency believes that standards set in this fashion represent an appropriate balancing of "the benefits

to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers," particularly in light of the competitive threats faced by GM. NHTSA also believes that given GM's and Ford's large market shares, a CAFE standard set at a level above either of their capabilities would be inconsistent with taking industrywide considerations into account.

A higher CAFE standard would substantially complicate the efforts of GM to respond to the competitive pressures confronting it. Such a standard would limit its efforts through product and marketing actions to regain lost market shares since those actions would entail increased sales of cars and options likely to reduce its CAFE. In addition, a standard set at the level of GM's projection, 27.2 mpg, would not adequately take into account some uncertainties associated with the GM projection that could , if they materialized, cause a reduction in GM's actual CAFE for MY 1989. These include EPA test result variability.

The agency has concluded that GM and Ford, as well as the manufacturers of most other cars sold in this country, can meet the 26.5 mpg standard for MY 1989 without engaging in harmful production restrictions and without any significant restrictions on consumer choice. Thus, no job or sales losses should result from GM and Ford, as well as the manufacturers of most foreign vehicles sold in this country, meeting the standard; indeed, that standard should help preserve the ability of the two domestic companies to recapture sales and jobs from competitors. Further, there should be no adverse economic impacts on automobile dealers, suppliers, or automotive employees resulting from this standard.

NHTSA recognizes that the 26.5 mpg standard for MY 1989 is above the capabilities of approximately eight European manufacturers. For some of those manufacturers, the standard is several mpg above their capabilities.

Some of the European companies may thus be limited to two options: (1) paying the statutory penalties associated with failure to comply with fuel economy standards, or (2) drastic product actions which, in the case of some, could require radical changes in the mix of cars they import. While the agency appreciates these difficulties, the agency does not believe there is any alternative available under the statute. NHTSA concludes that amending the MY 1989 standard to levels below 26.5 mpg would be inconsistent with a determination of maximum feasibility that takes industrywide considerations into account, as required by statute. Both the individual market share of each of these European manufacturers and the combined market share of all eight of those manufacturers is very small, i.e., less than 4 percent.

While NHTSA believes that energy conservation is important, it does not believe that the slight potential petroleum savings associated with a higher standard would justify setting the standard at a higher level, particularly given the competitive pressures facing the domestic auto industry. In analyzing the potential energy savings associated with standards within a range of 26.5 mpg to 27.5 mpg, the agency believes that it is appropriate to focus on GM and Ford. Since the Asian manufacturers, as well as several of the European manufacturers, have CAFE levels well above 27.5 mpg, reflecting their concentration in the smaller size classes, a reduction in the MY 1989 standard does not create an incentive for those companies to change their product plans. Similarly, given Chrysler's current CAFE projections, the agency does not have any reason to assume that company would change its product plans as a result of a reduced standard. Finally, the agency does not have any reason to assume that the European manufacturers below the standard would change their product plans as a result of the reduced standard. They have not indicated any plans to attempt to achieve higher CAFE levels in order to meet even the reduced standard.

It is doubtful whether there would be any quantifiable energy savings resulting from maintaining the 27.5 mpg standard, although a maximum bond can be calculated. NHTSA notes that this conclusion is consistent with the Department of Energy's comment that it is completely unconvinced that the standards are useful in actually achieving energy savings in today's market.

NHTSA expects that GM will respond to the 26.5 mpg standard by attempting to increase its market share by selling larger or higher-performance cars that would otherwise have been sold by other manufacturers. While this course of action would reduce the CAFE of GM's domestic fleet, it would not increase overall energy consumption. Conversely, if GM were faced with a standard higher than 26.5 mpg, it would sell fewer larger cars and engines. However, in place of the vehicle sales foregone by GM, there would be sales of foreign, typically high-performance,

compact, and mid-size cars whose CAFE in many instances would not differ significantly from that of the GM cars that would have been sold in their place. To the extent that GM responded to a standard higher than 26.5 mpg by restricting availability of its larger cars and engines, some consumers might keep their older, less fuel-efficient cars in service longer. Alternatively, they might choose to purchase large pickup trucks and vans to obtain the room, power, and load-carrying capacity they desire. Obviously, neither of these possibilities would improve energy conservation.

NHTSA expects that Ford, consistent with its statement at the September 14 public hearing, will not change its product plan as a result of the 26.5 mpg standard.

Notwithstanding the improbability of any significant impact on conservation, the agency has calculated the maximum hypothetical difference in gasoline consumption between GM and Ford achieving 26.5 mpg in MY 1989 and their achieving 27.5 mpg. The amount would be 0.9 billion gallons over the 20-year life of the MY 1989 fleet. The maximum increase in any individual year would be about 122 million gallons, approximately 0.05 percent of current oil consumption levels. The agency does not believe that hypothetical savings of this magnitude would justify the significant competitive harm to GM that could result from a standard higher than 26.5 mpg.

Conversely, it can also be argued that the higher 27.5 mpg CAFE standard might actually result in increased gasoline consumption. Dr. Crandall stated at the public hearing that the short-run effect of tightening CAFE would clearly be to increase the consumption of fossil fuels, because it would result in consumers postponing the decision to replace older, less fuel-efficient cars with new, more fuel-efficient cars. NHTSA notes that there are two ways in which a higher CAFE standard could result in a possible increase in gasoline consumption: (1) if the higher standard caused manufacturers to restrict product offerings, which in turn encouraged consumers to keep older (less fuel-efficient) cars, or to purchase pickups or vans (which are less fuel-efficient), or (2) if the higher standard impeded the ability of the U.S. manufacturers to compete vigorously in luxury/performance segments, and sales shifted to competing models of Asian manufacturers with lower fuel economy ratings. GM noted that larger domestic cars are often more fuel-efficient than smaller imported cars, citing, among other models, the large Buick Electra (3.8L/6 cylinder engine), with a fuel economy of 26 mpg, and the compact Acura Legend (2.7L/6 cylinder engine) and Toyota Cressida (2.8L/6 cylinder engine), which have fuel economies of 23 mpg and 24 mpg, respectively. While such effects may seem incongruous, it is important to remember that the CAFE law does not measure real fuel efficiency in the automotive sector, but instead uses an artificial bookkeeping system with numerous distortions (such as corporate averaging, the two-fleet rule, and separation of cars and light trucks).

The magnitude of this potential impact can be suggested with the following example: If, to meet a 27.5 mpg CAFE standard, GM curtailed production of its large (B-body) station wagons, which achieve 22.9 mpg, but these lost sales went to GM's own minivan, the Astrovan (which is a light truck for fuel economy calculation purposes), GM's passenger car CAFE would rise by about 0.1 mpg, but total fuel consumption would actually increase. This would occur because the Astrovan achieves a fuel economy about 1 mpg lower than that of the B-wagon. This switch, from station wagons to minivans, would raise passenger car CAFE but actually result in an additional 10 million gallons of gasoline being consumed over the life of those vehicles.

The agency does not believe that either "worst-case" scenario on the issue of energy conservation is likely. On the contrary, NHTSA believes the impact of the MY 1989 standard on actual gasoline consumption will be negligible. The agency notes that, for MY 1986-88, when the CAFE standard was set at 26.0 mpg, the actual CAFE of the total new car fleet still increased, from 27.9 mpg to 28.7 mpg. Moreover, the manufacturers have indicated their product plans for MY 1989 are fixed; and there are no signs of product restrictions. There may be shifts in sales among manufacturers (which may be influenced by CAFE), but the CAFE of the total MY 1989 fleet is unlikely to be affected by any NHTSA decision on CAFE in the 26.5 to 27.5 range.

To show how a given manufacturer's CAFE can increase while not positively affecting total fuel consumption, consider the following: if GM curtailed production of its Cadillac Brougham, its CAFE would increase by 0.06 mpg. If consumers desirous of this type of luxury car instead purchased a Lincoln Town Car (Ford has extensive credits which currently enable it to sell additional less fuel-efficient cars), total fleet fuel consumption would actually increase by 26 million gallons over the lifetime of the affected fleets.

Just as it is doubtful whether there will be any quantifiable increase in energy consumption resulting from reducing the 27.5 mpg standard to 26.5 mpg, it is doubtful that this action will have any impact on the environment. A number of commenters expressed concern that a reduced standard would result in increased emissions of a number of pollutants, including hydrocarbons, carbon monoxide, nitrogen oxides, chlorofluorocarbons, and carbon dioxide. Commenters particularly focused on carbon dioxide, since it contributes to the "greenhouse effect." NHTSA addressed the potential environmental impacts associated with this rulemaking in an environmental asessment. In addition, the agency has prepared a supplement to the Environmental Assessment in order to address comments submitted by various organizations and individuals. The agency observes here that carbon dioxide emissions are produced in direct proportion to gasoline consumption. Therefore, the reasons discussed above concerning why a reduced standard is unlikely to result in any quantifiable increase in gasoline consumption also mean that a reduced standard is unlikely to result in any quantifiable increase in carbon dioxide emissions.

The Center for Auto Safety (CFAS) argued that relaxation of the CAFE standard would permit the domestic auto companies to export small car production and U.S. jobs abroad. That commenter argued that the record is clear that CAFE relaxation costs U.S. jobs and CAFE strengthening saves U.S. jobs, since GM and Ford have increased their sales of captive imports during the last several years. CFAS argued that GM and Ford could have improved their CAFE and created more domestic jobs if they had produced these cars in the U.S. Also, Mr. Owen Bieber, president of the UAW, urged NHTSA to consider both the implications of not lowering the standards and of lowering the standards. Mr. Bieber stated that the lowering of the standards should not provide the companies with an incentive to outsource small cars.

The record does not support the belief that maintaining the 27.5 mpg standard for MY 1989 would increase American jobs. The economic reality is that small car jobs have been lost due to competition from foreign manufacturers which enjoy large cost advantages. Higher standards would not bring those jobs back. The domestic manufacturers import small cars in response to that competition. If GM and Ford did import particular small cars, a greater number of small cars would be imported by other manufacturers.

GM stated at the September 14 public hearing that the fuel-efficient Chevette, a domestic small car that company once produced, was not redesigned because GM couldn't compete in that market. GM emphasized that its inability to compete in that market is the reason it is working on Saturn at this point in time, which will probably come out in 1990 as a 1991 model. GM emphasized that it has increased its import fleet from zero in 1984 to over 300,000 in 1988 to maintain a presence in that market until it can get Saturn on the street. GM's August 1988 submission included an article on Saturn which characterized the project as a "development program for a new family of import-fighting subcompact cars planned for production in the United States." The article indicated that GM is spending $2 billion on the first phase of Saturn.

A higher MY 1989 standard would not bring Saturn along sooner. Moreover, given the importance of Saturn to GM, NHTSA agrees with that company that Saturn could not, and cannot, be "rushed." Given the current competitive market, it is essential that the car be "right" when it is introduced. NHTSA also observes that while Saturn will not help GM's MY 1989 CAFE, the Saturn project is an added reason to find that GM has continued to make reasonable efforts to achieve the 27.5 mpg standard.

Just as the agency cannot justify a standard of 27.5 mpg for MY 1989, neither can it justify keeping the standard at the level of the MY 1988 standard, i.e., 26.0 mpg. NHTSA is mindful of the statutory command to set the MY 1989 standard at the maximum feasible level. Since its review of the market suggests that even a fully competitive U.S. auto industry would achieve a fuel economy higher than 26.0 mpg, a higher standard must be set. The agency is also commanded by the CAFE law to give due weight to all statutory factors, including the need of the Nation to conserve energy. NHTSA is reminded by the Department of Energy in its comments to this proceeding that the Nation's conservation needs are greater now than they were in 1985, when the agency first set the standard at 26.0 mpg. Balancing the agency's view about what level of standard is economically practicable for MY 1989 against the Nation's conservation needs, NHTSA believes that a proper balance between these factors can be reached by increasing the standard to 26.5 mpg, a 0.5 mpg increase over the 1988 level. This increase also demonstrates the agency's recognition of the role of fossil fuel conservation in reducing carbon dioxide emissions, which are thought to be a major factor in the "greenhouse" effect. While NHTSA has concluded, and firmly believes, that a standard at 26.5

mpg will have no significant effect on the human environment, as compared with a standard of 27.5 mpg, the agency also sees the increase in the standard to 26.5 mpg as appropriately taking into account the need of the Nation to conserve energy. Moreover, taking this step can be made without threatening the competitiveness to the U.S. auto industry. It is important to note at this point the results of the agency's analysis (described more fully in the accompanying regulatory impact analysis and environmental assessment) demonstrating that the maximum hypothetical increase in fuel consumption of a standard set at 26.5 mpg as compared with 27.5 mpg is substantially less than a fraction of 1 percent. Indeed, this figure probably overstates the actual results as noted in those supporting documents. Further, as noted elsewhere in this notice, the Department of Energy has expressed strong doubts about the effect of CAFE standards on energy savings under current market conditions.

In consideration of the foregoing, 49 CFR Part 531 is amended as follows:

Model year	Average fuel economy standard (miles per gallon)
1978	18.0
1979	19.0
1980	20.0
1981	22.0
1982	24.0
1983	26.0
1984	27.0
1985	27.5
1986	26.0
1987	26.0
1988	26.0
1989	26.5
1990 and thereafter	27.5

Issued: September 30, 1988

Diane K. Steed
Administrator

53 F.R. 39275
October 6, 1988

PREAMBLE TO AN AMENDMENT TO PART 531

Passenger Automobile Average Fuel Economy Standards
Final Decision to Grant Exemption
(Docket No. LVM 86-02; Notice 2)

ACTION: Final decision granting exemption from average fuel economy standards and establishing an alternative standard.

SUMMARY: This decision is issued in response to a petition filed by Rolls-Royce Motors, Ltd. (Rolls-Royce) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model year (MY) 1990 and 1991 passenger automobiles, and that lower alternative standards be established for it. This decision grants Rolls-Royce that exemption and establishes an alternative standard of 12.7 mpg for MY 1990 and 12.7 for MY 1991.

EFFECTIVE DATE: October 16, 1989. This exemption and alternative standard apply to Rolls-Royce for model years 1990 and 1991.

SUPPLEMENTARY INFORMATION: NHTSA is exempting Rolls-Royce from the generally applicable average fuel economy standard for 1990 and 1991 model year passenger automobiles and establishing an alternative standard applicable to Rolls-Royce for those model years. This exemption is issued under the authority of section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended ("the Act") (15 U.S.C.2002(c)). Section 502(c) provides that a passenger automobile manufacturer which manufactures fewer than 10,000 passenger automobiles annually may be exempted from the generally applicable average fuel economy standard for a particular model year if that standard is greater than the low volume manufacturer's maximum feasible average fuel economy and if NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Section 502(e) of the Act (15 U.S.C.2002(e)) requires NHTSA, in determining maximum feasible average fuel economy, to consider:

(1) Technological feasibility;
(2) Economic practicability;
(3) The effect of other Federal motor vehicle standards on fuel economy; and
(4) The need of the Nation to conserve energy.

This final decision was preceded by a proposed decision announcing the agency's tentative conclusion that Rolls-Royce should be exempted from the generally applicable 1990 and 1991 passenger automobile average fuel economy standards, and that an alternative standard of 12.7 mpg should be established for Rolls-Royce in those model years (54 FR 37443, September 8, 1989). No comments were received on the proposed decision.

The agency is adopting the tentative conclusions set forth in the proposed decision as its final conclusions, for the reasons set forth in the proposed decision. Based on the conclusions that the maximum feasible average fuel economy level for Rolls-Royce in Model Years 1990 and 1991 is 12.7 mpg, that other Federal motor vehicle standards will not affect achievable fuel economy beyond the extent considered in the proposed decision, and that the national effort to conserve energy will not be affected by granting this requested exemption, NHTSA hereby exempts Rolls-Royce from the generally applicable passenger automobile average fuel economy standard for the 1990 and 1991 model years and establishes an alternative standard of 12.7 miles per gallon for Rolls-Royce in those years.

NHTSA has analyzed this decision, and determined that neither Executive Order 12291 nor the Department of Transportation's regulatory policies and procedures apply, because this decision is not a "rule," which term is defined as "an agency statement of general applicability and future effect.". This exemption is not generally applicable, since it applies only to Rolls-Royce. If the Executive Order and the Department policies and procedures were applicable, the agency would have determined that this action is neither "major" nor "significant." The principal impact of this exemption is that Rolls-Royce will not be required to pay civil penalties if it achieves its maximum feasible average fuel economy, and purchasers of its vehicles will not have to bear the burden of those civil penalties in the form of higher prices. Since this decision sets an alternative standard at the level determined to be Rolls-Royce's maximum feasible average fuel economy, no fuel would be saved by establishing a higher alternative standard. The impacts for the public at large will be minimal.

In consideration of the foregoing, 49 CFR Part 531 is amended by revising § 531.5(b)(2) to read as follows:

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(2) Rolls-Royce Motors, Inc.

MODEL YEAR	AVERAGE FUEL ECONOMY STANDARD (miles per gallon)
1978	10.7
1979	10.8
1980	11.1
1981	10.7
1982	10.6
1983	9.9
1984	10.0
1985	10.0
1986	11.0
1987	11.2
1988	11.2
1989	11.2
1990	12.7
1991	12.7

* * * * *

Issued on October 10, 1989

Jeffrey R. Miller
Acting Administrator

54 F.R.42303
October 16, 1989

PREAMBLE TO AN AMENDMENT TO PART 531
Passenger Automobile Average Fuel Economy Standards
(Docket No. LVM 89–01; Notice 2)

ACTION: Final rule.

SUMMARY: This decision is issued in response to individual petitions filed by three low volume manufacturers, Officine Maserati S.p.A. (Maserati), Lamborghini of North America (Lamborghini), and LondonCoach Co., Inc. (LondonCoach). Each company requested that it be exempted from the generally applicable passenger automobile average fuel economy standards, and sought establishment of lower alternative standards for each model year (MY) from which it sought exemption. This notice grants exemptions and establishes alternative standards as follows:

Lamborghini petitioned to be exempted for MYs 1983 and 1984. This notice grants that exemption and establishes alternate standards for Lamborghini of 13.7 mpg for MYs 1983 and 1984.

LondonCoach petitioned to be exempted for MYs 1985 through 1987. This notice grants that exemption and establishes alternate standards for LondonCoach of 21.0 mpg for MYs 1985 through 1987.

Maserati petitioned to be exempted for MYs 1984 and 1985. This notice grants that exemption and establishes alternate standards for Maserati of 17.9 mpg for MY 1984 and 16.8 mpg for MY 1985.

DATES: Effective Date: April 4, 1990. These exemptions and alternative standards apply to the respective above mentioned manufacturers for the stated model years.

SUPPLEMENTARY INFORMATION: NHTSA is exempting three low volume manufacturers from the generally applicable average fuel economy standards for passenger automobiles and establishing alternative standards applicable to those companies for the petitioned model years as follows: Lamborghini for MYs 1983 and 1984; LondonCoach for MYs 1985 through 1987; and Maserati for MYs 1984 and 1985.

These exemptions are issued under the authority of section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended ("the Act") (15 U.S.C. 2002(c)). Section 502(c) provides that a passenger automobile manufacturer which manufactures fewer than 10,000 vehicles annually may be exempted from the generally applicable average fuel economy standard for a particular model year if that standard is greater than the low volume manufacturer's maximum feasible average fuel economy and if NHTSA establishes an alternative standard applicable to that manufacturer at its maximum feasible average fuel economy. In determining the manufacturer's maximum feasible average fuel economy, section 502(e) of the Act (15 U.S.C. 2002(e)) requires NHTSA to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

This final decision was preceded by proposed decisions announcing the agency's tentative conclusion that the subject manufacturers should be exempted from the generally applicable average fuel economy standards for the petitioned model years, and that alternative standards should be established for the manufacturers for each of the model years; 54 FR 40689 (October 3, 1989), for Lamborghini, LondonCoach, and Maserati.

The agency received one comment on the October 3, 1989 notice from Maserati. Maserati endorsed the establishment of alternative standards for Maserati for MYs 1984 and 1985, but noted a "typographical error" in the summary section of the notice of proposed rulemaking (NPRM) where it was stated that the proposed alternative standards for Maserati was 17.3 mpg for MY 1984 and 16.6 mpg for MY 1985 rather than 17.9 mpg for MY 1984 and 16.8 mpg for MY 1985 as shown in the proposed amendment language at the end of the NPRM. The agency agrees with Maserati that the values in the summary of the NPRM are outdated. The discrepancy is that the first set of values were those requested in Maserati's petition while the second set are values that reflect Maserati's final adjusted CAFE as confirmed by the Environmental Protection Agency. Since 17.9 mpg for MY 1984 and 16.8 mpg for MY 1985 are the actual final CAFE values for Maserati, it is these values that will be used as the alternative fuel economy standards for Maserati.

Therefore, the agency is adopting the tentative conclusions set forth in the proposed decisions as its

final conclusions, for the reasons set forth in the proposed decisions. Based on the conclusions that the maximum feasible average fuel economy levels for each of the petitions during the applicable model years would be as shown below, that other Federal motor vehicle standards would not affect achievable fuel economy beyond the extent considered in this analysis, and that the national effort to conserve energy will not be affected by the granting of these requested exemptions, NHTSA hereby exempts the three petitioners from the generally applicable average fuel economy standards and establishes alternative standards for the three petitioners for the model years and at the levels shown below.

Section 531.5(b) is amended by revising (b)(7) and by adding (b)(8) and (b)(9). The introductory text of (b) is republished to read as follows:

§531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(7) Officine Alfieri Maserati S.p.A.

MODEL YEAR	AVERAGE FUEL ECONOMY STANDARD (miles per gallon)
1978	12.5
1979	12.5
1980	9.5
1984	17.9
1985	16.8

(8) Lamborghini of North America

MODEL YEAR	AVERAGE FUEL ECONOMY STANDARD (miles per gallon)
1983	13.7
1984	13.7

(9) LondonCoach Co., Inc.

MODEL YEAR	AVERAGE FUEL ECONOMY STANDARD (miles per gallon)
1985	21.0
1986	21.0
1987	21.0

Issued on: March 30, 1990

Jeffrey R. Miller
Deputy Administrator

55 F.R. 12485
April 4, 1990

PREAMBLE TO AN AMENDMENT TO PART 531
Passenger Automobile Average Fuel Economy Standards
(Docket No. 90–18; Notice 1)

ACTION: Final decision.

SUMMARY: This decision is issued in response to a petition filed by Dutcher Motors, Inc. (Dutcher) requesting that it be exempted from the generally applicable average fuel economy standard of 26.0 miles per gallon (mpg) for model year (MY) 1986, 1987, and 1988 passenger automobiles, and that lower alternative standards be established for it. This decision exempts Dutcher and establishes alternative standards of 16.0 mpg for MY 1986, 16.0 mpg for MY 1987, and 16.0 mpg for MY 1988. The decision was preceded by publication of a notice requesting public comments.

DATES: Effective Date: August 21, 1990. These exemptions and alternative standards apply to Dutcher for Model Years 1986, 1987 and 1988.

SUPPLEMENTARY INFORMATION: NHTSA is exempting Dutcher from the generally applicable average fuel economy standard for 1986, 1987 and 1988 model year passenger automobiles and establishing an alternative standard applicable to Dutcher for those model years. This exemption is issued under the authority of section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended ("the Act") (15 U.S.C. 2002(c)). Section 502(c) provides that a passenger automobile manufacturer which manufactures fewer than 10,000 passenger automobiles annually may be exempted from the generally applicable average fuel economy standard for a particular model year if that standard is greater than the low volume manufacturer's maximum feasible average fuel economy and if NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Section 502(e) of the Act (15 U.S.C. 2002(e)) requires NHTSA, in determining maximum feasible average fuel economy, to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

This final decision was preceded by a proposed decision announcing the agency's tentative conclusion that Dutcher should be exempted from the generally applicable 1986, 1987 and 1988 passenger automobile average fuel economy standards, and that an alternative standard of 16.0 mpg should be established for Dutcher in each of those model years (55 FR 14439, April 18, 1990). No comments were received on the proposed decision.

The agency is adopting the tentative conclusions set forth in the proposed decision as its final conclusions, for the reasons set forth in the proposed decision. Based on the conclusions that the maximum feasible average fuel economy level for Dutcher in Model Years 1986, 1987 and 1988 is 16.0 mpg, that other Federal motor vehicle standards will not affect achievable fuel economy beyond the extent considered in the proposed decision, and that the national effort to conserve energy will not be affected by granting this requested exemption, NHTSA hereby exempts Dutcher from the generally applicable passenger automobile average fuel economy standard for the 1986, 1987 and 1988 model years and establishes an alternative standard of 16.0 miles per gallon for Dutcher for each of those years.

In consideration of the foregoing, 49 CFR Part 531 is amended by adding §531.5(b)(11) to read as follows. The introductory text of (b) is shown for the convenience of the reader and remains unchanged.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(11) Dutcher Motors, Inc.

MODEL YEAR	AVERAGE FUEL ECONOMY STANDARD (miles per gallon)
1986	16.0
1987	16.0
1988	16.0

Issued on: August 14, 1990

Jeffrey R. Miller
Deputy Administrator

55 F.R. 34017
August 21, 1990

PREAMBLE TO AN AMENDMENT TO FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 531

Passenger Automobile Average Fuel Economy Standards

(Docket No. LVM 89-01; Notice 6)

ACTION: Final Decision.

SUMMARY: This decision is issued in response to a petition filed by Rolls-Royce Motors, Ltd. (Rolls-Royce) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model year (MY) 1992, 1993, and 1994 passenger automobiles, and that lower alternative standards be established for it. This decision exempts Rolls-Royce and establishes alternative standards of 13.8 mpg for MY 1992, 13.8 mpg for MY 1993, and 13.8 mpg for MY 1994. The decision was preceded by publication of a notice requesting public comments.

DATES: Effective Date: October 11, 1990. These exemptions and alternative standards apply to Rolls-Royce for model years 1992, 1993 and 1994.

SUPPLEMENTARY INFORMATION: NHTSA is exempting Rolls-Royce from the generally applicable average fuel economy standard for 1992, 1993 and 1994 model year passenger automobiles and establishing an alternative standard applicable to Rolls-Royce for those model years. This exemption is issued under the authority of section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended ("the Act")(15 U.S.C. 2002(c)). Section 502(c) provides that a passenger automobile manufacturer which manufactures fewer than 10,000 passenger automobiles annually may be exempted from the generally applicable average fuel economy standard for a particular model year if that standard is greater than the low volume manufacturer's maximum feasible average fuel economy and if NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Section 502(e) of the Act (15 U.S.C. 2002(e)) requires NHTSA, in determining maximum feasible average fuel economy, to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

This final decision was preceded by a proposed decision announcing the agency's tentative conclusion that Rolls-Royce should be exempted from the generally applicable 1992, 1993 and 1994 passenger automobile average fuel economy standards, and that an alternative standard of 13.8 mpg should be established for Rolls-Royce in each of those model years (55 FR 21626, May 25, 1990). No comments were received on the proposed decision.

The agency is adopting the tentative conclusions set forth in the proposed decision as its final conclusions, for the reasons set forth in the proposed decision. Based on the conclusions that the maximum feasible average fuel economy level for Rolls-Royce in model years 1992, 1993 and 1994 is 13.8 mpg, that other Federal motor vehicle standards will not affect achievable fuel economy beyond the extent considered in the proposed decision, and that the national effort to conserve energy will not be affected by granting this requested exemption. NHTSA hereby exempts Rolls-Royce from the generally applicable passenger automobile average fuel economy standard for the 1992, 1993 and 1994 model years and establishes an alternative standard of 13.8 miles per gallon for Rolls-Royce for each of those years.

NHTSA has analyzed this decision, and determined that neither Executive Order 12291 nor the Department of Transportation's regulatory policies and procedures apply, because this decision is not a "rule," which term is defined as "an agency statement of general applicability and future effect." This exemption is not generally applicable, since it applies only to Rolls-Royce. If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this action is neither "major" nor "significant." The principal impact of this exemption is that Rolls-Royce will not be required to pay civil penalties if they achieve CAFE levels equivalent to the alternative standards established in this notice. Since this decision sets an alternative standard at the level determined to be Rolls-Royce's maximum feasible average fuel economy, no fuel would be saved by establishing a higher alternative standard. The impacts for the public at large will be minimal.

The agency has also considered the environmental implications of this decision in accordance with the National Environmental Policy Act and determined that this decision will not significantly affect the human environment. Regardless of the fuel economy of a vehicle, it must pass the emissions standards which measure the amount of emissions per mile travelled. Thus, the quality of the air is not affected by this exemption and alternative standard. Further, since Rolls-Royce's MY 1992, 1993 and 1994 automobiles cannot achieve better fuel economy than 13.8 mpg, granting this exemption will not affect the amount of gasoline available.

Since the Regulatory Flexibility Act may apply to a decision exempting a manufacturer from a generally applicable standard, I certify that this decision will not have a significant economic impact on a substantial number of small entities. This decision does not impose any burden on Rolls-Royce. It does relieve the company from having to pay civil penalties for noncompliance with the generally applicable standards for model years 1992, 1993, and 1994. Since the prices of 1992, 1993 and 1994 Rolls-Royce automobiles will not be affected by this decision, the purchasers will not be affected. Generally, small businesses, small governmental jurisdictions, and small nonprofit entities are not purchasers of Rolls-Royce automobiles.

In consideration of the foregoing, 49 CFR Part 531 is amended to read as follows.

PART 531—[AMENDED]

1. The authority citation for Part 531 continues to read as follows:

Authority: 15 U.S.C. 2002, delegation of authority at 49 CFR 1.50.

2. Section 531.5(b) is amended by revising (b)(2). The introductory text of (b) is republished to read as follows:

§ 531.5 Fuel economy standards.

* * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * *

(2) Rolls-Royce Motors, Ltd.

MODEL YEAR	AVERAGE FUEL ECONOMY STANDARD (miles per gallon)
1978	10.7
1979	10.8
1980	11.1
1981	10.7
1982	10.6
1983	9.9
1984	10.0
1985	10.0
1986	11.0
1987	11.2
1988	11.2
1989	11.2
1990	12.7
1991	12.7
1992	13.8
1993	13,8
1994	13.8

* * * *

Issued on: September 5, 1990.

Jeffrey R. Miller
Deputy Administrator

55 F.R. 37326
September 11, 1990

PREAMBLE TO AN AMENDMENT TO PART 531

Passenger Automobile Average Fuel Economy Standards

(Docket No. LVM 89-01; Notice 10)

ACTION: Final rule.

SUMMARY: This decision is issued in response to a petition filed by Dutcher Motors, Inc. (Dutcher) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model year (MY) 1992 passenger automobiles, and that a lower alternative standard be established for it for each of these model years. This decision exempts Dutcher and establishes an alternate standard of 17.0 mpg for each of MY 1992. The decision was preceded by publication of a notice requesting public comments.

EFFECTIVE DATE: June 3, 1991. Thie exemption and the alternative standard apply to Dutcher for MY 1992.

SUPPLEMENTARY INFORMATION: NHTSA is exempting Dutcher from the generally applicable average fuel economy standard for 1992 model year passenger automobiles and establishing an alternative standard applicable to Dutcher for that model year. This exemption is issued under the authority of section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended (the Act) (15 U.S.C. 2002(c)). Section 502(c) provides that a passenger automobile manufacturer which manufactures fewer than 10,000 passenger automobiles annually may be exempted from the generally applicable average fuel economy standard for a particular model year if that standard is greater than the low volume manufacturer's maximum feasible average fuel economy and if NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Section 502(e) of the Act (15 U.S.C. 2002(e)) requires NHTSA, in determining maximum feasible average fuel economy, to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

This final decision was preceded by a proposed decision announcing the agency's tentative conclusion that Dutcher should be exempted from the generally applicable MY 1992 passenger automobile average fuel economy standard of 27.5 mpg, and that an alternative standard of 17.0 mpg should be established for Dutcher for each of these model years (56 FR 3441, January 30, 1991). No comments were received on the proposed decision.

The agency is adopting the tentative conclusions set forth in the proposed decision as its final conclusions, for the reasons set forth in the proposed decision. Based on the conclusions that the maximum feasible average fuel economy level for Dutcher in each of MYs 1993, 1994, and 1995 is 17.0 mpg, that other Federal motor vehicle standards will not affect achievable fuel economy beyond the extent considered in the proposed decision, and that the national effort to conserve energy will not be affected by granting this exemption, NHTSA hereby exempts Dutcher from the generally applicable passenger automobile average fuel economy standard for the 1992 model year and establishes an alternative standard of 17.0 miles per gallon for Dutcher for each of these years.

Section 531.5 is amended by revising paragraph (b)(11); the introductory text of paragraph (b) is republished to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(6) The following manufacturers shall comply with the standards indicated below for the specified model years:

(11) Dutcher Motors, Inc.

Model Year	Average Fuel Economy Standard (miles per gallon)
1986	16.0
1987	16.0
1988	16.0
1992	17.0
1993	17.0
1994	17.0
1995	17.0

* * * * *

Issued on: August 1, 1991.

Jerry Ralph Curry
Administrator

56 F.R. 20362
May 3, 1991

PREAMBLE TO AN AMENDMENT TO PART 531

Passenger Automobile Average Fuel Economy Standards

(Docket No. LVM 89-01; Notice 101)

ACTION: Final decision.

SUMMARY: This decision is issued in response to a petition filed by Dutcher Motors, Inc. (Dutcher) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model years (MY) 1993, 1994, and 1995 passenger automobiles, and that a lower alternative standard be established for it for each of these model years. This decision exempts Dutcher and establishes an alternate standard of 17.0 mpg for each of MYs 1993, 1994, and 1995. The decision was preceded by publication of a notice requesting public comments.

EFFECTIVE DATE: September 23, 1991.

This exemption and the alternative standards apply to Dutcher for MYs 1993, 1994, and 1995.

SUPPLEMENTARY INFORMATION: NHTSA is exempting Dutcher from the generally applicable average fuel economy standard for 1993, 1994, and 1995 model year passenger automobiles and establishing alternative standards applicable to Dutcher for each of these model years. This exemption is issued under the authority of section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended ("the Act") (15 U.S.C. 2002(c)). Section 502(c) provides that a passenger automobile manufacturer which manufactures fewer than 10,000 passenger automobiles annually may be exempted from the generally applicable average fuel economy standard for a particular model year if that standard is greater than the low volume manufacturer's maximum feasible average fuel economy and if NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Section 502(e) of the Act (15 U.S.C. 2002(e)) requires NHTSA, in determining maximum feasible average fuel economy, to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

This final decision was preceded by a proposed decision announcing the agency's tentative conclusion that Dutcher should be exempted from the generally applicable MY 1993, 1994, and 1995 passenger automobile average fuel economy standard of 27.5 mpg, and that an alternative standard of 17.0 mpg should be established for Dutcher for each of these model years (56 FR 21653, May 10, 1991). No comments were received on the proposed decision.

The agency is adopting the tentative conclusions set forth in the proposed decision as its final conclusions, for the reasons set forth in the proposed decision. Based on the conclusions that the maximum feasible average fuel economy level for Dutcher in each of MYs 1993, 1994, and 1995 is 17.0 mpg, that other Federal motor vehicle standards will not affect achievable fuel economy beyond the extent considered in the proposed decision, and that the national effort to conserve energy will not be affected by granting this exemption, NHTSA hereby exempts Dutcher from the generally applicable passenger automobile average fuel economy standard for the 1993, 1994, and 1995 model years and establishes an alternative standard of 17.0 miles per gallon for Dutcher for each of these years.

Section 531.5 is amended by revising paragraph (b)(11); the introductory text of paragraph (b) is republished to read as follows: § 531.5 Fuel economy standards.

The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(11) Dutcher Motors, Inc.

MODEL YEAR	*AVERAGE FUEL ECONOMY STANDARD (miles per gallon)*
1986	16.0
1987	16.0
1988	16.0
1992	17.0
1993	17.0
1994	17.0
1995	17.0

* * * * *

Issued on: August 1, 1991.

Jerry Ralph Curry
Administrator

56 F.R. 37478
August 7, 1991

PART 531—PASSENGER AUTOMOBILE AVERAGE FUEL ECONOMY STANDARDS

S531.1 Scope.

This part establishes average fuel economy standards pursuant to section 502(a) of the Motor Vehicle Information and Cost Savings Act, as amended, for passenger automobiles.

S531.2 Purpose.

The purpose of this part is to increase the fuel economy of passenger automobiles by establishing minimum levels of average fuel economy for those vehicles.

S531.3 Applicability.

This part applies to manufacturers of passenger automobiles.

S531.4 Definitions.

(a) *Statutory terms.* (1) The terms "average fuel economy," "manufacture," "manufacturer," and "model year" are used as defined in section 501 of the Act.

(2) The terms "automobile" and "passenger automobile" are used as defined in section 501 of the Act and in accordance with the determination in part 523 of this chapter.

(b) *Other terms.* As used in this part, unless otherwise required by the context—

(1) "Act" means the Motor Vehicle Information and Cost Savings Act, as amended by Pub. L. 94–163.

S531.5 Fuel economy standards.

(a) Except as provided in paragraph (b) of this section each manufacturer of passenger automobiles shall comply with the following standards in the model years specified:

Model year	*Average fuel economy standard (miles per gallon)*
1978	18.0
1979	19.0
1980	20.0
1981	22.0
1982	24.0
1983	26.0
1984	27.0
1985	27.5
1986	26.0
1987	26.0
1988	26.0
1989	26.5
1990 and thereafter	27.5

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

(1) Avanti Motor Corporation.

Average Fuel Economy Standard

Model year	*Miles per gallon*
1978	16.1
1979	14.5
1980	15.8
1981	18.2
1982	18.2
1983	16.9
1984	16.9
1985	16.9

(2) Rolls-Royce Motors, Inc.

Average Fuel Economy Standard

Model year	*Miles per gallon*
1978	10.7
1979	10.8
1980	11.1
1981	10.7
1982	10.6
1983	9.9
1984	10.0

1985	10.0
1986	11.0
1987	11.2
1988	11.2
1989	11.2
1990	12.7
1991	12.7
1992	13.8
1993	13.8
1994	13.8

(3) Checker Motors Corporation.

Average Fuel Economy Standard

Model year	*Miles per gallon*
1978	17.6
1979	16.5
1980	18.5
1981	18.3
1982	18.4

(4) Aston Martin Lagonda, Inc.

Average Fuel Economy Standard

Model year	*Miles per gallon*
1979	11.5
1980	12.1
1981	12.2
1982	12.2
1983	11.3
1984	11.3
1985	11.4

(5) Excalibur Automobile Corporation.

Average Fuel Economy Standard

Model year	*Miles per gallon*
1978	11.5
1979	11.5
1980	16.2
1981	17.9
1982	17.9
1983	16.6
1984	16.6
1985	16.6

(6) **(Reserved)**

(7) Officine Alfieri Maserati S.P.A.

Average Fuel Economy Standard

Model year	*Miles per gallon*
1978	12.5
1979	12.5
1980	9.5
1984	17.9
1985	16.8

(8) Lamborghini of North America

Average Fuel Economy Standard

Model year	*Miles per gallon*
1983	13.7
1984	13.7

(9) London Coach Co., Inc.

Average Fuel Economy Standard

Model year	*Miles per gallon*
1985	21.0
1986	21.0
1987	21.0

(10) **(Reserved)**

(11) Dutcher Motors, Inc.

Average Fuel Economy Standard

Model year	*Miles per gallon*
1986	16.0
1987	16.0
1988	16.0
[1992	17.0
1993	17.0
1994	17.0
1995	17.0

56 F.R. 37478—August 7, 1991. Effective: September 23, 1991)]

S531.6 Measurement and calculation procedures.

(a) The average fuel economy of all passenger automobiles that are manufactured by a manufacturer in a model year shall be determined in accordance with procedures established by the Administrator of the Environmental Protection Agency under section 502(a) (1) of the Act and set forth in 40 CFR Part 600.

42 F.R. 33534
June 30, 1977

PREAMBLE TO PART 533—AVERAGE FUEL ECONOMY STANDARD FOR NON-PASSENGER AUTOMOBILES

(Docket No. FE 76–3; Notice 3)

This notice establishes average fuel economy standards for nonpassenger automobiles which are rated at 6,000 pounds gross vehicle weight or less and are manufactured in model year 1979. Vehicles affected by these standards include pickup trucks, vans, and four-wheel drive, jeep-type vehicles which are rated within that weight range. The standard for four-wheel drive nonpassenger automobiles which are jeep-type vehicles is 15.8 mpg. The standard for all other nonpassenger automobiles is 17.2 mpg. The purpose of these standards is to conserve gasoline by improving the fuel economy of the Nation's fleet of nonpassenger automobiles. The agency estimates that 102,500,000 gallons of gasoline will be saved annually by the 1979 nonpassenger automobile fleet, over 1976 levels. The decreasing world petroleum supply and the uncertain availability to this Nation of existing foreign petroleum, combined with the importance of petroleum to the national economy and standard of living, have made these fuel economy standards necessary.

Dates: These standards will apply to the 1979 model year.

For further information, contact:

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Washington, D.C. 20590
(202–426–9511)

Supplementary Information:

The National Highway Traffic Safety Administration (NHTSA) is establishing average fuel economy standards for nonpassenger automobiles manufactured in model year 1979. These standards will appear in a new Part 533, added to NHTSA regulations by this action. The average fuel economy standards are issued pursuant to section 502(b) of Title V of the Motor Vehicle Information and Cost Savings Act, as amended. This final rule was preceded by a questionnaire last summer and a notice of proposed rulemaking (NPRM), 41 FR 52087, November 26, 1976. The rule proposed in the NPRM placed all nonpassenger automobiles 6,000 pounds gross vehicle weight rating (GVWR) or less in a single class, and established an average fuel economy standard of 18.7 mpg for that class. The NPRM specified that this proposed standard would be reduced in light of any effects of 1979 emissions standards and testing procedures established by the EPA.

Comments to the NPRM were received by NHTSA and were carefully evaluated in the process of developing the final rule. Most of the comments were submitted by automobile manufacturers. There were no comments received from consumer groups, or other public interest organizations.

A number of issues were raised by the comments received in response to the NPRM. The resolution of several of those issues has resulted in changes to the final rule. The major issues which have been raised, and their resolution, along with specific changes to the final rule, are described in the following discussion.

Summary of changes in the rule and its rationale. The final rule, which is still limited to nonpassenger automobiles 6,000 pounds GVWR or less, provides for two classes of nonpassenger automobiles, and a separate average fuel economy standard for nonpassenger automobiles in each class. The average fuel economy standard for four-wheel drive, jeep-type vehicles is 15.8 mpg. The average fuel economy standard for all other nonpassenger automobiles is 17.2 mpg.

Comments received from the manufacturers indicated that a separate class of nonpassenger automobiles, with a separate average fuel economy standard, was appropriate for four-wheel drive jeep-type vehicles. Therefore, the agency is establishing two average fuel economy standards for nonpassenger automobiles manufactured in model year 1979, one for the jeep-type vehicles, and one for the remainder of nonpassenger automobiles. However, manufacturers of jeep-type vehicles will have the option of counting their vehicles in the special class for those vehicles, or in the general class of other nonpassenger automobiles.

As described fully in the NPRM, the proposed standard was based primarily on the domestic manufacturers' production plans for 1979. In brief, this approach was taken to avoid market shifts to heavier, less fuel economical vehicles, which could be be precipitated or aggravated by requiring manufacturers to take drastic measures to improve fuel economy on short notice. Also, the agency believes that the short leadtime before model year 1979 precluded major changes from current 1979 product plans. Both final standards are based primarily on the manufacturer's product plans for 1979. The agency continues to believe that the approach taken in the NPRM is appropriate, for the reasons stated therein.

For the general class of nonpassenger automobiles that excludes four-wheel drive jeep-type vehicles, the domestic manufacturers indicated in their comments to the NPRM that an average fuel economy in the range of 18.7 mpg to 19.0 mpg was attainable for model year 1979, assuming both 1976 Federal emissions standards and testing procedures. Chrysler projected an average fuel economy of 16.5 mpg for 1979, assuming 1979 Federal testing procedures and the 1979 emissions standards; if Chrysler's estimated fuel economy reduction of 13 percent for emissions and testing procedures is taken out of the 16.5 projection, Chrysler in effect projected an average fuel economy of 19 mpg under 1976 emissions standards and testing procedures.

As described below, the agency does not believe that the manufacturers' fleets of 1979 nonpassenger automobiles will experience a fuel economy penalty from the 1979 Federal emissions standards. However, based on its own analysis and the comments received, the agency concludes that the change in the fuel economy testing procedures in model year 1979 will result in a reduction in measured fuel economy of 8 percent. Therefore, in the final rule, the proposed standard of 18.7 mpg is lowered to 17.2 mpg.

The standard for four-wheel drive jeep-type nonpassenger automobiles, like the standard for the balance of nonpassenger automobiles, is based on the projected fuel economy of the manufacturers, on an industry or marketwide basis. American Motors Corporation (AMC), Toyota and Chrysler are the only manufacturers of vehicles in this subclassification of nonpassenger automobiles. The agency's analysis of Toyota's fuel economy potential indicates an average fuel economy for Toyota approximately 15 percent lower than AMC. Chrysler has been achieving higher fuel economy than Toyota, but not as high as AMC. Because AMC is the major manufacturer of the vehicles and is projecting the highest fuel economy, the standard was based on the fuel economy projections of AMC. AMC indicated in their comments that 17 mpg was an attainable average fuel economy for model year 1979. Based on its consideration of AMC's product plans, the agency believes that AMC can make some additional improvement in fuel economy by model year 1979. Therefore, the agency has concluded that a level of 17.2 mpg is attainable for AMC under 1976 emissions standards and fuel economy testing procedures. By applying the reduction in measured fuel economy resulting from changes in the testing procedures, the final 1979 standard for general utility, jeep-type vehicles is 15.8 mpg.

A number of comments criticized NHTSA's consideration of technology available to improve fuel economy. Notwithstanding their criticisms all manufacturers indicated that 18.7 mpg to 19.0 mpg, assuming 1976 Federal emissions and testing procedures, was achievable for model year 1979. Therefore, the agency does not believe a full discussion of the criticisms of its technological assessment is necessary at this time, but will consider those criticisms in future rulemaking.

Scope of the average fuel economy standard. International Harvester commented that, although the preamble to the NPRM indicated that only vehicles 6,000 pounds or less, GVWR, were intended to be subject to the standard, the proposed standard as drafted includes in its scope vehicles less than 10,000 pounds GVWR. International Harvester bases its comment on its interpretation of proposed Part 523, Vehicle Classification, which was published in the Federal Register on December 20, 1976 (41 FR 55371).

The agency believes that International Harvester has misinterpreted proposed Part 523. Under that proposed regulation, the only vehicles with a GVWR in excess of 6,000 pounds which would be determined to be "automobiles" within the meaning of Title V are vehicles which are manufactured primarily for use in transporting not more than 10 individuals, and which do not meet the criteria for automobiles capable of off-highway operation. If International Harvester's vehicles with a GVWR in excess of 6,000 pounds are not manufactured primarily for that use, those vehicles are not automobiles and, therefore, cannot be nonpassenger automobiles under the Vehicle Classification NPRM. If those vehicles are primarily manufactured for this use, but do not meet those criteria, the vehicles are passenger automobiles.

Off-road vehicles. AMC contends in its comment to the NPRM that its Jeep CJ vehicle is not an automobile within the meaning of section 501(1) of Title V. AMC contends that the Jeep CJ is designed, manufactured, and marketed primarily for off-highway operation. Under section 501(1), only vehicles which are "manufactured primarily for use on the public streets, roads, and highways" can be "automobiles." Since the Title authorizes the setting of average fuel economy standards only for "automobiles," AMC is in effect contending that its Jeep CJ vehicle cannot be subject to a fuel economy standard under the Title.

Although AMC in its comment to the NPRM for nonpassenger automobiles did not indicate why it believes that its Jeep CJ vehicle is manufactured primarily for off-road use, AMC did submit a fuller expression of its views on that subject in a comment to the Vehicle Classification NPRM. In addition, the Ford Motor Company submitted a comment to the Vehicle Classification NPRM which made a similar argument to the one made by AMC, that is, that certain vehicles, because of features making them capable of off-highway operation, are not automobiles within the meaning of Title V because they are not manufactured primarily for use on the highways. AMC stated that Jeeps are manufactured primarily for off-road use because they are "built with low and medium speed capability and accommodate many off-road work-performing equipment accessories." Ford indicated that vehicles characterized by all five of the following features are not manufactured primarily for use on the highways: (1) four-wheel drive, (2) high ground clearance in terms of approach, breakover, and departure angles, and running and axle clearance, (3) engine oil systems capable of operation at inclines up to a 60 percent grade, (4) relatively high axle ratios and heavy duty axle and suspension components, and (5) relatively high frontal area.

NHTSA has concluded that there is no merit in the claims of AMC and Ford that vehicles with the characteristics set out above are not subject to fuel economy standards because their off-road characteristics place them outside the scope of Title V. The characteristics set out by the manufacturers are merely characteristics of vehicles which are capable of off-highway operation. Neither manufacturer claimed that the vehicles referred to were not intended, or expected, to spend a substantial portion of their operating lives on the public streets, roads, or highways. Therefore, NHTSA believes that Congress intended these vehicles to be automobiles within the meaning of section 501 of Title V, and subject to fuel economy standards as nonpassenger automobiles. NHTSA bases its perception of Congressional intent upon the plain language of section 501, the use of language identical to that used in other statutes where the vehicles referred to by Ford and AMC are clearly within the scope of those statutes, the legislative history of Title V, and the purpose for which the Title was enacted.

Congress clearly intended that vehicles capable of off-highway operation be subject to fuel economy standards as nonpassenger automobiles. The term "automobile capable of off-highway operation" is defined in section 501(3) of Title V. While such automobiles cannot be passenger automobiles, they can be subject to an average fuel economy standard under section 502(b) as "automobiles which are not passenger automobiles." Thus, a manufacturer must show more than an off-highway capability in order to show that a vehicle is beyond the scope of Title V.

In addition, a vehicle may be manufactured for more than one "primary" use. This interpretation of "primarily" is supported by the Supreme Court in *Board of Governors of the Federal Reserve System v. Agnew* 329 U.S. 441 (1947). In *Agnew*, the Supreme Court had to decide whether a securities firm which earned approximately two thirds of its revenue from brokerage, and less than one third from underwriting was "primarily engaged" in underwriting under the Banking Act of 1933. The Court believed that "primary" does not always mean "first," and stated, "An activity may be primary . . . if it is substantial." 329 U.S. at 426. Thus, under *Agnew*, even if a vehicle was manufactured primarily for off-highway use, if highway use was a substantial use of the vehicle, it would be manufactured primarily for highway use also, and would therefore be subject to Title V.

The phrase "manufactured primarily for use on the public streets, roads, and highways," which is found in the definition of "automobile" in section 501(1) of Title V, and which is the key to the claims of Ford and AMC, is also found in the definitions of "motor vehicle" in section 102(1) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391(1)) and section 2(15) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901(15)). "Automobile" under Title V, and "motor vehicle" under both the Vehicle Safety Act and the Cost Savings Act, do not completely overlap (for instance, "automobiles" are limited to four wheeled vehicles, while "motor vehicles" are not so limited). However, with respect to a vehicle's identity as an on-road or an off-road vehicle, the terms "motor vehicle" and "automobile" seem to refer to the same vehicles. Looking at the experience with these vehicles under the Motor Vehicle Safety Act and the Cost Savings Act, it is clear that the vehicles referred to by AMC and Ford are on-road vehicles, with a capability for off-highway operation.

After more than a decade of regulation under the Vehicle Safety Act, both Ford and AMC have acted consistently with the view that vehicles referred to here were "motor vehicles." Indeed, AMC admits that the vehicles are designed to meet the Federal safety standards applicable to motor vehicles. Moreover, the legislative history of the Cost Savings Act specifically contemplates that jeeps are subject to that Act. S.Rept. No. 92–413, 92d Cong., 1st Sess., at 20. Congress must be assumed to have been aware of this long, unchallenged regulatory practice which covered the vehicles at issue here when drafting the language found in section 501 of Title V.

NHTSA also notes that these vehicles are considered by the Environmental Protection Agency (EPA) to be subject to the emissions standards, under the Clean Air Act, which apply only to vehicles "designed for transporting persons or property on a street or highway."

There is nothing in the legislative history of Title V which indicates that the intent of Congress was that the Title have a more narrow scope than that given by the NHTSA's interpretation. In its comment to the Vehicle Classification NPRM, Ford quotes the following passage from the legislative history of Title V, in support of its claim that vehicles with all the features which Ford discussed are not manufactured primarily for on-road use:

> The effect of the definitional scheme of the bill is to exclude entirely vehicles not manufactured primarily for highway use (e.g., agricultural and construction equipment, *and vehicles manufactured primarily for off-road rather than highway use*). (Emphasis supplied by Ford.)

The quoted language adds nothing to Ford's argument. Although this language gives some examples of the kinds of vehicles which Congress intended not to be subject to fuel economy standards under the Title, e.g., agricultural equipment and construction equipment, those vehicles are

not characterized by the features which are claimed by the manufacturers to establish that a vehicle was not manufactured for highway use. Furthermore, the language which Ford underscored by no means referred necessarily to the vehicles which Ford seeks to have excluded from the Title. Other vehicles, such as racing cars, fork-lifts, and airport fire apparatus are just some of the other vehicles which are not manufactured primarily for on-road use.

Indeed, if anything, the quoted language supports NHTSA's position that its interpretation of the "manufactured primarily" language is correct, since the two examples of vehicles which were given have long been considered by the NHTSA to be off-road vehicles. Therefore, Congress seems to be adopting the NHTSA interpretation. Moreover, it should be noted that the quoted material referred to the definitional scheme as it existed in HR 7014. In that earlier version of Title V, there was no specific recognition of automobiles which are capable of off-road operation. Therefore, the House report referred to a definitional scheme that less clearly included off-road vehicles than the scheme enacted into law.

Moreover, Ford did not discuss the legislative history of Title V in the Senate. The bill originally passed by the Senate dealing with automotive fuel economy standards was S.1883. Section 503(7) of S.1883 read:

> "light duty truck" means any motor vehicle rated at 6,000 pounds gross vehicle weight or less which (A) is designed primarily for purpose of transportation of property including a derivative of such a vehicle, or (B) *has special features modifying such vehicle for predominant offstreet or off-highway operation and use.* (Emphasis added.)

Hence, the vehicles AMC and Ford seek to have excluded from the title were specifically included in the original Senate bill.

The text of S.1883 was incorporated verbatim into the Senate version of S.622; 41 Cong. Rec. S–16957 (daily ed., September 26, 1975). The conference report for S.622 states that "average fuel economy standards shall apply to all new 4-wheeled motor vehicles (referred to as "automobiles") manufactured or imported into the United States which are rated at 6,000 pounds gross vehicle weight (GVW) or less" S.Rep. 94–516, at 153. In light of the express provisions of the Senate bill and the broadly inclusive statement in the conference report, the agency believes that the legislative history supports the NHTSA interpretation of the scope of Title V.

Finally, the purpose of the Title dictates that its provisions, especially regarding the scope of its applicability, be given a liberal construction. Congress enacted Title V in response to the energy shortage and the pressing national need to reduce the consumption of gasoline. In light of the importance of energy conservation to the Nation's economic health and standard of living, NHTSA believes that Congress intended the Title to have broad application, and that any interpretation of the Title that would have the effect of exempting an entire class of vehicles from regulation under the Title must be firmly based in the language of the Title or its legislative history. Neither AMC nor Ford has shown a clear expression of Congressional intent that the vehicles with the characteristics they described, making them suitable for off-road operation, should be exempt from fuel economy standards established under the Title. Indeed, as has been demonstrated, the intent of Congress would have those vehicles subject to the Title.

The agency realizes that the term "primarily," as used in the definition of passenger automobile in section 501(2) ("manufactured primarily for use in the transportation of not more than 10 individuals") is given a different meaning than when it is used in section 501(1) ("manufactured primarily for use on the public streets, roads and highways"). However, the agency believes that Congress did not intend that the word be used in the same sense in those two definitional sections. As discussed above, the use of the term "primarily" in the definition of "automobile" must be considered against a legislative backdrop of other statutes using the identical phrase, and the remedial purposes of Title V justifying a broad interpretation of those definitions which delineate the scope of its applicability. However, the use of the term "primarily" in the definition of "passenger automobile" brings other

considerations into play. First, the need to give the term so broad a meaning is less compelling when the effect is not to include a vehicle in the scope of the Title, but only to place a vehicle into one of the categories clearly within the scope of the Title. Second, the definition of "passenger automobile," unlike the definition of "automobile," is not identical to existing definitions in other statutes with established interpretations. Third, since all automobiles carry at least one passenger, interpreting primarily to mean "substantial" would result in no automobile being classified as a nonpassenger automobile. Since Congress clearly intended that nonpassenger automobiles be considered apart from passenger automobiles, such an interpretation would defeat a clear Congressional intent.

Captive Imports. In the NPRM, the NHTSA indicated its tentative intent to calculate a single average fuel economy figure for domestic manufacturers which have captive imports by combining the captive imports with the domestically produced vehicles of those manufacturers. Captive imports are vehicles, such as the Chevrolet LUV and the Ford Courier pickup trucks, which are marketed by a domestic manufacturer but fabricated by a foreign manufacturer. It is anticipated that approximately 50,000 1979 LUV's and 50,000 1979 Couriers will be imported into this country. The agency noted that there were some questions about the propriety of this inclusion, including one relating to the meaning of the term "control" as used in section 503(c) of Title V and whether General Motors and Ford import these vehicles within the meaning of section 501(9) of Title V. Comments and information were requested from interested parties.

Comments were received from Chrysler, General Motors and Ford supporting the inclusion of the captive imports, and from the United Auto Workers (UAW) and AMC opposing the inclusion. Chrysler supported the inclusion of the captive imports because it believed this would allow the manufacturer to adopt the most cost-effective strategy for maximizing fleet fuel economy. General Motors supported the inclusion of the captive imports because it believed its ownership of 34 percent of the common stock of Isuzu (the producer of the LUV) plus its contractual control over the design, manufacture, and importing of the LUV vehicles makes General Motors the manufacturer under section 503(c) of Title V. Ford supported the inclusion of the captive imports because it believed Title V requires the separation of domestic and imported vehicles only for passenger automobiles, and because it believes its contractual arrangements with Toyo-Kogyo (the producer of the Courier) make Ford the importer of the Courier and hence the manufacturer under section 501(9). Ford also believes its contractual control over the design and manufacture of the Courier constitutes sufficient control to make it the manufacturer under section 503(c) of Title V. The UAW's opposition was based on its belief that the intent of the Title is to treat all imported and domestic vehicles separately, although it conceded that the language of the Title mandates this separate treatment only for passenger automobiles. AMC objected because it believes that the net effect of the inclusion of the captive imports would be to discriminate against nonimporters and stimulate foreign production at the expense of domestic production.

The NHTSA has concluded that the inclusion of the captive imports in the model year (MY) 1979 fleet is proper. First, it is clear that Ford and General Motors are the statutory manufacturers of their captive imports. Under section 503(c), the term "manufacturer" includes anyone who "controls" the manufacture of the vehicle. The NHTSA believes that control is not limited to majority stock ownership. Rather, control may consist of either the ownership of a large enough block of common stock in a producer to constitute effective voting control of the firm, as we believe is true of General Motors' ownership of Isuzu stock, or contractual restrictions on the design and manufacture of the vehicle which essentially eliminate the producer's freedom to alter the production of the vehicle, which we believe is true of the contracts between General Motors and Isuzu and between Ford and Toyo-Kogyo. Therefore, we believe that General Motors' and Ford's relationships with the Japanese producers of these vehicles is sufficient to make General Motors and Ford the statutory manufacturers of these vehicles.

In addition, section 501(9) defines the importer of a vehicle to be its manufacturer. The NHTSA believes that acceptance of delivery in the foreign country and assumption of full responsibility for the shipment and import duties on the vehicles by a domestic firm, as is the case for Ford, is sufficient to make the domestic firm the importer of the vehicle, and hence its manufacturer.

Further, the NHTSA believes that separate treatment of domestic and imported NPA's is not required by the Title. Section 503(b)(1) of Title V requires the separate treatment of domestic and captive import vehicles for passenger automobiles only. Section 503(a)(2) leaves open the question of whether to establish administrative requirements for separate treatment of domestic and captive import nonpassenger automobiles. The House report provides that procedures for calculating nonpassenger automobile average fuel economy are to be similar, although not necessarily identical to the procedures used for passenger automobiles. See H. Rept. No. 340, 94th Cong., 1st Sess. 91 (1975).

The provision in section 503(b)(1) for counting most captive import passenger automobiles together with the domestically produced passenger automobiles in model years 1978 and 1979 provides the affected manufacturers with an opportunity to adjust to the separate treatment requirement. Most domestic manufacturers which have captive import passenger automobiles have comparable domestically produced passenger automobiles also. The agency believes that if there is to be complete separate treatment of captive import and domestically produced nonpassenger automobiles, there should be a similar adjustment period first. One factor in determining the nature of such an adjustment period is the absence of any domestically produced nonpassenger automobiles that are comparable to the captive import nonpassenger automobiles.

The practical effect of not placing a limitation on counting the captive import nonpassenger automobiles in 1979 should be very small. The small, imported pickup truck market in this country, and Ford's and General Motors' share of it, have been fairly stable over the past several years. The agency believes that this stability will continue through 1979. Therefore, the chances seem minimal of there being any significant increase in the number of captive import nonpassenger automobiles that could be attributed to the absence of a limitation. However, since the manufacturers believe that inclusion of captive imports will help them market a more fuel economical fleet of nonpassenger automobiles, the agency is willing to allow inclusion for model year 1979. Allowing such inclusion may result in some small fuel economy benefits. If it can be demonstrated in a petition for reconsideration that the absence of a limitation on the inclusion of captive imports would have a significant effect on the captive import market, the agency would consider amending the standard.

As to AMC's discrimination argument, it should be noted that while the inclusion of the imports may give a manufacturer importing nonpassenger automobiles with high fuel economy some added flexibility in achieving the standard, this flexibility is no greater than the flexibility that would be enjoyed by a manufacturer which domestically manufactures a number of nonpassenger automobiles with high fuel economy.

Finally, the agency wishes to emphasize again that the decision to include all captive import nonpassenger automobiles in the fleets of the domestic manufacturers which import them applies to model year 1979 only. As part of the rulemaking to begin this summer regarding nonpassenger automobile standards for after 1979, the agency is considering establishing a limitation similar to the one for captive import passenger automobiles in 1978 and 1979 and providing for completely separate treatment beginning in the early 1980's. In this connection, the agency will be gathering information regarding the desirability of this approach, and an appropriate base period, similar to the one specified in section 503(b)(2)(B) of the Act, for the purpose of calculating the limitation.

Classes of nonpassenger automobiles. In the NPRM, the agency proposed establishing a standard for nonpassenger automobiles as a single class. The agency stated that it did not have sufficient information to assess the desirability or other implications of a multiple class system, nor had it fully assessed the potential criteria for

differentiating between or among classes, or the effect that a multiple classification system would have on the ability of a manufacturer to balance vehicles with high and low fuel economy.

Several comments discussed the classification issues which were raised in the NPRM. General Motors favored a single class for all nonpassenger automobiles, because such a system would allow a manufacturer maximum flexibility in meeting a standard. General Motors pointed out that a single class would enable the manufacturer to concentrate efforts for fuel economy improvement on its high volume products, while still being able to produce low volume, low fuel economy vehicles. General Motors indicated that a manufacturer might stop producing low volume, low fuel economy nonpassenger automobiles if those nonpassenger automobiles could not be balanced against other, more fuel economical nonpassenger automobiles. AMC argued that a single classification system favored large volume manufacturers with a broad product line which could balance low fuel economy vehicles against high fuel economy vehicles. AMC also argued that the vehicles which it produces, four-wheel drive, general utility jeep-type vehicles should be placed in a separate class because these vehicles were inherently less fuel economical than nonpassenger automobiles in general.

After considering these comments, as well as comments from International Harvester and Ford relating to separate classification, the agency has decided to establish a separate class for four-wheel drive, jeep-type vehicles. Because the agency intends that only four-wheel drive jeep-type vehicles, and not other four-wheel drive vehicles, such as some pickup trucks, be eligible for the separate class, the agency will allow only vehicles with wheelbases less than 110 inches to be eligible for the separate class. Each manufacturer of jeep-type vehicles will have the option of including those vehicles in the separate class, or including those vehicles in the general class of nonpassenger automobiles. In this way, the problems of both the manufacturer with a broad product line and the manufacturer with a narrow product line can be accommodated consistent with the purposes of Title V.

The basis for this decision is described below. The agency wishes to emphasize that the approach taken to the classification issue in this instance will not necessarily be used in the future when considering other manifestations of the classification issue.

Considering whether to establish a separate class for four-wheel drive, jeep-type vehicles brought into focus a problem in the analytical basis of the nonpassenger automobile fuel economy program. On the one hand, section 502(b) clearly gives the agency the authority to establish separate classes of nonpassenger automobiles with each class having a separate standard. This grant of authority recognizes that there are some vehicles which have characteristics in some way related to fuel economy making them either very fuel economical or very fuel uneconomical, which may justify their being subject to a special standard. On the other hand, the fact that standards must be *average* fuel economy standards indicates that the manufacturers should be given some opportunity to balance vehicles with differing fuel economies to ensure, consistent with the need to conserve energy, that a reasonable variety of vehicle types can be produced to satisfy consumer demand.

In consideration of this problem, the agency made the following analysis. In the case of four-wheel drive, jeep-type vehicles, the agency considered whether the vehicles were necessarily low performers (in terms of fuel economy) as compared to nonpassenger automobiles as a group. After considering the relevant comments and other information concerning these vehicles, the agency determined that these vehicles were inherently low fuel performing vehicles in comparison with nonpassenger automobiles in general, due to characteristics such as four-wheel drive and high drive ratios.

After determining that the general utility vehicles had special characteristics relating to fuel economy which could justify a separate standard, the agency next considered the manufacturers of the vehicles to determine whether all nonpassenger automobile manufacturers produce vehicles against which the low performing vehicles could be balanced. A single average fuel economy standard based on the performance of a variety

of nonpassenger automobiles of both inherently high and inherently low fuel economy may not be feasible for a manufacturer of only the inherently low fuel economy nonpassenger automobiles. The manufacturer of only inherently low fuel economy vehicles would not be able to perform the balancing that was assumed in developing the standard, and would therefore be unable to meet the standard. The conference report admonishes the Administrator to weigh the benefits to the Nation of a given fuel economy standard against the difficulties of individual manufacturers in meeting the standard. In doing so, he is cautioned to consider the competitive and national economic implications of the standards that might severely strain any manufacturer. (S. Rept. No. 516, 94th Cong., 1st Sess. 154–155 (1975)).

AMC is a manufacturer of four-wheel drive, jeep-type vehicles, which does not produce a significant number of high fuel economy vehicles against which its Jeep CJ could be balanced. Therefore, in light of the considerations discussed above, the agency deems the four-wheel drive, jeep-type vehicle to be an appropriate candidate for separate classification.

The agency also considered the effect of a separate classification on Toyota, another manufacturer of a general utility, jeep-type vehicle. Toyota produces mostly very high fuel economy nonpassenger automobiles, against which their Land Cruiser, which makes up approximately 17 percent of their total nonpassenger automobile production, can be balanced. In addition, the Land Cruiser is much heavier and has substantially lower fuel economy than the AMC Jeep CJ. Because the Jeep CJ represents a much larger part of the four-wheel drive, jeep-type vehicle market, the maximum feasible level of fuel economy would be influenced more by the Jeep CJ than the Land Cruiser. The agency believes that Toyota would be unlikely to spend substantial resources to improve the fuel economy of the Land Cruiser to the level where it could comply with the standard because that vehicle represents such a small portion of the Toyota fleet. Therefore, the agency believes it likely that Toyota would abandon the general utility, jeep-type vehicle market in this country rather than improve the fuel economy of the Land Cruiser, or pay a substantial civil penalty. The effect of Toyota's leaving the market would be to improve total average fuel economy of the nonpassenger automobile industry only slightly, but reduce competition in the general utility, jeep-type market under 6000 GVWR from two significant competitors to one. (Although Chrysler produces a four-wheel drive, general utility vehicle, Chrysler is not considered a significant competitive force since only 1700 of their vehicles were sold in model year 1976. Moreover, Chrysler's response to a standard for jeep-type vehicles is very difficult to gauge. Chrysler would have to improve fuel economy less than Toyota, but the Chrysler fleet of jeep-type vehicles is very small.) The agency believes that this lessening of competition should be avoided if possible, consistent with the need to conserve energy.

Therefore, the agency has given the manufacturers the option of including their four-wheel drive, jeep-type vehicles in the special class for such vehicles, or in the overall nonpassenger automobile class. In this way, AMC could meet a standard that was appropriate for its Jeep CJ, and Toyota would be able to balance the fuel economy of its Land Cruiser against the fuel economies of its highly fuel economical other nonpassenger automobiles if it chose to do so. By so doing, Toyota would be more likely to stay in the market.

The agency wishes to point out that the analysis leading to the decision to treat four-wheel drive, jeep-type vehicles as a separate class is closely tied to the language and purpose of Title V. Thus, the agency expresses no opinion as to whether such vehicles should be treated separately for other regulatory purposes, such as safety or emissions control.

A final point must be made. Although the agency has determined that certain characteristics of four-wheel drive, jeep-type vehicles result in those vehicles having an inherently lower fuel economy and therefore a lower fuel economy standard than more numerous nonpassenger automobiles, such as pickup trucks and vans, the jeep-type vehicles will still be expected to have improved fuel economy. The agency believes that these vehicles can improve fuel economy

through weight reduction, technological improvements, and performance reductions consistent with their intended use.

Responsibility for compliance. Each manufacturer is responsible for the fuel economy of the complete automobiles that it produces in a single stage. With respect to automobiles manufactured by two or more manufacturers, the agency has issued a proposed rule that would, in most circumstances, place the responsibility for their fuel economy on the manufacturer of the incomplete automobile (frame and chassis structure, power train, steering system, suspension system, and braking system). (Notice of Proposed Rulemaking, Manufacture of Multistage Automobiles, 42 FR 9040, February 14, 1977.) Under the contemplated scheme, such a manufacturer must determine the fuel economy of the automobiles it manufactures and include those automobiles in its fleet in calculating its average fuel economy. The incomplete vehicle manufacturer must also specify a maximum curb weight and a maximum frontal area with which the vehicle is to be completed. If the final stage manufacturer completes the automobile so as to exceed either maximum or if it sells the automobile as one manufactured in a model year subsequent to the model year during which the incomplete vehicle manufacturer produced the incomplete vehicle, that final stage manufacturer would then become the manufacturer of the automobile for purposes of Title V.

Measures to Improve Fuel Economy. In the NPRM, the NHTSA discussed several methods which could be used by manufacturers of nonpassenger automobiles to improve the average fuel economy of their nonpassenger automobile fleets. These methods included such techniques as technological improvements, weight reduction, and performance reductions. Many comments directed at these discussions of fuel economy improvement techniques were received from manufacturers of nonpassenger automobiles. Virtually all these comments made the point that the NHTSA, in one way or another, had overstated the potential for fuel economy improvement in nonpassenger automobiles.

It is important to put the assessment of fuel economy improvement contained in the NPRM in the proper perspective. The NPRM proposed an average fuel economy standard of 18.7 mpg. This proposed standard was intended to be set at a level that all manufacturers could meet without substantially modifying their product plans for model year 1979. The 18.7 mpg standard also assumed that there would be no adverse fuel economy effects resulting from the emissions standard and fuel economy testing procedures established by the EPA for model year 1979. In developing the proposed standard, NHTSA performed an engineering analysis to determine the appropriate level at which to set the standard consistent with that intention and assumption. This engineering analysis, which contained the discussion of the fuel economy improvement measures that were criticized by the commenters, concluded that those manufacturers that did not indicate a planned level of fuel economy of 18.7 mpg for model year 1979 could achieve that level without a substantial modification of their product plans (41 FR 52092). The NPRM made it clear that the NHTSA analysis of fuel economy potential did not depend on manufacturers' employing any particular method or methods of fuel economy improvement. The NPRM clearly stated:

> The agency wishes to emphasize that the proposed standard is a performance standard and, therefore, that the manufacturers would not be required to take any particular step discussed below. It is anticipated, however, that each manufacturer would take one or more of the steps and place its own unique emphasis on each of those steps. Thus, the fuel economy improvements derived from those steps by a particular manufacturer would vary from the percentage fuel economy improvements as calculated by the agency.

Thus, the discussion of methods by which fuel economy could be improved was only a general discussion of how some manufacturers of nonpassenger automobiles could modify their product plans slightly to achieve an average fuel economy of 18.7 mpg by model year 1979. Although, in general, weight reduction, performance reduction, technological improvements, and aerodynamic improvements are the basic methods to

improve automotive fuel economy, the discussion in the NPRM was clearly not an exhaustive list of the details of fuel economy improvement possibilities, nor a directive to manufacturers instructing them on how to improve fuel economy. The agency anticipated that each manufacturer would achieve 18.7 mpg as it determined was best for itself.

The comments by the manufacturers to the NPRM indicate that the manufacturers will be able to achieve an average fuel economy of at least 18.7 mpg, assuming no fuel economy consequences due to emissions standards and testing procedures. Ford and General Motors each recommended a standard which they derived by reducing the proposed 18.7 mpg standard by the claimed effects of EPA's actions regarding emissions and testing procedures for model year 1979. Thus, both Ford and General Motors appear to assume that they will be able to achieve an average fuel economy of at least 18.7 mpg, excluding the possible effects of the 1979 emissions standard and test procedures. An analysis of Chrysler's comments leads to the same apparent assumption that at least 18.7 mpg is achievable by 1979. Chrysler projected an average fuel economy standard for model year 1979 of 16.5 mpg, assuming 1979 emissions standards and testing procedures. Chrysler stated that the change in emissions standards from 1976 to 1979 would result in a fuel economy loss of approximately 5 percent, and the change in testing procedures would result in a measured fuel economy loss of 8 percent. If those fuel economy losses, totalling 13 percent, are taken out of the Chrysler projection, their projection would be 19 mpg in 1979, under 1976 emissions standards and test procedures.

Thus, although Ford, General Motors, and Chrysler all criticized the NHTSA analysis of fuel economy improvement potential, those companies did not claim that they were incapable of reaching at least 18.7 mpg. Indeed, they tacitly agreed that 18.7 mpg, under 1976 emissions standards and test procedures, is achievable. Therefore, there is no need for the NHTSA to change the final standard for model year 1979 in light of those comments. The proper level of the standard will depend on whether changes in the emissions standards or testing procedures result in reductions in fuel economy, not whether the NHTSA has correctly evaluated the fuel economy improvement potential through a particular combination of a variety of specified measures. However, the agency still believes, based on its analysis and considering the comments, that an average fuel economy level of 18.7 mpg, under 1976 emissions standards and testing procedures, is achievable without significant changes in product plans.

It is important to note that many of the comments received in this area are relevant to fuel economy standards for model years beyond 1979. They will be considered in connection with the development of those standards.

Effect of Federal Emissions Standards and Testing Procedures. EPA has established more stringent emission standards for model year 1979. EPA has also modified the testing procedures for measuring emissions for nonpassenger automobiles in model year 1979 (December 28, 1976, *Federal Register* 56316). The test procedure changes establish a higher road load horsepower requirement for test vehicles than the previous year. On the basis of various studies, EPA has concluded that the revised road load horsepower requirement is a more accurate description of conditions which an in-use vehicle experiences. Aside from a small increase in NOx any effect that the test procedure change has on fuel economy is a *measured* effect only; it has no impact on real, in-use fuel consumption of a vehicle.

The standard proposed by the NHTSA was based on the assumption that changes made by the EPA in the MY 1979 emissions standard and testing procedures applicable to nonpassenger automobiles would impose no fuel economy penalty or testing effect on vehicles of the manufacturers. NHTSA recognized, however, that this assumption was subject to some doubt, and indicated a willingness to revise the standard to take into account any such penalty or effect actually shown to exist. Comments and information on the existence and magnitude of these penalties were requested from all interested parties.

Comments were received from General Motors, Ford, Chrysler, AMC and International Harvester. Every manufacturer challenged the assumption that the revised EPA emissions standard and testing procedures would have no effect on average fuel economy. International Harvester believes the penalty due to the emission standard will be 10–15 percent. AMC estimated the combined penalty to be greater than 10 percent. The estimated fuel economy penalty due to the emission standard, including the effect of increased NOx emissions resulting from higher engine loading due to the revised test procedures, was 5 percent for General Motors, 3 percent for Ford, and 7 percent for Chrysler. General Motors estimates the fuel economy effect for revised testing to be 6.2 percent. Ford estimates the testing effect to be 9 percent. Chrysler estimates the testing effect at 6 percent. General Motors, Ford and Chrysler also submitted to the NHTSA the data upon which these estimates were made.

After a consideration of technology that will be available in model year 1979, and the ability to optimize engine calibration, and a careful analysis of the data supplied by the manufacturers, the NHTSA has concluded that the manufacturers have failed to show that there will be any penalty due to the tighter emissions standard. However, they have shown an effect of 8 percent due to the revised testing procedures.

The change in the EPA emissions standard that affects fuel economy is the lowering of the standard for NOx from 3.1 grams per mile (gpm) to 2.3 gpm. It is not disputed that meeting a more stringent NOx standard can result in taking product actions that would cause a degradation of fuel economy from levels achieved by a vehicle meeting a less stringent standard. However, it is also true that a number of product actions related to emissions control can be taken to restore the lost fuel economy. For example, where NOx is reduced through engine recalibration, which can result in lost fuel economy, the recalibration can be optimized to eliminate, or at least reduce, the fuel economy penalty. This optimization, or fine tuning, has occurred in the past as manufacturers have accumulated experience with the engine recalibration. Also, emissions control systems improve as the manufacturers gain experience with them, which can result in improved NOx control without a loss of fuel economy. Moreover, the use of existing emissions control systems, such as back pressure or proportional exhaust gas recirculation (EGR) systems, can be expanded for nonpassenger automobiles. Finally, advance emission control systems, such as three-way catalysts or electronic EGR, exist and could be used for nonpassenger automobiles, although the agency recognizes that such advanced systems may not be cost effective in controlling NOx to meet a standard of 2.3 gpm.

In light of these possibilities for achieving increased emissions control while maintaining fuel economy, the agency assumed that by model year 1979 manufacturers would be able to meet the 2.3 gpm NOx standard without a degradation in fuel economy from the level achievable when the NOx standard was 3.1 gpm. The NPRM solicited comments on this assumption of no fuel economy loss due to a tightened NOx standard. Although manufacturers submitted a significant amount of information on the issue, the manufacturers failed to show that a NOx standard of 2.3 gpm would necessarily result in a loss of fuel economy.

General Motors tested five different vehicles to establish the magnitude of the fuel economy penalty due to the revised emission standard. The vehicles were tested before and after recalibration to reduce NOx from the level required to meet the 3.1 gpm NOx standard to the level required to meet the 2.3 gpm NOx standard. The recalibration consisted of increased EGR flow rates and/or spark retard. General Motors' test data is inconsistent with regard to the relationship between reduction in NOx and fuel economy. One vehicle met the new NOx standard as delivered and was not recalibrated from the calibrations used to meet the 3.1 gpm standard. Two vehicles of the same engine family showed small reductions in fuel economy and one vehicle showed a large reduction in fuel economy. General Motors averaged the data with no weighting to reflect sales mix and extrapolated the results to the percent NOx reduction for the MY 1979 emission standard level since the arithmetic averaged NOx reductions in their test did not meet a level required for the 2.3 gpm standard. The General Motors testing methodology was unsat-

isfactory because the sample tested did not adequately represent General Motors' fleet and no replicate tests and only one replicate vehicle configuration were included. Additionally, using a non-weighted average is improper unless the results from one engine family are representative of all engine families. This was not shown to be the case for General Motors data, which indicated a wide range of results. In addition to the inconsistency of the test results, and the flaws in methodology, the other serious deficiencies in the General Motors test program were that it considered no improved emission control technology, especially improved EGR systems, and the recalibrations were not optimized.

Ford tested five nonpassenger automobiles in three engine families with one replicate vehicle configuration in two of the engine families. Ford data were the best submitted by a manufacturer since they had replicate vehicles and repeat tests (from two to four of each). Again, however, not all vehicle configurations were represented. Ford's vehicle recalibration was successful in meeting target emission levels although one vehicle met the revised emission standard by a sufficient margin without recalibration. However, the recalibrations were performed on current emission control systems and no mention was made of improved EGR systems. Also, there was no evidence that the calibrations were optimized. For the replicate vehicles, there was considerable variability in the effect of the recalibrations. It was concluded that Ford data, like the GM data, demonstrated an inconsistent effect on fuel economy of meeting a NOx standard of 2.3 gpm and demonstrated wide vehicle variability. It was also noted that in one case a recalibration to reduce NOx emissions improved fuel economy. This is evidence that other calibrations were not optimized. Ford arrived at its claimed fuel economy penalty by arithmetically averaging the results of its tests. This is improper unless the same results are expected for each engine family. In addition to its test data, Ford supplied supplemental data on the effects of the tighter California emission standard on fuel economy. The NHTSA believes the data are of limited usefulness because they rely on existing emission control technology for the California fleet, which is a small portion of the total fleet. Needs of the California fleet may not justify major changes in control techniques from those applied to the 49-state fleet. Moreover, the Ford data regarding California vehicles is inconsistent. Ford indicated that going from an engineering goal to meet a NOx standard of 3.1 gpm to a goal to meet a standard of 2.0 gpm in California resulted in a 10 percent reduction in fuel economy. However, Ford stated that the penalty from going from 3.1 to 2.3 for the 49-state fleet would result in a penalty of only 2 percent. In light of this discrepancy, the agency believes that comparisons with California vehicles are not particularly compelling.

Chrysler recalibrated three MY 1979 passenger cars from a 2.0 gpm NOx standard level to a 3.1 gpm NOx standard level and interpolated the resulting fuel economy penalty for a reduction in NOx from 3.1 gpm to 2.3 gpm. All vehicles were tested twice, but no identical vehicles or additional configurations were included. The results showed considerable variability in the claimed effect on fuel economy of the MY 1979 emission standard. The most serious deficiency, in NHTSA's opinion, is the fact that they tested passenger automobiles rather than nonpassenger automobiles. Besides the differences in attributes such as axle ratios between nonpassenger automobiles and passenger automobiles, the recalibration of model year 1977 vehicles ignores the improvements in the emission control systems and calibrations between MY 1976 and MY 1977 for passenger automobiles. Also, no allowance is made for similar improvements in nonpassenger automobiles emission control systems and calibration optimization by MY 1979. Chrysler also supplied a comparison of 49-state and California fleets of nonpassenger automobiles. This comparison is subject to the same criticism as for that of Ford.

NHTSA performed a statistical analysis of the data submitted by the manufacturers to assess the reliability of the data for estimating the level of penalty they claimed. A 95 percent confidence interval (i.e., the range of values within which the true level of any penalty lies with a 0.95 probability) was calculated for the claimed fuel economy penalty for each manufacturer and for the total fleet. The results of this analysis showed that even if the analysis consid-

ered improvements in emissions control technology and optimization of recalibration, and even if the vehicles tested were representative of the manufacturers' fleets, the claims of the manufacturers are not supported by the data because of the wide range of the confidence interval.

In conclusion, NHTSA considers the manufacturers' claims of a fuel economy penalty resulting from the need to reduce NOx emissions in MY 1979 to be unsupported by their submissions. NHTSA considers the results of a proper recalibration program more compelling than any other means of supporting a claim. The recalibration programs undertaken by the manufacturers were in some cases unsuccessful in reducing NOx emission to the levels desired. More importantly, the recalibrations performed neither demonstrate nor anticipate optimization of calibration nor new technology. Given the fact that the recalibration programs were inconsistent and inconclusive, NHTSA must rely on recognizing past accomplishments and on anticipating new technology. EPA has stated in their rulemaking action for the MY 1979 emission standard that there does not have to be a fuel economy penalty associated with its standard if the manufacturers have enough leadtime to optimize calibrations and control system designs. NHTSA agrees that there doesn't have to be a penalty if leadtime exists for recalibration optimization. Past performance indicates sufficient leadtime exists. However, NHTSA does not say there will be no penalty. Rather, the agency believes that the manufacturers have not demonstrated a penalty. The average fuel economy standard for model year 1979 has been set with no reduction included for the MY 1979 emission standard. However, the agency is open to submissions of further test data and leadtime information that will support the manufacturers' claims.

Unlike the situation with the change in emissions standards, the change in testing procedures, which includes an increase in the roadload horsepower setting of approximately 30 percent, will definitely result in a decrease in measured fuel economy. Manufacturers submitted data to show the effect of the revised testing procedure on measured fuel economy. The agency performed an analysis of the data submitted by the manufacturers.

The agency believes that the data submitted by Ford are the most meaningful because of the large number of vehicles tested (96 vehicles) in 550 separate tests, the testing of many identical vehicles, and because many of the tests were repeated. This amount of data enabled the NHTSA to use a statistical analysis procedure to show that if a 95 percent confidence interval for the effect on fuel economy for the entire fleet of Ford nonpassenger automobiles was computed, this fleet average effect would have a narrow confidence interval range, and would be considered to be highly reliable. The General Motors data are considered less reliable because of the fewer number of vehicles tested, the fact that there were no tests on identical vehicles, no tests were duplicated, and the data are highly variable. Chrysler's data are considered less reliable than Ford's because only 2 of 3 engine families were tested, and there were no tests of all vehicle configurations or duplicate tests. After a careful analysis of these results, the NHTSA believes the manufacturers have demonstrated an 8 percent fuel economy effect and the average fuel economy standard has been reduced to reflect this effect. This effect reflects primarily the results of the Ford analysis. However, for use on an industrywide basis, the effect demonstrated by Ford has been reduced slightly in light of differences between the Ford fleet and the industry fleet. For example, Ford produces a greater percentage of 6-cylinder engines than the industry average. In addition, Ford's average frontal area is larger than the industry average, which would cause a higher percentage of increase in road load. Both of these facts would result in a greater fuel economy effect. Also Ford produces a higher percentage of 4,000 pound inertia weight nonpassenger automobiles than the industry as a whole does. The percent increase in road load horsepower is greater for these lighter vehicles. Thus, the effect of the testing procedures on the industry average fuel economy would be slightly less than on Ford's average fuel economy.

Although the NHTSA is applying this correction for model year 1979, it will be revised in future model years if further data or analysis indicate that is appropriate.

Effect of California emissions standards. Ford stated that the 1979 emissions standards for California, which are more stringent than the 1979 Federal standards, will result in its California fleet of nonpassenger automobiles having an average fuel economy approximately 6 percent lower than its Federal fleet. Ford stated that the effect of the California fleet would be to lower the average fuel economy of its 50-state fleet by 0.1 mpg. Chrysler provided information showing that its California fleet will lower the average fuel economy of its 50-state fleet by 0.3 mpg. The NHTSA recognizes that emissions requirements for vehicles sold in California and the different mix of vehicles sold in California may have the effect of lowering the 50-state average fuel economy of a manufacturer of nonpassenger automobiles. However, neither Ford nor Chrysler made an adequate case for lowering the proposed standard because of the effect of the California vehicles. Ford, in information provided to the NHTSA in response to the agency's questionnaire circulated last summer, projected an average fuel economy for its nonpassenger automobiles manufactured in model year 1979 in excess of 19 mpg, without considering the effects of the 1979 Federal emissions standards and testing procedures. Although Ford's California vehicles may lower its 50-state average fuel economy by 0.1 mpg, Ford will still be capable of achieving a level of fuel economy under 1976 Federal emissions standards and testing procedures that is higher than the 18.7 proposed in the NPRM. Likewise, although Chrysler indicated some effect of the California standards on its average fuel economy, Chrysler still projected an average fuel economy for 1979 of 16.5 mpg, based on 1979 Federal testing procedures and emissions standards. If the fuel economy penalty and testing penalty estimated by Chrysler for emissions and testing procedures of 13 percent is taken out, Chrysler in effect projects a fuel economy of 19.0 mpg for 1979. Therefore, although California standards may make achievement of the level of 18.7 mpg, under 1976 Federal emissions standards and testing procedures, more difficult, there is no showing by Chrysler or Ford that the California standards make achievement of the level of 18.7 mpg infeasible.

Comparison of proposed standard for nonpassenger automobiles with standard established for passenger automobiles. In section 502(a)(1) of Title V, Congress established an average fuel economy standard for passenger automobiles manufactured in model year 1979 of 19.0 mpg. Congress established no standards for nonpassenger automobiles. Several commenters have argued that the proposed average fuel economy standard for nonpassenger automobiles of 18.7 mpg was too high, based on a comparison between the proposed nonpassenger automobile standard and the passenger automobile standard established by Congress. General Motors stated that there was an average difference in inertia weight of 500 pounds between passenger automobiles and nonpassenger automobiles and if the fuel economy costs of the extra 500 pounds were considered, the fuel economy standard for nonpassenger automobiles should be no more than 16.9 mpg to be consistent with the standard for passenger automobiles. Chrysler argued that an average fuel economy standard for nonpassenger automobiles which was only 0.3 mpg below that set for passenger automobiles failed to take into account the difference between passenger and nonpassenger automobiles. In particular, Chrysler stated that if the nonpassenger automobile standard remained at 18.7 mpg, after considering the effect of emissions standards and testing procedures that will be in effect in model year 1979, that standard would be equivalent to a standard of 21 mpg calculated under the emissions standards and testing procedures which Chrysler stated were used by Congress in establishing the passenger automobile standard of 19.0 mpg.

The NHTSA believes that these comments do not contain a legitimate reason for lowering the proposed fuel economy standard for nonpassenger automobiles. Title V does not require, or even hint, that the fuel economy standard which the agency establishes for nonpassenger automobiles must be comparable to the standard which Congress set for passenger automobiles. What Title V requires is that average fuel economy standards established by the agency for nonpassenger automobiles be set at the level of maximum feasible fuel economy. This is what the agency has done. In addition, because the agency is analyzing fuel economy potential on the basis of

data that are current now, rather than data that were current in 1975 when Title V was drafted, the agency believes that its own analysis of the proper level of fuel economy is deserving of greater weight than the earlier analysis of Congress.

Cost and Benefit Analysis. The NPRM contained a summary of costs and benefits concerning the proposed average fuel economy standard for nonpassenger automobiles. Ford stated that the NHTSA overstated the benefits and understated the costs of the proposed standard. Specifically, Ford stated that (1) the value of the gasoline saved was overstated because the price of gasoline assumed by NHTSA, $.65 per gallon, included an excise tax of $.13 per gallon, (2) the mileage used for calculating fuel savings should reflect the fact that annual vehicle mileage decreases as the vehicle grows older, and that the assumed vehicle life should reflect vehicle mortality statistics rather than an average life of ten years, (3) performance reductions in vehicles are not "virtually cost free," as stated in the NPRM, but have increased costs to consumers through reduced carrying capacity and increased trip time, (4) the cost of meeting the standard, if the proposed standard of 18.7 mpg is not reduced because of the penalties from 1979 emissions standards and testing procedures, will be at least $100.00, rather than the $12.00 assumed by NHTSA, (5) the cost increase due to meeting the 1979 emission standards is higher than assumed by the NHTSA, and (6) the weight reduction which NHTSA speculated might be necessary for General Motors to meet the standard can not necessarily be achieved for the cost estimated by NHTSA ($10.00–15.00 variable cost per vehicle and $500,000 investment), and that there is little correlation among particular weight reduction, variable costs, and investment levels associated with different components.

With respect to Ford's comment on the proper value of gasoline, it should be noted that the benefit and cost summary that was contained in the NPRM related to benefits and costs to consumers. Therefore, since consumers pay the excise tax on gasoline, it is proper to include that tax in a computation of the value of saved gasoline to the consumer. It is also important to note that the NHTSA considers $.65 per gallon to be a conservative estimate of the value of gasoline. The diminishing gasoline resources, and the uncertainty of the availability of petroleum for manufacturing gasoline, which led Congress to establish the mandatory fuel economy program, give the agency reason to believe that the current pump price of gasoline is not an adequate indicator of its true social value.

The annual mileage figure used by the agency to calculate fuel savings was found in the Census of Transportation, 1972 Truck Inventory and Use Survey, published by the United States Bureau of the Census. Although annual vehicle mileage decreases with the age of the vehicle, assuming constant 11,000 miles per year for the vehicles' life does not result in an inaccurate evaluation of total costs. It is the consideration of the total costs of the standard which the agency must consider.

The summary of costs and benefits of the proposed standard considered only quantifiable expenditures and savings related to the standard. Although Ford is correct that there may be some additional costs of the improved fuel economy in terms of reduced utility, these nonquantifiable costs were not contained in the summary of costs and benefits. Since the final rule, like the proposed rule, is based upon the manufacturers' product plans for model year 1979, these performance costs are not expected to be great.

Ford contended that meeting the average fuel economy standards would result in an average retail price equivalent increase of at least $100.00 per vehicle, if the proposed standard of 18.7 mpg were not reduced for emissions and testing penalties. Since the final standard reflects a substantial reduction from the proposed standard of 8 percent, due to the change in the fuel economy testing procedures, the agency assumes that the estimated price increase of $100.00 is no longer applicable. Although some price increase may be likely to meet the final standard, there is nothing in the Ford comment to indicate that the NHTSA estimate of $24.00 per vehicle retail price increase ($12 cost to the manufacturer, with a markup of 100 percent) is an incorrect estimate of that increase.

With respect to the costs of fuel economy testing and compliance with emissions requirements, the figures assumed were supplied to NHTSA by the EPA, and represent its estimate of the average industry costs. The EPA estimate includes allowances for reuse of the vehicle. The Ford comment does not seem to recognize that an entirely new vehicle is not necessary to test each base level. Changes in recalibration and axle ratios can be made to vehicles, and allow some of the testing costs to be spread over a number of tests. Therefore, Ford's estimate of testing costs seems high. However, even assuming that Ford's estimates of the cost of testing are correct, that higher testing cost is not a basis for modifying the standard, or deciding not to establish a standard. The agency is required by section 502(b) of Title V to establish an average fuel economy standard for nonpassenger automobiles manufactured in model year 1979. Therefore, even assuming that Ford's estimate of testing costs represents a legitimate upper limit of the range of reasonable estimates of testing costs, the agency would not modify its decisions on the basis of the Ford cost figures.

With respect to Ford's contention that there is little correlation between particular weight reduction, variable cost, and investment level, the agency realized that some ways of taking weight out of a nonpassenger automobile are more expensive than others. In evaluating the cost of weight reduction, the agency assumed that the manufacturer would attempt to use less expensive techniques of weight reduction.

In light of the foregoing, Title 49, Code of Federal Regulations, is amended by adding a new Part 533, *Average Fuel Economy Standards for Nonpassenger Automobiles*. . . .

(Sec. 9, Pub. L. 89–670, 80 Stat. 931 (49 U.S.C. 1657); Sec. 301, Pub. L. 94–163, 89 Stat. 901 (15 U.S.C. 2002); delegation of authority at 41 FR 25015, June 22, 1976.)

Issued on March 8, 1977.

John W. Snow
Administrator
National Highway Traffic
Safety Administration

42 F.R. 13807
March 14, 1977

PREAMBLE TO PART 533—LIGHT TRUCK FUEL ECONOMY STANDARDS

(Docket No. FE 77–05; Notice 5)

This notice amends the definition of "basic engine," as it appears in the light truck fuel economy standards of the National Highway Traffic Safety Administration. The amendment is intended to clarify the applicability of various light truck fuel economy standards for the 1980 and 1981 model years.

Date: This amendment is effective October 10, 1978.

For further information contact:

Roger Fairchild, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–426–2992).

Supplementary information: On March 23, 1978, the agency published a definition of "basic engine" as part of its fuel economy standards for 1980–81 model year light trucks. See 43 F.R. 11995, 49 CFR 533.4. That definition is relevant solely to the determination of which light trucks are "limited product line light trucks," and therefore subject to less stringent fuel economy standards. The latter definition was intended to identify the class of light trucks manufactured by companies which had not had experience designing and applying the advanced emission control systems necessary to meet current and near-term future passenger automobile emission standards. Those systems will be required for many light trucks for the first time beginning in model year 1979. The agency had International Harvester primarily in mind, given the company's unique problems resulting from its limited sales volume, restricted product line, and the fact that its engines are derivatives of medium duty truck (above 10,000 pounds GVWR) engines. See 43 F.R. 11998.

The original "basic engine" definition incorporates the definition appearing in the Environmental Protection Agency's regulation, 40 CFR 600.002–80(21), which defines that term as "a unique combination of manufacturer, engine displacement, number of cylinders, fuel system (as distinguished by number of carburetor barrels or use of fuel injection), catalyst usage, and other engine and emission control system characteristics specified by the Administrator." "Limited product line light truck" is in turn defined by NHTSA as "a light truck manufactured by a manufacturer whose light truck fleet is powered exclusively by basic engines which are not also used in passenger automobiles." See 49 CFR 533.4.

Although the EPA regulation defining "basic engine" does not on its face present any problem in NHTSA's definitional scheme, it grants EPA the authority to designate additional criteria to distinguish "basic engines". EPA has exercised this authority to classify otherwise identical engines used in both cars and trucks as two separate "basic engines," one for passenger cars, and the other for trucks. The effect of this administrative interpretation of the EPA regulation is arguably to cause *virtually all* light trucks to be "limited product line light trucks" under NHTSA's definitions, contrary to NHTSA's expressed limited intent. Therefore, NHTSA is revising the "basic engine" definition to exclude the additional characteristics specified by the EPA Administrator in that agency's advisory circular.

Since this amendment is in the nature of technical correction and makes the regulations conform to NHTSA's originally expressed intent, and because of the need to immediately clarify any ambiguity in the regulation, it is determined that a notice of proposed rulemaking is unnecessary and contrary to the public interest, within the meaning of 5 U.S.C. 553(b). Therefore, this amendment will be effective immediately.

The National Highway Traffic Safety Administration has determined that this document does not contain a significant regulation requiring a regulatory analysis under Executive Order 12044. Furthermore, this action does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq).

In consideration of the foregoing, 49 CFR Chapter V is amended. . . .

Authority: Sec. 9, Pub. L. 89-670, 80 Stat. 931 (49 U.S.C. 1657); sec. 301, Pub. L. 94-163, 89 Stat. 901 (15 U.S.C. 2002); delegation of authority at 41 FR 25015, June 22, 1976.

The principal drafter of this document is Roger C. Fairchild.

Issued on October 2, 1978.

Joan Claybrook
Administrator

43 F.R. 46546
October 10, 1978

PREAMBLE TO PART 533—LIGHT TRUCK FUEL ECONOMY STANDARDS

(Docket No. FE 77–5; Notice 7)

Action: Final rule.

Summary: This notice reduces the average fuel economy standards applicable to two wheel drive light trucks manufactured in model year 1981. This action is taken in response to a petition from Chrysler Corporation providing new information which indicates that their capability to improve the fuel economy of those trucks is less than had been determined in the earlier rulemaking. This notice also denies Chrysler's request to reduce the fuel economy standards applicable to four wheel drive light trucks. The reduction of the two wheel drive standard is intended to produce standards which are still at the maximum feasible levels achievable by the manufacturers taking the new information into account.

Dates: These standards are applicable for the 1981 model year.

For further information contact:

Mr. Francis J. Turpin, Office of Automotive Fuel Economy Standards (NRM–21), National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–472–6902).

Supplementary information:

BACKGROUND

On March 23, 1978, in 43 FR 11995, NHTSA established fuel economy standards for light trucks manufactured in the 1980–81 model years. The 1981 standards were established at levels of 18.0 mpg for two-wheel drive (4X2) light trucks and 15.5 mpg for four-wheel drive (4X4) light trucks. Vehicles subject to the standards include pick-up trucks, vans, and utility vehicles with gross vehicle weight ratings (GVWR) of up to and including 8500 pounds. The establishment of these standards is authorized by section 502(b) of the Motor Vehicle Information and Cost Savings Act ("the Act"), 15 U.S.C. 2002(b). The Act requires that standards be established for each model year at the "maximum feasible average fuel economy level," considering technological feasibility, economic practicability, the effects of other Federal motor vehicle standards on fuel economy, and the need of the Nation to conserve energy.

The fuel economy standards were largely based on the plans of the manufacturers to make specified improvements to increase the fuel economy of their trucks. They were set under the presumption that the Environmental Protection Agency (EPA) would approve by January 1, 1980, the use of low friction lubricants in fuel economy testing under its procedures. The final rule provided that if approval were not given by that date, the standards would each be 0.5 mpg less, i.e., 17.5 mpg for 4X2's and 15.0 mpg for 4X4's. This reduction in the fuel economy standards would be made to account for the manufacturers' diminished fuel economy improvement capability should they not be permitted to obtain credit for the benefits associated with use of these lubricants.

On September 20, 1978, Chrysler requested that these standards be reduced to 16.5 and 14.5 mpg for 4X2's and 4X4's respectively. Chrysler claimed that without such a reduction, it would be required to either violate the standards or drastically curtail its sales of larger, less fuel efficient trucks. After ascertaining that Chrysler intended this request to be treated as a formal petition for rulemaking under the agency's procedures, the agency requested that specific information supporting the petition be submitted. Some of this information was submitted on November 24, 1978, and the agency initiated rulemaking on the petition on December 18, 1978. See 43 FR 58840. The notice did not propose any specific change in the standards. Rather, it

mentioned the reductions by Chrysler and invited comment on issues raised by that company's petition.

The agency also contacted the other vehicle manufacturers to determine whether they were having similar difficulties in working toward compliance with the 1981 standards. Ford projected being able to achieve 17.6 mpg for its 4X2 fleet by 1981, thereby complying with the standard only if the lubricant-related standard reduction occurred. That company projected being capable of obtaining only a 0.1 mpg benefit from the use of improved engine lubricants, rather than the 0.5 mpg projected by the agency. GM projected its "free market" improvement capability for 1981 to be only 16.2 mpg, despite the fact that it projected compliance with the 18 mpg standard a year ago. The main factors in the lower GM capability projection are its changed position on the feasibility of certain marketing actions to improve its fuel economy by 0.8 mpg by 1981 and a complete (and only partially explained) reversal of position on its ability to offset the effects of changes in light truck emission standards. In the case of the 4X4 standard, American Motors and Ford project compliance with the 15.5 mpg standard, while GM projected only 14.2 mpg, for the same reasons as in the case of the 4X2 standard.

SUMMARY OF DECISION

The 1981 4X2 standard is being reduced by 0.8 mpg to 17.2 and Chrysler's request for a reduction of the 4X4 standard is being denied. The agency agrees with the arguments presented by Chrysler and the other companies in most respects, the main exception being the issue of whether the use of improved lubricants could provide a fuel economy benefit for 1981 model year light trucks. In that case, the impact on the standards of the agency's disagreement is contingent upon whether the EPA permits the use of these lubricants in fuel economy testing by January 1, 1980. If EPA does not approve the lubricants, each of the standards would be 0.5 mpg less, i.e., the standards would be 16.7 mpg for 4X2's and 15.0 mpg for 4X4's.

The major differences between the basis for this decision and that for the prior rulemaking are (in order of magnitude of fuel economy effect for Chrysler): reductions in expected fuel economy benefits from engine displacement or drive ratio reductions, engine efficiency improvements and weight reduction; errors in the agency's prior baseline or larger than anticipated effects of emission standards and test procedure changes; reduced benefits from aerodynamic and rolling resistance changes; changes in product mix; and changes in EPA fuel economy test procedures. Each of these areas resulted in a reduction in the agency's fuel economy improvement projections for Chrysler of from 0.1 mpg to 0.5 mpg, with the magnitude of the effect varying for the 4X2 and 4X4 fleets. Chrysler also provided information on certain fuel economy improvements which it plans to implement for the 1981 model year but which were not included in the agency's original standard-setting analysis. These items have been included in the agency's analysis of the Chrysler petition, and partially offset the effects of the previously mentioned reductions in fuel economy improvement potential. For the other manufacturers, the main factor causing their lowered projected capabilities is (in addition to the factors previously discussed) the agency's changed position on the effect of 1979 model year emission standards. While in the 1980–81 rulemaking, the agency concluded that the more stringent emission standards need not reduce fuel economy below pre-1979 levels, the agency now believes that a fuel economy impact of the more stringent 1979 emission standards exists and cannot be offset by 1981.

In deciding whether the standards should be reduced, the agency balanced the difficulties of the manufacturers in meeting the previously established standards against the benefits to the nation of compliance with the higher standards. In this case, it was decided that the marketing risks associated with meeting the higher 4X2 standard outweighed the potential energy savings.

The agency's analysis of the more significant areas of disagreement between the Chrysler petition and the conclusions drawn in the previous rulemaking to establish the 1981 standards follows. In conducting this analysis, the agency viewed the Chrysler petition as a continuation of the original rulemaking. If any changes were

to be made in the existing standards, the petitioner would have to demonstrate to the agency's satisfaction that the agency had erred in its original analysis of the maximum feasible level of average fuel economy achievable within the leadtime available from the issuance of the original final rule. A complete discussion of the technical basis for this decision is contained in the agency's Rulemaking Support Paper, copies of which are available from the individual listed as the "information contact" at the beginning of this notice.

EXPLANATION OF DECISION

(a) *Reduction in engine displacement and drive ratios.* In establishing 1980 and 1981 standards in March 1978, the agency projected that the manufacturers could make reductions in the product of average engine displacement and final drive ratio (CID x N/V) of approximately 10 percent, in addition to an amount made possible as vehicle weight is reduced (keeping vehicle performance relatively constant). In Chrysler's case, such a change was estimated to amount to a 16 percent reduction in CID x N/V, producing a fuel economy gain of about 1.1 mpg for 4X2's. In the case of 4X4's, a 16.4 percent reduction was projected, for a 0.92 mpg benefit in fuel economy. These reductions were greater than those projected by Chrysler in the last rulemaking by a large amount, but the agency concluded that there was no reason to believe that Chrysler could not achieve performance levels commensurate with those of the other manufacturers. See Rulemaking Support Paper Supplement (RSPS) for the 1980–81 rulemaking, page III–163–6.

In its petition and related submissions, Chrysler has provided information from which the agency calculated Chrysler's planned reductions in CID x N/V for model year 1981. These reductions appear to closely approximate the reductions projected by the agency in the last rulemaking (within about 1 percent). However, the agency's previous projections of CID x N/V levels for Chrysler in 1981 and Chrysler's current planned levels are not directly comparable, since Chrysler's planned values include the effect of rerating about 10 percent of its truck fleet (principally those with the highest CID and axle ratios) over the 8500-pound GVWR dividing line, an effect not considered in the 1980–81 rulemaking. Therefore, the agency attempted to determine whether Chrysler's planned reductions in CID x N/V for 1981 were in fact the maximum feasible reductions, as required by the Act. In the 1980–81 rulemaking, the extent to which reductions in engine displacement or drive ratios could be implemented were determined to be limited by (a) minimum truck performance criteria (e.g., ability to pull a load up a steep grade), (b) emission problems with extremely low performance levels, (c) technical factors, which may produce diminishing fuel economy returns beyond some level of CID x N/V reductions, and (d) market acceptability of trucks with lower acceleration characteristics, notwithstanding the ability of the truck to meet minimum functional requirements. See, e.g., DN–82, Att. II (GM).

A comparison of Chrysler's planned 1981 levels to those of the other manufacturers indicates that GM and Ford project CID x N/V levels approximately 5 percent lower than Chrysler for both 4X2's and 4X4's, even though Chrysler's trucks are lighter than their competitors'. The Center for Auto Safety argues that Chrysler should be able to offset this discrepancy between their performance levels and their competitors. DN–90, p. 6.[1] The agency asked Chrysler why such reductions could not be made, and Chrysler responded that, according to their marketing experts, severe marketing problems would be encountered at lower CID x N/V levels than those planned. DN–190. For each manufacturer, the CID x N/V product is governed by the available engines, transmissions (e.g., overdrive) and axle ratios. Given the mix of engines produced by Chrysler, the agency believes that they face a greater marketing risk from performance reduction than do their competitors. The Chrysler

[1] The abbreviation "DN" followed by a number refers to the docket number of material in NHTSA docket FE–77–05–N06. This docket is located in Room 5108 of the Nassif Building, 400 Seventh Street, S.W., Washington, D.C., and is open to the public during normal business hours. References to the materials in the docket and other materials are intended as an aid to persons dealing with the voluminous materials in this rulemaking, and may not be exhaustive.

fleet is powered by 360, 318, and 225 cubic inch engines. Given the very large gap between the 318 and the 225, Chrysler's ability to shift consumers to the 225 from the 318, the key to any performance reduction, faces them with the very distinct possibility of losing customers to competitors with a more complete range of engines or, to competitors with engines smaller than their 318 but larger than their 225.

Although the agency (or anyone else for that matter) cannot quantify with certainty the magnitude of the marketing risk faced by Chrysler in attempting to make CID x N/V reductions greater than those it now plans, the agency is particularly concerned about the potential impacts on Chrysler's economic position of taking such marketing actions. At a time when its competitors are earning record profits, Chrysler has faced steady financial losses. Further, Chrysler's truck sales (particularly vans and other two-wheel drive light trucks) have been one of its more profitable operations, and erosion of its competitive position in that market segment could be especially harmful to that company. While GM and Ford face marketing risks in reducing the average CID x N/V of their truck fleets, the impacts of an erroneous marketing judgment by those companies on their long term financial viability is certainly far less than in the case of Chrysler. Therefore, the agency has adopted Chrysler's planned reductions in CID x N/V for its two-wheel drive fleet for this rulemaking.

The case for Chrysler's 4X4 fleet is somewhat different; however, Chrysler's own projection of its CID x N/V reductions for 1981 indicate that it expected to encounter a shift in its engine offerings (either through its own marketing efforts or through other changes in customer preference) resulting in an *increase* in the sales of its largest engine at the expense of its intermediate displacement engine. The agency recognizes that this projection was made prior to recent gasoline shortages, which has resulted in a serious drop in the demand for large trucks and engines. Now, the agency doubts that Chrysler could effectuate this adverse mix shift without encountering sales resistance, even if the promotion of the sale of fuel inefficient trucks were consistent with the law. Faced with the current trend in the automobile and light truck market, the agency cannot accept Chrysler's unsupported projection of an engine mix shift toward larger displacement engines. By holding its engine mix constant for 4X4's (which may prove to be a conservative assumption) and by making minor axle ratio reductions consistent with those planned by the larger manufacturers, Chrysler should be able to make fuel economy improvements beyond those it projected in its petition and equivalent to those projected by the agency in the original 1980–81 rulemaking.

Chrysler also objected to the agency's projected benefit from a given level of CID x N/V reduction. DN–93, p. 12. Chrysler projected a lesser benefit for these reductions, based on an analysis of specific axle ratio changes or engine substitutions. The agency attempted to resolve this issue through a variety of methods, including an assessment of the effect of different axle ratios and engines on Chrysler's current fleet. These analyses indicate that the higher benefit for CID x N/V reductions projected by NHTSA in the original rulemaking on the 1980–81 standards is valid or even conservative. EPA's analysis showed a higher benefit for engine displacement reductions than did NHTSA's but a lower benefit for axle ratio reductions. The agency did not rely on EPA's analysis of the effect of N/V reductions on fuel economy, since that analysis was based solely on passenger car data (reflecting generally lower N/V values). DN–169. GM information also supports the agency's conclusion on this point. DN–81, p. 4. Therefore, the agency has used the same relationship between CID x N/V reductions and fuel economy improvements for the analysis of the Chrysler petition that it used in the original rulemaking. However, because of the lower CID x N/V reductions now projected, the agency is reducing its projected fuel economy gain for Chrysler in this area by 0.4 mpg for 4X2's and is retaining its projection for 4X4's, for the reasons mentioned above.

The agency has also reduced its projection for fuel economy gains from CID x N/V reductions in the case of AM's 4X4 fleet (the bulk of that company's production). In the 1980–81 rulemaking, the agency projected that AM could improve its fuel economy by 0.7 mpg through

making reductions in the same range of relative magnitude as the other manufacturers, but AM now indicates that it plans no reductions. Although AM indicated in August 1977 that it planned to make CID x N/V reductions of approximately the magnitude projected by the agency in the last rulemaking, it now indicates that such reductions should be made over the course of 3 to 4 years, to permit truck purchasers to become acclimated to the resulting decrease in vehicle acceleration capability. Even accepting AM's argument for the need of a phase-in period, making *no* CID x N/V reductions between 1979 and 1981 could not be justified as the maximum feasible fuel economy improvement on their part. If AM makes only half the CID x N/V reductions the agency projected (and AM previously planned) in the 1980–81 rulemaking, it could still comply with the existing 4X4 standard for 1981. AM in fact expects to be able to comply with that standard. AM's zero CID x N/V reduction estimate is also well out of line with the estimates of the rest of the manufacturers. Therefore, the agency concludes that AM can make fuel economy improvements of at least 0.3 mpg through reducing average engine displacement or drive ratios for its 4X4 light trucks, enough to permit it to reach the current standard for 1981.

(b) *Engine efficiency improvements.* In previous rulemakings, the agency has, for analytical purposes, considered the related areas of efficiency improvements (i.e., mechanical improvements), optimization of engine calibrations (i.e., those controlling spark advance, exhaust gas recirculation rate, air-to-fuel ratio) and improvements in emission control systems as a single class of technological improvements. In the case of Chrysler in the last rulemaking proceeding, the agency projected that through a combination of these measures, any adverse impacts associated with more stringent emission standards for 1979 could be offset, and a net improvement of 2.4 percent for 4X2's and 1.4 percent for 4X4's could result. This conclusion was based upon earlier development testing of 1979 vehicles which showed a 3 percent emission standard related fuel economy penalty and Chrysler's own projection that it could achieve fuel economy gains of 5.4 and 4.4 percent for 4X2's and 4X4's respectively through a combination of engine efficiency improvements. Prior to the proposal of the 1981 standards in December 1977, Chrysler had provided even more optimistic projections of engine efficiency improvements, which the agency relied upon in proposing standards. See 43 FR 12001. Chrysler's most recent estimates indicate that it is continuing to pursue the same engine efficiency improvements identified in the last rulemaking proceeding, but is not obtaining the expected benefits because of unanticipated development problems with the various individual changes.

Much of Chrysler's currently projected engine improvement is categorized as undefined task, i.e., no specific means are identified for achieving the projected gain. The agency is adopting Chrysler's revised estimate of engine efficiency improvements, since it appears to reflect the maximum feasible gains in fuel economy.

The agency is also revising downward its estimates of feasible engine efficiency improvements for the other manufacturers. In the previous rulemaking, NHTSA projected that American Motors (AM) and Ford could offset the effect of more stringent emission standards through a combination of engine efficiency improvements, changes to emission control systems and calibration optimization, and that GM could offset the penalty and obtain a net improvement of 2 percent for both 4X2's and 4X4's. The projection for GM was based on their submission in the prior rulemaking, and was confirmed by GM on two separate occasions, most recently in December 1978. DN–29, p. 3. GM now claims that it was necessary to incorporate the above-mentioned improvements to achieve MY 1979 emissions certification and that a penalty still exists. The projection for AM was based upon their submission in the original rulemaking which stated that their estimate of the maximum engine efficiency improvements available would be 4 to 5.5 percent for their 4X4's. AM claims that they never intended to imply that the improvement could be obtained by 1981, only that it could eventually be achieved. In the case of Ford, that company's submission in the last rulemaking showed through "engine mapping" analyses that the emission penalty could be reduced to approximately 1 percent with optimal engine calibra-

tions (which may require electronic controls) and that certain additional engine efficiency improvements were possible. See 43 FR 12001. The agency found that electronic controls might not be feasible for light trucks by MY 1981 due to inadequate leadtime to implement the full development and production of the required software.

In its January 17, 1979, submission on the Chrysler petition, GM indicated that the agency should revise its position on the question of engine efficiency/optimization changes. DN–82, p. 2. GM subsequently clarified their position, indicating that they were revising their earlier statements that the emission standards penalty could be offset. DN–207. GM indicated that the change in position was due to the fact that their 1979 trucks suffered more than they had anticipated due to the change in emission standards. However, GM had already obtained data on their 1979 truck fleet at the time they confirmed their original position on this question in December 1978. The agency also notes that GM apparently had significant difficulty certifying their 1979 truck fleet for emission compliance, and "last-minute" changes to those trucks were required to permit certification. Ford stated that its engine calibrations are much closer to optimal than in previous years when emission standards changed, due to improvements in Ford's technical capability, but that approximately 1 percent fuel economy improvement is projected by 1981 due to calibration optimization. DN–91, p. 7.

Based on this information, the agency is projecting that GM can achieve a 2 percent fuel economy improvement (from its 1979 levels) due to calibration improvements, engine efficiency improvements, and improvements in emission control systems. This improvement is based on the fact that other manufacturers are projecting fuel economy improvements for engine improvement programs like the ones GM is engaging in (see Rulemaking Support Paper (RSP), section III. A), the difficulties GM had in certifying their trucks for emission purposes in 1979, and the historical trend for improved engine efficiency after the first year in which emission standards are made more stringent (see, e.g., Chrysler's comment on this point, DN–93, p. 5). In the case of Ford, the agency is adopting a 0.2 mpg improvement based on the above Ford reference and other confidential information. These results are 0.3 to 0.4 mpg lower than the projections in the 1980–81 rulemaking for both GM and Ford. The agency is also adopting Chrysler's reduced estimate of engine efficiency improvements, reducing their fuel economy improvement capability by 0.2 to 0.3 mpg. In the case of AM, the agency is eliminating the previously projected 5 percent improvement in fuel economy due to engine modifications (resulting in a 0.7 mpg decrease in average fuel economy). Although the agency is still of the view that a substantial potential for engine efficiency improvements exists for AM's engines, it is not clear that AM possesses the technical capability to implement these improvements by 1981. While the larger domestic manufacturers have either already implemented improvements in this category or plan to do so by 1981, AM's technical resources to make these improvements are quite small in comparison to GM, Ford, and even Chrysler. It should also be noted that giving AM the benefit of the doubt on this question has no effect on the level established for the 1981 4X4 standard, since AM projects being able to meet the current standard.

(c) *Weight reduction.* In the 1980–81 rulemaking, the agency projected that the light truck manufacturers could reduce the weights of their vehicles by amounts ranging from approximately 225 to 450 pounds. These conclusions were based upon the agency's own analysis of light-weight material substitution opportunities available to the vehicle manufacturers, responses to special orders issued to numerous suppliers of vehicle components and materials, and the manufacturers' own weight reduction plans.

Based on their responses to the notice on the Chrysler petition, it appears that the manufacturers are currently projecting slightly less weight reduction than did the agency in the 1980–81 rulemaking. Chrysler submitted information explaining why it had reduced its weight reduction projections from those provided in the earlier rulemaking. AM has effected weight reduction since the existing standards were established. This has improved the fuel economy of their 4X4 fleet as reflected in the MY 79 data. Beyond MY 79, the new EPA procedures, i.e.,

new test weights and new truckline definition, offset the weight reduction benefits expected between MY 79–81, according to AM. Consequently, AM expects no fuel economy benefit from weight reduction between 1979 and 1981 for its 4X4 fleet (all its commercially available trucks). Ford projects test weight reduction of under 150 pounds by 1981, despite the fact that it will be introducing a new pickup truck in 1980. GM provided information on its new 1981 model year pickup truck, but the agency is unable to determine the exact magnitude of the weight reduction achieved. GM did provide information on the fuel economy improvement the new truck could be expected to achieve, but that improvement was due to several factors in addition to lower weight.

The agency is projecting reduced benefits for weight reduction for Chrysler. In the case of Chrysler's 4X2 fleet, the largest part of the reduction is due to the change in the agency's regression equation. In particular, the agency has determined that, for purposes of predicting fuel economy for light trucks, revisions should be made to the regression equation used by the agency to determine the effect on fuel economy of changes in axle or gear ratios, engine displacement, and weight. The new regression equation is based on more extensive fuel economy data for light trucks, which became available for the first time in 1979. It predicts lesser benefits for a given degree of weight reduction than did the previously used equation, and greater benefits for axle ratio and/or engine displacement reductions. In addition, the new equation includes a factor for changes in aerodynamic/rolling resistance characteristics. The inclusion of this factor makes the new equation more consistent with current fuel economy test procedures, which base certain dynamometer settings on these characteristics, while the previous procedures relied solely on vehicle weight. In this analysis of the Chrysler petition, the new equation's reduced benefit for weight reduction has been used, accounting for a portion of the reduction in standard established in this notice. A further description of the new regression equation is contained in the agency's Rulemaking Support Paper on this proceeding. The final projected weight reduction benefit for 4X2's agrees with the benefit projected by Chrysler when adjusted for changes in EPA test procedures.

In the case of 4X4's, the situation for Chrysler is essentially the same as in the 4X2 case. The projected weight reduction is slightly less than estimated by the agency in the 80–81 rulemaking; however, the benefits are reduced significantly (by 0.3 mpg) primarily because of changes in the agency's regression equation.

For both GM and Ford, the agency is projecting reduced fuel economy benefits (of about 0.3 mpg) from weight reduction for MY 1981, compared to the last rulemaking. While Ford and GM are reducing weight to levels approximating those projected by the agency in the original rulemaking, the use of the agency's new regression equation results in reduced fuel economy benefits. In addition, refinements to the weight simulation used by EPA for fuel economy testing are now expected to reduce previously projected improvements in *measured* fuel economy (naturally, on-the-road improvements are unaffected). Although these refinements make testing more accurate, their effect on measured fuel economy must be accounted for. The agency has also adopted AM's weight reduction plan, reducing their fuel economy improvement capability by 0.3 mpg.

(d) *Possible errors in NHTSA baseline or larger than anticipated effects of changes to emission standards and test procedures.* When the original 1980–81 standards were established, the agency lacked substantial fuel economy data for light trucks in the 6001–8500 pound GVWR range. The reason for the absence of these data was that those trucks were not yet tested for emissions by EPA in a manner which yields fuel economy data. Therefore, the agency used available data (primarily for trucks under 6000 pounds GVWR) and its regression equation to project fuel economy data for the entire 0–8500 pound GVWR fleet. This extrapolation permitted the agency to develop a starting point or "baseline" from which to project future fuel economy improvements for standard-setting purposes. A more complete description of this methodology is contained in Section II of the Rulemaking Support Paper for this petition.

The agency now has EPA-approved MY 1979 fuel economy data for light trucks in the 6001–8500 pound GVWR range. Using this data, the agency has attempted to determine the accuracy of the baseline used to set the existing standards. The first step in that process was to account for known changes that occurred between MY 1977 and MY 1979. Thus, the final NHTSA model year 1977 baseline fuel economy for each manufacturer (see RSP–S, Page III–19) must be reduced by 3 percent, the agency's estimate of the fuel economy penalty due to the stricter MY 1979 emission standards. Also, those baselines must then be increased by the known improvements which have been made since MY 1977. Finally, an adjustment must be made for differences between the 1977 and 1979 production mixes of the manufacturers. As a result, given no other changes, the adjusted final MY 1977 baseline should be identical to the MY 1979 baseline derived from the MY 1979 certification data. This is, however, not the case.

The 1977 and 1979 baselines, when adjusted as described above, are not consistent for a combination of reasons. One factor is that the trucks in the 6001–8500 pound GVWR range (for which fuel economy data were extrapolated from the under–6000 pound GVWR fleet) are inherently somewhat different from the lighter trucks and that the agency's extrapolation procedure therefore produced small errors. Another factor is that changes in the 1979 emissions standards and test procedures produced effects on individual manufacturers' fleets which were slightly different in magnitude than the agency-predicted effects. Another factor is random error, due to variation in results produced by the fuel economy test procedures and the relatively small number (statistically speaking) of actual tests conducted for 1979.

The agency has decided to use the 1979 certification data to construct a baseline to determine the fuel economy benefits that will be achieved through the manufacturers implementing the balance of their fuel economy improvements for MY 1981. This decision was based on the availability of actual fuel economy data instead of the partially estimated data used in the last rulemaking and on the shift in agency position on the question of whether the emissions standards penalty would be completely offset by MY 1981. In the 1980–81 rulemaking, the agency used a baseline that did not include such a penalty and assumed that any emission standards-related penalty encountered subsequent to MY 1977 could be overcome by MY 1981. The agency now believes that the penalty will not be overcome totally by the 1981 model year. Therefore, the agency is using the new 1979 baseline which reflects that penalty.

The effect of switching to the 1979 baseline is to alter the baselines for the manufacturers. In the case of AM's 4X4 fleet, the use of the 1979 baseline increases the agency's projection of that company's ability to improve fuel economy by 0.2 mpg. In the case of Chrysler's 4X2 fleet and GM's 4X4 fleet, the effect on fuel economy of this decision is negligible. In all other cases, the decision to use the 1979 baseline for this analysis reduces the agency's fuel economy estimates. This effect is in the range of a 0.3 to 0.4 mpg decrease in fuel economy for Chrysler's 4X4 fleet and GM's 4X2 fleet, and approximately a full mpg decrease for both Ford's 4X2 and 4X4 fleet.

(e) *Aerodynamic and rolling resistance reductions.* The agency projected a 0.35 mpg fuel economy improvement for Chrysler's 4x4 trucks in 1981 due to improvements in aerodynamic characteristics and the use of radial tires. This improvement was based on Chrysler's own estimate submitted in the 1980–81 rulemaking. In its petition, Chrysler claims that this improvement is no longer attainable. Chrysler is of the view that the physical improvements can be made, but that the changes will not be reflected on current EPA test procedures. These improvements would show up on the EPA test only if Chrysler could use the optional "coast-down" procedure for determining dynamometer roadload horsepower. The coast-down procedure would be used by Chrysler if its 4X4 trucks could achieve aerodynamic and rolling resistance characteristics superior to the tabulated values established by EPA.

Chrysler indicates that many of the 4x4's sold will be equipped with off-road tires and that the EPA will require testing with such tires. Unless radial tires are used on the test, the improvements attributable to both aerodynamics and

reduced rolling resistance do not show up, according to Chrysler. However, the agency notes that Chrysler's largest competitors project being able to sell a high enough percentage of radial tires on their 4X4 light trucks to permit all 4X4 fuel economy test vehicles to employ radial tires. Recognizing that the use of radial tires on vehicles intended for off-road use may involve some compromises in vehicle utility, the agency nevertheless concludes that Chrysler's difficulties in promoting the sale of radial tires on 4X4 trucks should be no greater than their larger competitors and that the fuel economy benefits warrant such sale. Therefore, the agency projects that Chrysler can sell enough radial tires on its 4X4 trucks in 1981 to obtain the fuel economy benefit it and the agency projected in the 1980–81 rulemaking for aerodynamic and rolling resistance improvements.

(f) *Mix shifts.* The Center for Auto Safety has argued that Chrysler could use marketing strategies to shift its sales mix toward more efficient vehicles, and thereby improve its average fuel economy. DN–90, p. 7. The Center concludes that such a shift is consistent with the law and with the trend toward greater use of trucks for personal (i.e., non-commercial) reasons. The Automobile Owner's Action Council conducted a survey of Chrysler's truck advertising and concluded that the advertising was oriented toward the sale of powerful trucks and toward the sale of trucks as "toys" and as car substitutes. DN–106, p. 3 and attachment. The agency agrees that basing fuel economy standards on the maximum feasible use of marketing measures to promote the sale of fuel efficient vehicles is entirely consistent with the law, at least to the extent such shifts can be accomplished without causing major reductions in sales.

In the case of Chrysler's 4X2 trucks, the original 1981 standard-setting analysis was based on an apparent adverse mix shift from the 1976 sales mix used in the NPRM, to the projected 1979 mix supplied by Chrysler, in early 1978. (An adverse mix shift is one which reduces fuel economy.) The effect of this assumption was to reduce Chrysler's projected average fuel economy by 0.2 mpg. In its petition, Chrysler provided sales mix information which the agency concludes reflects a further adverse mix shift between 1976 and 1979 having a fuel economy effect of about the same magnitude.

The agency is using Chrysler's latest mix projection for 1979 as the basis for the revised 1981 standard. This has the effect of reducing Chrysler's projected capability to increase fuel economy of 4X2's by 0.2 mpg.

The adverse mix shift impact is not necessarily like shifting from a large vehicle to a small vehicle. The impact here results in part because more Chrysler trucks are being sold with options like air conditioners, step bumpers, etc. These come in a package with a large engine, i.e., the 360 rather than the 318 or the 318 rather than the 225. Although Chrysler did eliminate the two largest engines it had available, the 400 and the 440, the net result of all these changes is a slight reduction in fuel economy. It is important to note that the relative proportion of Chrysler trucks sold with various accessories is still below the general level of accessory sales by the industry. Manufacturers' limits on sales of options such as step bumpers do not help fuel efficiency to a great extent because the resultant weight reductions and attendant fuel economy benefits are relatively small. The major option is air conditioning, and its control in a fleet where air conditioning is not as prevalent as it is in the fleets of other manufacturers might tend to drive customers to the competition. As noted in section (a) of this notice, the agency is very reluctant to place Chrysler in a position where it might be compelled to face major marketing risks in order to comply with the light truck fuel economy standards.

(g) *Revision to EPA's "car line" definition for light trucks.* Under EPA's fuel economy test procedures, test vehicles must be equipped with all optional equipment which is expected to appear on more than 33 percent of the trucks within that "car line." A car line was previously defined by EPA very broadly, with all vans constituting a single car line, for example. Thus, many vehicles equipped with options in production were not represented in fuel economy testing by test vehicles having those options. For the 1980 model year, EPA proposes

to revise the definition of "car line" to narrow that definition to better assure that vehicles are tested with the options they will have when sold. The proposal is supported by this agency. Chrysler argues that this change will result in reduced fuel economy caused by additional equipment being applied to more of its fleet, thereby reducing average fuel economy.

In the original 1980–81 rulemaking, the agency rejected the manufacturers' arguments claiming that this penalty was unavoidable and permanent, on the ground that the manufacturers could reallocate their offerings (i.e., sell more options on car lines which already exceed the 33 percent criterion and restrict options on the other car lines to less than 33 percent) to offset this penalty. In this rulemaking, this conclusion was universally disputed. Industry sales data indicate that a long-term trend toward higher sales of optional equipment is continuing, making option restriction quite difficult. Ford claimed to know of no method to restrict the option sales, and indicated that attempting to restrict those sales might even produce an adverse fuel economy impact. DN–91, p. 11. Ford provided a breakdown of its option sales by truck line, which showed that the vast majority of the newly created truck lines would be tested at higher weights than the previous truck lines. EPA conceded that due to the option equipment sales trends, option restriction was not a viable alternative for counteracting the effect of the new definition. DN–169, p. 2. The "penalty" appears to be as much a symptom of the trend toward higher sales of optional equipment as it is a result of changes in EPA's regulations, and is, therefore, permanent.[2] Thus, the agency is adopting the manufacturers' projected impacts of the 1980 test procedure change.

[2] The EPA procedures change would not actually reduce fuel economy. It would correct the error caused by using data from vehicles tested without options to represent trucks that actually are sold with options. This causes a decrease in measured fuel economy, not on-the-road fuel economy, since the new procedure will apply data with options to more of the manufacturer's product line. Increasing the number of production vehicles equipped with options naturally decreases both on-the-road and measured fuel economy. Both effects must be considered in the agency's analysis.

(h) *Lubricants.* In the 1980–81 rulemaking, the Agency projected that a fuel economy improvement of 3 percent is achievable through the use of improved lubricants (i.e., friction modified, lower viscosity, synthetic base, or some combination of these methods). Two percent of this improvement was attributed to the use of advanced crankcase lubricants, such as versions of the recently marketed ARCO Graphite, Exxon Uniflo, Mobil, and other similar lubricants. The remaining 1 percent of the improvement was attributed to changes in rear axle lubricants. However, the use of the improved crankcase lubricants is not currently permitted by EPA in that agency's fuel economy testing. That agency has indicated that, before approval is granted for the use of these lubricants in fuel economy testing, it must have evidence indicating that consumers will actually purchase and use these oils in the replacement market. The type of evidence EPA seeks includes information showing that the selling price of the new oils will be competitive with regular lubricants, that the oils will have widespread availability in the marketplace, and that a generic definition of the oils is developed, so that the vehicle manufacturers can specify in owner's manuals that the new oils must be used.

The basis for the agency's conclusion as to the magnitude of the fuel economy benefit resulting from use of the improved crankcase lubricants is set forth in the preamble to the final rule in the 1980–81 rulemaking. 43 FR 12004–5. Data submitted by Exxon, ARCO, and Mobil Oil companies tended to support an improvement figure in the 4 to 5 percent range. More limited data from the vehicle manufacturers generally tended to support fuel economy improvements of 1 to 3 percent. Data from Mobil and GM tended to support a fuel economy improvement in the range of 1 percent for improved axle lubricants. Ford's data tended to support a fuel economy improvement in the range of 1 percent for manual transmission lubricants. All told, the agency concluded that an improvement of 2 percent for crankcase oils and 1 percent for axle/transmission lubricants is reasonable. However, to encourage further testing of these lubricants and to avoid the necessity of attempting to predict how EPA would

ultimately decide the approval question discussed in the previous paragraph, the 1981 standards were established at alternate levels, contingent on this approval.

Only limited additional information was submitted on the lubricants issue in this proceeding. Chrysler's recommendation that the lubricant improvement be deleted from NHTSA's analysis was based on Chrysler's conclusion that EPA would not approve the use of the lubricants (DN–10, P. 2) and tests of four cars using the Exxon oil, which showed fuel economy benefit from that oil declining with increasing vehicle mileage. DN–13, Att.L. All Chrysler's earlier data showed an improvement for the advanced oils of about 1 to 3 percent. Ford echoed the concern over the likelihood of EPA approval of the lubricants, and noted that its own test program showed only 0.5 percent improvement for these lubricants (DN–91, p. 8), down from the 12 percent projected in the 1980–81 rulemaking. GM has apparently not changed its plan to delay use of friction modified oils until after 1981, and continues to rely on lower oil viscosity to improve fuel economy. Problems were reported by GM in the areas of increased oil consumption and catalyst deterioration, due to the use of low viscosity lubricants. DN–82, p. 3.

The oil companies expressed a range of opinions on this issue, but no additional data. Texaco noted that the percent fuel economy improvement achievable with the new lubricants will vary depending on the friction characteristics of the oil currently used by the vehicle manufacturer, and asserted that their currently sold crankcase oil provides just as good fuel economy as at least one of the advanced lubricants, in on-the-road testing. DN 25. Chevron stated that the agency's projected 2 percent benefit for new crankcase oils is "on the high side," and projected a lesser benefit of 1 to 1.5 percent. Chevron also found a 1 percent fuel economy benefit for axle lubricants, but anticipated that these lubricants would not be widely available by 1981. Cities Service measured a 2.6 percent benefit for their advanced crankcase oil, but also noted that the benefit obtained depends on the base oil used. That company also indicated that it would begin marketing their advanced oil by 1980, and predicted that the necessary approval criteria for fuel economy testing could be met by the January 1, 1980, deadline. DN–149. Sun Oil Company projected an improvement of 2–3 percent for the crankcase oils (DN–150), while Shell's testing of other company's products led it to estimate a 0–2 percent improvement. DN–176. Shell predicted that the EPA approval process and all necessary oil company certification of the oils would not be completed prior to 1982. ARCO reaffirmed its prior statements to the agency, that "significant improvements" in fuel economy are possible with these oils. DN–151.

Against this background (including the more voluminous information submitted as part of the 1980–81 rulemaking), the agency has concluded that the estimated fuel economy benefit for improved lubricants should not be revised. The vast majority of data submitted by the oil companies support the 2 percent crankcase oil improvement or a greater improvement. Most of the data submitted by the manufacturers prior to the consideration of Chrysler's petition tended to support that figure. Limited additional support for the axle lubricant improvement projected was received from the oil companies, as well. Recent information submitted by the vehicle manufacturers (principally Chrysler and Ford) is relatively limited. The decision to maintain the original lubricant projection is also supported by a contract study performed for NHTSA by the Coordinating Research Council. See DN–187.

With respect to the question of whether all necessary criteria for EPA approval of the lubricants can be satisfied, NHTSA notes that progress is being made toward ultimate approval, and it is premature to speculate that the process cannot be completed in a timely manner. In the NPRM on the Chrysler petition, the agency stated that it was strongly inclined to wait until the January 1, 1980, deadline for EPA approval of these lubricants for fuel economy testing rather than concluding that use of the lubricants will not be approved and removing the lubricant projection from its standard setting analysis now. See 43 FR 58841. The manufacturers should base their fuel economy planning on the assumption that the standards for 1981 will be

in effect at the levels which reflect the inclusion of lubricants; those are the standards in effect with the publication of this rule, and those standards will remain in effect unless EPA's approval is not granted.

(i) *Other reductions.* Another problem which Chrysler argues has reduced its 4X2 fuel economy improvement capability relates to reduced automatic transmission parasitic losses. The use of a light duty, more efficient transmission to accomplish this improvement was not included in the agency's projections which formed the basis for the original 1981 standard, but was included in Chrysler's petition. Although Chrysler was apparently confident that this item could be applied by the 1981 model year at the time it filed its petition, it no longer is sure of success. On April 9, 1979, Chrysler, citing manufacturing and durability problems encountered in testing of the more efficient transmission, stated:

> Presently, there is approximately a 50 percent probability that we will be successful in meeting the production date. If we are successful, we are confident the estimated improvement will be realized on the fleet.

DN–188, p. 2. In its December 6, 1978, submission Chrysler had projected a 1981 introduction of this technology, producing a 0.16 mpg fuel economy benefit.

The contradictory information places the agency in a difficult position to determine maximum feasible fuel economy improvements. Here, as elsewhere, Chrysler has reported development problems of one sort or another. However, the substantiation of those problems is often sketchy. Nevertheless, the current substantial uncertainty about the prospects for success leads the agency to be conservative. Therefore, the agency is not including this transmission improvement in projecting Chrysler's capability for MY 1981.

The agency has deleted its projection in the 1980–81 rulemaking that AM could employ a new, 4X4 transfer case in its fleet. This deletion lowers the agency's projection of AM's fuel economy improvement capability for 1981 by 0.2 mpg. NHTSA has deleted this item because of uncertainty as to whether the resulting gain from the use of a new transfer case would show up on fuel economy tests.

The agency's projection of Ford's fuel economy improvement capability has decreased by about .2 mpg for 4X2's and .5 mpg for 4X4's due to our changed assessment of Ford's ability to make improvements to automatic transmissions. All of the 4X2 reduction and about half of the 4X4 reduction is due to the elimination of the projected use of lock-up torque converters by 1981. The agency projected that the leadtime was adequate to accomplish this improvement by the 1981 model year, but Ford indicates that it plans to implement lockup torque converters after that date. The remainder of the 4X4 reduction is due to changes in Ford's planned usage of overdrive automatic transmissions in that portion of its fleet.

Selecting the Standards

On the basis of the above-described information from AM, Chrysler, Ford and GM, the agency has reassessed their fuel economy improvement potential for the 1981 model year as follows:

	4x2	*4x4*
AM	25.6	15.5
Chrysler	17.2	15.5
Ford	17.4 [3]	15.5
GM	17.2	15.8

The agency has not reassessed the capabilities of the other manufacturers (e.g., Nissan, Toyo Kogyo, Volkswagen, etc.) since only Toyota commented on the proposal. The absence of comments from most foreign manufacturers has been typical of all of the agency's other fuel economy rulemaking and results from those manufacturer's capabilities being well above the standard. The same is true in this rulemaking. See 43 FR 12012.

The values in the above table reflect the agency's judgment of the maximum levels of average fuel economy that the major domestic manufacturers can achieve without having to undertake measures involving substantial marketing risk. As indicated below, the agency concluded in this case that the additional difficulties involved with these measures would out-

[3] Ford's own projection is 17.6 mpg, with minimal benefits from lubricant.

weigh the slight additional fuel economy improvements they would make possible.

The agency also notes that there are often substantial uncertainties present in any rulemaking like the present one in which the government must project future capabilities in an industry to develop and implement technological innovations. For example, the agency projections of technological improvements for MY 81 include undefined spark ignition engine improvements for Chrysler and GM, benefits from improved manual transmissions for GM although they project none, and greater benefits from the use of automatic overdrive transmissions than Ford projects. Improvements beyond those projected by the agency may be possible in such areas as automatic transmissions parasitic loss reduction, engine efficiency improvements, mix shifts, and engine displacement/axle ratio reductions. The agency is unable to quantify the uncertainty associated with these improvements. In this type of situation, agencies are required to compare the harm which is likely to result from erring either on the side of too stringent or too lenient standards. *International Harvester Co.* v. *Ruckelshaus*, 478 F.2d 615 (D.C. Cir 1973). The same type of balancing is required under the Act to determine at which point within the range of fuel economy improvement capabilities of the various manufacturers standards should be set. See Senate Report 94–516, at pages 154–5. The potential harm from setting too stringent 4X2 standards was found to be the liability of the manufacturers for civil penalties (as high as $40 per truck produced in the case of Chrysler in the current rulemaking, i.e., achieving a CAFE of 17.2 mpg instead of 18.0) or the possibility of a decline in sales if a manufacturer attempts to restrict product availability while his competitors can sell a more complete line of vehicles. The amount of any civil penalty liability could be reduced by the Secretary of Transportation in a variety of circumstances, such as when the liability is due to certain circumstances outside the manufacturer's control or where payment of the full penalty would produce insolvency, bankruptcy, or a substantial lessening of competition within the truck market. In the case of the 4X4 standard, all the manufacturers are projected to be capable of achieving compliance with the existing 15.5 mpg standard with relatively low risk (although the risk for Chrysler may well be greater than for GM and Ford), so these concerns do not apply to the same extent to 4X4 vehicles.

In the case of the 4X2 standard, the risks associated with maintaining the standard at 18 mpg are substantially greater and are faced by all the companies. The 0.8 mpg shortfalls faced by Chrysler and GM could be offset only through significant market restrictions, based on the agency's analysis. Given the magnitude of the risk involved, those companies might well decide to simply pay the resulting $40 per truck civil penalties. In that case, maintaining the 18 mpg standard would not produce any additional petroleum conservation.

The benefits to the nation for Chrysler and the other manufacturers to meet the existing 4X2 standard of 18 mpg rather than a standard of 17.2 mpg are the approximately 710 million additional gallons of gasoline saved over the lifetime (128,000 miles) of the 1981 model year trucks. The agency considers that potential energy savings to be significant. However, the risks associated with maintaining the previously established standard has led the agency to decide to reduce the 4X2 standard to 17.2 mpg, the maximum achievable levels projected for GM and Chrysler. Since we project none of the major domestic 4X2 manufacturers to be able to meet the 18 mpg standard with only moderate risk, the agency cannot conclude that maintaining that standard would necessarily produce any additional energy savings. Should the manufacturers attempt to meet the 18 mpg standard through product restrictions, those actions would appear to involve substantial risk, due to the substantial fuel economy shortfalls involved. Because of the commercial uses for which many of these vehicles are applied, any marketing action which affected the trucks' utility in a substantially adverse manner could directly affect sales levels, and thereby industry profitability and employment.

A point made by the Department of Energy, and supported by EPA (DN–169) and the Center for Auto Safety (DN–90), is that standards should not be keyed to the "least capable" manufacturer, given the civil penalty/credit

mechanism in the law and Conference Report language which indicates that "industry-wide" considerations must be taken into account. See 43 FR 58841, December 18, 1978 (the proposed rule in this proceeding). GM, on the other hand, argues that fuel economy standards must be set at levels achievable by all. DN–82, Att. III. Chrysler argues that the issue of the "least capable manufacturer" is irrelevant, since the problems raised by that company are industry-wide, not just a problem facing one company. DN–93, p. 1. The agency has repeatedly stated in past rulemaking economy standards need not be set at the maximum achievable fuel economy level of the "least capable" manufacturer. In the case of the 4X2 standard, the agency's analysis demonstrated no single "least capable" manufacturer, with all the major domestic manufacturers falling within a very narrow fuel economy range and a majority of the domestic fleet (GM and Chrysler) being projected at the same level, 17.2 mpg. Thus, the "least capable" manufacturer issue is not implicated with respect to the 4X2 standard. Nor is the issue implicated with respect to the 4X4 standard, since that standard could not be set at a higher level at this time, due to the 18-month leadtime rule of section 502(f) of the Act.

Therefore, the agency is reducing the 1981 model year light truck fuel economy standard for 4X2's to 17.2 mpg, but is denying Chrysler's request to lower the 4X4 standard.

Other comments and impacts of this decision

The comments of the Department of Energy are of special significance in NHTSA's fuel economy rulemaking, given its statutory role. Under sections 502(h) and (i) of the Act, NHTSA must consult with DOE in carrying out fuel economy related responsibilities, and must provide DOE with advance notice and an opportunity to comment prior to issuing any proposed or final standards. In the case of proposed standards, NHTSA is required to discuss any "unaccommodated" comments of DOE in the Federal Register notice. Since NHTSA did not propose specific standards in this proceeding, but rather issued a "description of the subject and issues involved" within the meaning of 5 U.S.C. 533(b)(3), it is appropriate to address DOE's comments in this notice.

DOE is concerned that a decision to reduce the light truck fuel economy standards constitutes a very unfortunate lost energy conservation opportunity, the significance of which is magnified by the "large and *growing* demand for light duty trucks, increasing cost of imported oil and pressure that a revision of the 1981 standards could also lead to lower standards in later years." DN–95, p. 1. NHTSA believes that the energy loss resulting from this decision is outweighed by the risks faced by the vehicle manufacturers, consistent with the statutory requirements that standards be set at the maximum feasible level.

In particular, DOE is concerned that this decision may establish a precedent that standards will be reduced every time a manufacturer's technology development program encounters a problem, thereby eliminating "any effective forward looking standard setting activity by DOT." Supra, p. 2. Several of the agency's reduced fuel economy improvement projections have been revised to conform with manufacturers' plans, but only to reflect more recent information about capability. To the extent these development problems cannot be overcome by the model year in which the standards will apply, these problems limit the fuel economy improvement capability of the manufacturers, and, therefore, limit the levels at which standards can be set. These levels reflect the agency's current assessment of the maximum feasible fuel economy for each manufacturer, based on the leadtime from the issuance of the original 1981 standards. The agency does not intend to allow every minor development program problem encountered by the manufacturers to trigger a favorable consideration of a petition to reduce fuel economy standards, but that is not the case here as the problems are industry-wide.

DOE also argues that a revision to the fuel economy standards at this late date will penalize those manufacturers which have made plans and expended resources to meet the previous standards. The record of this proceeding indicates a similarity of capability of the various major domestic manufacturers. Judging by the comments of Ford and GM, those companies are facing the same type of problems that Chrysler confronts and will not be able to achieve fuel

economy levels significantly higher than Chrysler's. Indeed, Ford and GM support a reduction in the standards.

The Notice published by the agency concerning this petition (43 FR 58840) raised the question of the effect of a reassessment of the model year 1981 standards on the standard for limited product line light trucks. In the response to that notice, the only manufacturer subject to that standard, International Harvester, said that its 1979 projected corporate average fuel economy is 12.6 mpg or 1.4 mpg below the MY 1980 standard. DN–86. IH added that it expected "a considerable increase in fuel economy due to exhaust emission calibrations optimization in MY 1980." Since MY 1979 is the first year since the early 1970's that IH has had to comply with light duty truck emissions standards, the agency agrees with IH that substantial improvements are likely. IH has testified before Congress that it expects to meet the current 1980 and 1981 fuel economy standards. Therefore, the agency has not revised the limited product line standard.

Manufacturers have informed the agency that one of the methods they plan to use to improve the fuel economy of the currently regulated fleet of 0–8500 pounds GVWR is the rerating of vehicles above 8500 pounds GVWR. These actions do not contribute to fuel savings for the Nation. For this reason, the agency intends to monitor closely the manufacturers' production and marketing plans to determine the actual extent of this shifting beyond 8500 GVWR. These activities may lead to a determination by the agency to set fuel economy standards for such vehicles after model year 1981.

The environmental impacts of this decision are discussed in the Environmental Impact Statement prepared in conjunction with the establishment of the original 1981 standards. Copies of that document are available from the individual listed as the "information contact" at the beginning of this notice. The agency has concluded that a complete revised environmental impact statement need not be prepared for this proceeding, since the original document considered the impacts of a range of standards which encompasses both the original decision and the decision announced herein. The most significant environmental impact associated with this decision is the additional petroleum consumption, with attendant increases in petroleum production, transportation, refining, and transfer related environmental impacts. If the existing model year 1981 standards are not changed, the agency projects a savings of 2.85 billion gallons of gasoline, compared to the 1980 standard. The standards established herein will save 2.14 billion gallons.

In consideration of the foregoing, 49 CFR Chapter V is amended by changing the title of Part 533 to "Light Truck Fuel Economy Standards" and by revising the 1981 model year standards set forth in the table in section 533.5(a) as follows:

5.33.5 Requirements

(a) * * *

Model Year	*2-wheel drive light trucks*		*4-wheel drive light trucks*		*Limited product line light trucks*
	Captive Imports	*Other*	*Captive Imports*	*Other*	
1979	—	17.2	—	15.8	—
1980	16.0	16.0	14.0	14.0	14.0
1981	17.2*	17.2*	15.5*	15.5*	15.0*

* These standards are 0.5 mile per gallon less if, by January 1, 1980, the Environmental Protection Agency has not fully approved improved lubricants for use in fuel economy testing.

A Final Regulatory Analysis of the economic consequences of this decision has been prepared in accordance with section 10.f of the Department's Procedures for Improving Government Regulations, 44 FR 11034 *et seq.* This analysis considered a range of fuel economy standards between the existing standards and those requested by Chrysler. The establishment of 17.2 mpg as the fuel economy standards for 4X2 vehicles decreases gasoline savings by 0.7 billion gallons over the life of the 1981 fleet. Compared to the 1980 standards, the revised 1981 standards will save about 2 billion gallons of gasoline, at a cost of $153 million in capital investment and $49 per vehicle retail price increase. Consumers will achieve a net savings of $255 per vehicle as a result of the 1981 standards (compared to the 1980 standards). Copies of this analysis are available from NHTSA's Office of Plans

and Programs, Room 5212 of the Nassif Building, Washington, D.C. 20590.

(Sec. 9, Pub. L. 89–670, 80 Stat. 931 (49 U.S.C. 1657); Sec. 301, Pub. L. 94–163, 89 Stat. 901 (15 U.S.C. 2002); delegation of authority at 41 FR 25015, June 22, 1976 and 43 FR 8525, March 2, 1978)

Issued on June 20, 1979.

Joan Claybrook
Administrator

44 F.R. 36975
June 25, 1979

PREAMBLE TO AN AMENDMENT TO PART 533—LIGHT TRUCK AVERAGE FUEL ECONOMY STANDARDS

Standards for 1982 Model Year

(Docket No. FE 78-01; Notice 2)

ACTION: Final Rule.

SUMMARY: This notice establishes fuel economy standards for model year 1982 light trucks. The establishment of these standards is required by section 502(b) of the Motor Vehicle Information and Cost Savings Act. These standards are intended to result in the savings of 1.2 billion gallons of gasoline over the life of the 1982 light truck fleet, compared to the consumption which would have occurred if fuel economy remained at the levels of the 1981 standards.

DATES: These standards are applicable for the 1982 model year.

FOR FURTHER INFORMATION CONTACT:

Mr. Francis J. Turpin, Office of Automotive Fuel Economy Standards (NRM-21), National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-472-6902)

SUPPLEMENTARY INFORMATION: In December 1975, following the Arab oil embargo of 1973, substantial increases in the price of imported petroleum, and a recognition of the nation's vulnerability to interruptions of supply and rapid increases in the price of foreign oil, the Congress passed the Energy Policy and Conservation Act. That law added a new Title V to the Motor Vehicle Information and Cost Savings Act ("the Act"), authorizing a number of federal initiatives to improve automotive fuel efficiency.

Section 502(b) of the Act requires the Secretary of Transportation to issue average fuel economy standards for light trucks beginning with the 1979 model year. That provision requires that standards be set at the maximum feasible average fuel economy level, considering technological feasibility, economic practicability, the effects of other federal standards on fuel economy, and the need of the nation to conserve energy. That provision also requires that standards be established at least 18 months prior to the start of the model year to which they apply. To date, standards have been established through the 1981 model year. On December 31, 1979, in 44 FR 77199, the National Highway Traffic Safety Administration ("NHTSA" or "the agency"), which was delegated authority to administer the fuel economy program, proposed the issuance of light truck standards for model years 1982-85. These standards would apply to light trucks with gross vehicle weight ratings (GVWR) of up to 8500 pounds, curb weights of less than 6000 pounds, and frontal areas less than 45 square feet. This class of vehicles includes most standard pickup trucks, vans, and utility vehicles which are used for personal or light duty commercial applications.

This notice establishes standards for the 1982 model year only. Due to the imminence of the date specified in the law for establishment of the 1982 standards and to the complexity of the marketing and other issues involved in the later model years, standards for the 1983-85 model years will be established at a later date. The 1982 standards are 18 mpg for two-wheel drive light trucks and 16 mpg for four-wheel drive light trucks.

The basis for the proposed standards is set forth in the preamble to the December 31 notice of proposed rulemaking (NPRM), the agency's rulemaking support paper (RSP), and the agency's regulatory analysis, copies of which are available from the individual listed as the "information contact" at the beginning of this notice. These

standards are based upon information obtained in past rulemakings, the Department's own research activities, information submitted by the manufacturers in response to a July 1978 NHTSA questionnaire and a July 1979 special order, and other information. In general, the proposed 1982 standards are based primarily on the projected use of "add-on" technology such as radial tires, improved accessories, automatic transmissions with lock-up torque converters, and overdrive manual transmissions. Items requiring longer lead times, such as the introduction of compact pickup truck models and new engines were not included in the proposal for 1982 for most manufacturers, but were considered in three alternative analyses discussed in the agency's rulemaking support paper.

The fuel economy levels of 17.4 mpg for two-wheel drive (4×2) light trucks and 15.6 mpg for four-wheel drive (4×4) light trucks set forth in the NPRM were determined to be achievable by the "least capable manufacturer" with relatively minor difficulty, and were based on the agency's then current assessment of that manufacturer's capability. The NPRM noted that the final 1982 standards might be established at other higher or lower levels, depending on the comments received and the degree to which standards would be keyed to the least capable manufacturer. The proposed standards were generally consistent with levels of fuel economy which the manufacturers planned to meet, due to market demands and the anticipated establishment of fuel economy standards for that year. However, in most cases the proposed standards did not reflect such fuel economy improvement actions as reduction of average engine displacement or axle ratio below 1981 levels, or some feasible new model introductions.

The only comments received on the NPRM with respect to the 1982 standards came from the five domestic manufacturers of light trucks, the Center for Auto Safety, and Purolator Courier Corporation. With one exception, Chrysler Corporation, none of the manufacturers claimed to be unable to meet the proposed 1982 standards, and several apparently plan to exceed them by substantial margins. (As noted in greater detail later in this notice, the plans of the manufacturers and confidential information available to the agency place all of the manufacturers, except Chrysler, above the final standards too.) Since filing its comments on the proposal, Chrysler's position has changed. In its March 1980 special order response, that company revised its projections upward and indicated that it now plans to exceed the proposed 4×2 standard and to closely approach the 4×4 proposal. In general, the manufacturers took exception to certain of the details of the agency's analysis for 1982, but did not claim that the agency had overstated substantially their achievable fuel economy levels for that year.

It should be noted that the levels of fuel economy projected in the proposal understated the actual fuel economy improvement capability for some companies due to limitations discussed above and the agency's policy of not including the fuel economy benefits from usage of diesel engines until the questions relating to the possible adverse health effects of diesel engine emissions are more fully resolved. The EPA has recently issued diesel particulate standards, and they will not preclude the use of diesel engines in light trucks for the 1982 model year. However, only two manufacturers plan to rely significantly on diesel engine usage for 1982, GM and IH, and the increased fuel economy levels which the agency would project based on those plans would not change the balancing process by which the agency arrives at final standards. Therefore, the agency has not included diesel engines in its 1982 fuel economy analysis, but may do so for the 1983–85 final rule, as mentioned in the NPRM. See 44 FR 77204.

The main issues raised in the comments on the 1982 standards involve the applicability of the standards, and in particular whether captive import light trucks may be included in average fuel economy calculations and whether the agency can and should establish a separate class of light trucks and a separate fuel economy standard to accommodate manufacturers such as Chrysler and IH, which claim to need special consideration. The latter issue will be discussed at the end of this notice, in conjunction with selecting the levels of the 1982 standards.

A. *Inclusion of captive imports.* Section 503(b)(1) of the Act provides that when a manufacturer both produces passenger automobiles in the United States and imports passenger automobiles, those two groups of vehicles are to be treated as if manufactured by separate manufacturers for fuel economy standards compliance purposes. The

purpose of this provision is to remove any incentive the domestic manufacturers might have to comply with fuel economy standards by merely importing more small foreign-produced automobiles, thereby decreasing employment in the U.S. industry. See Congressional Record, p. H5383 (daily edition, June 12, 1975). Although the law does not specify procedures for calculating light truck average fuel economy, the legislative history states that a similar computation (including "special rules for imports") should be established as was done in the statute for passenger automobiles. See House Report 94-340 (94th Cong., 1st Sess. (1975), 91). In establishing standards for 1980-81 model year light trucks, the agency used its classification authority under section 502(b) to require separate compliance of captive import and other light trucks after the 1979 model year. See 43 FR 11995, March 23, 1978.

Four of the domestic manufacturers commented on the issue of inclusion of captive import light trucks in model years after 1981. GM argued that the law *compels* NHTSA to require separate compliance of domestic and captive import light trucks. This position is based upon the language in the House Report relating to a "similar computation" for light truck average fuel economy as was done statutorily for passenger automobiles. GM argues that this position is further supported by Congress' making the definition of the term "domestically manufactured" in section 503(b)(2)(E) apply to both passenger automobiles and light trucks. That term is the key definition for purposes of requiring separate compliance of imported and domestic vehicles, and could have been limited in application to passenger automobiles had Congress so intended. Ford also favored requiring separate compliance for import and domestic light trucks, but argued that if imports are permitted to be included in the average fuel economy calculation for some manufacturers, they must be includable for all. International Harvester favored permitting the inclusion of captive imports, but only if a higher fuel economy standard were set for companies which did so. Chrysler favored permitting the inclusion of up to 80,000 captive import light trucks in a manufacturer's average fuel economy calculation, and argued that the agency has authority to permit this.

One argument raised by Chrysler to support the inclusion of captive imports is that this step would raise the average fuel economy of its domestic fleet relative to the levels achieved by Ford's and GM's domestic fleets. (Inclusion of the captive imports would also increase the agency's assessment of Chrysler's ability to improve its domestic average fuel economy and might lead to the setting of higher standards than would be set were the captive imports excluded. Chrysler would still have the lowest projected fuel economy of all companies, however.) However, the agency remains of the view that the separate compliance requirement for domestic and captive import light trucks has a countervailing positive impact, in encouraging the domestic manufacturers to produce small trucks in the U.S. and thereby increase U.S. industry employment. Once this investment is made, the companies will have a stronger incentive to promote the sale of these more fuel efficient vehicles, thereby reducing gasoline consumption. Domestic production of small trucks will also improve the U.S. trade balance by capturing sales which would otherwise go to the importers.

Chrysler also argued that permitting it to include captive imports in its CAFE would enable it to "test the market" for smaller, more fuel efficient types of vehicles. The agency's original decision to require separate compliance of captive import and other light trucks does not preclude Chrysler or other manufacturers from continuing to test the small truck market with imports, to determine if demand for such vehicles is adequate to support minimum feasible domestic production volumes. However, the agency doubts that additional evidence is needed to convince a manufacturer that a market exists for these vehicles. In fact, Chrysler, in an October 17, 1979, submission to the Treasury Department relating to its loan guarantee, projects that small pickup trucks will account for 23 percent of the light truck market in the early 1980's. Sales of compact Japanese pickup trucks increased 39 percent from 1978 to 1979, to 465,000 units, despite a general decline of over 15 percent in total light truck sales. The compact pickup trucks were the only segment of the truck market to register a sales increase. Given the nearly universally accepted predictions of future gas price increases and possible shortages, the market for compact, fuel efficient light trucks

seems assured. The other domestic light truck manufacturers apparently agree with the agency's conclusion that the market is sufficient to support the sale of these trucks, given their plans to begin production in the next few model years.

The agency remains convinced that the separate treatment of captive import and domestic light trucks is the position most consistent with the legislative mandate to develop similar average fuel economy calculation procedures for light trucks as for passenger automobiles. Therefore, this final rule makes no change in the current requirement for separation of foreign and domestic light truck fleets.

B. *Technical issues.* Several rather minor objections were raised with respect to the agency's technical analysis of 1982 fuel economy improvement capability. All issues are discussed in greater detail in the agency's rulemaking support paper, copies of which are available from the individual listed as the "information contact" at the beginning of this notice.

The first issue involves the baseline used to project 1982 fuel economy levels. For the NPRM, the agency used as the baseline its prior analysis of achievable 1981 fuel economy levels from the rulemaking proceeding to reconsider that year's standards (44 FR 36975, June 25, 1979). That analysis was in turn based upon 1979 sales mix and fuel economy test data. Only IH commented on the question of whether 1980 mix and test data should be used as a baseline to the extent that information becomes available. IH supported the use of 1980 test data, but cautioned that the 1980 sales data might be unrepresentative due to market fluctuations. A shift in the light truck mix apparently occurred between early 1979 and the present time, with lighter trucks and smaller engines accounting for a larger portion of total sales. Although the agency is not revising its baseline estimates of average fuel economy, the standards established herein do reflect the changes in the truck market which occurred after the start of the 1979 model year, as discussed below.

Both AM and IH argued that the 1981 *standards* should be the baseline for projecting 1982 fuel economy levels, and that the only additional technology which should be considered by the agency is that which could be added for the 1982 model year. This approach would ignore any technology which was used by manufacturers to voluntarily *exceed* the 1981 standards, and would therefore inaccurately measure 1982 maximum feasible fuel economy levels. For the NPRM, the agency did include improvements by two manufacturers (Ford and GM) which raised their capabilities beyond the 1981 standards. Thus, the agency has rejected this suggestion, due to its inconsistency with the legal requirements that standards be established at maximum feasible levels.

The agency also requested comment on its current policy of not including in standard-setting analyses the fuel economy benefits from diesel engines, pending resolution of various diesel-emission-related questions by EPA. All the manufacturers (but for AM, which did not address the issue) supported the continuation of this policy, which has the potential effect of reducing the level of standards which are set. Ford also suggested that the policy be extended to its planned PROCO engine. With respect to the diesel issue, the agency is continuing its current policy for the reasons discussed above. The PROCO issue has no direct bearing on the 1982 standards in any case, since the PROCO engine would not be available until some later model year. Ford's comment will be addressed in the 1983–85 final rule.

IH also objected to the agency's methodology of assuming that if diesels were not available to that company, consumers would purchase the most efficient alternative gasoline engine available, a four-cylinder engine in IH's case. In fact, the agency substituted a combination of 4- and 8-cylinder engines for the diesels, not solely the 4-cylinder engines. However, the agency is of the view that the 4-cylinder engine is the closest substitute to the diesel in terms of acceleration performance and fuel economy, as discussed in the rulemaking support paper.

Several objections were raised with respect to the agency's projections of various transmission improvements. However, none of these objections were accompanied by test data or supporting analysis. Therefore, the agency has not revised its analysis with respect to potential transmission usage. Additional discussion on transmission improvements is contained in the agency's rulemaking support paper.

Ford objected to the fuel economy benefit from improved accessories projected by the agency.

However, since Ford's statement did not indicate that such improvements were not feasible or provide any supporting data, the agency has not revised its projection used in the NPRM. Chrysler also differed with the agency's projection (and its own past estimates) of accessory improvements. No substantiating data for this change of position was provided, and the agency sees no reason why at least a portion of the originally projected improvement cannot be achieved by Chrysler. Although Chrysler pointed out that tests of one proposed technique provided no benefit, the agency considers it likely that other techniques may still provide a portion of the benefit.

Chrysler also objected to the agency's estimate and reduced its own previous estimate of the fuel economy benefit it could obtain from aerodynamic improvements for 4×2 light trucks. However, Chrysler provided no data or analysis in support of its claim, beyond stating that only one previously proposed improvement had proven acceptable within the constraints of cost, engineering and styling. Also, Chrysler's current estimate of the relationship between reductions in aerodynamic drag and fuel economy improvements is much lower than both the agency's estimates and those of the other manufacturers. Accordingly, the agency cannot accept Chrysler's unsupported assertion in this area.

Chrysler has also changed its position on feasible weight reduction for 1982. The agency had previously projected a very small improvement in this area (a reduction from projections made in the original 1981 standard-setting proceeding). Since Chrysler provided no basis to conclude that NHTSA's projected weight reduction is not feasible, the agency is retaining its original estimate.

Ford, GM, and Chrysler all objected to the agency's projection of a 1 percent fuel economy benefit from improved axle and manual transmission lubricants for 1982. GM and Ford projected lower benefits than did the agency, and GM and Chrysler indicated that additional time would be needed to complete the necessary durability testing. The agency recognizes that the precise level of benefits has not been finally established, but believes that its projections are substantially correct. The agency recognizes too that durability is a matter that the manufacturers must address. However, except for Chrysler, the manufacturers' arguments were not supported by any new information and are the same arguments considered and rejected by the agency in the past proceedings on 1980–81 light truck standards and the reconsideration of the 1981 standards. GM's and Chrysler's comments discuss lower viscosity rear axle lubricants only and do not discuss the benefits from the use of synthetic base or friction modified axle lubricants. Ford has tested the friction modified lubricants and apparently has not encountered any durability problems. In the absence of data or information in support of these arguments, the agency is retaining its 1 percent axle lubricant projection, but not including this benefit for Chrysler until 1983.

The manufacturers also objected to the agency's projection of a 3 percent fuel economy improvement for 1982 from the use of electronic engine control systems. Some manufacturers apparently assumed that the agency's projections were limited to systems for fully interactive electronic control of spark advance, air-to-fuel ratio, and exhaust gas recirculation rate. This was not the case, since, as was pointed out in the Support Paper for the NPRM, the agency was projecting the use of a variety of electronic controls which differ in sophistication. The primary basis for this projection was that electronic controls (not necessarily fully-interactive electronic controls) would be used on 1981 model year passenger cars. In the 1980–81 proposal on light trucks (42 FR 63184; December 15, 1977), the agency projected that these controls could be applied to 1981 model year light trucks. The agency did not assume the use of controls in setting the final 1981 standards due to possible lead time problems in fully developing and reproducing the necessary software. Now some manufacturers are arguing that lead time does not exist to apply electronic controls to the 1982 light truck fleet, and even if it were done, no fuel economy benefit would result. Again, those arguments are based primarily on 3-way catalyst systems.

The agency rejects the lead time argument put forth by GM because the agency did not restrict its MY 1982 projections to 3-way catalyst systems and there has been sufficient lead time for large manufacturers such as GM and Ford to develop electronic control systems. Indeed, GM is intending to use a Knock Limiter System. Further,

both Chrysler and Ford will be using some form of electronic controls on certain applications in MY 1982. Several sources in the Support Paper for the NPRM substantiate the agency's position of average fuel economy benefits of from 3 to 5 percent for electronic controls in various forms as does later information submitted by one manufacturer. Although some data submitted by the manufacturers showed no fuel economy improvement from specific electronic subsystems in particular applications, the agency is retaining its original estimate of 3 percent as a reasonable estimate of the average improvement in fuel economy.

Ford and Chrysler objected to the agency's estimate of fuel economy benefits available from reducing engine displacement or total drive ratio (CID × N/V). Ford objected to the CID × N/V reductions projected in one alternative case in the rulemaking support paper, but that was not the reduction upon which the 1982 proposal was based. The agency believes that Ford can meet the standards established herein without making CID × N/V reductions beyond those planned. Chrysler, however, projects that for 1981 it will sell engines with *larger* average displacement, and consequently poorer fuel economy, than in 1980. The mix gets even worse for 1982. The agency cannot accept Chrysler's 1982 projection for purposes of setting standards. Against a background of current rapid gas price increases, uncertainties over Mideast oil supplies, and record sales of small imported automobiles, neither the agency nor Chrysler's domestic competitors views the market as being consistent with Chrysler's forecasts. Even if Chrysler were correct in its forecast, that company provided no information bearing on its ability to use marketing measures to promote the sale of smaller engines. However, the agency is accepting Chrysler's projected shift for 1980–81, which is based on certain sales dislocations being carried over from 1979. Overall, the agency is retaining its original estimate of CID × N/V reductions for Chrysler.

In the NPRM, the agency discussed a base case for making fuel economy improvements in 1982–85. It also set forth three alternative cases for achieving higher fuel economy levels, by introducing additional compact truck models, major performance reductions, and eliminating many of the higher payload trucks. With respect to the "new model" case, the Center for Auto Safety objected to the fuel economy values projected by the agency for compact pickup truck and van models. Specifically, the Center argues that the new domestic models projected by the agency would still be larger than and have poorer fuel economy than imported light trucks, and would be unable to successfully compete with the imports in these times of increased demand for high fuel efficiency. According to the Center, the result of producing such vehicles would be further loss of sales to the imports, increased unemployment in the domestic industry, and a waste of capital due to the need to downsize these trucks again. The agency is concerned about the issue of new model attributes, but the issue raised relates to the 1983–85 standards because of the inadequate lead time to change 1982 designs. The agency will consider this question more fully for the final rule on 1983–85 standards.

C. *Economic practicability.* None of the manufacturers raised any specific objections with respect to the agency's analysis of the costs associated with compliance with the 1982 standards. Since the agency's projections of 1982 fuel economy improvements are no more stringent than the actions planned by the manufacturers to meet current market demand for greater fuel efficiency, the additional costs imposed by the 1982 standards are speculative. For that reason, the agency has continued to determine the costs and benefits of improving fuel economy to the levels required by our standards, regardless of the motivation for making those improvements.

IH raised two general economic issues. First, it requested that the agency conduct cash flow analyses for AM and IH as had been done for the larger domestic manufacturers. The 1982 model year capital investment required of these two companies, which rely extensively on suppliers for major components, is quite small. This makes cash flow a much less critical consideration for those companies than for the "Big Three." Further, IH's light truck production is a very small portion of that company's business. Thus, IH's light truck expenditures have a relatively small impact on its

cash flow. Second, IH agrued that the agency consider the costs associated with fuel economy standards compliance, but which do not involve product changes. Apparently, IH is referring to the costs associated with commenting on proposed standards, responding to questionnaires and special orders for NHTSA, and submitting reports to the government. IH states that these costs are insignificant for the larger manufacturers, but important for companies having a much smaller share of the market, like IH. However, IH provided no cost information to support their argument.

D. *Effects of other federal standards.* Two manufacturers addressed the issue of the effect of 1982 safety standard amendments on fuel economy. GM argued that the changes to Standard 204 (relating to steering column rearward displacement) would require structural reinforcement to its vans, adding 40 pounds additional weight. IH, on the other hand, estimated no adverse impact for its light truck fleet due to changes in safety requirements. The agency estimates that 40 pounds added to GM vans, if actually required, would have a negligibly small impact on measured fuel economy and no effect on its compliance with the 1982 standards.

E. *Need of the nation to conserve energy.*

None of the manufacturers took exception to the agency's discussion of the need of the nation to conserve energy, as set forth in the NPRM, rulemaking support paper, and preliminary regulatory analysis. Events continue to bear out the conclusion expressed by the agency in each standard-setting proceeding to date, that the need of the nation to conserve energy is so great as to require the establishment of the most stringent feasible fuel economy standards.

F. *Setting the 1982 standards.* Based on comments received on the agency's NPRM, no significant revisions are required to the detailed technology usage projections which formed the basis for the proposed standards. However, due to rapid shifts in the light truck market and to corresponding changes in manufacturers' product plans, the estimates made by the agency in December no longer appear valid. For example, Chrysler recently submitted a response to an agency special order which projected 1982 fuel economy levels of 17.7 mpg for 4 × 2's and 15.3 mpg for 4 × 4's 0.5 to 0.6 mpg above the levels it told NHTSA were its maximum feasible levels less than two months ago. Based on the plans of the various manufacturers to substantially change current trucks and on other information available to the agency, the fuel economy levels achievable with no more than moderate risk for the 1982 model year are as follows:

	4 × 2	4 × 4
American Motors	—	16–17
Chrysler	17.7	15.3
Ford	18–19	16–17
General Motors	18–19	16–17
International Harvester	—	17.1

The precise planned fuel economy levels of some of the manufacturers have been claimed to be confidential by some of the companies.

The reason for these higher levels is that some manufacturers plan (in response to the rapidly shifting market) to take certain actions to improve fuel economy beyond those actions projected by the agency for the proposed standards. Also, some of these numbers include the benefits of diesel engines, which the agency did not include in its analysis. These additional actions either became more firmly established after the issuance of the NPRM, or were discussed in manufacturers' special order responses but were not fully integrated into the agency's proposal due to the short period of time between the receipt of special order responses and issuance of the NPRM.

Because of the rapid changes in the truck market, with fuel efficiency playing a much greater role in consumers' purchasing decisions, it appears that the manufacturers' fuel economy improvement plans for 1982 are a more accurate indicator of the "maximum feasible average fuel economy" for that year than are the agency's projections in the NPRM. Given the limited lead time remaining until the beginning of the 1982 model year and the substantial economic uncertainties facing the manufacturers and the national economy, the agency is relying primarily on the manufacturers' planned fuel economy levels in setting final 1982 standards. The final standards are also quite consistent with the fuel economy levels projected in the alternative cases in the agency's rulemaking support paper.

The Act's legislative history provides guidance on the establishment of fuel economy standards in a situation like this one, in which one manufacturer has lower projected fuel economy than the rest of

the industry. The Conference Report on the Act provides guidance in this regard as follows:

> The conference substitute lists a number of factors the Secretary shall consider in determining maximum feasible average fuel economy . . . . Such determination should . . . . take industrywide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual automobile manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic automobile manufacturers that currently exist, and the possible implications for the national economy and for reduced competition association (sic) with a severe strain on any manufacturer. However, it should also be noted that provision has been made for granting relief from penalties under Section 508(b) in situations where competition will suffer significantly if penalties are imposed.

Senate Report 94-340, 94th Cong., 1st Sess. (1975), at 154-5. Thus, the Secretary is required to balance the benefits to the nation of setting fuel economy standards at some level above that projected to be achievable with minimal risk by the "least capable" manufacturer against the resulting harm to that manufacturer and to industry competition.

The main benefit from setting higher fuel economy standards is the additional petroleum savings which would result, or at least the greater certainty that these savings will be realized. This benefit is limited by feasibility constraints, since some levels of fuel economy either cannot be achieved or, more likely, could be achieved only at a risk perceived by the manufacturers to be so great that they would elect to pay civil penalties for failing to meet the standards rather than comply. This possibility of setting fuel economy standards which do not produce the anticipated savings is remote (but for Chrysler) if standards are set at levels at least up to 18 mpg for 4 × 2's and 16 mpg for 4 × 4's. Over the fuel economy ranges which the manufacturers are able to achieve for 1982, each 0.1 mpg of additional average fuel economy for the industry (including both classes of trucks) produces additional gas savings of approximately 130 million gallons over the life of the affected vehicles.

Setting standards at levels which can more readily be achieved by the least capable manufacturer could result in the loss of gasoline savings which a higher standard would produce. In other words, standards set at a level which Chrysler can readily achieve would be below the maximum level which the other manufacturers can meet, and the other manufacturers could choose to just meet the lower standards instead of achieving the higher fuel economy levels they are capable of meeting. It has been argued by some manufacturers that market forces would not permit any manufacturer to produce vehicles of less than maximum fuel economy. However, the concept of "maximum fuel economy" is one upon which the agency and some of the manufacturers would disagree. There is no certainty that the manufacturers would maintain their planned 1982 fuel economy improvements if the fuel economy standards provided that latitude. In the unlikely event that setting 1982 standards well below GM's and Ford's capability (and below that of AM and IH in the case of 4 × 4's) did not result in lower energy conservation in 1982, it could have that effect in a later year. The setting of such standards would enable those companies to earn large 1982 credits and thus possibly reduce the incentive for additional fuel economy improvements in a later year. The fact that Ford, in its comments on the NPRM, stated that its 1982 planned fuel economy levels had been reduced from levels reported to the agency in September 1979 is evidence that current plans are not absolutely fixed, and that lower fuel economy levels are a definite possibility.

The agency is also directed to consider the possible competitive harm which would occur if standards were set at a level above which a manufacturer could meet with low risk. This harm could result from either the payment of civil penalties (and any resulting adverse publicity) or the taking of drastic actions to comply with the standards. With respect to the payment of civil penalties, the Secretary may waive penalties if the Federal Trade Commission certified that the payment of such penalties would produce a "substantial lessening of competition." Given Chrysler's situation as one of the three major domestic light truck producers and its current financial troubles, it is likely that such a finding would be made and potential penalties waived. More to the point, Chrysler will earn enough credits in 1981 to eliminate any civil penalties for the majority of its trucks, the 4 × 2's. Credits carried over for its 4 × 4 fleet would reduce the maximum civil penalty

liability to about 2 million dollars. Given the public's awareness of Chrysler's problems, the small magnitude of the potential penalties, and the possibility that Chrysler might meet the standards, the agency discounts the adverse publicity factor.

The remaining risk to be considered is the potential harm resulting from a manufacturer taking extraordinary actions to meet the standard and either producing vehicles which are not accepted in the market or incurring expenses which it cannot meet. Given the magnitude of the potential civil penalty liability for Chrysler of $35 per 4 × 4 truck and the possibility that any penalty would be waived, it is inconceivable that company would take any actions to comply with the standards which might have serious adverse economic consequences for it.

Further, the possibility remains that Chrysler may be able to achieve 1982 average fuel economy levels of 18 mpg for 4 × 2's and 16 mpg for 4 × 4's. If Chrysler took such actions as further increasing the efficiency of its engines, reducing its average engine displacement by changing the mix of the vehicles sold, or instituting additional lightweight material substitutions, it may be able to comply with these standards.

The agency concludes that the energy savings benefits associated with setting standards at levels of 18 mpg for 4 × 2's and 16 mpg for 4 × 4's outweigh the rather speculative harm to Chrysler of such standards. Therefore, after balancing the factors required by the law, the agency is establishing final standards of 18 mpg for 4 × 2's and 16 mpg for 4 × 4's.

Commenters on the NPRM raised two issues which directly relate to the balancing process and selection of final standards. First, IH and Chrysler both argued that standards *should* be set at levels, readily achievable by the least capable manufacturer, and the Center for Auto Safety opposed such a process. IH argued that the adverse publicity associated with violating the standards would be very damaging to the "least capable manufacturer." The standards established herein can be met by IH, based on that company's current product plan, as described in its response to the agency's July 1979 special order. In Chrysler's case, the public is already aware of that company's current financial difficulties and should not draw additional adverse conclusions based on its possible failure to comply, particularly if civil penalties are offset by credits or waived. In any case, the potential loss in fuel savings resulting from setting standards at a level which Chrysler readily could meet outweighs any of the speculative effects on that company.

The second argument, which was also supported by IH and Chrysler but opposed by GM, Ford, and the Center for Auto Safety, involves the use of the agency's authority under section 502(b) of the Act to set separate class fuel economy standards for companies with particular problems. IH argued that it needs such special treatment. However, based on its own plan and the agency's projections, it can comply with the standards established herein. With respect to the Chrysler situation, both GM and Ford argue that the agency lacks the authority to establish such a classification. Both manufacturers argue that the Act requires that standards apply equally to all manufacturers, and that the agency's authority to set standards for different classes applies to classes of *vehicles,* not of manufacturers. The Center for Auto Safety argues that the mechanism in the law for payment of moderate civil penalties for noncompliance and for reduction or elimination of those penalties in cases of need should be the sole method for dealing with the problems of the least capable manufacturer. Ford also argues that separate standards for different companies competing in the same market segment provides a competitive advantage to the company subject to the less stringent standard.

The agency has in the past used its classification authority to promote maximum fuel savings while still not placing undue burdens on particular manufacturers. For example, the separate 4 × 4 standard was established to account for American Motors, whose fleet is predominantly the less fuel efficient four wheel drive vehicles. The "limited product line" standard was established to provide a two year transition period for IH to gain experience with complying with more stringent emission standards, which were applied to that company's light trucks for the first time in 1979.

With respect to IH, the two year period expires in 1981, and all indications are that IH has been able to improve its ability to meet more stringent emission standards without loss of fuel economy. The fuel economy of IH's 4 × 4 fleet for 1982 is on a par with that of the other manufacturers' 4 × 4 fleets, so the agency is not granting IH's request to

extend the applicability of that company's special class. IH argued that a separate class is needed to allow for the possibility that it might offer 4 × 2 versions of its Scout vehicle in 1982. In recent years, the sales of these 4 × 2 derivatives of the standard 4 × 4 Scout have been at very low levels, dropping to under 300 units in 1979. In a September 13, 1979, letter to the agency, IH indicated that the Scout is available "only in four-wheel drive." In any case, given the low volumes involved, the availability of diesel engines to raise 4 × 2 fuel economy, and the existence of carry-over credits if 4 × 2 Scouts continue to be sold, the agency sees no need to perpetuate the special class for IH. However, since IH and AM will still have fleets which are at least predominantly four wheel drive, the agency deems it necessary to extend the separate class for that type of vehicle. See 42 FR 63192–3, December 19, 1977.

Without deciding the question of whether the agency has the authority to set a separate standard for Chrysler but recognizing that serious questions exist in that regard, the agency deems it appropriate to employ other statutory mechanisms in dealing with that company's problems. Chrysler competes in the same market segments as GM and Ford, and the various truck models offered by those three companies are remarkably similar. There is no inherent technical reason why Chrysler's light trucks cannot achieve the same levels of fuel economy as the other companies. The agency does not seek to minimize the magnitude of the *economic* difficulties which confront Chrysler. However, the agency is concerned that the establishment of differential fuel economy standards for fleets of vehicles which are nearly identical on a model-for-model basis could have an anticompetitive effect. Congress considered the conflict between standards which require maximum fuel economy improvements and the inevitable differences in capabilities of the affected manufacturers, and developed the enforcement mechanism in section 508 of the Act (involving modest civil penalties for noncompliance, offsetting monetary credits, and waivers of penalties in certain instances) to deal with the situation. Therefore, the agency is not establishing a separate class and fuel economy standard for Chrysler.

G. *Miscellaneous comments.* AM raised two procedural issues in regard to the 1982 standards. First, it argued that the agency failed to comply with the requirement in section 502 (b) of the Act that standards be issued 18 months prior to the start of the model year to which they apply. In AM's case, its 1982 production period will begin in July 1981, and 18 months prior to that date would be January 1980. As the agency noted in response to the same comment made by AM with respect to the 1980 standard, there is no single start of a model year for all companies in the industry (43 FR 11995; March 23, 1978). Production begins as early as July (or even earlier in some cases such as with the GM X-body cars) and as late as December for some foreign manufacturers. However, the agency has endeavored to provide approximately 18 months leadtime for the industry as a whole. Even for domestic companies with early-starting model years, these standards are established 18 months prior to the introduction for sale of the 1982 models. Further, lead time should not be a problem for AM with respect to the 1982 standard, since its current product plan would lead it to exceed the standards promulgated herein.

AM also objected to the brief 30 day comment period provided with respect to the 1982 standard. This short comment period was necessitated by the statutory deadline for issuance of that standard and by delays in issuing the NPRM resulting from requests from the industry to reduce the 1981 standards. Although the agency seeks to provide more than 30 days to comment on proposed rules, NHTSA views the 30 day period as reasonable in this case, due to the relatively narrow issues involved. More time has been provided to comment on the 1983–85 standards, where the issues involved are much more complex.

Purolator Courier Corporation argued for a more gradual increase in stringency in fuel economy standards to accommodate fleet truck operators like itself. It argued that much of the technology needed to comply with fuel economy standards is not fully proven, and that downsizing of light trucks would make those trucks less useful to commercial purchasers. Purolator also requested that a public hearing be held on the standards. The agency recognizes that changes to light trucks might result in some inconvenience to commercial users, e.g., from the need to train mechanics to repair new types of technology.

However, the Act specifies that the agency must establish fuel economy standards at the maximum feasible level for each model year, necessarily producing changes in the truck fleet. The technology projected by the agency, particularly for the 1982 model year, is well proven and in most cases already in use on some vehicles. Further, the agency's standards do not necessitate the elimination of standard-size trucks with V-8 engines, which Purolator claims to need. The agency does not see a need for a public hearing on these fuel economy standards, since the opportunity to submit written information is an effective means of addressing the primarily technical issues in a detailed fashion.

H. *Economic and energy impacts of the 1982 standards.*

The agency considered the economic impacts of the 1982 standards, in accordance with Executive Order 12044 and the Department's regulations for implementing that order. See 44 FR 11034. Also considered were the "Urban and Community Impacts" of the standard, as specified in Executive Order 12074. These impacts are discussed in a Regulatory Analysis, copies of which are available from the agency's Office of Plans and Programs. The major conclusions of that document are that the standards will produce gasoline savings of 1.2 billion gallons over the life of the 1982 model year light truck fleet. The investment requirement associated with making that improvement would be approximately $900 million, part of which would be assimilated in normal business as usual capital spending. The average retail price increase resulting from the standards is approximately $95, but this initial cost is more than offset by the operating cost savings over the life of the vehicle of about $470. No significant adverse "urban or community" impacts should result from the standards.

I. *Environmental impacts of the standards.*

The agency also considered the environmental impacts associated with the 1982 light truck standards, in accordance with the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.* As has been the case with all of the agency's fuel economy standards, the main environmental impacts are positive ones associated with the reduction of petroleum consumption. Copies of the Environmental Impact Analysis are available from the individual listed as the "information contact" at the beginning of this notice.

J. *Standards for 1983-85.* As stated previously, the agency proposed standards for 1983-85 at the same time it proposed the 1982 standards. However, standards for the later 3 years are not being established now, due to the legal requirement for establishment of the 1982 standards by this March and the much more complex issues involved in setting standards for 1983-85. Comments on the 1983-85 standards are due by March 31, 1980, although the agency will consider late comments to the extent possible. It is NHTSA's intent to promulgate these standards this year, to provide ample leadtime for the manufacturers to develop compliance strategies.

In consideration of the foregoing, 49 CFR Chapter V is amended as follows:

1. By deleting the footnote to the table in section 533.5 (a) and by revising the table to read as follows:

Model year	2-wheel drive light trucks		4-wheel drive light trucks		Limited product line light trucks
	Captive imports	Other	Captive imports	Other	
1979		17.2		15.8	
1980	16.0	16.0	14.0	14.0	14.0
1981	16.7	16.7	15.0	15.0	14.5
1982	18.0	18.0	16.0	16.0	—

Issued on March 27, 1980.

Joan Claybrook
Administrator

45 F.R. 20871
March 31, 1980

PREAMBLE TO AN AMENDMENT TO PART 533

Light Truck Average Fuel Economy Standards; Model Years 1983-85 (Docket No. FE 78-01; Notice 4)

ACTION: Final rule.

SUMMARY: This notice establishes average fuel economy standards for light trucks manufactured in model years 1983-85. Section 502(b) of the Motor Vehicle Information and Cost Savings Act ("the Act") requires that standards be established for each model year at the maximum feasible level. Model year 1983-85 light trucks complying with these standards are expected to consume approximately 10 billion less gallons of gasoline over their lifetime, than would have been consumed if light truck average fuel economy were to remain at the levels of the 1982 standards.

FOR FURTHER INFORMATION CONTACT:

Mr. Philip W. Davis, Office of Automotive Fuel Economy Standards (NRM-21), 400 Seventh Street, S.W., Washington, D.C. 20590 (202-472-6902)

SUPPLEMENTARY INFORMATION: This notice establishes average fuel economy standards for light trucks manufactured in model years 1983-1985. On December 31, 1979, the agency published proposed standards for light trucks manufactured in model years 1982-85, in 44 FR 77199. Due to the requirement in section 502(b) of the Act that standards be established at least 18 months prior to the start of the affected model year and due to the many complex issues involved in setting standards for the later model years, the agency separately established final standards for the 1982 model year on March 31, 1980. See 45 FR 20871. Previously, the agency established standards for light trucks manufactured in 1979 (42 FR 13807, March 14, 1977), and 1980-81 (43 FR 11995, March 23, 1978, and 44 FR 36975, June 25, 1979). Passenger automobile standards were established in the Act for model years 1978-80 and 1985 and thereafter (15 U.S.C. 2002 (a)), and administratively by NHTSA for model years 1981-84 (42 FR 33534, June 30, 1977).

Section 502(b) of the Act requires that average fuel economy standards for light trucks be established for each model year at the "maximum feasible average fuel economy level." In determining that level, the agency is directed to consider technological feasibility, economic practicability, the need of the nation to conserve energy, and the effects of other Federal motor vehicle standards on fuel economy. A discussion of how the agency interprets these requirements is set forth in the preamble to the notice establishing the 1981-84 passenger automobile standards, cited in the previous paragraph.

In its proposal the agency invited comment upon a range of possible fuel economy standards for 1983-85. The use of a range of fuel economy values rather than a single value for each model year reflected uncertainty at the time of the proposal with respect to such issues as demand for new, compact truck models, the acceptability to consumers of light trucks with smaller displacement engines (with corresponding higher fuel economy but reduced acceleration and grade-climbing capability), and the existence and magnitude of a claimed fuel economy penalty resulting from emission standards applicable to light trucks beginning with the 1983 model year. Specifically, the ranges of fuel economy values cited in the proposal for 2-wheel drive (4x2) and 4-wheel drive (4x4) light trucks were as follows:

	4x2 (mpg)	4x4 (mpg)
1983	18.0-20.0	15.6-18.0
1984	18.8-21.4	16.1-19.3
1985	19.7-22.4	16.2-19.9

The vehicles covered by these standards include the pickup trucks, vans, and utility vehicles typically used for personal or mixed personal/commercial purposes, i.e., those with gross vehicle weight ratings (GVWR's) up to and including 8,500 pounds.

Comments on the proposed 1983-85 light truck standards were received from the domestic light truck manufacturers, Toyota, the U.S. Department of Energy (DOE) and the Regulatory Analysis Review Group (RARG). Because of the significance of certain issues raised by DOE and RARG, a notice was published in the *Federal Register* inviting public comments on those issues. See 45 FR 35403, May 27, 1980. The comments received on various issues in the rulemaking are summarized below, along with the agency's response to those comments and a summary of the basis for the final standards.

Many of the comments received in this rulemaking and many of the details of the agency's analysis contain confidential information. The confidentiality of this information (typically involving future product plans of the domestic manufacturers, especially for new models which have the greatest effect on fuel economy) prevents the agency from presenting in this notice a detailed description of the comments received and the agency's response to those comments. Nevertheless, the agency has attempted to describe the basis for the final standards by providing a general overview of these matters and an approximation of a "typical" future product plan for compliance with the standards established herein. This approach has been adopted after balancing the public's need to know the basis for the agency's actions against the manufacturers' needs to maintain the confidentiality of their future product plans. The agency in this case has tended to tip the balance in favor of preserving confidentiality. Comment is invited on how the agency could better resolve this conflict between the public's need to know and the manufacturers' need to maintain confidentiality of certain information.

Structure of the Standard

In all the light truck standard-setting to date, the agency has provided some form of separate treatment for 4-wheel drive vehicles. In 1979, the manufacturers were given the option of combining all their light trucks into one fleet and complying with the 4x2 numerical level. In 1980-82, no alternative single standard was provided. Separate standards were provided (under the authority of section 502(b) of the Act to establish separate standards for different classes of light trucks) due to the lower fuel economy of 4x4's and the fact that two companies, American Motors and International Harvester, offered fleets comprised almost exclusively of 4x4 vehicles. Given the lower average fuel economy of those vehicles, any single standard would have had to be set low enough to accommodate those companies (giving no incentive for the other companies to achieve higher fuel economy) or above their capability (possibly penalizing those companies). Separate standards avoided this problem.

While establishing separate standards for each of several vehicle classes reduces inequities for companies with less fuel efficient fleet mixes, it also has certain disadvantages. Separate class standards reduce manufacturers' flexibility in complying with standards, by requiring improvements to each class of vehicles subject to standards rather than permitting the option of making a major improvement to only one class of vehicle. For example, under the classification system used for the model year 1980-82 standards, making a major improvement in the fuel economy of a manufacturer's vans (which are 4x2's) would not assist that company's efforts to meet the 4x4 standard.

RARG requested that NHTSA consider the establishment of a "composite" fuel economy standard as a means of providing varying levels of fuel economy standards based on differences in mix of 4x2 and 4x4 vehicles, or other more narrow classes, without the offsetting disadvantages of separate class standards. Each manufacturer's composite standard, for example could be based upon a projected mix of 4x2 and 4x4 vehicles, with a production-weighted average fuel economy standard being calculated from separate 4x2 and 4x4 targets developed as the agency had developed separate standards in the past. Thus, each company would have a different numerical fuel economy standard, depending on its projected production mix. A manufacturer with a high proportion of 4x2 vehicles would have a higher standard than a manufacturer with a lower proportion of them.

All the major domestic manufacturers commented on the RARG proposal, with Chrysler sup-

porting it and Ford supporting it as an option (to be used at the manufacturer's election) to complying with separate standards. General Motors (GM) supported the concept of a composite standard but opposed separate standards for different companies. American Motors also opposed different standards for each company.

The agency agrees with RARG's goals in proposing the composite standard, but, like some of the manufacturers, doubts the existence of any authority to set different standards for different companies based solely on mix projections. However, the advantages of the composite standard can be achieved in the 1983-85 model years through the addition of an optional single average fuel economy standard applicable to all companies. The use of a single standard (other than one set at a very low level which would sacrifice fuel economy) is possible because of projected substantial improvements in the AM fleet fuel economy (see following sections of this notice) and because International Harvester has decided to stop producing the Scout vehicle. This leaves the average fuel economy levels projected for all the domestic manufacturers within a narrow enough range to make the establishment of a single fuel economy standard for all an effective means of promoting conservation while providing the manufacturers with substantial flexibility in achieving compliance.

The combined standard is established as an option to the separate 4x2 and 4x4 standards which the agency has issued beginning with the 1980 model year. This action is being taken to permit manufacturers seeking greater investment flexibility to opt for the combined standard and to permit manufacturers seeking to increase sales of 4x4 vehicles to opt for the separate standards. Further, this approach will provide some stability in the year-to-year structure of the agency's light truck standards and would provide relief in the post-1985 period should manufacturers such as American Motors not be able to make further fuel economy improvements in their exclusively 4x4 fleets.

Basic Methodology

Several comments were received, principally from DOE, with regard to the methodology used by the agency to project future model year average fuel economy. DOE objected that the baseline used by NHTSA to project future years' fuel economy was inappropriate. The baseline used to develop the proposed fuel economy ranges for 1983-85 was the 1981 standards, which were in turn based upon pre-1979 product mix estimates and 1979 fuel economy test results. More recent mix and fuel economy information was not available at the time the agency proposed the 1983-85 standards. In particular, DOE suggested that changes be made in the baseline to reflect the shift in light truck production mix for 1980. Included in this shift are a rerating of certain trucks with large engines above the 8,500 pound GVWR upper limit of the scope of these standards and a shift in the relative proportion of smaller and larger trucks, precipitated by the rapid increase in gasoline prices in 1979-80.

The agency determined that, to meet DOE's concern about the significant change which the domestic light truck fleets and market have undergone and will undergo by 1985, a different projection methodology would be used to set the 1983-85 standards than has been used in the past. That methodology is described in detail in the agency's rulemaking support paper (RSP), copies of which are available from the individual listed as the "information contact" at the beginning of this notice. Generally, future light truck offerings were grouped in seven classes. These classes provide distinctions between various types of vehicles which have clearly different market attributes. The potential characteristics of each group were analyzed (based primarily on the manufacturers' future product plans, particularly where lead time was a controlling factor) and fuel economy value derived. Sales projections for each group of vehicles were also developed based upon information available to the agency, including the manufacturer's own estimates. Once group fuel economy and sales projections are derived, average fuel economy values for each of the model years 1983-85 were calculated.

DOE also suggested revisions to NHTSA's mathematical model used to predict the effect on fuel economy of small changes in vehicle weight, engine displacement, or axle ratio. DOE developed an alternate model which it believes provides a more accurate prediction of the effect of changes in these vehicles' attributes. Because of the DOE analysis, NHTSA reviewed its fuel economy model and has developed a new model which predicts fuel economy levels more accurately than the original

one and, in some cases, the alternative one developed by DOE. Both models provide fuel economy estimates within 5 percent of EPA test data. The major area of concern expressed by DOE was an apparent misunderstanding of the limited manner in which the agency actually used its previous model. This area is described fully in the RSP.

Technological Feasibility.

The agency received a number of comments on its analysis of the various methods available to improve light truck fuel economy in the 1983-85 model years, including a comprehensive analysis by the Department of Energy. The DOE analysis concluded that fuel economy levels approximately 1½ mpg above the upper end of the range of fuel economy levels proposed by the agency are achievable by 1985. However, DOE deferred to NHTSA on the manufacturers' capability to finance product changes. On the other hand, the vehicle manufacturers generally recommended that standards be established at the lower end of that range. These overall disagreements resulted from differences in the detailed fuel economy projections for individual truck models, technology, and sales mix made by NHTSA, DOE, and the manufacturers.

For the final rule, the agency is using fuel economy projections for individual new light truck models which tend to exceed those which formed the basis for the proposed standards. While the individual projections used in the proposal were composites reflecting information from a variety of sources (i.e., the same fuel economy value was used for all manufacturers' models of a particular type), final rule projections are manufacturer-specific. This change was made because the agency received information about manufacturers' plans after the issuance of the proposal, because in many instances individual manufacturer plans could not readily be changed at this late date in the product introduction process for the 1981-85 model years (particularly for the earlier years), and because in some cases the manufacturers' own estimates exceeded those of the agency.

The agency's analysis is based on 12 major light truck types being offered in 1983-85 in seven basic market groups. The types include 4x2 and 4x4 versions of the standard size pickup trucks, standard size utility truck, compact pickup trucks (slightly larger than current imported trucks), and compact utility trucks, along with standard size vans, compact vans (slightly larger than the Volkswagen Vanagon, but smaller than current domestic vans), and a small, front-wheel drive passenger car-derived pickup truck which would be approximately the size of current imports. The precise attributes projected for each manufacturer's light trucks were derived from confidential submissions from those companies and from independent agency analyses. The approximate fuel economy value (in miles per gallon) projected by the agency for each truck type are as follows:

	4x2	4x4
Full size pickup	19-22	16-19
Compact pickup	27-28	23-26
Small pickup (car-based)	27-30	-
Full size van	17-20	-
Compact van	22-26	-
Full size utility	16-18	16-21
Compact utility	25-27	21-24

The above fuel economy values were derived by NHTSA from submissions from the manufacturers and from the agency's independent analysis. The manufacturer's estimates were verified by comparing their planned new models with similar existing models (adjusting for weight or other differences) and by projecting the addition of all available fuel economy improving technology. This technology typically includes a 1 percent fuel economy benefit for accessory improvements, a 3 percent improvement for engine and rear axle lubricants, a 1 percent benefit for tire improvements, and transmission improvements of from 3.5 to 10 percent, depending on the type of transmission involved. In most cases, the agency's independent assessment closely coincided with or was slightly more conservative than that of the manufacturers, in which case the agency used the manufacturer's estimate in the analysis. Where the manufacturer's estimate appeared to be unduly conservative, the agency used its own estimate.

Sales projections for the various models were developed principally from the manufacturers' own estimates, estimates of Data Resources Incorporated, and the agency's own judgment of future light truck demand. The agency made two separate sales estimates of future light truck market conditions, which are described in detail

in the agency's Final Regulatory Analysis, copies of which are available from NHTSA's Office of Plans and Programs. The cases were developed to cover the probable range of light truck sales mixes in 1983-85. In general, Case A assumes that manufacturers undertake an aggressive program of introduction of new, fuel-efficient light truck models and that strong consumer demand for these models will exist. This case represents the agency's estimate of the largest number of new model introductions each manufacturer would likely be able to undertake, considering its financial position, lead time, and competitive pressures. Case B assumes that demand for compact light trucks is less than in Case A, but still significantly higher than in the past when no domestic compact trucks were produced. In the latter scenario, the introduction of new, fuel-efficient models is delayed one or more years compared to Case A due to lack of financial capability, need to invest in passenger car programs, and more limited demand for those trucks. The projected sales fractions for new light truck models for the various manufacturers and in the various model years are as follows:

	Case A	Case B
Compact 4x2 pickup	25-35%	15-25%
Compact 4x4 pickup/utility	10-15%	10%
Compact van	15-25%	0-10%
Small car-based pickup	0-20%	0-10%

It should be noted that not every manufacturer is projected to offer all of these new models, and that current standard size truck models would still account for a substantial portion of light truck sales through 1985 under the agency's projections. A typical composite light truck fleet for 1985 under the agency's analysis would contain roughly the following fleet mix:

	Case A	Case B
Standard 4x2 pickup	20%	40%
Standard 4x4 pickup/utility	10%	15%
Standard van	5%	15%
Compact 4x2 pickup	20%	15%
Compact 4x4 pickup/utility	15%	5%
Compact van	25%	10%
Small car-based pickup	5%	0%

Using these approximate fuel economy values and sales fractions, one can calculate average fuel economy values of about 22 mpg for Case A and 20 mpg for Case B. However, such averages are only approximations (used here because of the confidential nature of much of the specific fuel economy values and sales projections) and do not reflect the problems which individual manufacturers face in financing new models.

With respect to the 1983 and 1984 model years, the agency projected a fairly even rate of introduction of these new models, given the major investments required for production of a new vehicle and the current financial difficulties of the domestic manufacturers. This projection leads to average fuel economy levels increasing about 1.5 to 2 mpg per year over the level of the 1982 standards (about 17.5 mpg) for Case A or about 1 mpg per year for Case B, on a total domestic light truck fleet basis.

As previously stated, the agency has chosen to set final standards for 1983-85 relying heavily on the domestic manufacturers' estimates of new model fuel economy values and market shares. This was done because the agency recognized the current financial difficulties of the domestic manufacturers (see discussion below) and independently verified the new model fuel economy values provided by the manufacturers.

DOE's main objectives to NHTSA's new model projections were that the new compact pickup trucks should be projected to be the same size as current imports or smaller (rather than slightly larger as NHTSA projects), that the engines projected for those vehicles should be all 4-cylinder (rather than a mix of 4 and 6-cylinder engines as NHTSA projects), and that redesigned standard pickup trucks should be projected to have lower weights than NHTSA had estimated.

To a great extent DOE's disagreement with NHTSA with respect to the fuel economy levels projected for new models was phrased in terms of DOE's view of the domestic manufacturers' *plans* to offer new models. Based on numerous submissions to NHTSA, DOE's understanding of those plans is incorrect. Apparently the domestic manu-

facturers have determined that new compact models slightly larger than those now offered by the foreign companies will be an attractive alternative for consumers, providing more utility to the truck user at only about a 2 mpg sacrifice in fuel economy. The recent trend for the foreign manufacturers has been to slightly increase the size of their trucks. The domestic companies apparently feel that their planned small trucks have the potential to draw some purchasers who might otherwise consider full size trucks, and that offering new models identical to the imports might be less effective in attracting those purchasers and thereby result in less overall energy savings. In any case, the question of whether the domestic companies could offer smaller new models than they now plan is largely irrelevant, due to the advanced stage of their product introduction process (trade press reports indicate manufacturers will begin to introduce these models in the 1982 model year).

The agency received several comments on technological improvements projected for the 1983-85 model years. One area of comment involved the 1 percent fuel economy benefit projected for improved engine accessories. DOE commented that a 2 percent improvement is feasible, and some manufacturers indicated that a lesser improvement is the most which could be accomplished through 1985. The agency has retained its original projection (based on several research studies and manufacturer submissions) for the final rule, with the exception that accessory improvements were not projected for carry-over standard size trucks. No improvement was projected for the latter vehicles, due to limitations on manufacturer resources given the planned major product actions and the inefficiency associated with devoting resources to vehicles which would account for steadily diminishing portions of total sales and which would be replaced by new models in the near future. The agency's original 1 percent benefit was retained due to the absence of any data or analysis submitted by the commenters to support any other position.

With respect to the agency's projection of a 1 percent fuel economy benefit for reduced rolling resistance, none of the manufacturers presented data or engineering analyses supporting their claims that no such benefit is feasible. DOE argued that an additional 0.5 percent benefit should be provided for reduced brake drag, but submitted no data to support that claim. Here again, in the absence of supporting data or analysis for any contrary position, the agency retained its original position.

DOE also suggested that aerodynamic drag and weight reduction improvements should be projected for the carry-over standard size vans and weight reduction improvements alone for standard pickup trucks. DOE would apply these improvements only where a manufacturer did not plan to replace these models in the near future. NHTSA did not adopt this suggestion for vans because of limited manufacture resources and because the cost associated with such changes could not be justified given the small potential fuel economy benefit and the relatively small market share (about 5 percent for Case A). With respect to the weight reduction comment for carryover pickup trucks, the agency believes that meaningful weight reduction can be obtained only through major redesigns. The agency's basis for projecting no further major redesigns for the domestic manufacturers is discussed in the "economic practicability" section of this notice. Due to the economic difficulties of the domestic manufacturers and the large number of lay-offs of technical personnel in those companies (as prominently reported in the press), resources will likely be hard-pressed simply to introduce the planned new models.

In the agency's proposal, an alternative set of assumptions (Case 4) was developed to obtain comment on the extent to which engine downsizing could be accomplished as a means of improving light truck fuel economy. The Case 4 scenario involved a major shift to the smallest displacement engines currently offered. DOE projected that a lesser reduction in engine displacement could be accomplished to provide about a 5 percent fuel economy improvement. According to DOE, this improvement could be accomplished without degrading vehicle performance, through improvements in engine power efficiency. The manufacturers generally argued that only slight engine downsizing could be accomplished, with Ford stating that a 2 percent fuel economy benefit could be obtained and GM stating that the feasibility of any engine downsizing in the future is "questionable."

For the final rule, the agency is projecting major engine downsizing through the introduction of new, compact truck models. Given current low

sales of domestic trucks and the strong competition being encountered from the imports, the agency cannot project any further reductions in engine size (with probable reductions in vehicle acceleration capability) which might further jeopardize the marketability of these vehicles. DOE provided no data or analysis and NHTSA knows of none to support its claim that further engine downsizing could be accomplished without sacrificing performance capability or durability.

The final technological area addressed by commenters is transmission improvements. The agency is retaining its original projections of a 5 to 7 percent improvement from 4-speed wide ratio manual transmissions (whether overdrive or direct drive), a 3.5 percent improvement when adding a lock-up clutch to a 3-speed automatic transmission, and a 10 percent improvement for automatic overdrive transmissions with lockup clutch. Several manufacturers argued that lower improvements should be projected, but they either did not support their claims with data or, in one case, submitted data (after the agency requested it) which was more supportive of the agency's position than the manufacturer's.

Ford argued that only a 0.5 percent improvement in fuel economy is available for its light trucks through the use of improved engine lubricants. Ford supported its position with data generated by the ASTM Fuel Efficient Oils Task Force, which indicates that Ford's current factory fill oil has superior fuel efficiency characteristics than the oils used by other manufacturers. In other words, it appears that Ford has already achieved part of the benefit available through the use of improved lubricants, leaving a small benefit remaining for the future. Therefore, the agency adopted Ford's projected improvement for our analysis of that manufacturer's capability. The agency continued to use 2 percent for the other manufacturers.

The manufacturers unanimously suggested that the agency continue its policy of excluding diesel engines in standard-setting analyses until the health related questions associated with the widespread use of those engines are settled. DOE, on the other hand, argued that the agency's analysis should reflect the inclusion of this technology, which represents one of the most significant methods available for improving light truck fuel economy. Although EPA has established diesel particulate standards, the health effect issue remains open. Therefore, the agency's analysis reflects the plans of manufacturers to offer diesel engines in 1983-85 model year light trucks, but does not project any use of diesels beyond those plans. The agency is reluctant to project further dieselization while substantial health questions remain to be answered. The levels of the final standards do not require the use of diesels for compliance, since all companies can meet the standards without any diesel light trucks being offered.

Ford commented that the agency should not project the use of PROCO ("programmed combustion") engines in 1983-85 model year light trucks. Ford recently announced the cancellation of its V-8 PROCO engine program due to a variety of economic and technical problems. Therefore, the agency will delete those engines from its analysis.

Economic Practicability

The current depressed condition of the domestic auto industry has had a major impact on the agency's standard-setting process. Although the low fuel efficiency of current domestic vehicles was initially a major contributing factor to that condition, the agency recognizes that major improvements in light truck fuel economy must be financed mainly through revenues generated from the sale of current vehicles. The recent downturn in the national economy has severely limited the resources available to the manufacturers to improve light truck fuel economy.

The agency performed cash flow analyses for Ford and General Motors, to assess their capability to finance fuel economy improvements. For Chrysler, the agency has relied on the more detailed analyses of the Chrysler Loan Guarantee Board. No analysis was conducted for American Motors, pending the completion of its financial arrangement with Renault. The agency's analysis for General Motors' U.S. and Canadian automotive operations in the 1980-85 period shows a loss of about $500 million for 1980, but a return to profitability for the remainder of the period. Due to the heavy capital investment plan announced by GM through 1985, net cash flow would be negative for GM through 1983, and would turn positive thereafter. With respect to Ford, the agency's projections are more pessimistic. The agency's analysis shows losses of over $2.5 billion for Ford's

domestic automotive operations in 1980, with annual but smaller losses through 1982. Thereafter, Ford would return to profitability. Even though Ford has recently announced reductions in its planned capital expenditures, its cash flow would remain negative until 1985, with a cumulative negative cash flow in 1980-84 of over $7 billion. This large projected negative cash flow led the agency to project no major capital expenditures beyond those planned by Ford for purposes of this rulemaking. (See section h of this notice.)

The Effects of Other Federal Standards on Fuel Economy

The manufacturers all argued that their ability to improve fuel economy in model years 1983-85 would be impaired by changes in the stringency of light duty truck emission standards and related requirements. Those changes, which EPA had proposed to make effective beginning with the 1983 model year but which were recently delayed until 1984 to provide additional leadtime, would, in the manufacturers' view, result in fuel economy penalties ranging from 3 to 7 percent. General Motors has recently submitted 1981 model year data to both NHTSA and EPA which purports to show that the penalty could range as high as 13 percent for some light trucks.

The manufacturers have based their claims on comparisons of 1980 49-state fuel economy and the fuel economy of light trucks meeting the more stringent California standards. The manufacturers believe that the stringency of the 1980 California standards approximates that of the 1984 Federal emission standards for light duty trucks. Both NHTSA and EPA have been wary in past rulemakings of relying on Federal-California fuel economy comparisons in predicting future model year effects because of the additional leadtime available prior to the nationwide application of more stringent standards, questions about emission control technology used, and limitations on manufacturer resources available for developing and refining emission control technology to be used on vehicles sold only in one state.

The most advanced emission control technology currently available is a system employing a 3-way catalyst with interactive electronic control of air-to-fuel ratio, spark advance, exhaust gas recirculation, and other parameters, and other emission-related hardware. This type of technology is being used to meet 1981 passenger automobile emission standards with little or no fuel economy penalty compared to automobiles meeting prior years' standards. Some of the manufacturers' projections of 1984 light truck fuel economy penalties are based on the use of this type of technology, but others do not include it, apparently due to cost considerations. In some cases, the manufacturers have based their projections of penalties on the use of simple oxidation catalyst systems, possibly incorporating less sophisticated electronics. NHTSA's analysis of limited data from 1981 certification trucks which used some form of electronic controls showed no appreciable difference in fuel economy between California and Federal versions.

EPA, in establishing the 1984 standards, concluded that the 1984 emission levels can be met without fuel economy penalty by using electronic engine control systems, improved oxidation catalysts, and air injection. Three-way catalysts would not be needed in most cases. EPA concluded, based upon a comparison of 1980 California and Federal light duty trucks, that with no improvement over the current California technology, a penalty of 5.2 percent on average would result. Since EPA concluded that California emission requirements for 1980 are more stringent than the 1984 Federal standards and adjusting for future engine mix changes, the fuel economy penalty associated with the 1984 standards would be only 4 percent if no technology improvements were implemented. Based on EPA's review of published technical literature, that agency concluded that through the use of "moderately complex" electronics (controlling spark advance and exhaust gas recirculation rate) together with improved oxidation catalysts and air injection, the 1984 emission standards could be met without fuel economy penalty. Compliance with the standards was projected by EPA to add $95 to the price of 1984 light trucks. The EPA analysis appears to be the most complete and detailed analysis of the emission penalty issue now available. Therefore, the agency projects for purposes of this final rule that the 1984 emission levels can be met without fuel economy penalty, consistent with the position taken by the agency in setting the 1981-84 passenger automobile fuel economy standards.

Ford projected an additional fuel economy penalty for a change in stringency in the light duty truck emission standards for oxides of nitrogen in

the 1985 model year. Such a change has not been proposed at this point. Therefore, NHTSA deems it premature to attempt to estimate the magnitude of any fuel economy penalty which might result from such changes.

The manufacturers also estimated that adverse fuel economy effects would result from future changes in safety standards applicable to light trucks. These changes would result in slight increases in vehicle weight. Since the agency adopted the manufacturers' own weight estimates for future vehicles, their claims of safety-related weight additions have been adopted.

The Need of the Nation to Conserve Energy

The United States imported only 15% of its oil needs at a cost of $1.1 billion in 1955. In 1970, imported oil accounted for 31% of total consumption and cost the nation $3 billion. But by 1975, 49% of the domestic demand for oil had to be imported at a cost of $26.3 billion. This eight-fold increase in the cost of imported oil over five years was the result of huge OPEC price increases, falling domestic crude oil production, and continued increase in domestic demand. This trend has continued. By 1979, imported oil, constituting 58% of petroleum consumed, cost the nation about $60 billion; comparable import cost estimates for 1980 are $82 billion, and at 51 percent of domestic petroleum consumption.

The nation has become increasingly dependent for its oil supplies on the actions and decisions of a few foreign governments. This dependence has been demonstrated in the aftermath of the revolution in Iran when that country's oil production was stopped entirely in December 1978 and, once resumed, only returned to about one-half of its former level. Although the U.S. no longer imports oil from Iran, this reduction was felt by *all* importers because it represented the difference between satisfying current world oil demand and a shortage of supply. OPEC, which supplied 83% of the U.S.'s imported oil in 1978, has taken advantage of the tight world oil market by more than doubling prices from $12.70 per barrel in December 1978, to more than $30 per barrel as of July 1980. Currently, prices on the world "spot" market are about $35 per barrel. An increase of this magnitude has severe adverse impacts on our trade balance, inflation, economic growth, unemployment, and confidence in the dollar as an international reserve currency.

The rapid transition from a condition of apparent worldwide surplus in 1978 to one of shortage in 1979 has shown the instability of the world oil market. Now the Iran-Iraq war may again bring worldwide shortages. Thus, the nation's economic growth and national security are being heavily constrained by the decisions of a few foreign countries which control world oil prices and production.

The U.S. can change this situation by increasing its domestic energy production and by reducing demand. The fuel economy standards program helps to reduce demand by motor vehicles. Light trucks account for about 7% of our total oil consumption (20% of automobile consumption) and an improvement in their fuel efficiency, beyond the level scheduled to be achieved through the MY 1982 standards, is considered an integral part of the nation's total effort to conserve energy. Increased light truck fuel economy efficiency would contribute directly to reduced U.S. dependence on foreign oil and help limit foreign oil imports to a level no greater than the amount imported in 1978—in accordance with the President's pledge.

Selection of Final Standards

Based on the analysis described above, the agency projects that the following combined fuel economy levels can be achieved for model years 1983-85:

	Case A			Case B		
	1983	1984	1985	1983	1984	1985
AM	20.3	21.7	22.3	20.2	21.2	21.5
Chrysler	20.6	23.9	27.0	20.3	20.4	25.7
Ford	20.4	21.8	21.8	19.0	19.3	19.4
GM	22.7	23.2	23.5	21.1	21.2	22.0

No separate analysis was conducted for the foreign manufacturers, which project exceeding these fuel economy levels by wide margins.

The legal requirements for establishing the maximum feasible average fuel economy level for a particular model year, and thereby the levels of fuel economy standards for that year, are discussed in the preamble to the agency's final rule establishing the 1982 light truck standards. See 45 FR 20875-6, March 31, 1980. In general, the agency is directed to take "industry-wide considerations" into account in establishing standards, and should

not necessarily key the standards to the level of the least capable manufacturer. However, the agency must weigh the benefits to the nation of setting standards above such a manufacturer's level against the difficulties of individual companies. The agency must also consider the possible competitive harm associated with placing a severe strain on any company, given the small number of domestic manufacturers. In this proceeding, the agency is considering not only the range of capabilities *among* the various manufacturers but also the ranges of capability for individual companies, given the uncertainties associated with their abilities to finance new models and the ultimate market acceptance of those models.

The agency has determined that standards requiring the high rates of model introduction and high sales levels of compact trucks inherent in Case A should be gradually phased in. Therefore, the standards established for 1983 are based on the Case B set of assumptions. Even this less aggressive scenario results in an increase in fuel economy of about 1.5 mpg over the 1982 standards, comparable to the rate of increase in the passenger automobile standards over the 1980-85 period. As discussed previously in this notice, the Case B levels would permit deferral of new model introductions for some manufacturers and reduce the risk associated with only modest market acceptance of the new truck models. Relying on Case B for the 1983 model year reflects uncertainty regarding the national economy, the ability of the manufacturers to finance major new programs in the near future, and the recent reduced overall consumer demand for cars and trucks.

For 1984 and 1985, the agency has relied to a greater extent on the Case A scenario, with 1984 projections falling between Case A and Case B and 1985 projections more closely approaching Case A. This gradual increase in relative stringency of the agency's projections is due in part to the greater leadtime available for developing new programs and for generating the capital necessary to finance the required new products. Also reflected is greater long term certainty that, as gasoline prices increase, market demand for compact, fuel-efficient truck models will also increase. Although the past seven years have brought brief gasoline supply gluts or price reductions, it is virtually certain that in the long run the trend toward reduced gasoline supplies and higher prices will continue.

With respect to the range of fuel economy capabilities among manufacturers, the agency has determined that it is appropriate in this proceeding to set the 1983-85 light truck fuel economy standards at levels achievable by the "least capable manufacturer." As stated by Ford in its comments on the 1983-85 standards, the reasonableness of a decision to set standards above the level of the least capable manufacturer depends upon factors such as economic conditions and the degree of burden placed upon the individual companies.

The severe economic problems facing the manufacturers (and in particular Ford, the least capable manufacturer for 1983-85 based on the agency's analysis) were discussed in prior sections of this notice. Setting standards above the levels projected for Ford in this proceeding could result in Ford attempting to introduce additional compact truck models or major new technology programs such as diesel engines. While such actions, if successfully completed, might benefit Ford and the nation in the long run, the agency recognizes the uncertain availability of financial resources to take such actions. Setting standards above Ford's level might also result in product restrictions by Ford (e.g., limiting the sale of larger trucks and engines). Such actions could further erode Ford's economic situation. Finally, Ford could elect to pay civil penalties rather than attempting to meet the higher standards. Penalties could amount to as much as $75 million per year. While even a penalty that large might not result in insolvency for a company as large as Ford or a "substantial lessening of competition" in the truck market (thereby permitting a reduction of penalties under section 508 of the Act), it is certainly substantial enough to make future fuel economy improvements even more difficult to finance.

The harm resulting from establishing fuel economy standards at Ford's level is the lost fuel savings. Considering the nation's serious energy problem (see discussion of "need of the nation to conserve energy," infra), the agency does not lightly dismiss this potential loss. However, given the seriousness of the industry's current financial problems, this potential loss in fuel savings is, in the agency's view, outweighed by the potential harm to Ford in setting standards above the level it can reasonably achieve.

The situation faced by the agency in setting the

1983-85 standards differs from that for the 1982 final rule, in which the agency set standards above the level of the least capable manufacturer. The most important difference between the two situations is that the 1982 proceeding involved setting the fuel economy standards above the level of a much smaller portion of the light truck fleet. Chrysler, whose trucks represent 10-15 percent of domestic sales, had the lowest fuel economy projection in that proceeding. Ford accounts for about 35 percent of domestic sales. Further, Chrysler was projected to have sufficient monetary credits to avoid paying penalties for its 4x2 trucks, and to partially offset penalties for its much smaller 4x4 fleet. The maximum total penalty should be under $1 million.

By setting standards at the level of the least capable manufacturer and gradually shifting from the Case B scenario in 1983 toward the Case A scenario in 1985, fuel economy standards of 19 mpg in 1983, 20 mpg in 1984, and 21 mpg in 1985 result.

The agency also calculated separate 4x2 and 4x4 fuel economy levels. This was done by projecting a compliance strategy product plan for the least capable manufacturer to just meet the combined fuel economy standards and disaggregating that company's fleet into separate 4x2 and 4x4 subfleets. The resulting 4x2 and 4x4 standards are as follows: 19.5, 20.3, and 21.6 mpg for 4x2's in 1983-85, respectively, and 17.5, 18.5, and 19.0 mpg for 4x4's in those same years.

Other Comments Received

RARG proposed that an alternative methodology be used to set the 1983-85 fuel economy standards. This methodology would require that standards be based on available technological improvements which provide fuel savings greater than their cost. The costs and benefits which go into this determination would include not only the relatively straightforward gasoline pump prices and technology costs but also some quantification of national security, balance of payments and related benefits as well as truck utility degradation (e.g., smaller payload, reduced acceleration capability) costs. The manufacturers supported this approach in their comments.

The RARG methodology is a slight variation of the cost-benefit test previously proposed by the Council on Wage and Price Stability and rejected by the agency as being inconsistent with the Act. Title V of the Cost Savings Act requires that standards be set at "maximum feasible" levels, which necessarily implies that all possible fuel economy improvements should be implemented. Given the historical background of the Act, passed as a response to the 1973 Oil Embargo, it appears that national security considerations, not consumer cost savings, are the primary focus of the legislation. Further, RARG concedes that setting a precise value for the national security benefits and vehicle utility changes would be quite difficult. It is the agency's view that Congress did not intend that the agency in the rulemaking process be required to place a dollar value on factors (particularly the national security benefits) which are not quantifiable, and to use these numbers as the basis for setting standards. Nevertheless, the agency's fuel economy rulemaking has to date produced standards which produce substantial net benefits for consumers, and the standards established herein are no exception.

GM argued that in valuing gasoline savings, a 20 percent discount rate should be used. The agency has used a 10 percent discount rate, which is standard for government programs, and constant dollars to account for inflation. GM bases its argument on its claim that light truck purchases are generally a "producer capital investment" and that the opportunity cost for capital, together with a "risk premium" to account for risks associated with truck investments, would justify the 20 percent rate. However, the agency has presented data in its various light truck rulemaking proceedings which shows that light trucks are principally used for personal, agricultural, or small commercial operations. In those situations, a 10 percent discount rate is a more accurate representation of the opportunity cost.

GM also argued for a change to the agency's classification regulations to permit redesigned versions of 4x2 utility vehicles to continue to be classified as light trucks even if their GVWR were to be reduced below 6,000 pounds. Under the agency's current regulations in 49 CFR Part 523, such a change in the vehicles' GVWR would result in their being classified as passenger automobiles. GM argues that manufacturers should not be penalized (including these vehicles in passenger automobile fleets might lower both car and truck CAFE's) for reducing the weight of their trucks. If adopted, such an amendment

would presumably apply to future compact 4x2 utility vehicles as well.

Chrysler also requested a revision to the vehicle classification regulations to assure that future compact passenger vans would be classified as light trucks, rather than as passenger automobiles. Current regulations classify large passenger vans as light trucks based on the ability of passenger van users to readily remove the rear seats to produce a flat, floor level cargo-carrying space. Future compact passenger vans might not be able to satisfy that requirement. The agency's technical analysis for this rulemaking treats 4x2 utility vehicles and passenger vans as light trucks, consistent with the classification of current vehicles. However, this treatment should not be interpreted as a statement by the agency that all future designs of 4x2 utility vehicles and compact vans will continue to be classified as light trucks. The agency will in the near future issue a notice inviting comment on the proper classification of these vehicles, and what revisions, if any, should be made to current vehicle classification regulations. Based on all information now available to the agency, the levels of fuel economy standards established herein would not change if the vehicles in question were classified as passenger automobiles.

AM again argued for the inclusion of captive import light trucks in a domestic manufacturer's CAFE. This issue has been fully dealt with in prior rulemakings and, in the absence of any new arguments, the agency will not modify its requirement that captive import light trucks must comply separately with light truck fuel economy standards.

Impacts of the Standards

The economic consequences and other impacts of the 1983-85 standards were considered by the agency in accordance with Executive Order 12221 and the Department's implementing regulations. See 44 FR 11034. The agency also considered the "Urban and Community Impacts" of the regulations, as required by Executive Order 12074. The results of this are discussed in the agency's Regulatory Analysis, copies of which are available from the agency's Office of Plans and Programs. That document states that capital investments of approximately $3.8 billion will be required to raise the fuel economy of the domestic light truck fleet from the level of the 1982 standards to the level of the 1985 standards. This investment would reduce expenditures for imported petroleum by $7 billion over the life of the 1983-85 light truck fleet. Operating cost savings result from the increased fuel efficiency of the 1983-85 fleets. On a discounted basis, they amount to $1,250 per vehicle over its 128,000 mile life. Net consumer savings—operating cost savings less retail price increases—are nearly $1,200 per vehicle. On a benefit to cost basis, these standards would have a ratio of 19 to 1. Or, the purchaser of a 1985 truck would be paying, through higher purchase prices, about 5 cents for each of the 1,200 gallons that vehicle would save over its life—5 cents to save each of 1,200 gallons that would otherwise have cost the purchaser about $1.50 per gallon. These standards result in a 20 percent reduction in operating costs for a MY 1985 light truck.

The environmental impacts of the 1983-85 standards were also considered, as required by the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.* The major environmental impacts associated with the standards were found to be positive, such as reductions of petroleum consumption and material usage (less iron and steel). No major adverse impacts were projected.

Issued on December 8, 1980.

Joan Claybrook
Administrator

45 FR 81593
December 11, 1980

PREAMBLE TO AN AMENDMENT TO PART 533 and 526

Petitions Under the Automobile Fuel Efficiency Act of 1980; Procedures Relating to Light Truck Fuel Economy Standards

(Docket No. 82-01; Notice 1)

ACTION: Interim final rule.

SUMMARY: The notice establishes requirements for the contents of petitions filed under Automobile Fuel Efficiency Act of 1980 ("the 1980 Act"). The 1980 Act authorizes the granting of relief from certain requirements related to the automobile fuel economy standards established under Title V of the Motor Vehicle Information and Cost Savings Act ("the Cost Savings Act"). This notice is being issued to inform manufacturers about types of information which must be submitted in support of the various types of relief petitions and plans. This notice also explains the flexibility of manufacturers in determining how to group their vehicles for the purposes of compliance with the MY 1982 light truck fuel economy standards.

EFFECTIVE DATE: February 18, 1982.

SUPPLEMENTARY INFORMATION:

The Automobile Fuel Efficiency Act of the 1980 (94 Stat. 1821) amended the fuel economy provisions of the Motor Vehicle Information and Cost Savings Act to assist the automobile manufacturers in complying with fuel economy standards and to promote employment in the U.S. automotive industry. To obtain this relief, the 1980 Act requires manufacturers first to file petitions or plans with the agency and make certain specified showings. This notice establishes an interim final regulation concerning the specific information which manufacturers must submit in their petitions and plans.

This notice addresses four different types of relief authorized under the 1980 Act. The agency has previously issued a rule under the 1980 Act relating to the availability of monetary credits for exceeding the light truck average fuel economy standards. See 45 FR 83233, December 19, 1980, and section 6(b) of the 1980 Act.

The first set of requirements established in this notice applies to the exemption provided by section 4(a) of the 1980 Act from the domestic content requirement in section 503 of the Cost Savings Act. The requirement specifies that if at least 75 percent of the cost to the manufacturer of an automobile is attributable to value added in the United States or Canada, the automobile is considered domestically-manufactured. If the percentage is below that level, the automobile is considered to be foreign-manufactured. See section 503(b)(2)(E). Under that requirement, if a manufacturer produces cars both in this country and abroad for sale in this country and it raises the domestic content of the cars produced in this country above 75 percent, it must ensure that its domestically-produced cars and its foreign-produced cars separately meet the fuel economy standards. Thus, the manufacturer could not average high fuel economy imported cars with lower fuel economy domestically-manufactured cars as a strategy for complying with the fuel economy standards.

The domestic content provision was originally included in the Cost Savings Act to promote employment in the U.S. automobile industry by encouraging manufacturers to produce high fuel economy vehicles in this country, instead of relying on the importation of high fuel economy cars which they produce or purchase abroad. However, the requirement for separate compliance has had the opposite effect on U.S. employment in its application to foreign manufacturers. Foreign manufacturers which seek or might seek to produce high fuel economy cars in the U.S. are penalized under the original domestic content provision. If they produce their high fuel economy cars in the country and

eventually exceed 75 percent domestic content, they would lower the average fuel economy of their remaining foreign-produced fleet. As a result, a manufacturer's foreign fleet might not comply with the fuel economy standards, although its combined foreign and domestic fleet would probably exceed the standard substantially.

To reduce this disincentive for foreign manufacturers to initiate production in this country and to achieve high levels of domestic content, Congress amended section 503(b) of the Cost Savings Act by adding a new subsection (3). Under that provision, a manufacturer which completes its first model year of domestic production of automobiles between 1975 and 1985 may petition the agency for exemption from the requirement for separate compliance so that it does not apply when the domestic content of the U.S. produced fleet exceeds 75 percent. Section 503 (b)(3) requires that the agency grant such a petition unless it finds that doing so would "result in reduced employment in the United States related to motor vehicle manufacturing." Employment reductions could occur if, for example, granting the petition resulted in the petitioner's capturing increased sales from current U.S. manufacturers whose vehicles have a higher domestic content. The agency has already granted a petition under this provision to Volkswagen of America. (See 46 FR 54453; November 2, 1981.) It appears that in most instances, increasing U.S. content for one company should produce net increases in overall U.S. employment.

To determine whether to grant a petition filed under this provision, the agency needs information on the magnitude of these possible adverse employment effects, if any. The agency would also need to know the magnitude of the positive employment effects resulting from the decision to begin domestic production or increase domestic content. Therefore, the regulations or petitions and plans for relief set forth below specifies that a petitioning manufacturer submit information describing insofar as possible the vehicles it plans to sell in the United States during the exemption period, the projected sales of those vehicles, the domestic content of those vehicles and plans for obtaining components from domestic sources. Information is also required on the extent, if any, to which additional sales of the petitioner's vehicles are expected to be gained at the expense of current U.S. manufacturers, and the net employment impact of the shift in sales. The petitioner must also submit data on the yearly total employment related to its U.S. production operations to give an overview of the positive impact of granting petition. Finally, information is required on the extent to which the petitioner's product plan and component sourcing decisions would be affected by the agency's granting or denial of the petition.

The second relief provision added by the 1980 Act is intended to encourage manufacturers to transfer production of a foreign-produced vehicle to this country. Section 503(b)(4) of the Coast Savings Act authorizes a temporary exemption from the domestic content requirement in section 503. Under that requirement, an automobile whose domestic content is less than 75 percent must be treated as a foreign-produced automobile. This poses a problem particularly if a manufacturer wishes to transfer production of a high fuel economy car and average it with its domestic fleet. The exemption is available to any manufacturer which plans to phase-in domestic production of a new vehicle by gradually increasing its domestic content to 75 percent. A manufacturer which satisfies the satutory requirements is permitted to include up to 150,000 automobiles in its domestic fleet if the automobiles have at least 50 percent domestic content initially and if the manufacturer submits and the agency approves a plan for achieving 75 percent domestic content by the fourth year of the exemption.

In considering whether to approve a plan under this provision, the agency must determine whether the plan is adequate. To verify achievement of the 50 and 75 percent domestic content levels, the regulation specifies that information must be provided on the total manufacturing costs of the vehicles whose production is to be transferred to this country. In addition, information is required on the changes in domestic content of the vehicles to be produced in this country during each of the four years covered by the plan, including information on the timing and nature of the change.

The third relief provision relates to compliance with fuel economy standards for 4-wheel drive light trucks. This provision, which was added by the 1980 Act to the Coast Savings Act as section 502(k), authorizes the agency to adjust the manner in which average fuel economy is calculated for a petitioner's 4-wheel drive light truck fleet or to provide other relief with respect to a fuel economy standard for 4-wheel light trucks. To obtain this relief, the petitioner must show that it would be unable to comply with such a standard "without causing service economic impacts such as plant closings or reduction

in employment in the United States related to motor vehicle manufacturing." (Section 502(k)).

To enable the agency to assess the impacts on a petitioning manufacturer of compliance with a fuel economy standard for 4-wheel drive light trucks, the regulation requires that information be submitted on the changes planned by the manufacturer to achieve compliance and the cost and fuel economy impacts of each of those changes. The manufacturer must also identify the particular compliance steps which the manufacturer believes would cause "severe economic impacts" and the nature of those impacts. This information will permit the agency to determine what level of rule economy the petitioner is capable of achieving without experiencing "severe economic impacts."

Information must also be submitted on monetary credits likely to be earned in the three model years preceding and the three model years following model year for which relief is sought. This information will permit the agency to assess the effect of available credits on the need for relief. Credits are earned at the rate of five dollars per vehicle for each tenth of a mile per gallon by which a manufacturer's fleet exeeds a average fuel economy standard. Earned credits may be used to offset civil penalties (accrued at the same rate) for the manufacturer's falling below a standard in one or more of the three model years before or after the model year in which the credit was earned.

Finally, the petitioner must specify the precise type and extent of relief being sought.

The final relief provision is section 502(1) of the Cost Savings Act which was added by section 6(b) of the 1980 Act. Section 502(1) authorizes a manufacturer which expects to fail to meet a fuel economy standard in a particular model year to file a plan with NHTSA regarding the prospects for earning credits in the next three model years. The plan must set forth the individual actions comprising the plan and the schedule for accomplishing those actions. If NHTSA approves the plan, the credits are available immediately to offset the civil penalty for the model year in which the manufacturer failed to meet the standard. The benefit of having such a plan approved is that the manufacturer can avoid ever being deemed to have violated the fuel economy standard for the model year if it actually earns the projected credits. If such a manufacturer does not obtain the agency's approval for a plan under section 502(1), the manufacturer may have to pay the civil penalty and then seek a refund if credits are subsequently earned.

Section 502(1) directs the agency to approve any plan submitted by a manufacturer under that section unless the agency determines that "it is unlikely that the plan will result in the manufacturer earning sufficient credits" to offset the civil penalty. The agency might make such a finding if either the technological or other steps planned by the manufacturer will fail to produce the levels of average fuel economy necessary to earn the credits.

Therefore, the regulation specifies that the manufacturer must submit information demonstrating the feasibility of its plan. Among types of required information are descriptions of planned product actions which will affect fuel economy (e.g., the introduction of a new model), and the effect of that product action on the manufacturer's average fuel economy.

In addition to establishing a regulation regarding certain types of submissions under provisions added to the Cost Savings Act by the 1980 Act, this notice also adopts a simple change relating to how light trucks are grouped for purposes of compliance with the light truck fuel economy standards for model year 1982. The change would give manufacturers the same latitude in grouping their light trucks in the model year the they presently have for model years 1983–1985. On December 31, 1979, the NHTSA published a proposal to establish separate standards for 2-wheel drive and 4-wheel drive light trucks for model years 1982-1985. Due to a statutory deadline for issuing the model year 1982 standards, the agency published them on March 31, 1980. The standards were 16 miles per gallon for 4-wheel drive light trucks and 18 miles per gallon for 2-wheel drive light trucks. The NHTSA then sought further comment on the model year 1983-1985 standards and expressly focused public attention on the concept of a combined stancard. Whe the agency published its decision on December 11, 1980, it provided manufacturers with an option of complying with separate standards or a single combined standard. The NHTSA did not, however, then go back and provide the same option for model year 1982.

Over the past year, the agency has been reviewing its existing procedures and regulations pursuant to E.O. 12291 to determine the need for any amendments to eliminate ineffective or unnecessarily burdensome or inflexible regulations. However, it was only in December that the agency received informaton indicating the value of increasing the flexibility of the manufacturers in grouping their light trucks for compliance purposes. In that month, the

manufacturers submitted their semi-annual fuel economy reports required by 49 CFR 537. The agency's analysis of the information in those reports revealed for the first time the value of giving manufacturers the same flexibility in grouping their light trucks for model year 1982 as they already have for model years 1983-1985. By placing all of its light trucks in a single group, a manufacturer has greater freedom to choose how it allocates its efforts to improve fuel economy between technology changes and sales mix changes.

Accordingly, the agency has decided to provide manufacturers with the option of complying with a single, combined standard. in terms of required fuel savings, the separate standards of 16 and 18 miles per gallon are essentialy the equivalent of a single standard of 17.5 miles per gallon for all light trucks together. The single standard has therefore been set at the level. The figure of 17.5 was calculated by harmonically weighting the separate standards based on the 75 percent/25 percent sales mix of 2-wheel drive light trucks and 4-wheel drive light trucks used in the 1983-1985 proceeding. This notice adopts that combined standard of 17.5 miles per gallon. As noted above, this action makes no change in the level of fuel economy required of manufacturers, but does allow a manufacturer the choice of placing all of its 2-wheel drive and 4-wheel drive light trucks together in a single group or maintaining two separate groups for compliance purposes. It also provides an additional method of compliance, i.e., selling larger numbers of the higher fuel economy 2-wheel driven light trucks.

The actions taken by this notice are being issued as an interim final rule because they are essentially procedural and therefore notice and opportunity for comment is not required by the Administration Procedures Act. Neverless, the agency is providing an opportunity to comment. Appropriate changes warranted by the comments will be incorporated in the permanent final rules.

The agency also notes and expressly finds there is good cause for proceeding directly to an interim final rule. As noted above, the need for their amendment was identified by the agency as a result of its evaluation of the recently submitted pre-model year fuel economy reports. Those reports were submitted to the agency last month. If manufacturers are to have a meaningful opportunitiy to take advantange of the change, it must be adopted now. Typical production runs for 1982 light trucks of major domestic manufactuers end in June 1982. That is only about four months away. If the rule were not adopted and made effective until after a comment period and the issuance of another *Federal Register*, little or no time would remain for the manufacturers to take advantage of the additional flexibility being provided through the combined standard. Extensive comment has already been solicited and obtained on the concept of an optional combined standard for the immediately following model years. Applying the concepts to model year 1982 does not appear to raise any issues not considered in the rulemaking. For these reasons and because this amendment relieves a restriction, the agency finds good cause also for making the amendment effective upon publication in the *Federal Register*.

The petitions and plans regulation also is being made effective immediately. The agency finds good cause for doing so since it will facilitate the submission of any requests for relief.

For the reasons set forth in the preamble, Chapter V of Title 49, Code of Federal Regulation, is amended as set forth below.

Issued on February 11, 1982.

Raymond A. Peck, Jr.,
Administrator

33 F.R. 7245
February 18, 1982

PREAMBLE TO AN AMENDMENT TO PART 533 and 526

Petitions Under the Automobile Fuel Efficiency Act of 1980; Procedures Relating to Light Truck Fuel Economy Standards

(Docket No. 82-01; Notice 2)

ACTION: Final rule.

SUMMARY: This notice issues in final form certain fuel economy procedural rules which were initially implemented on an interim basis. Most of the procedures relate to provisions in the Automobile Fuel Efficiency Act of 1980 for granting relief to manufacturers from automobile fuel efficiency requirements. The balance relate to compliance with light truck fuel economy standards. Since no comments were received on the interim procedures, this notice establishes final procedures identical to the interim ones.

EFFECTIVE DATE: July 29, 1982.

SUPPLEMENTARY INFORMATION:

The Automobile Fuel Efficiency Act of the 1980 (94 Stat. 1821) amended the fuel economy provisions of the Motor Vehicle Information and Cost Savings Act to assist the automobile manufacturers in complying with fuel economy standards and to promote employment in the U.S. automotive industry. To obtain this relief, the 1980 Act requires manufacturers first to file petitions or plans with the agency and make certain specified showings. On February 18, 1982, the agency published interim procedures on the required contents of these petitions and invited comment on those procedures. See 47 FR 7245. That notice also specified an optional procedure for complying with 1982 light truck standards. Since no comments were received on the interim procedures during the established public comment period, the agency is now adopting those procedures in final form without change.

Two of the petition procedures in the interim rules relate to fuel economy domestic content requirements. The Cost Savings Act specifies that, in general, each manufacturer's domestically manufactured (i.e., those with at least 75 percent U.S. or Canadian content) and imported automobiles must comply separately with average fuel economy standards. This provision was originally enacted to discourage domestic auto manufacturers from merely importing increasing numbers of fuel efficient, foreign produced vehicles to comply with standards, thereby adversely affecting U.S. employment. However, the original provision could, in certain situations, penalize manufacturers which intended to transfer production of a foreign automobile to the United States or, in the case of a foreign manufacturer, to begin U.S. production of an existing model. Therefore, Congress enacted the previously mentioned two exemption provisions.

The first provision applies to foreign manufacturers which begin U.S. production. Such manufacturers may be exempted from domestic content requirements if they submit, and NHTSA approves, a petition demonstrating that granting the requested relief would not adversely affect employment in the U.S. automobile industry. The second provision applies to the situation where a manufacturer transfers a foreign produced automobile to U.S. production. To obtain exemption from domestic content requirements under that provision, a petitioner must show (among other things) that it will achieve at least 75 percent U.S. content with the transferred automobiles by the fourth model year after U.S. assembly begins. The interim procedures specify the required contents for both types of petitions.

The 1980 Act also authorized special relief for manufacturers which plan to exceed fuel economy standards for a year prior to that future one. Under the current statutory scheme, manufacturers earn credits for any model year in which they exceed a fuel economy standard. These credits may be used to offset civil penalties which would otherwise be assessed for falling short of a standard in any of the three prior or subsequent model years. The 1980 Act

authorized these credits to be available in advance where a manufacturer submits and the agency approves a plan for earning the necessary credits in the future. Approval of such a plan eliminates the need for manufacturers to pay civil penalties and subsequently apply for a refund when credits are earned, and also eliminates any stigma associated with being in violation of a standard.

The fourth provision of the 1980 Act authorizes special relief for manufacturers which are unable to comply with one or more of the four-wheel drive light truck fuel economy standards in model years 1982-85. Such manufacturers may petition the agency to adjust the manner in which average fuel economy is calculated for these truck. The 1980 Act requires petitioning manufacturers to submit information on their abilities to comply with the standard and the economic consequences of their efforts to comply.

The final provision in the interim rule permitted manufacturers to combine their two-wheel drive and four-wheel drive light truck fleets in order to comply with the 1982 model year fuel economy requirements for light trucks. When those requirements were originally established, 1982 model year light trucks were required to comply with separate two-wheel drive and four-wheel drive standards. Manufacturers' fleets of two-wheel drive trucks were required to comply with a standard of 18 miles per gallon, while the average fuel economy of each company's four-wheel drive trucks was required to be at least 16 miles per gallon. When standards were later established for the 1983-85 model years, the agency set separate standards for each of these classes of trucks. However, it also set an optional combined standard for each manufacturer's entire light truck fleet. The combined standard was intended to achieve essentially the same overall fuel efficiency improvement as the separate standards, while giving manufacturers the flexibility of making greater improvements to one class or the other. When the 1983-85 standards were established, the agency did not make corresponding changes to the 1982 standards by adding a separate combined standard option for that year. However, that conforming change was made in the February 18 interim procedures, by establishing a 17.5 mile per gallon optional combined standard.

Further information on the final procedures can be found at 47 FR 7245 with the actual text of the procedures appearing at 47 FR 7248-50.

Since this notice makes final existing procedures, it is effecive immediately

For the reasons set forth in the preamble, the agency adopts as final the amendments made to Chapter V of Title 49 , Code of Federal Regulation, in 47 FR 7248–50.

List of Subjects in 49 CFR Parts 526 and 533

Energy conservation
Gasoline
Imports
Motor vehciles
National Highway Traffic Safety Administration

Sec. 9, Pub. L. 89–670, 80 Stat. 931 (49 U.S.C. 1657); sec. 301, Pub. L. 94–163, 89 Stat. 901 (15 U.S.C. 2002 and 2003); delegation of authority at 49 CFR 1.50.)

Issued on July 2, 1982.

Raymond A. Peck, Jr.,
Administrator

47 F.R. 32721
July 29, 1982

PREAMBLE TO AN AMENDMENT PART 533

Light Truck Average Fuel Economy Standards
Model Years 1985-86
[Docket No. FE 78-01; Notice 6 and No. FE-84-01; Notice 2]

ACTION: Final rule.

SUMMARY: This notice amends the light truck average fuel economy standard for model year 1985 and establishes a new standard for model year 1986. These standards are required to be established at the maximum feasible level, under section 502(b) of the Motor Vehicle Information and Cost Savings Act. It is anticipated that there will not be any loss of potential fuel savings associated with the revised 1985 standards. The 1986 light truck fleet will consume 510 million gallons less than that which would have occurred if fuel economy levels remained at those now projected for 1985. Light truck fuel economy standards for model year 1987, proposed at the same time as the model year 1986 standards, will be issued at a later date.

EFFECTIVE DATE: These standards are effective for the 1985 and 1986 model years.

Background

On March 8, 1984, NHTSA published a notice of proposed rulemaking (NPRM) on the establishment of light truck average fuel economy standards for model years 1986 and 1987. See 49 FR 8637. The issuance of the 1986 standard 18 months before model year 1986 is required by section 502(b) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2002(b). That provision requires the Secretary of Transportation to set light truck standards at the "maximum feasible average fuel economy level" for each model year after 1978. In determining the "maximum feasible" level, the Secretary is directed to consider four factors: technological feasibility, economic practicability, the need of the nation to conserve energy, and the effects of other Federal motor vehicle standard on fuel economy. See 15 U.S.C. 2002(e).

The agency's March NPRM proposed ranges of possible standards for all types of light trucks, with the 1986 composite standard to be set within the range of 20.0 to 21.5 mpg and the 1987 composite standard to be set within the range of 20.0 to 22.5 mpg. Ranges of standards were also proposed for two-wheel drive light trucks. These separate standards were proposed as optional means of compliance, consistent with the agency's practice in previous proceedings, and are intended to account for the fact that different manufacturers' fleets contain significantly different proportions of four-wheel drive trucks, which tend to have lower fuel economy.

Due to a continuing shift in consumer demand for light trucks, the agency anticipated that downward revisions to the standards would be necessary. The demand shifts, which are due primarily to the recent trend of stable and diminishing gasoline prices, are manifested in higher levels of sales of larger light trucks and larger displacement engines than were previously anticipated by either the manufacturers or the agency.

The market trends toward larger light trucks and larger displacement engines led Ford Motor Company to petition the agency on November 21, 1983, to reduce the existing 1984 and 1985 light truck standards. Ford also argued that changes in light duty truck emissions standards and related procedures had led to a loss in fuel economy for those years. Ford requested that NHTSA reduce

the 1984 composite light truck fuel economy standard from 20.0 to 19.0 mpg and the 1985 composite standard from 21.0 to 19.5 mpg, with corresponding changes to the optional two and four-wheel drive standards. On May 30, 1984, in 49 FR 22516, the agency proposed to grant Ford's request for the 1985 model year. However, the agency also proposed at that time to deny Ford's request for the 1984 model year, based on the agency's conclusion that the petition had not been timely filed for that model year. In its comments on this notice, Ford indicated that it would not pursue the issue of the 1984 standards since it had succeeded in assuring compliance with the standards for that year.

Summary of Decision

Based on the agency's analysis of sales data for the 1984 model year and the manufacturers' most recent projections for future sales, market trends toward large vehicles and engines have continued and are likely to continue through at least 1986. Projected fuel economy levels for 1985 domestic light truck fleets have declined on the order of 1.5 mpg since establishment of the standard, due almost entirely to mix shifts in vehicle size and engine displacement. These market trends are expected to continue through at least the 1986 model year. Our analysis leads us to establish composite average fuel economy standards of 19.5 mpg for light trucks manufactured in the 1985 model year and 20.0 mpg for 1986 model year light trucks. Equivalent separate standards for two-wheel drive and four wheel drive light trucks are also established. A decision has not yet been reached with respect to the proposed 1987 model year standards. The agency has concentrated its efforts on analyzing issues relating to the 1985-86 standards, which must be issued at this time. There is a considerable period of time before the agency is required to issue 1987 model year standards. The agency needs additional time to complete its analysis of issues relating to such standards. Some of these issues, particularly those relating to market trends, are characterized by uncertainty and complexity.

Basis for the Final Standards

a. *1985 Standards.* The basis for the agency's original 1985 standards is summarized at 45 FR 81593, December 11, 1980.

The fuel economy gains projected by the agency in that notice were due primarily to the introduction of new compact pickup, utility, and van models and progressively higher sales levels for these models. The new models were projected to employ smaller, more efficient engines and other fuel economy-improving technology. However, in its May 30, 1984 notice, the agency indicated that a number of its projections had not been borne out in terms of current consumer preferences in the marketplace. In particular, the agency's May 30 notice stated that market demand for light truck performance as reflected in engine mix and axle ratio usage, did not materialize as anticipated when the agency initially established the 1985 standards. These and certain other less significant effects produced a 1.5 mpg loss in Ford's 1985 light truck average fuel economy. The original 1985 standards were based primarily upon Ford's maximum fuel economy capability, since that company had the lowest projected fuel economy, accounted for a substantial share of light truck sales, and faced serious risk of economic harm if standards were set at levels above its capability to achieve with a product mix reflecting market demand. As the agency has consistently stated in the past, the agency has a responsibility to set standards at a level that can be achieved by manufacturers having a substantial share of light truck sales.

The agency has refined its analysis of Ford's 1985 fuel economy capability for purposes of this final rule, and has performed analyses of the capability of Chrysler and General Motors as well. Other light truck manufacturers have significantly higher average fuel economy capabilities than the three large domestic manufacturers and account for a minority share of light truck sales. These other fleets have not been analyzed for this proceeding, since it is clear that because of their small size they would not influence ultimate standards levels. The agency has concluded that there has been a market related 1.5 mpg loss in Ford's model year 1985 fuel economy capability.

Increases in demand for larger displacement engines compared to levels anticipated at the time the 1985 standards were originally established caused 0.9 mpg of the drop in Ford's model year 1985 capability. Increases in average vehicle weight principally resulting from higher than anticipated demand for larger vehicles produced a 0.5 mpg drop, while a drop in demand for diesel engines caused a further 0.1 mpg loss. Several

minor effects combined to produce an additional 0.2 mpg loss, but were more than offset by a 0.4 mpg fuel economy gain due to the use of fuel injection in certain light truck engines.

A 0.2 mpg loss in fuel economy was experienced by Ford coincident with the imposition of more stringent emission regulations. Although the agency has concluded that a 0.2 mpg fuel economy loss will occur for Ford in 1985, EPA has advised the agency that, in their opinion, this loss is due to efforts to improve engine performance through engine calibration and is not an inherent effect of the emissions standards. However, NHTSA has treated this effect as equivalent to the engine mix change effects described above since it appears to result from market demand for increased vehicle performance at a time of stable gasoline prices.

A decline in General Motors 1985 fuel economy is also projected by the agency to a level of 20.0 mpg. The magnitude of this reduction is similar to that experienced by Ford, and is also due to market demand factors. The major factors causing the decline in GM's 1985 fuel economy were found to be an increase in average vehicle weight and engine displacement due to higher than anticipated demand for larger vehicles and engines, a decline in demand for diesel engines, reduced demand for manual transmissions, and increased demand for vehicles with four-wheel drive capability.

Chrysler's 1985 fuel economy is estimated to be 20.3 mpg. The other domestic and foreign manufacturers were not assessed in detail in this analysis, for the reasons noted above.

b. *1986 Standards.* Based primarily on technology, the agency anticipates that Ford can achieve a fuel economy gain of 0.9 mpg over the 1985 standard of 19.5 mpg. This fuel economy gain is due predominantly to the introduction of engines using more efficient lean burn/fast burn technologies (0.5 mpg) and also to the elimination of the engine calibration/emissions effect described above (0.2 mpg) and gradual growth in demand for new small vans (0.2 mpg). However, the agency believes these gains will be somewhat offset by continued market shifts, as discussed below. The emissions standards effects are also discussed below.

The agency also projects that GM can achieve fuel economy gains of the same magnitude through engine efficiency improvements as projected for Ford (0.5 mpg). Through a variety of other minor improvements, the agency projects that GM can achieve an additional 0.1 mpg improvement. Taken together, these improvements will enable GM to achieve a composite average fuel economy of 20.6 mpg in 1986.

Chrysler is capable of achieving the highest 1986 fuel economy levels of the "Big 3" domestic manufacturers, 21.5 mpg. This gain primarily results from the introduction of fuel efficient engine technology and the introduction of certain new light weight truck models.

For each of the two model years covered by this rule, the agency concluded that fuel economy improvements beyond those previously discussed are not feasible.

d. *Economic practicability.*

Economic factors have been of significance in the agency's standard-seting analysis, particularly the potential costs incurred by manufacturers should standards necessitate the sale of a "non-free market" model mix. As noted in the discussion of fleet technology above, virtually the entire fuel economy difference between the original 1985 standard and the lower standards promulgated herein reflects a change in anticipated market demand for larger light trucks and engines, resulting from lower than anticipated gasoline prices. The mix of vehicles and engines projected in this notice for the 1985-86 model years is an estimate of free market demand for light trucks under current market conditions.

It is possible that higher levels of fuel economy could be achieved by domestic manufacturers should they restrict their product offerings. For example, sales of particular larger light truck models and larger displacement engines could be limited or eliminated entirely. In its petition to reduce the 1984-85 light truck standards, Ford submitted an analysis of the potential effects of restricting product offerings in this manner. This analysis showed that to achieve a 1.5 mpg average fuel economy benefit, sales reductions of 100,000 to 180,000 units at Ford could occur, with resulting employment losses of 12,000 to 23,000 positions at Ford, its dealers and suppliers. To the extent that these sales restrictions merely shifted purchasers of larger trucks to other manufacturers, no net fuel economy benefit would be achieved. No commenter in the proceeding directly took issue with the Ford analysis. The agency believes this analysis to be a reasonable projection of the impacts of restricting the availability of larger trucks and engines in the current market. Impacts of this magnitude would go beyond the realm of "economic

practicability" as contemplated in the Act, particularly in view of the uncertain energy benefits.

The agency has analyzed the economic impacts associated with the manufacturers' efforts to improve the fuel economy of individual light truck models in the 1985-86 time period. This analysis is set forth in a Regulatory Impact Analysis, copies of which are available in the agency's Docket Section. The agency projects an average retail price increase of $35 to result from these improvements. This price increase would be offset by operating cost savings of $176 for the average 1986 light truck, due to reduced lifetime gasoline consumption. Overall, the agency projects the domestic manufacturers' automotive operations to remain highly profitable over the 1985-86 period, based on current market trends.

e. *Effects of other Federal Standards on fuel economy.* Three new light truck exhaust emission requirements were cited by several commenters as having possible adverse impacts on fuel economy. The first requirement is a change in stringency in hydrocarbon and carbon monoxide emissions standards, which took effect in the 1984 model year. The second requirement extends the useful life period for which manufacturers must certify compliance with emissions standards beginning with the 1985 model year. The third requirement is an anticipated increase in stringency of light duty truck emission standards for oxides of nitrogen.

The agency has concluded that none of these regulatory changes will impact 1985-86 light truck fuel economy levels. With regard to 1984 emissions standards changes and the extended useful life regulation, the agency concurs in a technical analysis provided by the Environmental Protection Agency (EPA) which indicates that there is no causal link between these regulations and any loss in fuel economy experienced by the manufacturers. A Department of Transportation assessment of the 1984-85 emissions regulations supported the EPA conclusions. In the case of the possible change in the emission standards for oxides of nitrogen, EPA has yet to issue proposed standards. Given the need for EPA to conduct a rulemaking proceeding and provide adequate lead time, NHTSA concludes that it is unlikely that any change in stringency of that standard would occur by 1986. If this judgment turns out to be incorrect, the agency will reassess the impact of such a change on light truck fuel economy.

General Motors argued that future light truck diesel particulate emission standards could effectively ban diesel engines in such vehicles, reducing fuel economy levels accordingly. EPA has indicated that these standards can be met with available technology. However for certain vehicles EPA concedes that the standards may require the use of particulate traps which could produce a fuel economy penalty of approximately 2 percent per affected vehicle. NHTSA is accepting the EPA analysis. Should the anticipated fuel economy penalty occur, the impact on the domestic manufacturers' average fuel economy levels would be much less than 0.1 mpg, and would therefore not impact fuel economy standards levels.

American Motors argued that changes in EPA test procedures will result in a fuel economy loss. American Motors did not provide an analysis of the quantitative impact of the proposed rule on American Motors' average fuel economy levels, and none of the other manufacturers argued for the existence of such an impact. In its comments, American Motors noted that the potential impact of the change in EPA procedures could be offset through testing additional vehicles, but pointed out that such testing might be too expensive for a smaller manufacturer. Should American Motors experience a fuel economy less, its average fuel economy levels will still be high enough to easily comply with the standards promulgated herein. Therefore, the agency is not making a specific adjustment in the standards to account for this potential effect.

f. *Need of the nation to conserve energy.*

The United States imported 15 percent of its oil needs at a cost of $1.1 billion in 1955. By 1977, the import share peaked at 46.4 percent at a cost of $42 billion. While the import share of total petroleum demand has been steadily declining since 1977 to 1983 level of 28 percent, the cost continued to rise to a 1981 peak level of $75.8 billion. In 1983, the percentage of imported petroleum was the lowest it had been during the prior decade, and the cost was lower than in 1979. During most of this period price controls on petroleum were in effect, sending the wrong economic signals to consumers. It is during such a period that fuel economy standards are most effective.

The rapid transition from apparent worldwide surplus in 1978 to shortage in 1979, to surplus again today points out the instability of the world oil market. The U.S. is now dependent for about

a third of its oil supplies on the actions and decisions of a few foreign governments. Although the concern over dependence on imported petroleum has lessened in the past few years, it is necessary to continue conservation efforts due to the uncertainty, especially in regard to the Middle East, of the future availability of petroleum.

g. *Determining the maximum feasible average fuel economy level.* In determining the level at which standards are to be set, the agency must take industrywide considerations into account. The Conference Report on Title V of the Motor Vehicle Information and Cost Saving Act provides in this regard as follows:

> ...a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual automobile manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic automobile manufacturers that currently exist, and the possible implications for the national economy and for reduced competition association (sic) with a severe strain on any manufacturer. However, it should also be noted that provision has been made for granting relief from penalties under Section 508(b) in situations where competition will suffer significantly if penalties are imposed.
>
> Senate Report 94-516, 94th Cong. 1st Sess. (1975), at 154-5.

As in the proposals, NHTSA's analysis concludes for both years that Ford is the "least capable" manufacturer in regard to improving the average fuel efficiency of its light trucks. For the 1985 model year, the agency projects that Ford can achieve 19.5 mpg, while GM could achieve 20.0 mpg and Chrysler 20.3 mpg. Production of 1985 model year vehicles has begun, so there is little that the manufacturers can do at this point to change their 1985 average fuel economy through use of additional technology. Setting the 1985 standards significantly above Ford's level would not likely increase that company's fuel economy performance through greater use of technology, but might require drastic product restriction actions which would adversely affect employment at Ford. Such actions by Ford might also result in the shifting of sales of larger light trucks with large engines to other manufacturers, thereby achieving no net fuel economy improvement for the industry as a whole. On the other hand, setting standards below the level attainable by GM and Chrysler would not likely cause those companies to reduce their fuel economy performance, since the agency's projected levels for those companies is based on the product mixes they plan to sell. Further, GM indicated in its comments that setting standards at a level below its planned levels would not cause GM to revise its plans. Therefore, the agency concludes that the risks associated with setting standards above Ford's maximum feasible level and possibly forcing that company to adopt severe product restrictions outweigh the potential benefits from setting standards at a higher level.

For the 1986 model year, the agency projects the maximum fuel economy Ford could achieve is 20.4 mpg, GM 20.6 mpg, and Chrysler 21.5 mpg. Data provided by Ford indicate that Ford's 1986 fuel economy could be as low as 19.6 mpg if consumers maintain a strong demand for larger vehicles. The agency also found that GM faces a number of technological risks involving certain engine efficiency improvements for 1986. If these technological actions became infeasible, NHTSA estimates the company's 1986 fuel economy would decline to 20.0 mpg.

There are additional factors to be considered selecting the 1986 standards. Major technological changes can not be made in manufacturers' product plans for that year. New programs cannot be developed to compensate for market shifts or technological problems. Futhermore, as noted in the NPRM, manufacturers' projections (and NHTSA's analyses) of their fuel economy improvement capabilities have declined over the past 1-1/2 years due to market changes. For all the above reasons, the agency has decided to set the 1986 composite standard at 20.0 mpg. The agency believes the risks of reduced sales and employment resulting from attempts to achieve a higher level for MY 1986 outweigh the potential fuel savings.

The agency has decided to continue setting 4×2 and 4×4 standards for each year as an alternative to the composite standard. Separate $4 \times 2/4 \times 4$ standards allow manufacturers greater flexibility

in planning their fuel economy improvements and do not discriminate against firms with truck fleets heavily weighted toward four-wheel drive or two-wheel drive models.

The final standards are:

Model Year	Composite Standard MPG	4 × 2 Standard MPG	4 × 4 Standard MPG
1985	19.5	19.7	18.9
1986	20.0	20.5	19.5

Other Comments on the NPRM

In its March 1984 NPRM, the agency raised the possibility of changing the structure and scope of the current standards in several ways, including establishing a number of additional standards for subclasses of the light truck fleet and limiting the scope of the standards with regard to vehicles in the 6001-8500 pound gross vehicle weight range. Those commenters taking a position on the merits of this issue generally argued in favor of retaining the present structure of standards, at least for this rulemaking, citing the additional complexity resulting from multiple standards. Ford pointed out that addressing the issue at this time could delay the rulemaking, which is subject to stringent time constraints. Therefore, the agency is making no changes in this area at the current time.

GM and Ford argued that the agency should revise the manner in which it evaluates the economic practicability of standards. Both companies argued that cost/benefit considerations should play a greater role in the agency's standard-setting, and Ford suggested a variety of additional factors the agency should consider. However, in this proceeding, none of the additional criteria suggested by Ford would affect the level at which the standards are set in this rule. Furthermore, the agency has always considered cost/benefit analysis results in setting fuel economy standards; indeed, the most stringent economic criterion for this rule has been the one the agency has traditionally relied upon: the risk of any substantial adverse economic impacts on the industry or the national economy. The standards are being set at the levels discussed above to avoid the risk of significant adverse employment impacts which could result if the manufacturers (and Ford in particular) restricted product offerings to comply with overly stringent standards.

A coalition of public interest organization opposed the agency's proposed 1986 standard level, arguing that it was based on an assumption of the continuation of the current favorable energy supply and cost situation. The coalition recommended a standard of 22.5 mpg for model year 1986. No technical or economic analysis was provided to support the feasibility of a standard at this level. The agency agrees that the need of the nation to conserve energy remains strong and that the nation still faces the risk of energy problems in the future. However, section 502 of the Act requires the agency to set standards at the maximum feasible average fuel economy level, considering not just energy conservation needs but also technical and economic factors. As discussed above, the agency believes that requiring compliance with more stringent standards than provided herein would create a risk of serious adverse economic repercussions such as losses in employment in the automobile and related industries, without necessarily producing the contemplated fuel economy gains.

In its NPRM concerning the MY 1984-1985 standards, the agency concluded that Ford's petition to amend the 1984 light truck standards was not timely filed due to legal time constraints for amending standards. The agency presented its tentative conclusion that amendments reducing the stringency of standards for a particular model year may be made up until the beginning of the model year but not after that time. Several vehicle manufacturers disagreed with this conclusion. Ford, GM and Volkswagen argued that amendments reducing the stringency of standards may be made at any time, including during a model year. Chrysler, on the other hand, argued that amendments reducing the stringency of standards must be made 18 months prior to the beginning of a model year. As discussed below, the agency has decided that its tentative conclusion was correct. The following paragraphs provide a complete discussion of this issue both for purposes of this rulemaking and to provide a complete discussion of this issue both for purposes of this rulemaking and to provide future guidance to manufacturers as to the correct timing of petitions.

A model year is presumed to begin in the autumn of the preceding calendar year (see *Center for Auto Safety v. NHTSA*, 710 F.2d 842 (D.C. Cir. 1983).) Ford's petition to reduce the existing 1984 and 1985 light truck standards was filed on

November 21, 1983, and amended on January 20, 1984. Since model year 1984 began in the fall of 1983, it is clear that the 1984 light truck standards could not have been amended in response to the Ford petition prior to the start of that model year.

Section 502(b) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(b) requires that the Secretary of Transportation "shall, by rule, prescribe average fuel economy standards" for light trucks for each model year beginning with 1979. These standards must be prescribed at least "18 months prior to the beginning of" the model year to which they apply. *Id.*

Section 502(f)(1) of the Act provides that the "Secretary may, by rule, from time to time, amend" any light truck fuel economy standard "so long as such standard, as amended, meets the requirements" of section 502(b). Section 502(f)(2) provides that any amendment which makes standards more stringent must be promulgated "at least 18 months prior to the beginning of the model year to which such amendment will apply."

The Conference Report on the Energy Policy and Conservation act (the statute which added the fuel economy provisions to the Motor Vehicle Information and Cost Savings Act) contains the following discussion:

> Average fuel economy standards prescribed by the ST (Secretary of Transportation) for passenger automobiles in model years after 1980, for nonpassenger automobiles, and for passenger automobiles manufactured by manufacturers of fewer than 10,000 passenger automobiles may amended from time to time as long as each such amendment satisfies the 18 month rule—i.e., any amendment which has the effect of making an average fuel economy standard more stringent must be promulgated at least 18 months prior to the beginning of the model year to which such amendment will apply. *An amendment which has the effect of making an average fuel economy standard less stringent can be promulgated at any time prior to the beginning of the model year in question.*
>
> See Sen. Rep. 94-516, 94th Cong., 1st Sess. (1975) at 157. [Emphasis added.]

As noted above, Ford, General Motors and Volkswagen argued that there is not time limitation on amendments reducing the stringency of standards and that such amendments may be made in mid-model year. GM read section 502(f)(1) and section 502(f)(2) to together imply that Congress concluded that it was not necessary or appropriate to set time limits on standards reduction rulemaking. GM argued that the statutory structure is unambiguous, citing Sands, *Sutherland Statutory Construction* Section 46.01 (Fourth Ed. 1973), for the plain meaning rule of statutory construction. Ford stated that the purpose of the leadtime provisions included in the Act is to protect manufacturers from not being given sufficient time to plan and implement compliance with a more stringent standard and that the provisions should not be construed to operate to manufacturers' detriment. Ford stated that as a general rule of statutory construction, a distinction must be made between utilizing legislative history for purposes of illuminating Congressional intent with respect to express statutory language and using such history to write into the law that which is not otherwise there. Ford also argued that the language of the Conference Report was intended to emphasize the fact that, in contrast to the situation in which more stringent standards are established, there is no leadtime requirement with respect to less stringent standards.

Chrysler, however, argued that amendments reducing the stringency of standards must be made at least 18 months prior to the beginning of the model year and that, therefore, Ford's petition was too late with respect to both the 1984 and 1985 model years. Chrysler argued that section 502(b) calls for 18 months leadtime for any standards being prescribed and that changes in standards come within that requirement. Chrysler contended that this specific language of the law takes precedence over the Conference Report. Chrysler stated that the 18 month requirement of section 502(f)(2) is also applicable since granting Ford's request would in effect make the standards more stringent for Chrysler.

As suggested by the two very different views advanced by the commenters, the timing requirements applicable to amendments which make standards less stringent are not clear on the face of the statute. The language in section 502(f)(1) authorizing amendments "from time to time" could be interpreted to permit amendments at any time. Alternatively, the language in that paragraph requiring that amendments to standards must comply

with requirements applicable to their original enactment could be interpreted to impose the 18 month rule, one of the requirements of section 502(b) on amendments to reduce standards.

Where a statutory provision is ambiguous on its face, rules of statutory construction dictate that the legislative history of the provision must be considered. See Sutherland, "Statutory Construction," 4th Ed., section 48.01. An Act's Conference Report has been considered the "most persuasive evidence of congressional intent" in this regard. *Demby v. Schweiker*,671 F.2d 507, 510 (D.C. Cir. 1981).

The agency believes the language of the Conference Report is clear on this point. As indicated above, the Conference Report includes a statement that "(a)n amendment which has the effect of making an average fuel economy standard less stringent can be promulgated at any time prior to the beginning of the model year in question." While the discussion in the Conference Report does not expressly prohibit amendments after the start of a model year, the quoted sentence certainly implies that result. If no limit on the timing of relaxatory amendments had been intended, the sentence would been ended after the words "...promulgated at any time...." The agency believes that Congress intended to provide certainty and finally for all parties concerned with regard to the levels of standards, to permit planning by the manufacturers and the agency through cutting off amendments once a model year has begun.

Ford has argued that a failure to permit amendments to fuel economy standards after the start of a model year places manufacturers in a difficult position, since unanticipated sales trends during the model year might impair its ability to comply. However, the agency is also concerned that amendments made after production has begun have some characteristics of *ex post facto* law.

On this point, the agency notes that, as quoted above, section 502(b) and 502(f)(1) require that fuel economy standards and amendments to such standards be prescribed "by rule". The term "rule" ordinarily refers to prospective agency action. The Administrative Procedure Act's definition of rule incorporates the concept of "agency statement of general or particular applicability and *future effect*." See 5 U.S.C. §551(4) (emphasis added). Since an average fuel economy standard regulates overall production over an entire model year, a change to such a standard during the model year would represent, in part, retrospective agency action, with retroactive effect. On the issue of retroactive rules, Kenneth Culp Davis states that "...agencies have no powers except those conferred and courts are reluctant to imply power to issue retroactive rules...." Davis, *Administrative Law Treatise*, 2d ed., §7.23. The agency does not believe that a court imply such authority in this instance, particularly given the statement in the legislative history implying that Congress intended the opposite result.

The agency believes that Congress intended standards to be established before production begins, to encourage the achievement of particular fuel economy levels rather than imply ratifying past conduct. As noted above, Chrysler expressed similar concerns in its comments, noting that late changes in standards levels could adversely affect manufacturers who planned to meet the original levels. Therefore, the agency must reaffirm its previous position that petitions to amend fuel economy standards must be submitted in time to permit necessary rulemaking to be completed prior to the start of the model year.

With respect to Chrysler's suggested construction of section 502(f)(2), the agency sees no basis in the Act or its legislative history for construing "more stringent" amendments to mean anything other than its common meaning, i.e., numerically higher. Adopting Chrysler's proposed construction would mean that all amendments make standards "more stringent" regardless of the direction of the change, since any particular standards level will impact manufacturers unequally. In that case, the "more stringent" language of the Act would be rendered meaningless, a result to be avoided under normal rules of statutory construction. The agency rejects this argument.

The agency recognizes the general concern raised by Chrysler that standards reductions may adversely affect manufacturers which made good faith efforts to achieve the initially established standards level. However, the agency must consider the feasibility of its standards for the industry as a whole, as noted above. With regard to the 1985 standards, it appears that none of the domestic manufacturers, including Chrysler, will be able to meet the original standards. Therefore, the agency concludes that reducing the 1985 standards is necessary.

Ford has also requested that the agency specify the precise date by which petitions to amend fuel

economy standards must be filed. As noted above, the single court to address the issue has stated only that a given model year begins in the fall of the preceding calendar year (e.g., fall 1984 is the beginning of the 1985 model year). In its final rule establishing fuel economy reporting requirements, the agency took the position that, in the absence of any single "annual production period," the model year would be deemed to coincide with the calendar year, e.g., the 1985 model year would begin January 1, 1985. See 19 U.S.C. 2001(12) and 42 FR 62374 (December 12, 1977). Since any amendments to standards must be *promulgated* prior to the start of the model year, petitions must be filed in time to permit the agency to complete a rulemaking proceeding on the petition prior to the start of the model year. The time necessary for such a proceeding will vary greatly depending on the complexity and controversiality of the issues involved. A proceeding would involve agency analysis of the petition, preparation and publication of the necessary supporting documentation, a minimum public comment period, analysis of comments, and preparation and publication of the documentation necessary to accompany the final decision. The various uncertainties affecting the duration of a proceeding make it impossible for the agency to specify a precise date after which petitions will not be accepted. However, it is clear that the Ford petition, which was filed in November of the preceding calendar year, was not timely. As a general matter, petitions regarding a particular model year's standards should be submitted no later than the early part of the preceding calendar year, and preferably before that time.

In accordance with section 502(j) of the Act, the agency has submitted this rule to the Department of Energy for review. The Department of Energy indicated that it had no comment on the rule.

In consideration of the foregoing, 49 CFR Chapter V is amended by revising Table II in S533.5(a) to read as follows:

S533.5 *Requirements.*

(a) * * *

TABLE II

Model Year	Combined standard		2-wheel drive light trucks		4-wheel drive light trucks	
	Captive imports	Other	Captive imports	Other	Captive imports	Others
1982	17.5	17.5	18.0	18.0	16.0	16.0
1983	19.0	19.0	19.5	19.5	17.5	17.5
1984	20.0	20.0	20.3	20.3	18.5	18.5
1985	19.5	19.5	19.7	19.7	18.9	18.9
1986	20.0	20.0	20.5	20.5	19.5	19.5

Issued on October 16, 1984.

Diane K. Steed
Administrator

49 FR 41250
October 22, 1984

PREAMBLE TO AN AMENDMENT TO 533

Light Truck Average Fuel Economy Standards
Model Year 1987
[Docket No. FE-84-01: Notice 4]

ACTION: Final rule.

SUMMARY: This notice establishes a new light truck average fuel economy standard for model year 1987. The standard is required to be established at the maximum feasible level, under section 502(b) of the Motor Vehicle Information and Cost Savings Act. The 1987 light truck fleet will consume 520 million fewer gallons of gasoline over its lifetime than it would have consumed if light truck average fuel economy were to remain at the levels of the 1986 standards.

EFFECTIVE DATE: The amendments made by this rule to the Code of Federal Regulations are effective November 4, 1985. The standard is applicable to the 1987 model year.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 1984, NHTSA published in the *Federal Register* (49 FR 8637) a notice of proposed rulemaking (NPRM) on the establishment of light truck average fuel economy standards for model years 1986 and 1987. The issuance of the standards is required by section 502(b) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2002(b). That provision requires the Secretary of Transportation to set light truck standards at the "maximum feasible average fuel economy level" for each model year after 1978. In determining the "maximum feasible" level, the Secretary is directed to consider four factors: technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the Nation to conserve energy. See 15 U.S.C. 2002(e).

The agency's March 1984 NPRM proposed ranges of possible standards for all types of light trucks, with the 1986 composite standard to be set within the range of 20.0 to 21.5 mpg and the 1987 composite standard to be set within the range of 20.0 to 22.5 mpg. Separate ranges of standards were also proposed for two-wheel drive and four-wheel drive light trucks. These separate standards were proposed as optional means of compliance, consistent with the agency's practice in previous proceedings. The separate standards account for the fact that different manufacturers' fleets contain significantly different proportions of four-wheel drive trucks, which tend to have lower fuel economy.

On October 22, 1984, NHTSA published in the *Federal Register* (49 FR 41250) a final rule establishing a light truck average fuel economy standard for model year 1986. That notice also amended the light truck average fuel economy standard for model year 1985. NHTSA stated that a light truck fuel economy standard for model year 1987 would be issued at a later date. The agency stated that it needed additional time to complete its analysis of issues relating to a standard for that model year, noting that some of the issues, particularly those relating to market trends, are characterized by uncertainty and complexity.

The 1987 standard established by this notice is based on the same NPRM as the 1986 standard adopted by NHTSA in October 1984. There is a large degree of commonality of facts and circumstances in setting standards for these two model years. NHTSA relied in part on analyses developed for the October 1984 notice in developing this final rule. Accordingly, the agency incorporates by reference that notice and its accompanying analyses as part of the rulemaking record for this final rule. Also, this notice freely adopts some of the discussion presented in that notice.

Among other things, the October 1984 notice and accompanying analyses provide a more complete discussion of the background for this rulemaking, including analysis of a continuing shift in con-

sumer demand for light trucks. The demand shifts, which are due primarily to the recent trend of stable or diminishing gasoline prices, have resulted in higher levels of sales of larger light trucks and larger displacement engines than were previously anticipated by either the manufacturers or the agency.

On December 10, 1984, NHTSA published in the *Federal Register* (49 FR 48064), a questionnaire requesting data from manufacturers and the general public on the ability to increase average fuel economy levels for passenger car and light truck fleets during MY's 1985-90. The responses received from manufacturers in late February and early March 1985 updated earlier data submitted in response to the agency's March 1984 NPRM. Also, on June 7, 1985, Ford submitted a revised projection of its fuel economy capability for MY 1987 light trucks. The agency considered these updated data in determining the appropriate levels of the MY 1987 standards.

Summary of Decision

Based on the agency's analysis of projections of future gasoline prices, current sales data, and the manufacturers' most recent projections for future sales, NHTSA believes that market trends toward large vehicles and engines are likely to continue through 1987. Our analysis leads us to establish a composite average fuel economy standard of 20.5 mpg for model year 1987 light trucks. Separate standards of 21.0 mpg for two-wheel drive light trucks and 19.5 mpg for four-wheel drive light trucks are also established.

Basis for the Final Standards

a. *Technological feasibility.*

The agency focused its detailed analysis of manufacturer capabilities on General Motors (GM), Ford and Chrysler, which together account for over three-quarters of light truck sales. Other light truck manufacturers have significantly higher average fuel economy capabilities than the three largest domestic manufacturers because they do not offer the larger, less fuel efficient, light trucks made by domestic manufacturers to satisfy the needs of business users. These other manufacturers are thus not significantly affected by fuel economy standards which are set primarily on the basis of the capabilities of GM, Ford and Chrysler.

In evaluating the MY 1987 fuel economy capability of GM, Ford and Chrysler, the agency analyzed data submitted over a several-year period. As anticipated by the NPRM, projections submitted by the manufacturers in response to an October 1982 questionnaire had largely been negated by events, including a shift in consumer demand, attributable to economic recovery and steady or falling gasoline prices, toward larger light trucks and larger displacement engines.

Ford's comments on the March 1984 NPRM indicated that it believed it could achieve 20.4 mpg for its combined fleet in MY 1987, a figure which was later revised to 20.3 mpg based on errors in calculating the projection. That projection included a 0.5 mpg fuel economy penalty due to anticipated increases in the stringency of the Environmental Protection Agency's (EPA's) oxides of nitrogen (NOx) standards and a 0.2 mpg fuel economy penalty due to EPA's "Extended Useful Life" (EUL) regulation, which took effect in MY 1985. (EPA's final rule, issued after the submission of Ford's original comments, increased the stringency of the NOx standards for MY 1988 rather than MY 1987.)

Ford's comments indicated that it might be able to achieve a 0.7 mpg increase over its adjusted 20.3 mpg projection, based on several potential programs (primarily powertrain improvements) which had not yet been approved by senior management. As part of this potential increase, Ford believed it might be able to achieve a 0.2 mpg gain through powertrain recalibrations to minimize the claimed fuel economy losses associated with EPA's NOx and EUL regulations.

Ford also indicated that its MY 1987 fuel economy could be lower than 20.3 mpg due to market risks. This possibility existed for both MY 1986 and MY 1987, and was discussed in the MY 1986 final rule. Ford submitted a "high risk" scenario, including greater consumer demand for large trucks, which could result in a fuel economy loss of 0.6 mpg. That company indicated that its fuel economy could decline by another 0.2 mpg if standard full-size van production remained at plant capacity (as it was for MY 1984 and is currently for model year 1985). Thus, Ford projected a capability of between 19.5 mpg and 21.0 mpg.

In response to NHTSA's December 1984 questionnaire, Ford indicated (in a submission dated February 28, 1985) that its MY 1987 fuel economy could be as high as 21.8 mpg. This number included several technological improvements not included in its 20.3 mpg projection, the details of which are subject to a claim of confidentiality. That response

also indicated, however, that the 21.8 mpg projection was subject to both market and technological risks. Ford projected that potential mix shifts could reduce its fuel economy capability by 0.6 mpg. That company also identified technological risks, e.g., lower than anticipated gains in fuel economy for specific "hardware" improvements, which could reduce Ford's fuel economy by an additional 0.8 mpg. Thus, in its February 1985 submission, Ford projected a capability of between 20.4 mpg and 21.8 mpg.

Ford's most recent update of its model year 1987 fuel economy projections, submitted on June 7, 1985, indicated that its maximum fuel economy is 21.0 mpg, a number which is subject to possible adverse mix shifts of 0.4 mpg and technological risks totaling 0.3 mpg. A June 14, 1985, submission by that company indicated that the 0.8 mpg reduction from its February 1985 upper limit capability projection of 21.8 mpg occurred specifically because actual test data regarding some programs have indicated smaller fuel economy improvements than projected, and because leadtime problems prevented the incorporation of one of its anticipated fuel economy improvement programs on the 1987 models. That program will now be incorporated for 1988 models. Ford also stated that an anticipated shift in mix, based on actual sales experience and current sales trends, caused a 0.2 mpg reduction from the prior projection. More detailed information, subject to a claim of confidentiality, was also submitted to the agency. Hence, this latest Ford projection anticipates a maximum capability of between 20.3 mpg and 21.0 mpg.

NHTSA has analyzed the projections and data submitted by Ford and concludes that the 20.3 mpg to 21.0 mpg range represents that company's maximum fuel economy capability for its light truck fleet in model year 1987. In the final rule for MY 1986, NHTSA projected that Ford could achieve no higher than 20.4 mpg for that year. Currently, that company projects it can achieve 20.2 mpg in MY 1986. The 0.2 mpg difference is attributable to a loss due to not meeting certain technological objectives, which is partially offset by minor changes in actual test fuel economy values.

The 21.0 mpg upper limit figure for model year 1987 would thus represent a 0.8 mpg improvement in Ford's fuel economy over model year 1986. It assumes that Ford can achieve a 0.8 mpg gain by making a variety of technological improvements, generally relating to improved engines, the details of which are subject to a claim of confidentiality. That figure also assumes that Ford can raise its fuel economy by 0.1 mpg due to maturity of certain engine control systems. The improvements would be slightly offset by a 0.1 mpg loss due to minor model mix shifts toward less fuel-efficient vehicles as well as minor changes in engine and transmission usage within model lines.

The 20.3 mpg figure for model year 1987 is based on the possibility of continued sales shifts toward larger engines and vehicles, with a potential 0.4 mpg loss (from the above-mentioned 21.0 mpg figure), as well as technological risks totaling 0.3 mpg.

The agency has concluded that other technological actions, including those discussed in Ford's submissions, are either unlikely to be feasible due to leadtime limitations or they present too high a risk of being successfully implemented by the 1987 model year to be relied on by the agency for the purpose of setting standards. NHTSA's consideration of the technological and marketing risks associated with the 20.3 mpg figure is discussed later in this document. In evaluating the potential magnitude of these risks, the agency has concentrated its analysis on Ford because that company is the "least capable" manufacturer, with regard to fuel economy capability for MY 1987.

As suggested above, NHTSA projects that both GM and Chrysler can achieve higher fuel economy than Ford for their MY 1987 light truck fleets. In GM's comments on the NPRM, that company indicated that it believed it could achieve 23.5 mpg for MY 1987. This figure was revised downward in GM's latest projection, provided on March 1, 1985, in response to the December 1984 questionnaire. GM now projects that its MY 1987 light truck fuel economy will be between 21.1 and 22.4 mpg. GM's estimated MY 1986 light truck fuel economy is 20.3 mpg.

A large portion of the improvement in GM's estimated fuel economy results from the anticipated introduction of new full-size pickups in MY 1987. As a consequence of weight reduction and improved aerodynamic drag associated with these new vehicles, GM's fuel economy capability rises 1.0 mpg. A number of other technological improvements in the GM fleet are expected to add an additional 1.4 mpg to that company's fuel economy, although these will be partially offset by another change (subject to a claim of confidentiality) caus-

ing a 0.3 mpg decline. These additions and subtractions to GM's estimated MY 1986 capability result in the 22.4 mpg estimate of possible MY 1987 light truck fuel economy.

GM's March 1985 submission also indicated that a program risk (the details of which are subject to a claim of confidentiality) could result in a decline in its MY 1987 fuel economy of up to 1.3 mpg. If this should occur, GM's fuel economy would be 21.1 mpg, not significantly higher than the maximum estimated by Ford (21.0 mpg).

NHTSA believes that Chrysler could achieve a MY 1987 fuel economy of 21.6 mpg, which is that company's estimate provided in its February 8, 1985, response to the December 1984 questionnaire and in its March 20, 1985, carry-back plan. This is a minor change from Chrysler's 21.8 mpg projection provided in response to the NPRM, and would represent a 1.7 mpg improvement over its current projection of 19.9 mpg for MY 1986. Chrysler's current MY 1986 projection is significantly lower than that projected by NHTSA in the MY 1986 final rule primarily due to the deferral of introducing a new compact pickup from MY 1986 to MY 1987.

The weight and aerodynamic drag reductions associated with the introduction of a new compact pickup would add 0.9 mpg to Chrysler's projected MY 1986 fuel economy. The use of more fuel-efficient transmissions on several vehicles adds another 0.6 mpg to that company's capability. Various changes in engines add an additional 0.4 mpg. One factor which is likely to have a small negative impact on Chrysler's composite fuel economy is the anticipated introduction of a new four-wheel-drive compact pickup, which would raise the proportion of four-wheel drive vehicles in the company's fleet. This contributes to a 0.2 mpg decline in Chrysler's composite fuel economy. The resultant value is 21.6 mpg.

As in the case of Ford, the agency concluded that fuel economy improvements beyond those discussed above are not feasible for GM and Chrysler.

b. *Economic practicability.*

The agency has thoroughly considered economic factors in its standard-setting analysis, particularly the potential costs incurred by manufacturers should standards necessitate the sale of a restricted model mix.

It is always possible that higher levels of fuel economy could be achieved by the domestic manufacturers if they were to restrict severely their product offerings. For example, sales of particular larger light truck models and larger displacement engines could be limited or eliminated entirely. As discussed by the October 1984 notice, Ford submitted an analysis of the potential effects of restricting product offerings in this manner. This analysis showed that to achieve a 1.5 mpg average fuel economy benefit through such restrictions, sales reductions of 100,000 to 180,000 units at Ford could occur, with resulting employment losses of 12,000 to 23,000 positions at Ford, its dealers and suppliers. The agency believes this analysis to be a reasonable projection of the impacts of restricting the availability of larger light trucks in the current market.

Impacts of this magnitude go beyond the realm of "economic practicability" as contemplated in the Act. This is particularly true since it is likely that a standard set at a level resulting in impacts of this magnitude would result in little or no net fuel economy benefit. This is because consumers could meet their demand for larger light trucks by merely shifting their purchases to other manufacturers which continue to offer such trucks. The other manufacturers could increase sales of these vehicles without risking noncompliance with the standards. An additional possible negative economic consequence would be reduced competition in the market for larger light trucks. Given the small number of manufacturers producing larger light trucks, a decision by Ford (or GM or Chrysler) to significantly reduce its role in this market could have serious consequences for competition.

Achieving an average fuel economy benefit of somewhat less than 1.5 mpg through restrictions would result in similar types of effects, but of a lesser magnitude. Again, however, a standard resulting in such impacts would likely achieve little or no net fuel economy benefit, since consumers could easily meet their demand for larger light trucks by shifting purchases to other manufacturers. A standard could conceivably be set at a level to require an industrywide mix shift. Consumers would then be unable to obtain the vehicles they demand by shifting purchases of larger light trucks from one manufacturer to another. The negative economic consequences would be much greater than those discussed above, however, and clearly beyond the realm of "economic practicability" as contemplated in the Act.

The agency's analysis of the economic impacts associated with the manufacturers' efforts to improve the fuel economy of individual light truck

models for model year 1987 is set forth in a Final Regulatory Impact Analysis, copies of which are available in the agency's Docket Section. The agency projects an average retail price increase of $130 per vehicle to result from product improvements designed to enhance fuel economy. This price increase would be offset by estimated operating cost savings of $155 for the average 1987 light truck, due to reduced lifetime gasoline consumption. Overall, the agency projects the domestic manufacturers' automotive operations to remain profitable for the 1987 model year, based on current market trends.

c. *Effects of other Federal standards on fuel economy.*

As discussed by the October 1984 notice, three new light truck exhaust emission requirements were cited by several commenters as having possible adverse impacts on fuel economy. The first requirement is a change in stringency of hydrocarbon and carbon monoxide emissions standards, which took effect in the 1984 model year. The second requirement extends the useful life period for which manufacturers must certify compliance with emissions standards, beginning with the 1985 model year. The third requirement was the anticipated increase in stringency of light duty truck emission standards for oxides of nitrogen.

With regard to 1984 emissions standards changes and the extended useful life regulation, the agency concurs in a technical analysis provided by the Environmental Protection Agency (EPA) which indicates that there is no causal link between these regulations and any loss in fuel economy experienced by the manufacturers. An assessment of the 1984-85 emissions regulations prepared by the Transportation Systems Center, Research and Special Programs Adminstration, Department of Transportation, supported the EPA conclusions. Therefore, the agency has concluded that these changes will not affect the 1987 light truck fuel economy levels.

On October 15, 1985, EPA issued an NPRM covering a number of light duty and heavy duty truck emission standards, including a more stringent NOx standard for MY 1987. As indicated above, EPA issued a final rule on March 15, 1985, which implemented the more stringent light duty truck NOx standard for MY 1988 rather than MY 1987.

In addition to the three EPA requirements cited by several commenters, General Motors and American Motors each cited other EPA emissions requirements that could affect light truck fuel economy. General Motors argued that future light truck diesel particulate emission standards could effectively ban diesel engines in such vehicles, reducing fuel economy levels accordingly. EPA has indicated that these standards can be met with available technology. However, for certain vehicles EPA concedes that the standards may require the use of particulate traps which could produce a fuel economy penalty of approximately 2 percent per affected vehicle. NHTSA is accepting the EPA analysis. Should the anticipated fuel economy penalty occur, however, the impact on fuel economy would be very small. Due to the small number of diesel light trucks which are produced, the potential effect on the domestic manufacturers' average fuel economy levels projected above would be much less than 0.1 mpg.

American Motors argued that changes in EPA test procedures will result in a fuel economy loss. American Motors did not provide an analysis of the quantitative impact of the proposed rule on American Motors' average fuel economy levels, and none of the other manufacturers argued for the existence of such an impact. In its comments, American Motors noted that the potential impact of the change in EPA procedures could be offset through testing additional vehicles, but pointed out that such testing might be too expensive for a smaller manufacturer. Should American Motors experience a fuel economy loss, its average fuel economy levels will still be high enough to easily comply with the standards promulgated herein. Therefore, the agency is not making a specific adjustment in the standards to account for this potential effect.

As discussed in the agency's Final Regulatory Impact Analysis, changes in Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment,* could permit reduced weight and greater flexibility to design vehicles with improved aerodynamics. However, leadtime constraints preclude manufacturers from utilizing this additional flexibility beyond what is already reflected in their current model year 1987 fuel economy estimates. A proposed change in Federal Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection,* relating to enhanced comfort and convenience of safety belts, could result in a slight increase in weight. Since the increase in weight would be less than five pounds, however, there

would be a neglible effect on light truck fuel economy.

d. *Need of the nation to conserve energy.*

The United States imported 15 percent of its oil needs in 1955. By 1977, the import share was 46.4 percent and the value of imported crude oil and refined petroleum products was $67 billion (stated as 1984 dollars). While the import share of total petroleum demand declined after that year, the cost continued to rise to a 1980 peak level of $93.2 billion (1984 dollars). By 1984, the import share had declined to 30.9 percent at a cost of $54.2 billion. Thus, the concern over dependence on imported petroleum, as measured by these indicators, has lessened in the past several years.

Moreover, imports from OPEC sources have been declining, from a high of 6.2 million barrels per day and 70.3 percent of imports in 1977 to 2.0 million barrels per day and 37.6 percent of imports in 1984. Imports from non-OPEC sources have risen slightly from a low of 2.0 million barrels per day or 28.5 percent of imports in 1976, to 2.6 million barrels per day or 56.7 percent in 1984. In 1984, Mexico was the largest supplier to the U.S. of crude oil and petroleum products, followed by Canada. As imports have shifted to non-OPEC sources, the United States' supply of petroleum has become less vulnerable to the political instabilities of some OPEC countries, as compared to the situation in the mid-1970's.

Overall, the Nation is much more energy independent than it was a decade ago, when Congress passed the Energy Policy and Conservation Act, which established the automotive fuel economy regulatory program. Domestic oil production is higher than it was in 1975, total import have dropped 20 percent since then, the value of the Nation's imported oil bill has declined 27 percent since 1977 (on a net import basis the value of the Nation's imported oil bill fell nearly 45 percent from 1980 to 1984), and the amount of imported oil from OPEC has dropped by 67 percent since the peak of 1977. In addition, the price of oil is now fully decontrolled, permitting the market to adjust quickly to changing conditions, and the Strategic Petroleum Reserve is well on its way to being filled.

According to Energy Information Administration (EIA) and Data Resources, Inc., projections, however, domestic production is expected to decline from a stable level of 10 MMB/D to about 18.5 MMB/D by 1995. Net imports are expected to rise from 4.5 to 5 MMB/D to about 7.5 (EIA) to 9.0 (DRI) MMB/D by 1995. This would result in imports approaching 50 percent of U.S. petroleum use by 1995. However, future projections about petroleum imports are subject to great uncertainty and may be overtaken by new domestic discoveries. Indeed, oil imports are very difficult to project beyond a year or two. For example, the EIA's *1977 Annual Report to Congress* projected that net oil imports by the U.S. would, in the "reference case," reach 11 million barrels per day by 1985. Net imports for this year are now forecast to be less than 4.5 million barrels per day, substantially less than half the level predicted in 1977.

The agency believes that energy conservation is important and notes that the 1987 light truck fleet will consume 520 million fewer gallons of gasoline over its lifetime than it would have consumed if light truck average fuel economy were to remain at the levels of the 1986 standards. This will make a positive contribution to the goal of petroleum conservation.

e. *Setting the average fuel economy standard.*

The agency is required to set light truck standards at the "maximum feasible average fuel economy level," taking account of the four factors discussed above. In determining this level, the agency must take industrywide considerations into account. The Conference Report on Title V of the Motor Vehicle Information and Cost Savings Act provides in this regard as follows:

> . . . a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual automobile manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic automobile manufacturers that currently exist, and the possible implications for the national economy and for reduced competition association (sic) with a severe strain on any manufacturer. However, it should also be noted that provision has been made for granting relief from penalties under Section 508(b) in situations where competition will suffer significantly if penalties are imposed.

Senate Report 94-516, 94th Cong. 1st Sess. (1975), at 154-5.

As in the NPRM, NHTSA's analysis concludes that Ford is the "least capable" manufacturer in regard to improving the average fuel efficiency of its light trucks. The agency projects that Ford could achieve an average fuel economy level between 20.3 and 21.0 mpg, while GM could achieve between 21.1 to 22.4 mpg and Chrysler could achieve 21.6 mpg.

As indicated above, the 21.0 figure for Ford is subject to a potential 0.4 mpg loss due to sales shifts toward larger engines and vehicles, and a potential 0.3 mpg loss due to technological risks. GM also faces a serious program risk which could lower its maximum fuel economy capability from 22.4 mpg to 21.1 mpg.

In this rulemaking, as in any rulemaking concerning fuel economy standards, it is difficult for the agency to project with any precision the effects of extra marketing programs on average fuel economy levels. This difficulty has several origins. First, the amount of improvement in average fuel economy through the use of such programs is fairly small. Second, there is considerable uncertainty involved in projecting sales involved in projecting sales mixes and the effects of extra marketing programs on those mixes. The further in advance of a model year that an agency attempts to make such projections, the greater the uncertainty in making them.

In deciding on the level of the MY 1987 standards, the agency nevertheless considered the possible effects of extra marketing actions in determining manufacturers' fuel economy capabilities for MY 1987 light trucks. Based on the agency's analysis of available data, including information provided by Ford concerning the effectiveness of past marketing efforts, the agency has concluded that the effect of such efforts on improving Ford's (the least capable manufacturer's) MY 1987 average fuel economy is likely to be minimal. In Ford's petition to amend the model year 1985 light truck fuel economy standards, the company indicated that it could achieve up to a 0.4 mpg increase in its projected model year 1985 fuel economy through the use of marketing measures to shift sales mixes. However, 0.2 of this gain was projected to come at the expense of Ford's model year 1986 fuel economy. Thus, sales of certain fuel-efficient vehicles were merely being shifted from one model year to another, and any long-run improvement in fuel economy was very small. According to Ford, it did implement some of these programs for model year 1985, and achieved a gain of only 0.1 to 0.2 mpg.

The setting of maximum feasible fuel economy standards, based on consideration of the four required factors, is not a mere mathematical exercise but requires agency judgment. The agency has concluded that 20.5 mpg is the maximum feasible composite standard for the 1987 model year. This level balances the potentially serious adverse economic consequences associated with market and technological risks against Ford's opportunities, as the least capable manufacturer, to further increase its fuel economy levels. As the agency has consistently stated in the past, it has a responsibility to set standards at a level that can be achieved by manufacturers having a substantial share of light truck sales. Since Ford produces more than 30 percent of all light trucks subject to fuel economy standards, its capability has a significant effect on the level of the industry's capability and, therefore, on the level of the standards.

The agency's consideration of uncertainties is both prudent and required by the statute when selecting final standards. Uncertainties are part of the consideration of both technological feasibility and economic practicability. NHTSA believes that Ford faces a substantial risk that market demand for large vehicles and engines may be higher than that reflected by the 21.0 mpg figure representing the upper end of the range for Ford's MY 1987 fuel economy capability. This risk is also faced by the other manufacturers. The uncertainty of market demand projections has clearly been indicated by consumer behavior over the past several years. As noted above, these shifts in market demand are discussed at greater length in the October 1984 notice and accompanying analyses. Data Resources, Inc.'s, Spring 1985 *U.S. Long Term Review* includes the projection that gasoline prices will drop about eight percent in real terms between 1985 and 1987. Such a drop could trigger further market shifts toward larger vehicles and engines.

The agency also believes that there is a substantial risk that Ford and other manufacturers may not be able to meet all of their engineering goals. Past experience indicates that manufacturers often are unable to achieve all of the fuel economy gain they project from technological improvements.

A standard which is set at too high a level may result in serious economic problems. As a model year approaches, it is too late for manufacturers to make major technological changes (e.g., new

engines or drivetrains which typically require three to five years of leadtime) or develop new programs to compensate for market shifts or technological problems. If the agency were to set a MY 1987 standard at too high a level, Ford might be required to make drastic product restrictions, adversely affecting employment at Ford. Such actions by Ford would likely result in the shifting of sales of larger light trucks with large engines to other manufacturers, thereby achieving little or no net fuel economy improvement for the industry as a whole.

On the other hand, setting standards below the level attainable by GM and Chrysler would not likely cause those companies to reduce their fuel economy performance, since the agency's projected levels for those companies are based on the product mixes they plan to sell. Further, GM indicated in its comments that setting standards at a level below its planned levels would not cause GM to revise its plans. Therefore, the agency concludes that the risks associated with setting standards above Ford's maximum feasible level, taking account of uncertainties, and possibly forcing that company to adopt severe product restrictions, outweigh the potential benefits from setting standards at a higher level.

The agency has decided to continue setting 4×2 and 4×4 standards for each year as an alternative to the composite standard. Separate 4×2/4×4 standards allow manufacturers greater flexibility in planning their fuel economy improvements and do not discriminate against firms with truck fleets heavily weighted toward four-wheel drive models. As discussed above, Ford is the least capable manufacturer with respect to meeting a composite standard. In setting separate standards, the agency considered Ford's average fuel economy capability for 4×2 and 4×4 light trucks. The selected standards are consistent with the composite standard. American Motors, the manufacturer which has primarily been concerned about separate standards in past years due to the high percentage of 4×4 light trucks in its fleet, is estimated to easily meet the composite standard.

The final composite standard for MY 1987 is 20.5 mpg; the final 4×2 standard is 21.0 mpg; and the final 4×4 standard is 19.5 mpg.

Issued on September 30, 1985

Diane K. Steed
Administrator

50 F.R. 40398
October 3, 1985

PREAMBLE TO AN AMENDMENT TO PART 533

Light Truck Average Fuel Economy Standards Model Year 1988

(Docket No. FE-86-01, Notice 2)

ACTION: Final rule.

SUMMARY: This notice establishes new light truck average fuel economy standards for model year 1988. The standards are required to be established at the maximum feasible level under section 502(b) of the Motor Vehicle Information and Cost Savings Act. Based on its analysis, the agency is establishing a combined average fuel economy standard of 20.5 mpg for model year 1988 light trucks. Optional separate standards of 21.0 mpg for two-wheel drive light trucks and 19.5 mpg for four-wheel drive light trucks are also established.

DATES: The amendments made by this rule to the Code of Federal Regulations are effective May 23, 1986. The standards are applicable to the 1988 model year. Petitions for reconsideration must be submitted within 30 days of publication.

SUPPLEMENTARY INFORMATION:

Background

On January 24, 1986, NHTSA published in the *FEDERAL REGISTER*. (51 FR 3221) a notice of proposed rulemaking (NPRM) on the establishment of light truck average fuel economy standards for model years 1988 and 1989. The issuance of the standards for those years is required by section 502(b) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2002(b). That provision requires the Secretary of Transportation to set light truck standards at the "maximum feasible average fuel economy level" for each model year after model year 1978. In determining the "maximum feasible" level, the Secretary is directed to consider four factors: technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of Nation to conserve energy. See 15 U.S.C. 2002(e).

The agency's January 1986 NPRM proposed ranges of possible standards for all types of light trucks, with the 1988 combined standard to be set within the range of 20.5 mpg to 22.0 mpg, and the 1989 combined standard to be set within the range of 20.5 mpg to 22.5 mpg. As a compliance alternative to the combined standard, the agency also proposed separate standards for two- and four-wheel drive vehicles. The agency stated that in view of factual uncertainties, the setting of standards outside the proposed ranges was possible depending on the comments that might be submitted.

NHTSA received comments on the NPRM from General Motors, Ford, Chrysler, American Motors, Volkswagen, the National Automobile Dealers Association (NADA), the Center for Auto Safety (CFAS), numerous employees of light truck manufacturers, dealers, and private individuals. The issues raised by the commenters are discussed below.

Summary of Decision

At this time, the agency has concentrated its efforts on analyzing issues relating to the 1988 standard. Based on its analysis, NHTSA is establishing a combined average fuel economy standard of 20.5 mpg for model year 1988 light trucks. Optional separate standards of 21.0 mpg for two-wheel drive (2WD) light trucks and 19.5 mpg for four-wheel drive (4WD) light trucks are also established. Both the combined and optional separate standards are being set at the same levels as the MY 1987 light truck fuel economy standards. A decision will be reached at a later date with respect to the proposed model year 1989 standards.

Manufacturer Capabilities for MY 1988

As part of its consideration of technological feasibility and economic practicability, the agency has evaluated the manufacturers' fuel economy capabilities for MY 1988. In making this evaluation, the agency has analyzed manufacturers' current projections and underlying product plans and has considered what, if any, additional actions the manufacturers could take to improve their fuel economy.

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A. Manufacturer Projections

General Motors: As discussed in the NPRM, General Motors (GM) projected in March 1985 that it could achieve a CAFE level of 22.6 mpg in MY 1988. That projection was 0.2 mpg higher than that company's 22.4 mpg projection for MY 1987. While GM's March 1985 submission indicated that program risks (the details of which are subject to a claim of confidentiality) could result in a decline in its projected MY 1987 CAFE of up to 1.3 mpg, the NPRM stated that the agency did not believe that particular risks affected GM's projection for MY 1988.

The NPRM noted that GM had emphasized the following in its March 1985 submission:

> All estimates and future product plans contained in this submission are but a 'snapshot in time'. As we have stated on a number of occasions . . ., changes in the economic outlook, in fuel availability, in fuel prices or in consumer preference significantly affect GM's CAFE. The unpredictability of the market, the unknown effect of future light duty truck emission regulations and the unproven results of future combinations of technology cause CAFE projections to be . . . tentative . . .

In GM's February 1986 comment on the NPRM, the company lowered its CAFE projections for MY 1987 and MY 1988 to levels no higher than 20.5 mpg and 20.7 mpg, respectively.

One reason for the reduced MY 1987 projection is the realization of the program risk noted above, which accounts for 0.9 mpg of the decline. Additional reasons, together accounting for another 0.9 mpg of the decline, include the achievement of lower-than-anticipated fuel economy from certain programs, the purchase by consumers of more options than expected and certain changes to meet consumer demand for higher performance. A small portion of the reduction, 0.1 mpg, is associated with increased sales of certain larger engines and heavier trucks.

(The details of the changes are subject to a claim of confidentiality as confidential business information whose release could cause competitive harm. This is also true with respect to this notice's discussion of GM's MY 1988 projection and to the projections of other manufacturers.)

These changes, other than the program risks, also affect GM's MY 1988 projection, together accounting for a 1.0 mpg decline in that projection. The company also identified a number of other reasons for the reduced projection. The company no longer plans to make certain product changes which it once planned for that model year. Reasons for not making the changes relate to such concerns as durability, cost, results of market research, and the unavailability of certain equipment it planned to use. GM also now expects to include additional standard equipment on certain vehicles. These changes together account for an additional 0.6 mpg of the decline. GM also identified an apparent error in its earlier projection, accounting for 0.2 mpg of the decline, and cited miscellaneous reasons for the remaining 0.1 mpg loss.

GM's comment on the NPRM indicated that uncertainties such as the future price of fuel, small truck sales by foreign competitors and potential less-than-anticipated gains through the use of technology could result in its MY 1988 CAFE level being below its current projection of 20.7 mpg.

GM presented three possible scenarios to illustrate how factors such as these could influence its MY 1988 CAFE. The first scenario assumes constant rather than rising fuel prices and an economic outlook which reflects the former price pattern instead of the latter. According to GM, there would be a reduced incentive under this scenario for consumers to buy smaller vehicles with more fuel efficient powertrains, and the company would experience a model and powertrain mix change estimated to cause a 0.3 mpg to 0.4 mpg decline in its MY 1988 CAFE projection. GM's second scenario develops that company's sensitivity to an unanticipated increase in import light truck sales above its current forecasts. According to that company, this could result in a 0.2 mpg to 0.3 mpg decline in its MY 1988 CAFE projection. GM's third scenario focuses on the introduction of emission controls which will cause heavy duty engines in trucks over 8500 pounds gross vehicle weight rating (GVWR) to be equipped with catalytic converters and use unleaded gasoline just as the trucks with lower GVWR's have been. This regulatory change creates the potential for a shift in consumer purchases from vehicles which are just over 8500 pounds GVWR and thus not subject to the fuel economy standards to vehicles which are between 7000 pounds and 8500 pounds GVWR and within the ambit of those standards. According to GM, this potential increase in the sales of the high GWVR light trucks could reduce its CAFE projection below 20.7 mpg by approximately 0.1 mpg.

Ford: As discussed in the NPRM, Ford projected in February 1985 that it could achieve a CAFE level of up to 22.5 mpg in MY 1988. This number was

adjusted in the NPRM to 22.2 mpg, however, in light of later technical information provided by Ford. The primary reason for the reduction was that actual test data regarding some programs had indicated smaller fuel economy improvements than projected. The 22.2 mpg level was 1.2 mpg higher than Ford's 21.0 mpg projection for MY 1987. The NPRM noted, however, that 0.4 mpg of the increase was attributable to mix shifts toward more fuel-efficient vehicles, which the agency considered unlikely given the recent and expected continued declines in gasoline prices. Thus, if these mix shifts were deleted, the upper end projection for MY 1988 would be 21.8 mpg.

The NPRM noted that Ford had identified several risks to its MY 1988 projection. These included both technological risks, i.e., risks that technological programs might not achieve expected fuel economy gains, and mix shift risks, i.e., risks that the sales mix of Ford's light truck fleet might shift toward less fuel-efficient vehicles. Ford identified additional technological risks totaling 0.9 mpg and mix shift risks totalling 0.6 mpg, for a total risk of 1.5 mpg. However, the agency had already incorporated 0.7 mpg in technological and sales mix risks in the 21.8 mpg figure, reducing the remaining risk to 0.8 mpg. Thus, if the events creating these risks occurred simultaneously, the lower end figure for MY 1988 would have been 21.0 mpg as of the time of the NPRM.

In Ford's February 1986 comment on the NPRM, the company lowered its CAFE projections for both MY 1987 and MY 1988. For MY 1987, Ford projected a CAFE level of 20.2 mpg to 20.4 mpg. For MY 1988, it projected a CAFE level of 20.2 mpg to 20.8 mpg. In explaining its lower projections, Ford stated that ". . . recent development testing of new hardware and technology has yielded lower levels of fuel economy benefit than had been predicted earlier in the program."

In the final rule for MY 1987, published in the *Federal Register* (50 FR 40398) on October 3, 1985, the agency noted that Ford's then latest projection for that year was for a CAFE level of no higher than 21.0 mpg. Even that figure was subject to possible adverse mix shifts of 0.4 mpg and technological risks totalling 0.3 mpg. The decline in Ford's upper end projection from 21.0 mpg to 20.4 mpg is attributable to technological reasons, almost entirely related to certain programs not achieving expected fuel economy. Of particular significance is a drop in projected fuel economy for the electronic fuel injection program for Ford's 4.9 liter I-6 engine. A very small portion of the decline, less than 0.1 mpg, is related to small increases in weight and performance. Technological risk explains the difference in Ford's low and high end current CAFE projections for MY 1987.

The drop in Ford's MY 1988 CAFE from the 21.8 mpg value used in the NPRM to the company's current maximum projection of 20.8 mpg is also attributable to technological reasons. The most significant factor in the decline is the drop in projected fuel economy for the 4.9 liter fuel injection program, which carries over from MY 1987. In addition, Ford no longer plans to make a certain technological change due to durability concerns. A number of small factors, primarily engine calibration issues, explain the remaining decline. Some of the engine calibration changes are being made to ensure compliance with emissions standards.

Ford's 20.8 mpg projection is subject to both further technological risks and mix shift risks. The company identified technological risks of 0.3 mpg, which are related to certain programs possibly not achieving projected fuel economy levels. Ford also presented a mix risk scenario in which sales were higher for standard trucks and lower for compact trucks, resulting in a potential 0.3 mpg CAFE loss. Ford's 20.2 mpg to 20.8 mpg range is explained by these risks. The company also indicated that its CAFE could decline an additional 0.2 mpg as a further mix shift risk if gasoline prices remain below $1.00 per gallon on a sustained basis.

Chrysler: As discussed by the NPRM, Chrysler projected in August 1985 that it could achieve a CAFE level of 22.3 mpg in MY 1988. This projection was 1.1 mpg higher than that company's then latest MY 1987 projection. The NPRM stated that the bulk of the improvement would be attributable to technological improvements, especially transmission improvements. The NPRM noted that Chrysler also expected slight mix shifts toward smaller, more fuel-efficient trucks.

In March 1986, Chrysler provided new projections of 20.4 mpg to 21.3 mpg for MY 1987 and 21.5 mpg to 22.3 mpg for MY 1988. The company stated the following:

> There is considerable uncertainty associated with predicting any specific single level of annual CAFE for the 1987-89 time frame because we are in the process of revising our long range plan. For this reason, our new estimates for model years 1987-89 are presented as ranges to indicate the effects of various marketing alternatives available

to Chrysler. The high ends of our ranges represent Chrysler's fuel economy capabilities, given our current product plan. These numbers are similar to those previously submitted to [NHTSA], although 1987 estimates are now much firmer due to actual test data being available. The low ends of the ranges represent the results of a new analysis in which it was assumed we would sell our products in a completely free market with no attempt on our part to force the sales mix to a desired fuel economy target.

Both product plans contain the same fuel economy improving technologies and our new Dakota N-Body truck previously described to you. Projected CAFE differences are solely a result of mix shifts. . . . Should international economic conditions continue to change, even the low end of these estimates may ultimately require market forcing and/or product limiting actions by Chrysler.

The 22.3 mpg estimate at the high end of Chrysler's Projection for MY 1988 is thus the same mix of vehicles and technology as discussed in the NPRM. The 21.5 mpg estimate at the low end of that company's range for MY 1988 is based on mix shifts toward larger, less fuel-efficient trucks.

American Motors: In February 1985, American Motors (AMC) projected 4WD CAFE levels of 18.5 mpg to 22.2 mpg for MY 1987 and 19.0 mpg to 22.7 mpg for MY 1988. The company projected 2WD CAFE levels of 21.5 mpg to 24.3 mpg for MY 1987 and 21.5 mpg to 24.2 mpg for MY 1988. These projections, for which no supporting data were provided, were the latest available to the agency at the time the NPRM was issued. Since AMC had projected in its mid-model year report for MY 1985 that its CAFE levels for that model year would be 20.3 mpg for its 4WD fleet and 23.5 mpg for its 2WD fleet, the agency placed greater credence in the upper ends of the company's CAFE projections for MY 1987-88. The NPRM noted, however, that AMC had recently advised NHTSA that it was revising its projections.

In AMC's February 1986 comment on the NPRM, the company projected that its 4WD CAFE levels would be 19.2 mpg for MY 1987 and 19.3 mpg for MY 1988. AMC projected that its 2WD CAFE levels would be 21.3 mpg for both MY 1987 and MY 1988. With 4WD vehicles accounting for most of AMC's light truck fleet, these figures result in composite CAFE levels of 19.7 mpg for MY 1987 and 19.9 mpg for MY 1988.

AMC provided the following explanation for the decline in its CAFE projections:

. . . As has been widely reported in the press, our Jeep products have experienced record sales, which have substantially changed our model mix projections. Lower-than-anticipated fuel economy performance for some future models, coupled with some administrative changes to reduce product complexity are also expected to measureably alter the fleet average values. In addition, our 2- and 4-wheel drive pickup trucks, which had not yet been introduced last February, are now on the market, giving us some actual sales information for developing future model mix projections.

NHTSA's analysis of the data provided by AMC indicated that most of the reason for the decline in that company's CAFE projections was a drop-off in average fuel economy for each truckline and not sales mix changes between trucklines. For 2WD vehicles, the fuel economy declines within each truckline caused all of the drop in the projections for both MY 1987 and MY 1988. For 4WD vehicles, the drop in the MY 1987 projection was attributable to both a shift in sales mix and lower fuel economy levels for individual trucklines. The drop in the MY 1988 projection, however, was attributable entirely to lower fuel economy levels for individual trucklines.

AMC's comment on the NPRM stated that uncertainties related to lower gasoline prices and market trends toward greater performance could significantly lower its CAFE beyond its projections. AMC stated that there is a level of uncertainty with respect to engine mix in Jeep XJ vehicles and a possibility that sales of larger model "senior Jeeps" such as the Grand Wagoneer and J-series pickup trucks will escalate. That company also stated that sales of its smaller Commanche pickups could decline as buyers "move up" to larger trucks.

Volkswagen: Volkswagen (VW) currently offers only one light truck model, the Vanagon compact bus. In February 1985, VW projected a CAFE level of 21 mpg through MY 1990. In VW's March 1986 comment on the NPRM, the company provided a MY 1988 CAFE projection of 19.1 mpg. VW stated that, in response to consumer demand, it has had to make performance improvements in the Vanagon vehicles. The company also stated that it has introduced a new 4WD version of the Vanagon, to increase the utility of the vehicle to the consumer.

Other manufacturers: Foreign manufacturers other than VW compete only in the small vehicle portion of the light truck market and are therefore expected to achieve CAFE levels well above GM, Ford, and Chrysler, which offer full ranges of light truck models.

NHTSA is aware of one other domestic manufacturer, Lands Motor Company, whose light truck fuel economy capability is expected to be below that of GM, Ford, Chrysler and AMC. While that company did not submit comments on the NPRM, it has submitted a petition requesting that the agency establish a separate class of light truck for its precedent model and provide a separate fuel economy standard for that class. (This issue and a similar one raised by Volkswagen are addressed below in the section entitled Setting the MY 1988 Standards.) Lands Motor Company has a production goal of 500 vehicles for MY 1988, with a CAFE level of 16.9 mpg.

B. Possible Additional Actions to Improve MY 1988 CAFE

The possible additional actions which manufacturers may be able to take to improve their MY 1988 CAFE above the levels which are currently projected may be divided into three categories: further technological changes to their product plans (beyond what they are already planning), increased marketing efforts, and product restrictions.

1. *Further Technological Changes*

Ford commented that it is unaware of any new technology which could be executed within available leadtime to improve its CAFE significantly. Chrysler commented that "(i)t is important to recognize that the leadtime required to implement improvements in engines, transmissions, aerodynamics and rolling resistance, is usually three to four years." That company argued that "as of today, it is too late in the engineering cycle to design, develop, and implement any further major technological CAFE improvements on 1988-89 model year light trucks."

In light of limited leadtime, the agency agrees that it is too late at this time to initiate further major technological improvements. Once a new design is established and tested as feasible for production, the leadtime necessary to design, tool, and test components such as new body sheet-metal subsystems for mass production is typically 22 to 29 months. Other potential major changes, such as those cited by Chrysler, often take longer. Leadtimes for new vehicles are typically at least three years.

However, there may be sufficient leadtime for manufacturers to make more minor technological changes, such as changes in axle ratios, refinement of engine calibrations, and changes in horsepower. In analyzing specific manufacturer capabilities below, the agency has considered whether manufacturers can make these types of changes.

2. *Increased Marketing Efforts*

As discussed in the NPRM, the agency believes that the ability to improve light truck CAFE by marketing efforts is relatively small. Light trucks are generally purchased for their work-performing capabilities. This is particularly true for the larger, less fuel-efficient light trucks. Since the smaller light trucks cannot meet the needs of many users, the manufacturers' abilities to use marketing efforts to encourage consumers to purchase smaller light trucks instead of larger light trucks are limited.

As a practical matter, marketing efforts to improve CAFE are largely limited to techniques which either make fuel-efficient vehicles less expensive or less fuel-efficient vehicles more expensive. Moreover, the ability of a manufacturer to increase sales of fuel-efficient light trucks depends in part on increasing its market share at the expense of competitors or pulling ahead its own sales from the future. The ability of domestic manufacturers to make such sales increases is also affected by the strong competition in that market from Japanese manufacturers. While Japanese manufacturers currently have an overall combined market share of about 20 percent of light trucks, their share for the smaller, more fuel-efficient pickup trucks is about 50 percent.

The agency also notes that the improved fuel efficiency of all sizes of modern light trucks makes it more difficult to sell the small light trucks on the basis of significant operating cost savings. The reason for this is that there are diminishing returns in terms of fuel economy from purchasing smaller light trucks as the fuel efficiency of larger light trucks increases. The average fuel economy of large pickup trucks rose from 13.1 mpg in 1975 to 18.4 mpg in 1985, and the average fuel economy of large vans rose from 13.1 mpg to 17.5 mpg during this time period. The average fuel economy of small pickup trucks rose from 22.1 mpg to 26.2 mpg, and the average fuel economy of small vans rose from 20.7 mpg to 23.9 mpg. (SAE Paper No. 850550, "Light Duty Automotive Fuel Economy . . . Trends Thru 1985.") The fuel economy of large pickup trucks and vans has thus improved more than the

fuel economy of small pickup trucks and vans, both in absolute and percentage terms.

Also, as gasoline prices have declined, there are diminishing returns from purchasing more fuel-efficient vehicles. For example, an improvement in fuel efficiency from 20 mpg to 25 mpg at a gasoline price of $1.50 per gallon would save a truck owner about $150.00 per year, assuming 10,000 miles driven annually. However, at a gasoline price of $1.00 per gallon, which more closely reflects today's market, the annual savings drop to about $100.00. The financial savings for smaller changes in fuel economy will, of course, be even lower. Hence, an economically rational consumer will not be as concerned with improving fuel efficiency as gasoline prices decline, making it more difficult for a manufacturer to market its most fuel-efficient vehicles.

A problem with pulling ahead sales is that the manufacturers' CAFE levels for subsequent years are reduced. For example, if a manufacturer increases its MY 1988 CAFE by pulling ahead sales of fuel-efficient light trucks from MY 1989, its MY 1989 CAFE will decrease, compared with the level it would have been in the absence of any pull-ahead sales attributable to marketing efforts. For this reason, a manufacturer cannot continually increase its CAFE simply by pulling ahead sales.

GM commented that "(i)t would be difficult, if not impossible, to predict any gains in CAFE through marketing incentives based on present and future projections of consumer purchasing preferences, particularly in view of the uncertain future of world oil price." Ford commented that "because of the number of competitive entries in the compact segment, potential countering actions by each competitor, and the price/cost advantage of imported models, . . . marketing actions cannot be relied upon to produce the desired effect."

Chrysler commented that "(t)ruck buyers are much more sensitive to functional needs in making their purchase decisions and in many cases they must consider their product selection as a longer term decision than a passenger car customer." That company stated that "(f)uel efficiency must often be downgraded in priority for many truck buyers because vehicle function is often paramount to the purchaser's livelihood." The National Automobile Dealers Association commented that because light trucks are most often purchased for capability and practicability reasons, a decision to buy a larger, more powerful vehicle cannot be changed by marketing incentives. That organization emphasized that there are no available alternatives at any price for a consumer that needs a heavier light truck.

Given all of these factors, the agency does not believe that the domestic manufacturers can significantly improve their CAFE levels by increasing marketing efforts.

3. *Product Restrictions*

As discussed in the NPRM, manufacturers could improve their CAFE by restricting their product offerings, e.g., limiting or deleting particular larger light truck models or larger displacement engines. However, such product restrictions could have significant adverse economic impacts on the industry and the economy as a whole. In the final rule reducing the light truck fuel economy standard for MY 1985, the agency concluded that sales reductions to a manufacturer of 100,000 to 180,000 units, with resulting employment losses of 12,000 to 23,000, "go beyond the realm of 'economic practicability' as contemplated in the Act. . . ." 49 FR 41252, October 22, 1984. These impacts were believed by the agency to be a reasonable projection of the impacts to Ford of restricting the availability of larger trucks and engines in order to achieve a 1.5 mpg average fuel economy benefit.

In addition to the adverse impacts on the automotive industry, a wide range of businesses could be seriously affected to the extent they could not obtain the light trucks they need for business use. Also such product restrictions could run counter to the congressional intent that the CAFE program not unduly limit consumer choice. See H.R. Rep. No. 93-340, 94th Cong., 1st Sess. 87 (1975).

GM commented that CAFE standards that are set at too stringent a level could require full-line manufacturers to consider product restrictions as a last resort. GM stated that this would occur only after incentives had been applied and other reasonable steps taken, including the application of carryforward credits. That company stated that product restrictions would be harmful to the vehicle manufacturer, its employees and suppliers, to the consumer and to the nation's economy. Ford commented that establishing truck fuel economy standards above manufacturers' capability could result in substantial sales decline, adverse employment effects, and a threat of substantial economic hardship. That company stated that should the MY 1988 standard be set above its capability, it may be forced to restrict the availability of certain V-8 engines in full-size light trucks, vans, club wagons and large

utilities, and possibly delete some of its full-size products entirely. The company stated that market research data show that the vehicles that would most likely be restricted are used for a combination of commercial as well as personal uses.

Given all of these considerations, NHTSA concludes that significant product restrictions should not be considered as part of manufacturers' capabilities to improve CAFE.

C. Manufacturer-Specific CAFE Capabilities

In analyzing manufacturer-specific CAFE capabilities, the agency has focused on GM, the largest domestic manufacturer and one of the two "least capable manufacturers" with a substantial share of 4WD sales; Ford, the "least capable manufacturer" with a substantial share of both combined light truck sales and 2WD sales; and AMC, the other "least capable manufacturer" with a substantial share of 4WD sales.

General Motors: As discussed above, while GM projected in March 1985 that it could achieve a CAFE level of 22.6 mpg for MY 1988, it now projects a CAFE level no higher than 20.7 mpg. The agency's analysis indicated that some of the reasons for the decline in GM's projected MY 1988 CAFE level were within that company's control. The company made a number of changes in its product plan which, in the agency's judgment, were not consistent with its long-range maximum fuel economy capability. Other reasons for the decline in GM's projected MY 1988 CAFE level were outside the company's control, including changing sales mixes of vehicles and engines due to consumer demand and achieving lower-than-anticipated gains from the introduction of new technologies.

Some of the product plan changes that were within GM's control cannot be reversed within available leadtime. However, the agency's analysis has concluded that GM can still incorporate certain other of the product actions it identified in its March 1985 submission. The agency believes that GM has time to reverse its plans for increasing horsepower and that doing so would not have a significant effect on sales. While GM claimed that this action was necessary to compete in the marketplace, its supporting documentation did not provide a sufficient rationale for the agency to change its conclusion that reversing this action would not result in competitive or other economic harm. Achieving lower horsepower levels would have the effect of increasing GM's CAFE by an additional 0.2 mpg. In addition, GM indicated in its NPRM comments that two other planned actions (the details of which are subject to a claim of confidentiality) will reduce its CAFE by 0.2 mpg. However, the agency believes that those actions can be undertaken without adversely affecting CAFE.

NHTSA thus concludes that GM's MY 1988 CAFE could be as high as 21.1 mpg. However, the agency agrees with GM's comment that it faces a mix shift risk of 0.2 mpg to 0.3 mpg due to continued declines in gasoline prices and concomitant shifts toward larger trucks and engines for MY 1988. NHTSA is not including a risk associated with increased import light trucks in GM's capability. While manufacturers face a continuing challenge to meet possible increased light truck competition from abroad, the agency does not believe this issue, in the particular case of MY 1988 light truck sales, is likely to adversely affect domestic CAFE values. Moreover, the agency does not believe that mix shift risks and potential risks related to increased imports are additive, since lower fuel prices should enhance the domestic manufacturers' competitive positions. NHTSA believes that the issue should instead be recognized as a limitation on manufacturers' abilities to increase their market share of compact trucks beyond their present projections. NHTSA concludes that GM's MY 1988 fuel economy capability is 20.8 mpg to 21.1 mpg.

The agency has also evaluated GM's fuel economy capability for its 4WD fleet for MY 1988. The actions discussed above to raise GM's combined CAFE above its projection would also raise its 4WD CAFE. Taking these additional actions into account, NHTSA has concluded that GM's MY 1988 4WD capability could be as high as 19.5 mpg.

The agency has concluded that there is insufficient time for GM to introduce additional programs or technologies beyond those discussed above to improve its MY 1988 fuel economy level.

Ford: As discussed above, while at the time of the NPRM the agency believed that Ford might be able to achieve a MY 1988 CAFE level of as high as 21.8 mpg, the company now projects a CAFE level of 20.2 mpg to 20.8 mpg. The agency's analysis indicates that virtually all of the decline in Ford's CAFE was due to reasons beyond that company's control. The bulk of the decline in Ford's projected MY 1988 CAFE level is attributable to lower-than-anticipated fuel economy levels for the 4.9 liter fuel injection program. Given the aggressive fuel economy goals of the program when it was approved, the agency does not consider it surprising that the

goal has not been, and is not likely to be, fully attained. More stringent EPA emissions requirements also added to the difficulty of meeting the original fuel economy goal. The only significant change in Ford's MY 1988 product plan that reduced its projected CAFE was the deletion of a certain confidential technological change due to durability concerns. The agency concurs with Ford's concern about this particular issue.

The agency does not consider it likely that Ford can achieve the 20.8 mpg upper end of its range of MY 1988 CAFE values. The sales mix included in Ford's 20.8 mpg projection for MY 1988 is comparable to the mix Ford now expects for MY 1986. The agency believes that Ford's actual MY 1988 sales mix could experience some further shift toward larger trucks and engines, should gasoline prices continue to decline. Thus, the agency agrees with Ford's assessment that it faces mix shift risks of 0.3 to 0.5 mpg. As discussed above, Ford also faces technological risks of 0.3 mpg. Taking all of these risks into account, Ford's maximum achievable CAFE could be as low as 20.0 mpg. The agency believes it likely that some but not all of these risks will occur and concludes that Ford's MY 1988 capability does not exceed 20.5 mpg.

The agency has also evaluated Ford's 2WD and 4WD fuel economy capabilities. Since the company's projected 2WD CAFE is higher than those projected by Chrysler, GM and AMC, the agency did not focus on Ford in establishing the separate 2WD standard. Ford's 4WD projection is slightly lower than those projected by Chrysler, GM and AMC. With the consideration of the risks to Ford's projected 2WD CAFE, the agency concluded that company's 2WD CAFE does not exceed 21.0 mpg.

As with GM, NHTSA concludes that there is insufficient leadtime for Ford to introduce additional new programs or technologies to increase its MY 1988 CAFE.

AMC: AMC projects that its 4WD CAFE will decline from 20.0 mpg for MY 1986 to 19.3 mpg for MY 1988. In analyzing AMC's fuel economy capability, NHTSA looked closely at the changes that are projected to lower that company's CAFE. The agency has concluded that certain changes related to that company's efforts to reduce product complexity, in an effort to improve its profitability, could be reversed within available leadtime, thereby raising AMC's 4WD CAFE by 0.2 mpg. The agency has also concluded that AMC could take certain development and refinement actions that would raise its 4WD CAFE by 0.1 mpg to 0.2 mpg. The agency therefore concludes that AMC's MY 1988 4WD CAFE could be as high as 19.7 mpg.

NHTSA believes that AMC faces some mix shift risks, as well as risks that it may not be able to achieve all of the additional gains identified by the agency's analysis. Because the agency believes that some but not all of these risks will occur, it concludes that 19.5 mpg is that company's maximum 4WD fuel economy capability. The agency concludes that there is insufficient leadtime for AMC to introduce additional new programs or technologies to increase its MY 1988 CAFE.

Other Federal Standards

A. Safety Standards

As discussed by the NPRM, several recent and proposed changes in Federal safety requirements may affect CAFE. These include several amendments to NHTSA's lighting standard, which permit reductions in aerodynamic drag and slight weight savings; an amendment to the agency's occupant crash protection standard to promote the comfort and convenience of safety belts, and a proposal to extend the applicability of the agency's standard concerning steering control rearward displacement to additional light trucks.

The NPRM stated that while the agency has estimated that passenger car fuel economy could be increased by 0.4 to 0.9 percent by using aerodynamic headlamps, it is likely that the potential fuel economy improvement for light trucks by adoption of this feature is less. The reason for this is that the basic shape of light trucks is often dictated by load carrying capability or other functional attributes, thereby making it more difficult to reduce aerodynamic drag. Ford commented that it agrees with the agency's conclusion in the PRIA that the potential for CAFE improvement from vehicle aerodynamics is minimal due to the higher frontal area and drag coefficients inherent in light trucks compared with passenger cars. GM commented that aerodynamic headlamps will not have an impact on light truck CAFE in the 1988-89 timeframe. That company also noted that truck designs which included improved aerodynamics through the use of lower profile headlamps and more rounded sheet metal were not well received by the public in recent design clinics.

The NPRM cited the PRIA's conclusion that the effect of the comfort and convenience requirements on light truck CAFE will be negligible, since both

the number of affected vehicles and weight impact are small. GM and Ford agreed that these requirements will not significantly affect CAFE.

With respect to the proposal to extend the applicability of the agency's standard on steering control rearward displacement, the NPRM cited the PRIA's similar conclusion that CAFE would not be significantly affected since the number of affected vehicles is believed to be small and the required modifications minimal. GM disagreed with this conclusion, stating that the standard would primarily affect the older model lines in its fleet and that significant mass increases may result from required vehicle changes. That company stated that the magnitude of the mass increases associated with the vehicle changes has not been determined, but may be relatively large and could negatively affect CAFE. Ford commented that the Econoline is its only vehicle anticipated to have significant potential for weight increase due to this proposal. It stated that since baseline testing has not been completed, specific corrective actions have not been identified and the weight effect of these changes remains an open issue. NHTSA currently anticipates that any final rule concerning this proposal would have an effective date of September 1, 1988, or later and therefore should not impact manufacturers' MY 1988 CAFE levels significantly, if at all. The agency will address these comments to the extent necessary in establishing the MY 1989 light truck fuel economy standards.

B. Evironmental Standards

The NPRM cited several final and proposed changes in environmental standards which may affect CAFE.

The Environmental Protection Agency (EPA) published a proposal on July 1, 1985 (50 FR 27188) to provide test adjustment credits to light truck manufacturers for changes made in test procedures. Assuming that EPA's final rule is along the lines of the proposal, the rulemaking is not likely to have any significant effect on the manufacturers' projections discussed above.

The EPA requirement for control of diesel particulate matter becomes more stringent in MY 1987. NHTSA's NPRM noted that in the preamble to the final rule establishing MY 1987 light truck fuel economy standards, the agency concluded that any impact of the diesel particulate requirement on fuel economy would be very small, i.e., much less than 0.1 mpg. GM commented that the standard will have a negative impact on its CAFE but that the impact will be small since diesel sales have declined. According to that company, the maximum impact on its MY 1988 CAFE is estimated to be 0.05 mpg. AMC commented that more stringent standards are reducing diesel engines, not solely because of technological difficulties, but because with the low sales volume it would be impossible to recover the engineering costs associated with development of control systems. That company argued that the impact on CAFE of a more stringent emissions standard is the total removal of a fuel-efficient engine from the market, not just an incremental loss in fuel economy due to meeting more stringent standards. After analyzing the comments, the agency continues to believe that there will be little CAFE effect from the more stringent particulate standard since manufacturers do not plan on offering significant volumes of diesel engines that would require changes. The agency agrees with AMC that when volumes for an engine family drop below certain levels, it may become economically unattractive to spend the money necessary to certify compliance with the emissions standards. However, this is a business decision and not a direct result of the more stringent requirements to control emissions.

The EPA requirement for control of oxides of nitrogen (NOx) becomes more stringent in MY 1988. As noted in NHTSA's NPRM, EPA estimates that with the use of three-way catalyst technology, there will be no net loss in fuel efficiency and possibly even small gains. Moreover, since the EPA regulation provides for averaging compliance with the more stringent particulate standard and the oxides of nitrogen standard, manufacturers have greater flexibility to help ensure that there are little or no attendant fuel economy penalties.

GM commented that the recalibration required to meet the 1988 NOx standard decreases its light truck CAFE 0.3 mpg to 0.35 mpg from the level attainable if the standard were not changed. The company stated that this reduction assumes across-the-board use of closed loop throttle body injection and three-way catalysts for gasoline vehicles, and has been factored into its CAFE projections. Ford stated that it does not believe that EPA's overall assessment that there will be no net loss in fuel efficiency associated with the NOx standards is applicable to its vehicles. Ford argued that paired fuel economy data from its MY 1985 Federal and California vehicles show a fuel economy penalty of 1.3 percent to 5.3 percent (0.4 to 1.2 mpg) between the versions having the same control technologies. (California vehicles were required to meet a MY 1985 NOx

standard that was more stringent than either the current or MY 1988 Federal standard.) According to that company, these data are consistent with its conclusion presented earlier to the agency that a light truck fuel economy penalty of 0.5 mpg may be encountered from the new Federal standard. Ford stated that a reassessment of its 1988 capabilities indicates a fuel economy penalty of about 0.2 mpg for its fleet, and that it still anticipates some degree of risk that the penalty is understated. That company also stated that it does not see any benefit in using the NOx averaging concept adopted by EPA in light of the restrictions imposed by the conditional certificates of conformity and the engine family emission limits provisions. Ford stated that it had included a fuel economy penalty of 0.2 mpg in its MY 1988 projection.

NHTSA believes that GM's and Ford's arguments about a fuel economy penalty associated with the more stringent NOx standards are consistent with EPA's position presented in the NPRM. That position is that with the use of three-way catalyst technology, the new NOx standard will not cause any net loss in fuel efficiency, compared to the fuel efficiency levels under the current NOx standard. There might even be small gains as a result of the new standard. The losses to which GM and Ford refer are actually "gains foregone" in the context of EPA's analysis, i.e., the loss is the difference in fuel economy capability of a closed loop three-way catalyst system calibrated to meet the current and new NOx standards. Thus, by adopting three-way catalyst technology, the manufacturers avoid any losses in fuel economy associated with the new NOx standards but do not achieve the gains that would be associated with such technology in the absence of the new standards. AMC commented that other emission-related considerations are the increase in the useful life interval, limited maintenance intervals, and warranty liability. That company argued that because of these restrictions, manufacturers must reduce compliance/warranty risks by utilizing current technology with proven durability in the field. AMC stated that this has a direct effect on decisions to adopt newer fuel-efficient technology, especially for the lower volume manufacturers, until after the technology has proven its durability in the field for 11 years/120,000 miles. AMC did not provide any data concerning how these types of considerations affect its CAFE. As a general matter, NHTSA believes it would be inappropriate to assume that manufacturers need to wait 11 years before deciding to adopt new technology for purposes of emissions and/or fuel economy.

NHTSA is not aware of any plans on the part of EPA to promulgate noise regulations applicable to MY 1988 light trucks and therefore does not anticipate any attendent fuel economy penalties.

GM and Ford cited several other standards which could potentially affect CAFE after MY 1988. The agency will address those comments to the extent necessary in establishing the MY 1989 light truck fuel economy standards.

Need to Conserve Energy

Since 1975, when the Energy Policy and Conservation Act was passed, this nation's energy situation has changed significantly. For example, oil markets have been deregulated and the Strategic Petroleum Reserve has been established.

In 1977, the United States imported 46.4 percent of its oil needs and the value of imported crude oil and refined petroleum products was $67 billion (stated in 1984 dollars). While the import share of total petroleum demand declined after that year, the cost continued to rise to a 1980 peak level of $93.2 billion (1984 dollars). By 1985, the import share had declined to 28.7 percent at a cost of $48.3 billion.

Moreover, imports from OPEC sources have declined, from a high of 6.2 million barrels per day and 70.3 percent of all imports in 1977 to 1.8 billion barrels per day and 36.2 percent of imports in 1985. As imports have shifted to non-OPEC sources, such as Mexico, Canada and the United Kingdom and as this country builds up its strategic stockpile, the United States' petroleum market has become less vulnerable to the political instabilities of some OPEC countries, as compared to the situation in the mid-1970's.

Overall, the nation is much more energy independent than it was a decade ago, when Congress established the fuel economy standards program. From 1975 to 1984, energy efficiency in the economy improved by 21 percent (*1984 Annual Energy Review,* Energy Information Administration (EIA), U.S. Department of Energy, p. 47). Domestic oil production is higher than it was in 1975, total imports have dropped 18 percent since then, the value of the nation's imported oil bill has declined 35 percent in the last five years, and the amount of imported oil from OPEC has dropped by 71 percent since the peak of 1977. As a percentage share of GNP, the net oil import bill fell from 2.8 percent in 1980 to 1.2 percent in 1985. Future trends, as history has demonstrated, are subject to great uncertainty. However, the price of oil is now fully decontrolled, permitting consumers to make choices in response

to market signals and allowing the market to adjust quickly to changing conditions. The Strategic Petroleum Reserve now contains approximately 500 million barrels that can be used to ameliorate the effect of supply interruptions. Thus, by any measure, the nation is in a stronger, and more efficient, energy position than it was a decade ago.

GM's comment on the NPRM stated that the effect of "the deregulation of the oil industry and the existence of the Strategic Petroleum Reserve as well as continued conservation and the development of alternative energy sources, such as methanol, has been to place the U.S. in a much more secure energy position." That commenter urged that it is "important that NHTSA take these developments into account in explaining the 'need of the nation to conserve energy.'"

Chrysler commented that it believes that the need to conserve petroleum-based energy should remain a national priority, despite the transient period of falling fuel prices we are now experiencing. That company stated that there is every reason to expect that oil will again be in short supply, even within the lifetime of vehicles produced in the 1988-89 models years.

The Center for Auto Safety commented that the nation is facing a future of greater reliance on imported petroleum to fuel a vehicle fleet which includes an increasing share of light trucks. That organization argued that the Iraq-Iran war and other Middle East instabilities continue to threaten our national security, and cited a study by the National Academy of Sciences noting that the oil in the Strategic Petroleum Reserve will equal a decreasing number of days supply in future years.

Since the NPRM was prepared, world oil prices have dropped precipitously, from $28 to $30 a barrel late last year to close to $10 a barrel this year in some cases. While the fall in oil prices offers significant benefits to consumers and other users of oil, it may also result in decreased domestic production and increased reliance on foreign imports. The most recent available long term projections by EIA and Data Resources, Inc. (DRI), which are based on late 1985 data, indicate that domestic production could decline from a stable level of 10.6 MMB/D to about 8.2 MMB/D by 1995, and net imports could rise from 4.2 MMB/D to about 7.7 (EIA) to 9.1 (DRI) MMB/D by 1995. If this occurred, imports could reach 50 percent of U.S. petroleum use by 1995. As noted by the NPRM, however, experience has shown that future projections about petroleum supply, prices and imports are subject to great uncertainty.

MY 1988 light trucks meeting the 20.5 mpg standard established by this rule will be more fuel-efficient than the average vehicle in the current light truck fleet in service, thus making a positive contribution to petroleum conservation. Further, the agency believes that many of the changed conditions since 1975, including decontrol of oil, establishment of the Strategic Petroleum Reserve, and diversification of the sources of oil imports, ensure that the nation will remain in a strong energy position, even if imports should rise to earlier levels.

Determining the Maximum Feasible Average Fuel Economy Level

As discussed above, section 502(b) requires that light truck fuel economy standards be set at the maximum feasible average fuel economy level. In making this determination, the agency must consider the four factors of section 502(e): technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy.

A. Interpretation of "Feasible"

Based on dictionary definitions and judicial interpretations of similar language in other statutes, the agency has in the past interpreted "feasible" to refer to whether something is capable of being done. The agency has thus concluded in the past that a standard set at the maximum feasible average fuel economy level must: (1) be capable of being done and (2) be at the highest level that is capable of being done, taking account of what manufacturers are able to do in light of available technology, economic practicability, how other Federal motor vehicle standards affect average fuel economy, and the need of the nation to conserve energy. In this rulemaking, as in earlier rulemakings, NHTSA has considered and weighed all four statutory factors of section 502(e) and has not merely adopted a level based on what was technologically capable of being done.

B. Industrywide Considerations

The statute does not expressly state whether the concept of feasibility is to be determined on a manufacturer-by-manufacturer basis or on an industrywide basis. Legislative history may be used as an indication of congressional intent in resolving ambiguities in statutory language. The agency believes that the below-quoted language provides guidance on the meaning of "maximum feasible average fuel economy level."

The Conference Report to the 1975 Act (S. Rep. No. 94-516, 94th Cong., 1st Sess. 154-5 (1975)), states:

> Such determination (of maximum feasible average fuel economy level) should therefore take industrywide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic manufacturers that currently exist, and the possible implications for the national economy and for reduced competition association (sic) with a severe strain on any manufacturer. . . .

It is clear from the Conference Report that Congress did not intend that standards simply be set at the level of the least capable manufacturer. Rather, NHTSA must take industrywide considerations into account in determining the maximum feasible average fuel economy level. The focus, thus, must be on the manufacturers' collective ability to meet a standard, rather than any particular manufacturer's ability to meet it.

NHTSA has consistently taken the position that it has a responsibility to set light truck standards at a level that can be achieved by manufacturers whose vehicles constitute a substantial share of the market. See 49 FR 41251, October 22, 1984. The agency did set the MY 1982 light truck fuel economy standards at a level which it recognized might be above the maximum feasible fuel economy capability of Chrysler, based on the conclusion that the energy benefits associated with the higher standard would outweigh the harm to Chrysler (45 FR 20871, 20876; March 31, 1980). However, as the agency noted in deciding not to set the MY 1983-1985 light truck standards above Ford's level of capability, Chrysler had only 10-15 percent of the light truck domestic sales, while Ford had about 35 percent. (45 FR 81593, 81599; December 11, 1980).

C. Setting the MY 1988 Standards

Based on the analysis described above and on manufacturer projections, the agency concludes that manufacturers can achieve the combined fuel economy levels in the following table:

Manufacturer	*Approximate Market Share*	*Combined CAFE*
Chrysler	13%	21.5 mpg to 22.3 mpg
GM	33%	20.8 mpg to 21.1 mpg
Ford	25%	20.5 mpg
AMC	5%	*19.9 mpg
Volkswagen	0.5%	19.1 mpg
Lands less than	0.01%	16.9 mpg

* AMC's MY 1988 combined projection, unadjusted for the additional 4WD fuel-economy improving actions identified by NHTSA's analysis.

As indicated above, foreign manufacturers other than Volkswagen only compete in the small vehicle portion of the light truck market and are therefore expected to achieve CAFE levels well above GM, Ford and Chrysler, which offer full ranges of light truck models.

NHTSA has concluded that among the manufacturers with a substantial share of combined light truck sales, Ford is the least capable manufacturer, with a maximum MY 1988 combined fuel economy capability no higher than 20.5 mpg. While AMC has a lower combined capability than Ford, due to AMC's model mix being heavily weighted toward 4WD vehicles, AMC does not have a substantial share of combined light truck sales. Further, the agency has again adopted the approach of setting optional separate 2WD and 4WD standards in light of model mixes that are heavily weighted toward 4WD vehicles. Since, as discussed below, AMC can meet both the 2WD and 4WD standards, it is unnecessary for it to be able to meet the combined standard.

NHTSA has concluded that 20.5 mpg is the maximum feasible combined standard for the 1988 model year. This level balances the potential petroleum savings associated with higher standards against the difficulties of individual manufacturers facing potentially higher standards.

The setting of maximum feasible fuel economy standards, based on consideration of the four required factors, is not a mere mathematical exercise but requires agency judgment. In setting the MY 1988 standards, the agency believes that the current plummeting of gasoline prices affects both the benefit of differing levels of average fuel economy standards and the difficulties of individual auto-

mobile manufacturers facing higher standards, i.e., both of the considerations NHTSA must balance in setting maximum feasible standards taking industrywide considerations into account. (See the language of the Conference Report quoted above.)

The main benefit from setting higher fuel economy standards is the potential additional petroleum savings which would result. Since rapidly falling gasoline prices result in reduced consumer demand for higher fuel economy, individual manufacturers whose maximum fuel economy capabilities may be above the level of the industrywide standard may have less incentive to achieve their maximum capabilities. This may explain GM's business decision to cancel some technological programs to improve fuel economy and Chrysler's current reconsideration of its product mix for future model years. There may, of course, be counterbalancing motivations for achieving higher fuel economy, such as a need or desire to earn credits for exceeding fuel economy standards.

The 20.5 mpg standard will be challenging for Ford, without causing significant economic distortion, and act as an incentive for that company to achieve its maximum fuel economy capability. Since Ford produces more than 25 percent of all light trucks subject to fuel economy standards, a standard set at its level can make a substantial contribution to petroleum conservation.

NHTSA believes there are serious questions whether a standard set at a level above Ford's capability would be consistent with the requirement that standards be set taking industrywide considerations into account, given that company's more than 25 percent market share. Even if the MY 1988 standard could be set at a level above Ford's capability, however, the agency believes that it clearly could not be set above both Ford's and GM's capabilities, since those companies' combined market share approaches 60 percent. As noted previously, the agency's estimate of GM's maximum capability for MY 1988 is 20.8 to 21.1 mpg. Thus, any higher standard than 20.5 mpg could not exceed that range.

The precise effects on petroleum conservation of a standard set at GM's projected capability are uncertain, although the effects can be bounded. The maximum theoretical additional energy savings associated with a standard set at that higher level can be determined by comparing hypothetical situations where GM and Ford would have combined average fuel economy levels of 21.0 mpg versus 20.5 mpg. Since most other manufacturers in the industry project MY 1988 CAFE above that of GM's capability, a standard set at 21.0 mpg would not be expected to affect the petroleum consumption of trucks manufactured by that part of the industry. The difference in total gasoline consumption between these two hypothetical situations, over the *lifetime* of the MY 1988 fleet, would be 419 million gallons. The maximum yearly impact on U.S. gasoline consumption would be 48.3 million gallons, or roughly five hundredths of one percent of total motor vehicle gasoline consumption.

The agency believes, however, that any actual gasoline savings associated with a higher standard would be much less. While GM would have an added incentive to achieve its maximum fuel economy capability, it is not clear in light of possible carryforward/carryback credits whether this would actually occur. Ford could not likely improve its CAFE other than by restricting sales of its larger light trucks and engines. To the extent that would-be purchasers of such vehicles and engines transferred their purchases to GM and Chrysler without those companies otherwise changing their product plans, there could be little or no effect on petroleum consumption.

While the agency recognizes that a higher standard could have some effect on gasoline consumption, it concludes that the effect would be much less than the theoretical maximum noted above and could be negligible.

A higher standard than 20.5 mpg could result in serious economic difficulties for Ford. NHTSA believes that the first potential fuel-efficiency enhancing actions that Ford or any other manufacturer would consider in response to a higher standard would primarily consist of marketing actions. For the reasons discussed earlier in this notice, however, the agency does not believe that marketing actions can be relied upon to significantly improve fuel economy. Assuming that such marketing actions were unsuccessful in whole or in part, Ford would likely have to engage in product restrictions, including limiting the sales of larger engines and/or vehicles to improve its fuel economy. Such product restrictions could result in adverse economic consequences for Ford, its employees, and the economy as a whole and unduly limit consumer choice, especially with regard to the load carrying needs of light truck purchasers.

The agency believes that the current situation of plummeting gasoline prices can create significant difficulties for individual manufacturers facing higher CAFE standards. As gasoline prices fall, con-

sumer demand shifts toward larger vehicles and more powerful engines. While the magnitude of such shifts is limited to some extent by the fact that trucks are purchased largely with respect to work-performing capabilities, lower gasoline prices can nonetheless result in mix shifts which lower manufacturers' CAFE. The large magnitude of the recent drop in gasoline prices makes it particularly difficult for manufacturers such as Ford to attempt to use marketing efforts to overcome such shifts in consumer demand.

Given Ford's more than 25 percent share of the light truck market, its capability has a significant effect on the level of the industry's capability and, therefore, on the level of the standards. The agency believes that for Ford, the 20.5 mpg standard balances the potentially serious adverse economic consequences associated with market and technological risks against that company's opportunities as the least capable manufacturer with a substantial share of sales. The agency concludes, in view of the statutory requirement to consider several factors, that the relatively small and uncertain energy savings associated with setting a standard above Ford's capability would not justify the economic harm to that company and the economy as a whole.

The agency recognizes that a 20.5 mpg standard is above the capabilities of Volkswagen and Lands Motor Company. Given the limited remaining leadtime for both companies and the limited financial resources of Lands, the agency does not believe that either company could change its product plans to meet the 20.5 mpg standard. In the absence of some type of alternative light truck standard which these companies could meet (an issue which is addressed further below), the companies would therefore be limited to two options: paying the statutory penalties associated with failure to comply with fuel economy standards (to the extent credits are not available) or drastic product actions which, in the case of Lands, could include ceasing production. While the agency appreciates these difficulties, it also concludes that establishment of a standard less than 20.5 mpg would reduce or eliminate the incentives for Ford to achieve its maximum capability and essentially render meaningless any impact the light truck CAFE program has on petroleum conservation. Given that Volkswagen and Lands Motor Company together represent less than one-half of one percent of the light truck market and in light of the above factors, NHTSA believes that it would be inappropriate to set industrywide standards based on these manufacturers' capabilities. In light of the statutory criteria, NHTSA concludes that the petroleum savings associated with the 20.5 mpg standard outweigh the difficulties to these two companies.

A combined standard of 20.5 mpg was supported by some manufacturers. Ford's comment on the NPRM recommended a MY 1988 standard of 20.5 mpg. Ford noted that although the level of its recommended standard is higher than the low end of its estimated capability when all potential risks are taken into account, it believes that the 20.5 mpg level represents a reasonable balancing of the risks and opportunities facing the company and, therefore, reflects its best estimate of Ford's maximum feasible average fuel economy capability. Chrysler stated that given the present circumstances and uncertainties, it would not object if the agency sees fit to carry over the present 1987 light truck CAFE standard of 20.5 mpg to MY 1988.

GM commented that due to such uncertainties as potential further mix shifts and increased imports, beyond what it is currently projecting, a 20.5 mpg standard might be too stringent. That company stated that if its current forecasts prove to be unduly optimistic, it would then have to either petition for a lower standard or resort to product restrictions with attendant layoffs and negative impact on the economy in order to remain in compliance.

NHTSA disagrees with this comment of GM. As discussed above, the agency has concluded that GM can take additional technological actions beyond what it is now planning to achieve, a MY 1988 CAFE of 20.8 mpg to 21.1 mpg. If that company now believes that there is a significant question concerning whether its current product plan can meet the 20.5 mpg standard, it can take the additional technological actions to ensure compliance. Moreover, as GM stated elsewhere in its comment and as noted above, product restrictions would occur only after incentives and available credits had been applied.

The Center for Auto Safety (CFAS) urged that the MY 1988 standard be set at 23.5 mpg. That commenter's request appears to have been based on the manufacturers' projections cited in the NPRM, on its assertion that the manufacturers' projections are "considerably below true manufacturing potential," and on its contention that changing market conditions will help light truck fuel economy rather than cause it to deteriorate, as the percentage sales of compact and more fuel-efficient light trucks is expected to increase. CFAS also argued that GM and Ford have had at least five years leadtime to

introduce new models and technologies for the 1988 standard.

NHTSA disagrees with CFAS's arguments supporting a 23.5 mpg standard. The agency's analysis of changes in the manufacturers' projections is fully discussed above. CFAS did not support its allegation concerning manufacturers' projections being below true manufacturing potential, other than to reference a comment it has made in the agency's ongoing passenger automobile fuel economy rulemaking. The agency has analyzed the data underlying the manufacturers' light truck CAFE projections and has no reason to give this allegation any credence. While it is true that the percentage sales of compact light trucks is expected to increase, the agency agrees with a comment by Ford that this shift is unlikely to cause any significant increase in its CAFE because estimated sales of its products are heavily weighted toward the larger vehicles. As stated by that company, significantly increasing its share of the compact truck market beyond projections would be difficult, since the Japanese manufacturers have emphasized that market. Ford also pointed out that competitive reports indicate that competition is expected to intensify in that market as the Japanese work to strengthen their market share at the expense of the domestic manufacturers. NHTSA also disagrees with CFAS's argument that GM and Ford have had at least five years leadtime for the 1988 standard. Unlike the situation with passenger automobile fuel economy standards, where a 27.5 mpg standard is in place indefinitely unless it is amended by the agency, no light truck fuel economy standard is in place until it is established by the agency.

As in past years, the agency has decided to continue setting 2WD and 4WD standards as an alternative to the combined standard. Separate 2WD/4WD standards allow manufacturers greater flexibility in planning to meet CAFE standards and do not discriminate against firms with truck fleets heavily weighted toward 4WD models.

NHTSA has concluded that AMC and GM are the least capable manufacturers with substantial shares of 4WD light trucks, and has focused on these manufacturers' capabilities in establishing the separate 4WD standard. As discussed earlier in the notice, the agency concluded that 19.5 mpg is AMC's maximum 4WD fuel economy capability and that GM's 4WD fuel economy capability could be as high as 19.5 mpg. The final 4WD standard is being established at 19.5 mpg.

AMC has traditionally been the manufacturer primarily concerned about separate standards due to the high percentage of 4WD light trucks in its fleet. AMC requested in its comment that the 4WD standard be set at 19.0 mpg. NHTSA has concluded, however, that AMC can achieve a MY 1988 4WD CAFE of 19.5 mpg by making relatively minor changes in its product plan and thereby meet the 19.5 standard. While the agency recognizes that the 19.5 mpg standard will be challenging for AMC, it believes that it is appropriate under the statutory requirement for "maximum feasible" standards.

The agency notes that Chrysler has a lower 4WD fuel economy capability than GM, AMC, or Ford. Chrysler projects that its 4WD CAFE could be as low as 17.4 mpg. However, in 1985, Chrysler's share of the 4WD market was less than five percent. Thus, that company did not have a substantial share of 4WD light truck sales. Moreover, since Chrysler can meet the combined standard, it is unnecessary for it to be able to meet the separate standards.

NHTSA has concluded that Ford is the least capable manufacturer with a substantial share of 2WD light trucks, and has focused on that manufacturer's capabilities in establishing the separate 2WD standard. As discussed earlier in the notice, the agency concluded that Ford's maximum 2WD fuel economy capability is 21.0 mpg. The final 2WD standard is being set at 21.0 mpg.

AMC requested in its comment that the 2WD standard be set at 20.3 mpg. The company projects its MY 1988 2WD CAFE at 21.3 mpg. NHTSA has concluded, based on its analysis of that company's projection, underlying product plan, and expected market conditions, that AMC can meet the 2WD separate standard of 21.0 mpg.

Volkswagen suggested as an alternative to establishing a combined standard within its capability that the agency consider alternate special consideration for limited product line truck manufacturers. In establishing the MY 1980-81 light truck CAFE standards, the agency did establish a separate standard in light of International Harvester's (IH) limited product line. (See 43 FR 11995, March 23, 1978.) The agency noted that IH had unique problems given its limited sales volume, restricted product line, the fact that its engines were derivatives of medium duty truck (above 10,000 pounds GVWR) engines, and the fact that it did not have experience with state-of-the-art emission control technology which the other manufacturers had obtained in the passenger automobile market. The agency emphasized, however, that the separate class

was being established for only two model years' duration, concluding that IH should be able to achieve levels of fuel efficiency in line with other manufacturers within that time period either through purchasing engines from outside sources or by making improvements to current engines. The agency does not believe that Volkswagen's situation is similar to that of IH. While IH's difficulties were related to being newly subject to the fuel economy program, Volkswagen's CAFE difficulties are not. Moreover, establishing a separate standard for Volkswagen would be outside the scope of notice of the NPRM.

The agency will address Lands Motor Company's petition requesting a separate fuel economy standard for its precedent model in a separate notice.

Impact Analyses

1. *Executive Order 12291*

The agency considered the economic implications of the fuel economy standards established by this rule and determined that the rule is major within the meaning of Executive Order 12291 and significant within the meaning of the Department's regulatory procedures. The agency believes that many of the changed conditions since 1975, including decontrol of oil, establishment of the Strategic Petroleum Reserve, and diversification of the sources of oil imports, ensure that the nation will remain in a strong energy position, even if imports should rise to earlier levels. The agency believes also that the standards established by this notice can be met without significant economic distortion. The agency's detailed analysis of the economic effects is set forth in its regulatory impact analysis. The contents of that analysis are generally described in the above sections of this preamble.

2. *Environmental Impacts*

The agency has analyzed the potential environmental impacts of these light truck fuel economy standards in accordance with the requirements of the National Environmental Policy Act of 1969 and concluded that the rule it is adopting will not significantly affect the human environment. An Environmental Assessment (EA) was prepared and placed in the public docket in conjunction with the NPRM and made available to the public for comment. The EA analyzed the potential environmental effects for the range of standards proposed by the NPRM. The EA stated that the agency expected to make a finding that the rulemaking would not have a significant impact on the human environment. No comments were received on the EA.

As indicated in the EA, any fuel savings that might have resulted from the establishment of standards at the high end of the proposed range would have been minimal. With respect to any possible effects on air pollution, the agency notes that a recent letter to NHTSA from the Environmental Protection Agency (EPA), in another fuel economy rulemaking, discussed a number of considerations concerning why little change in air quality can be expected from different levels of fuel economy standards. (Docket No. FE-85-01, Notice 2, Item 121.) Among other things, the letter indicated that exhaust emissions will not change because EPA mobile source standards for oxides of nitrogen (NOx), carbon monoxide (CO), and hydrocarbons (HC) are expressed in grams/mile. While the EPA mobile source standard for lead (Pb) is expressed in grams per gallons of gasoline, compliance with that standard would not be affected by a change in fuel consumption because MY 1988 light trucks must use unleaded fuel. NHTSA concludes that little change in air quality is expected as a result of the adoption of these regulations.

Based on all available information, including the analysis presented in the EA, the agency has determined that this rulemaking action will not have a significant effect upon the environment. The agency is therefore making a finding of no significant impact (FONSI).

3. *Facts on Small Entities*

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking action will have on small entities. I certify that this action will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. Only one light truck manufacturer, Lands Motor Company, might be classed as a "small business" under the Regulatory Flexibility Act. In the case of small businesses, organizations and governmental units which purchase light trucks, those entities which purchase a 1988 truck might achieve again in fuel economy as compared to a situation in which there was no standard. The cost impact of this rulemaking action is not high enough to reduce the ability of these groups to purchase new vehicles.

Department of Energy Review

In accordance with section 502(j) of the Act, the agency has submitted this rule to the Department of Energy for review. The Department made no unaccommodated comments.

List of Subjects in 49 CFR Part 533

Energy conservation, Gasoline, Imports, Motor vehicles.

PART 533—[AMENDED]

In consideration of the foregoing, 49 CFR Part 533 is amended as follows:

1. The authority citation for Part 533 continues to read as follows:

Authority: 49 U.S.C. 1657; 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

2. Table II in § 533.5(a) is revised to read as follows:

S533.5 Requirements

(a) * * *

TABLE II

	Combined standard		*2-wheel drive light trucks*		*4-wheel drive light trucks*	
Model Year	*Captive imports*	*Others*	*Captive imports*	*Others*	*Captive imports*	*Others*
1982	17.5	17.5	18.0	18.0	16.0	16.0
1983	19.0	19.0	19.5	19.5	17.5	17.5
1984	20.0	20.0	20.3	20.3	18.5	18.5
1985	19.5	19.5	19.7	19.7	18.9	18.9
1986	20.0	20.0	20.5	20.5	19.5	19.5
1987	20.5	20.5	21.0	21.0	19.5	19.5
1988	20.5	20.5	21.0	21.0	19.5	19.5

3. § 533.5(d) is revised to read as follows:

(d) For model years 1982-88, each manufacturer may:

(1) Combine its 2- and 4-wheel drive light trucks (segregating captive import and other light trucks) and comply with the combined average fuel economy standard specified in paragraph (a) of this section; or

(2) Comply separately with the 2-wheel drive standards and the 4-wheel drive standards (segregating captive import and other light trucks) specified in paragraph (a) of this section.

Issued on:

Diane K. Steed
Administrator

51 F.R. 15335
April 23, 1986

PREAMBLE TO AN AMENDMENT TO PART 533

Light Truck Average Fuel Economy Standards
Model Year 1989
[Docket No. FE-86-01; Notice 3]

ACTION: Final rule.

SUMMARY: This notice establishes new light truck average fuel economy standards for model year 1989. The standards are required to be established at the maximum feasible level under section 502(b) of the Motor Vehicle Information and Cost Savings Act. Based on its analysis, the agency is establishing a combined average fuel economy standard of 20.5 mpg for model year 1989 light trucks. Optional separate standards of 21.5 mpg for two-wheel drive light trucks and 19.0 mpg for four-wheel drive light trucks are also established.

EFFECTIVE DATE: The amendments made by this rule to the Code of Federal Regulations are effective April 3, 1987. The standards are applicable to the 1989 model year.

SUPPLEMENTARY INFORMATION:

Background

On January 24, 1986, NHTSA published in the *Federal Register* (51 FR 3221) a notice of proposed rulemaking (NPRM) on the establishment of light truck average fuel economy standards for model years (MY) 1988 and 1989. The issuance of the standards for those years is required by section 502(b) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2002(b). That provision requires the Secretary of Transportation to set light truck standards at the "maximum feasible average fuel economy level" for each model year after MY 1978. In determining the "maximum feasible" level, the Secretary is directed to consider four factors: technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the Nation to conserve energy. See 15 U.S.C. 2002(e).

The agency's January 1986 NPRM proposed ranges of possible standards for all types of light trucks, with the MY 1988 combined standard to be set within the range of 20.5 mpg to 22.0 mpg, and the MY 1989 combined standard to be set within the range of 20.5 mpg to 22.5 mpg. As a compliance alternative to the combined standard, the agency also proposed separate standards for two- and four-wheel drive vehicles. The agency stated that in view of factual uncertainties, the setting of standards outside the proposed ranges was possible depending on the comments that might be submitted.

NHTSA received comments on the NPRM from General Motors, Ford, Chrysler, American Motors, Volkswagen, the National Automobile Dealers Association (NADA), the Center for Auto Safety (CFAS), numerous employees of light truck manufacturers, dealers, and private individuals.

On April 23, 1986, NHTSA published a final rule in the *Federal Register* (51 FR 15335) establishing light truck fuel economy standards for MY 1988. Based on all available information, including that provided by commenters, NHTSA set the MY 1988 combined light truck fuel economy standard at 20.5 mpg. Optional separate standards of 21.0 mpg for two-wheel drive (2WD) light trucks and 19.5 mpg for four-wheel drive (4WD) light trucks were also established. The agency indicated that a decision would be reached at a later date with respect to the proposed MY 1989 standards.

Summary of Decision for MY 1989

NHTSA has now reached its decision for the MY 1989 light truck average fuel economy standards. Based on its analysis, the agency is establishing a combined average fuel economy standard of 20.5 mpg. Optional separate standards of 21.5 mpg for two-wheel drive (2WD) light trucks and 19.0 mpg for four-wheel drive (4WD) light trucks are also established. The combined standard is at the same level as the MY 1988 standard. The optional 2WD standard is 0.5 mpg higher than the MY 1988 standard, while the optional 4WD standard is 0.5 mpg lower than the MY 1988 standard.

Manufacturer Capabilities for MY 1989

As part of its consideration of technological feasibility and economic practicability, the agency has evaluated the manufacturers' fuel economy capabilities for MY 1989. In making this evaluation, the agency has analyzed manufacturers' current projections and underlying product plans and has considered what, if any, additional actions the manufacturers could take to improve their fuel economy.

A. *Manufacturer Projections*

General Motors: As discussed in the NPRM, General Motors (GM) projected in March 1985 that it could achieve a CAFE level of 23.1 mpg in MY 1989. The agency adjusted that figure downward to 23.0 mpg to correct errors in GM's submission.

The NPRM noted that GM had emphasized the following in its March 1985 submission:

> All estimates and future product plans contained in this submission are but a 'snapshot in time'. As we have stated on a number of occasions . . . , changes in the economic outlook, in fuel availability, in fuel prices or in consumer preference significantly affect GM's CAFE. The unpredictability of the market, the unknown effect of future light duty truck emission regulations and the unproven results of future combinations of technology cause CAFE projections to be . . . tentative . . .

In GM's February 1986 comment on the NPRM, the company lowered its CAFE projection for MY 1989 to a level no higher than 20.9 mpg. By comparison, GM projected at the same time that its MY 1988 CAFE would be no higher than 20.7 mpg.

GM identified nine identifiable causes which had reduced its MY 1989 CAFE by a total of 2.2 mpg. The company also indicated that its CAFE had declined by an additional 0.3 mpg due to certain "miscellaneous" reasons. The decline was partially offset by a certain change in model offerings, which improved GM's CAFE by 0.3 mpg.

Some of the decline in GM's CAFE relates to decisions by that company to cancel or defer certain product changes which it once planned. GM's reasons for not making the changes relate to such concerns as cost, results of market research, and the unavailability of certain motor vehicle equipment it planned to use on some trucks. Other reasons for the decline include achieving less than the expected benefit from certain technological changes, the purchase by consumers of more options than once expected, certain changes to meet consumer demand for higher performance, a change in model offerings, and increased sales of certain larger engines and heavier trucks. GM indicated that 0.2 mpg of the decline is attributable to an error in the March 1985 submission.

(The details of the changes are subject to a claim of confidentiality as confidential business information whose release could cause competitive harm. This is also true with respect to this notice's discussion of the projections of other manufacturers.)

GM's comment on the NPRM indicated that uncertainties such as the future price of fuel, small truck sales by foreign competitors and potential less-than-anticipated gains through the use of technology could result in its MY 1989 CAFE level being below its current projection of 20.9 mpg.

GM presented three possible scenarios to illustrate how factors such as these could influence its MY 1989 CAFE. The first scenario assumed constant rather than rising fuel prices and an economic outlook which reflects the former price pattern instead of the latter. While GM's basic MY 1989 CAFE projection assumed that fuel prices (in constant 1984 dollars) would gradually rise from $1.09 in MY 1987 to $1.16 in MY 1989, that company's alternative scenario assumed that fuel prices would remain at $1.09 for all three model years. According to GM, there would be a reduced incentive under this scenario for consumers to buy smaller vehicles with more fuel efficient powertrains, and the company would experience a model and powertrain mix change estimated to cause a 0.3 mpg to 0.4 mpg decline in its MY 1989 CAFE projection. GM's second scenario develops that company's sensitivity to an unanticipated increase in import light truck sales above its current forecasts. According to that company, this could result in a 0.3 mpg decline in its MY 1989 CAFE projection. GM's third scenario focuses on the introduction of emission controls which will cause heavy duty engines in trucks over 8500 pounds gross vehicle weight rating (GVWR) to be equipped with catalytic converters and use unleaded gasoline just as the trucks wih lower GVWR's have been. This regulatory change creates the

potential for a shift in consumer purchases from vehicles which are just over 8500 pounds GVWR and thus not subject to the fuel economy standards to vehicles which are between 7000 pounds and 8500 pounds GVWR and within the scope of those standards. According to GM, this potential increase in the sales of the high GVWR light trucks could reduce its CAFE projection below 20.9 mpg by approximately 0.1 mpg.

Ford: As discussed in the NPRM, Ford projected in February 1985 that it could achieve a CAFE level of up to 22.6 mpg in MY 1989. This number was adjusted in the NPRM to 22.3 mpg, however, in light of later technical information provided by Ford. The primary reason for the reduction was that actual test data regarding some programs had indicated smaller fuel economy improvements than projected. While the 22.3 mpg level was similar to that projected by Ford for MY 1988, it was 1.3 mpg higher than that company's projection for MY 1987. The NPRM noted that 0.4 mpg of the increase was attributable to mix shifts toward more fuel-efficient vehicles, which the agency considered unlikely given the recent and then expected continued declines in gasoline prices. Thus, if these mix shifts were deleted, the upper end projection for MY 1989 would be 21.9 mpg.

The NPRM noted that Ford had identified several risks to its MY 1989 projection. These included both technological risks, i.e., risks that technological programs might not achieve expected fuel economy gains, and mix shift risks, i.e., risks that the sales mix of Ford's light truck fleet might shift toward less fuel-efficient vehicles. Ford identified additional technological risks totalling 0.9 mpg and mix shift risks totalling 0.6 mpg, for a total risk of 1.5 mpg. However, the agency had already incorporated 0.7 mpg in technological and sales mix risks in the 21.9 mpg figure, reducing the remaining risk to 0.8 mpg. Thus, if the events creating these risks occurred simultaneously, the lower end figure for MY 1989 would have been 21.1 mpg as of the time of the NPRM.

In Ford's February 1986 comment on the NPRM, the company lowered its CAFE projection for MY 1989 to a level between 20.4 mpg to 21.3 mpg. In explaining its lower projections, Ford stated that "... recent development testing of new hardware and technology has yielded lower levels of fuel economy benefit than had been predicted earlier in the program."

The drop in Ford's MY 1989 CAFE from the 21.9 mpg value used in the NPRM to the company's current maximum projection of 21.3 mpg is attributable to technological reasons. The most significant factor in the decline is a drop in projected fuel economy for Ford's 4.9 liter fuel injection program. A number of small factors, primarily engine calibration issues, explain the remaining decline. Some of the engine calibration changes are being made to ensure compliance with emissions standards.

Ford's 21.3 mpg projection is subject to both further technological risks and mix shift risks. The company identified technological risks of 0.5 mpg, which are related to certain programs possibly not achieving projected fuel economy levels and a delay in introducing a technological improvement. Ford also presented a mix risk scenario in which sales were higher for standard trucks and lower for compact trucks, resulting in a potential 0.4 mpg CAFE loss. Ford's 20.4 mpg to 21.3 mpg range is explained by these risks. The company also indicated that its CAFE could decline an additional 0.2 mpg as a further mix shift risk if gasoline prices remain below $1.00 per gallon on a sustained basis.

Chrysler: As discussed by the NPRM, Chrysler projected in August 1985 that it could achieve a CAFE level of 23.3 mpg in MY 1989. This projection was 2.1 mpg higher than that company's then latest MY 1987 projection and 1.0 mpg higher than its MY 1988 projection. The NPRM stated that the bulk of the improvement would be attributable to technological improvements, especially transmission improvements. The NPRM noted that Chrysler also expected slight mix shifts toward smaller, more fuel-efficient trucks.

In March 1986, Chrysler provided new projections of 20.4 mpg to 21.3 mpg for MY 1987, 21.5 mpg to 22.3 mpg for MY 1988, and 21.8 mpg to 23.3 mpg for MY 1989. The company stated the following:

> There is considerable uncertainty associated with predicting any specific single level of annual CAFE for the 1987–89 time frame because we are in the process of revising our long range plan. For this reason, our new estimates for model years 1987–89 are presented as ranges to

indicate the effects of various marketing alternatives available to Chrysler. The high ends of our ranges represent Chrysler's fuel economy capabilities, given our current product plan. These numbers are similar to those previously submitted to [NHTSA], although 1987 estimates are now much firmer due to actual test data being available. The low ends of the ranges represent results of a new analysis in which it was assumed we would sell our products in a completely free market with no attempt on our part to force the sales mix to a desired fuel economy target.

Both product plans contain the same fuel economy improving technologies and our new Dakota N-Body truck previously described to you. Projected CAFE differences are solely a result of mix shifts. . . Should international economic conditions continue to change, even the low end of these estimates may ultimately require market forcing and/or product limiting actions by Chrysler.

The 23.3 mpg estimate at the high end of Chrysler's projection for MY 1989 is thus the same mix of vehicles and technology as discussed in the NPRM. The 21.8 mpg estimate at the low end of that company's range for MY 1989 is based on mix shifts toward larger, less fuel-efficient trucks.

American Motors: In February 1985, American Motors (AMC) projected a MY 1989 4WD CAFE level of 21.0 mpg to 24.2 mpg, and a MY 1989 2WD CAFE level of 21.5 mpg to 24.2 mpg. These projections, for which no supporting data were provided, were the latest available to the agency at the time the NPRM was issued. The NPRM noted, however, that AMC had recently advised NHTSA that it was revising its projections.

In AMC's February 1986 comment on the NPRM, the company projected that its 4WD CAFE level would be 19.4 mpg for MY 1989, and its 2WD CAFE level 21.3 mpg. These projections would result in that company having a combined CAFE estimate for MY 1989 of 19.9 mpg, which is lower than that of the other domestic manufacturers.

NHTSA's analysis of the reasons for the decline in AMC's projections indicated that the most significant reason for the decline was a decision by that company to introduce a new 4.0 liter six-cylinder engine, beginning in the 1987 model year, to replace the 2.8 liter six-cylinder engine it had been purchasing from GM. The new engine has 50 percent more horsepower and 47 percent more torque than the GM engine.

In September 1986, NHTSA contacted the Environmental Protection Agency to determine whether that agency had MY 1987 certification data for 4.0 liter AMC light trucks. EPA had limited test data on the new engine which indicated that the engine was achieving higher fuel economy levels than AMC had projected in its February 1986 submission. NHTSA then contacted AMC to determine the impact of those higher fuel economy levels on that company's MY 1989 CAFE projections. AMC indicated that, with the revised fuel economy projections for the 4.0 liter engine, its MY 1989 2WD CAFE rises from 21.3 to 22.6 mpg, and its MY 1989 4WD CAFE rises from 19.4 mpg to 20.8 mpg. These revised projections result in a combined projection of 21.3 mpg.

Volkswagen: Volkswagen (VW) currently offers only one light truck model, the Vanagon compact bus. In February 1985, VW projected a CAFE level of 21 mpg through MY 1990. In VW's March 1986 comment on the NPRM, the company provided a MY 1989 CAFE projection of 19.1 mpg. VW stated that, in response to consumer demand, it has had to make performance improvements in the Vanagon vehicles. The company also stated that it has introduced a new 4WD version of the Vanagon, to increase the utility of the vehicle to the consumer.

Other Manufacturers: Foreign manufacturers other than VW compete only in the small vehicle portion of the light truck market and are therefore expected to achieve CAFE levels well above GM, Ford, and Chrysler, which offer full ranges of light truck models.

B. *Possible Additional Actions to Improve MY 1988 CAFE*

There are additional actions which, given sufficient time and resources, manufacturers may be able to take to improve their CAFE above the levels which are currently projected for MY 1989. These actions may be divided into three categories: further technological changes to their product plans (beyond what they are already planning), increased marketing efforts, and product restrictions.

1. *Further Technological Changes*

Ford commented that it is unaware of any new technology which could be executed within avail-

able leadtime to improve its CAFE significantly. Chrysler commented that "(i)t is important to recognize that the leadtime required to implement improvements in engines, transmissions, aerodynamics and rolling resistance, is usually three to four years." That company argued that "as of today, it is too late in the engineering cycle to design, develop, and implement any further major technological CAFE improvements on 1988–89 model year light trucks."

In light of limited leadtime, the agency agrees that it is too late at this time to initiate further major technological improvements. Once a new design is established and tested as feasible for production, the leadtime necessary to design, tool, and test components such as new body sheet-metal subsystems for mass production is typically 22 to 29 months. Other potential major changes, such as those cited by Chrysler, often take longer. Leadtimes for new vehicles are typically at least three years.

There may be sufficient leadtime for manufacturers to make more minor technological changes, such as changes in axle ratios, refinement of engine calibrations, and changes in horsepower. In analyzing specific manufacturer capabilities below, the agency has considered whether manufacturers can make these types of changes.

2. *Increased Marketing Efforts*

As discussed in the NPRM, the agency believes that the ability to improve light truck CAFE by marketing efforts is relatively small. Light trucks are generally purchased for their work-performing capabilities. This is particularly true for the larger, less fuel-efficient light trucks. Since the smaller light trucks cannot meet the needs of many users, the manufacturers' abilities to use marketing efforts to encourage consumers to purchase smaller light trucks instead of larger light trucks are limited.

As a practical matter, marketing efforts to improve CAFE are largely limited to techniques which either make fuel-efficient vehicles less expensive or less fuel-efficient vehicles more expensive. Moreover, the ability of a manufacturer to increase sales of fuel-efficient light trucks depends in part on increasing its market share at the expense of competitors or pulling ahead its own sales from the future. The ability of domestic manufacturers to make such sales increases is also affected by the strong competition in that market from Japanese manufacturers. While Japanese manufacturers currently have an overall combined market share of about 20 percent of light trucks, their share for the smaller, more fuel-efficient pickup trucks is about 50 percent.

The agency also notes that the improved fuel efficiency of all sizes of modern light trucks makes it more difficult to sell the small light trucks on the basis of significant operating cost savings. The reason for this is that there are diminishing returns in terms of fuel economy from purchasing smaller light trucks as the fuel efficiency of larger light trucks increases. The average fuel economy of large pickup trucks rose from 13.1 mpg in 1975 to 18.4 mpg in 1985, and the average fuel economy of large vans rose from 13.1 mpg to 17.5 mpg during this time period. The average fuel economy of small pickup trucks rose from 22.1 mpg to 26.2 mpg, and the average fuel economy of small vans rose from 20.7 mpg to 23.9 mpg. (SAE Paper No. 850550, "Light Duty Automotive Fuel Economy . . . Trends Thru 1985.") The fuel economy of large pickup trucks and van has thus improved more than the fuel economy of small pickup trucks and vans, both in absolute and percentage terms.

Also, as gasoline prices have declined, there are diminishing returns from purchasing more fuel-efficient vehicles. For example, an improvement in fuel efficiency from 20 mpg to 25 mpg at a gasoline price of $1.50 per gallon would save a truck owner about $150.00 per year, assuming 10,000 miles driven annually. However, at a gasoline price of $0.85 per gallon, which more closely reflects today's market, the annual savings drop to about $85.00. The financial savings for smaller changes in fuel economy will, of course, be even lower. Hence, an economically rational consumer will not be as concerned with improving fuel efficiency as gasoline prices decline, making it most difficult for a manufacturer to market its most fuel-efficient vehicles.

A problem with pulling ahead sales is that the manufacturers' CAFE levels for subsequent years are reduced. For example, if a manufacturer increases its MY 1989 CAFE by pulling ahead sales of fuel-efficient light trucks from MY 1990, its MY 1990 CAFE will decrease, compared with the level it would have been in the absence of any pull-ahead sales attributable to marketing efforts. For this reason, a manufacturer cannot continually increase its CAFE simply by pulling ahead sales.

GM commented that "(i)t would be difficult, if not impossible, to predict any gains in CAFE through marketing incentives based on present and future projections of consumer purchasing preferences, particularly in view of the uncertain future of world oil price." Ford commented that "because of the number of competitive entries in the compact segment, potential countering actions by each competitor, and the price/cost advantage of imported models, . . . marketing actions cannot be relied upon to produce the desired effect."

Chrysler commented that "(t)ruck buyers are much more sensitive to functional needs in making their purchase decisions and in many cases they must consider their product selection as a longer term decision than a passenger car customer." That company stated that "(f)uel efficiency must often be downgraded in priority for many truck buyers because vehicle function is often paramount to the purchaser's livelihood." The National Automobile Dealers Association commented that because light trucks are most often purchased for capability and practicability reasons, a decision to buy a larger, more powerful vehicle cannot be changed by marketing incentives. That organization emphasized that there are no available alternatives at any price for a consumer that needs a heavier light truck.

Given all of these factors, the agency does not believe that the domestic manufacturers can significantly improve their CAFE levels by increasing marketing efforts.

3. *Product Restrictions*

As discussed in the NPRM, manufacturers could improve their CAFE by restricting their product offerings, e.g., limiting or deleting particular larger light truck models or larger displacement engines. However, such product restrictions could have significant adverse economic impacts on the industry and the economy as a whole. In the final rule reducing the light truck fuel economy standard for MY 1985, the agency concluded that sales reductions to a manufacturer of 100,000 to 180,000 units, with resulting employment losses of 12,000 to 23,000, "go beyond the realm of 'economic practicability' as contemplated in the Act. . . ." 49 FR 41252, October 22, 1984. These impacts were believed by the agency to be a reasonable projection of the impacts to Ford of restricting the availability of larger trucks and engines in order to achieve a 1.5 mpg average fuel economy benefit.

In addition to the adverse impacts on the automotive industry, a wide range of businesses could be seriously affected to the extent they could not obtain the light trucks they need for business use. Also such product restrictions could run counter to the congressional intent that the CAFE program not unduly limit consumer choice. See H.R. Rep. No. 93–340, 94th Cong., 1st Sess. 87 (1975).

GM commented that CAFE standards that are set at too stringent a level could require full-line manufacturers to consider product restrictions as a last resort. GM stated that this would occur only after incentives had been applied and other reasonable steps taken, including the application of carryforward credits. That company stated that product restrictions would be harmful to the vehicle manufacturer, its employees and suppliers, to the consumer and to the nation's economy. Ford commented that establishing light truck fuel economy standards above manufacturers' capability could result in substantial sales decline, adverse employment effects, and a threat of substantial economic hardship. That company stated that, should the MY 1989 standard be set above its capability, it may be forced to restrict the availability of certain V-8 engines in full-size light trucks, vans, Club Wagons and large utilities, and possibly delete some of its full-size products entirely. The company stated that market research data show that the vehicles that would most likely be restricted are used for a combination of commercial as well as personal uses.

Given all of these considerations, NHTSA concludes that significant product restrictions should not be considered as part of manufacturers' capabilities to improve CAFE.

C. *Manufacturer-Specific Capabilities*

As discussed later in this notice, NHTSA is directed to take "industrywide considerations" into account in setting fuel economy standards. In carrying out this direction, the agency focuses on the capabilities of the least capable manufacturers with substantial shares of light truck sales. In analyzing manufacturer-specific CAFE capabilities for MY 1989, the agency has focused on GM and Ford. Those manufacturers are the two "least capable manufacturers" with substantial shares of combined light truck sales and 2WD sales.

Also, GM is the least capable manufacturer with a substantial share of 4WD sales.

General Motors: As discussed above, while GM projected in March 1985 that it could achieve a combined CAFE level of 23.1 mpg for MY 1989, it now projects a CAFE level no higher than 20.9 mpg. The agency's analysis indicated that some of the reasons for the decline in GM's projected MY 1988 CAFE level were within that company's control. Other reasons for the decline in GM's projected MY 1989 CAFE level were outside the company's control, including changing sales mixes of vehicles and engines due to consumer demand and achieving lower-than-anticipated gains from the introduction of new technologies.

In the final rule for MY 1988, on a similar record, NHTSA concluded that some product plan changes within GM's control that reduced its fuel economy capability could not be reversed within available leadtime. The agency's analysis also concluded that GM could still incorporate certain other of the product actions it identified in its March 1985 submission, thereby improving its CAFE. NHTSA stated the following:

> The agency believes that GM has time to reverse its plans for increasing horsepower and that doing so would not have a significant effect on sales. While GM claimed that this action was necessary to compete in the marketplace, its supporting documentation did not provide a sufficient rationale for the agency to change its conclusion that reversing this action would not result in competitive or other economic harm. Achieving lower horsepower levels would have the effect of increasing GM's CAFE by an additional 0.2 mpg. In addition, GM indicated in its NPRM comments that two other planned actions (the details of which are subject to a claim of confidentiality) will reduce its CAFE by 0.2 mpg. However, the agency believes that those actions can be undertaken without adversely affecting CAFE. 51 FR 15339.

NHTSA thus concluded that GM's MY 1988 CAFE could be as high as 21.1 mpg, although this number was subject to mix shift risks.

While the actions discussed above would raise GM's MY 1988 CAFE by a total of 0.4 mpg, they would raise GM's MY 1989 CAFE by only 0.2 mpg. This is due to different mixes of the affected vehicles for the two model years.

For this final rule, NHTSA has concluded that these actions should not be considered as part of GM's MY 1989 CAFE capability. With respect to GM's decision to increase certain horsepower, the agency has concluded that this is an appropriate market-related action for the purpose of competing with certain vehicles produced by Ford, Chrysler, AMC, Nissan and Toyota. Beginning with MY 1986, Nissan introduced a 3.0 liter V-6 engine of 140 horsepower in its compact pickups, Ford increased the displacement of its V-6 engine to 2.9 liters and raised the horsepower to 140, and Toyota added turbocharging to its 4-cylinder engine to raise the horsepower to 135. This was followed in MY 1987 by the introduction of a slightly larger, mid-size pickup by Chrysler using a new 3.9 liter V-6 engine of 124 horsepower and the replacement by AMC of the lower horsepower version of the GM 2.8 liter engine with its own 4.0 liter engine, with 173 horsepower. Thus, by MY 1987, most small pickup manufacturers had increased the horsepower of the 6-cylinder or turbocharged engines that they are offering in compact and mid-size pickups. In addition to obtaining new data related to 1987 models, the agency also examined sales data, not available at the time of the MY 1988 final rule, which showed that 1986 sales of these higher horsepower vehicles were 15 percent higher than anticipated. Therefore, NHTSA concludes that market forces necessitate GM's increase in horsepower, and the agency will not consider the effects of reversing that decision as part of GM's capability.

Moreover, NHTSA now has new data relevant to the two actions which it believed GM could take without an adverse impact on that company's CAFE. The two actions, which were also incorporated in certain of GM's MY 1986 trucks, were changes in axle ratios and increased purchases by consumers of certain optional equipment which could affect aerodynamic drag. The available evidence before NHTSA at the time of the MY 1988 final rule suggested that these changes were not having an impact on GM's CAFE. However, the agency's analysis of GM's 1986 mid-model year report, which provides later and more complete data, does indicate an adverse impact on CAFE. Also, in a letter dated March 27, 1986, GM provided additional data concerning increased purchases of the optional equipment. NHTSA now concludes that these actions by GM

are market-related and do have an adverse impact on that company's CAFE.

Based on its analysis, NHTSA concludes that there is insufficient leadtime for GM to introduce additional new programs or technologies to increase its MY 1989 CAFE above its projection of 20.9 mpg. Moreover, the agency believes it is unlikely that GM can achieve that projected CAFE level.

The sales mix included in GM's 20.9 mpg projection is comparable, on balance, to the mix of models and engines that company experienced for MY 1986. However, production mixes for the entire 1986 model year do not fully reflect the dramatic fuel price reductions which took place during the early part of calendar year 1986. Also, the fuel prices on which GM based its MY 1989 projections are higher than those currently believed by NHTSA to be likely. Based on its analysis, the agency agrees with GM's comment that it faces a mix shift risk of up to 0.4 mpg due to lower gasoline prices and concomitant shifts toward larger trucks and engines for MY 1989.

NHTSA also agrees with GM's comment that the introduction of emission controls for heavy duty engines may cause some increase in sales of trucks with GVWR just under 8500 pounds, thereby adversely affecting GM's CAFE. The agency is not including a risk associated with increased import light trucks in GM's capability. While manufacturers face a continuing challenge to meet possible increased light truck competition from abroad, the agency does not believe this issue, in the particular case of MY 1989 light truck sales, is likely to adversely affect domestic CAFE values. Imported light trucks are subject to a 25 percent tariff, which substantially offsets the cost advantages of foreign producers. Also, the rising value of the yen against the dollar makes it more difficult for the Japanese manufacturers to increase their market shares at the expense of the domestic manufacturers. Moreover, the agency does not believe that mix shift risks and potential risks related to increased imports are additive, since lower fuel prices should enhance the domestic manufacturers' competitive positions. NHTSA believes that the issue should instead be recognized as a limitation on manufacturers' abilities to increase their market share of compact trucks beyond their present projections.

Taking account of these risks, NHTSA concludes that GM's combined capability is 20.5 mpg. The agency has also evaluated GM's fuel economy capability for its 2WD and 4WD fleets for MY 1989. GM's current projections for those fleets are 21.6 mpg and 19.2 mpg, respectively. The agency believes it is unlikely that GM can achieve these projected CAFE levels, for the reasons discussed above. Thus, based on its analysis, NHTSA concludes that GM's MY 1989 capability for its 2WD fleet is 21.5 mpg, and its capability for its 4WD fleet is 19.0 mpg.

Ford: As discussed above, while at the time of the NPRM the agency believed that Ford might be able to achieve a MY 1989 CAFE level of as high as 21.9 mpg, the company now projects a CAFE level of 20.4 mpg to 21.3 mpg. The agency's analysis indicates that virtually all of the decline in Ford's CAFE was due to reasons beyond that company's control. The bulk of the decline in Ford's projected MY 1989 CAFE level is attributable to lower-than-anticipated fuel economy levels for the 4.9 liter fuel injection program. Given the aggressive fuel economy goals of the program when it was approved, the agency does not consider it surprising that the goal has not been, and is not likely to be, fully attained. More stringent EPA emissions requirements also added to the difficulty of meeting the original fuel economy goal.

The agency does not consider it likely that Ford can achieve the 21.3 mpg upper end of its range of MY 1989 CAFE values. The sales mix underlying that projection is biased slightly more toward more fuel-efficient models and engines than Ford has experienced for MY 1986. With a likelihood that fuel prices will be lower in MY 1989 than those assumed by Ford in developing its projections and that continued lower fuel prices will encourage consumers to shift toward less fuel-efficient models and engines, the agency believes that Ford's actual MY 1989 sales mix will experience some further shift toward larger trucks and engines. Thus, the agency agrees with Ford's assessment that it faces mix shift risks of 0.4 to 0.6 mpg. As discussed above, Ford also faces technological risks of 0.5 mpg. Taking all of these risks into account, Ford's maximum achievable CAFE could be as low as 20.2 mpg. The agency believes it likely that some but not all of these risks will occur and concludes that Ford's MY 1989 capability is 21.0 mpg. As discussed below, this level reflects Ford's best estimate of its max-

imum feasible average fuel economy capability, and is the level it recommended for the combined standard.

The agency has also evaluated Ford's 2WD and 4WD fuel economy capabilities. Since the company's projected 4WD CAFE of 20.4 mpg is higher than those projected by GM and Chrysler, the agency did not focus on Ford in establishing the separate 4WD standard. Ford's 2WD projection of 21.7 mpg is similar to that of GM and below that of Chrysler and AMC. With the consideration of the risks to Ford's projected 2WD CAFE, the agency concludes that company's 2WD CAFE capability is 21.5 mpg.

As with GM, NHTSA concludes that there is insufficient leadtime for Ford to introduce additional new programs or technologies to increase its MY 1989 CAFE.

Other Federal Standards

A. *Safety Standards*

As discussed by the NPRM, several recent and proposed changes in Federal safety requirements may affect CAFE. These include several amendments to NHTSA's lighting standard, which permit reductions in aerodynamic drag and slight weight savings; an amendment to the agency's occupant crash protection standard to promote the comfort and convenience of safety belts, and a proposal to extend the applicability of the agency's standard concerning steering control rearward displacement to additional light trucks.

The NPRM stated that while the agency has estimated that passenger car fuel economy could be increased by 0.4 to 0.9 percent by using aerodynamic headlamps, it is likely that the potential fuel economy improvement for light trucks by adoption of this feature is less. The reason for this is that the basic shape of light trucks is often dictated by load carrying capability or other functional attributes, thereby making it more difficult to reduce aerodynamic drag. Ford commented that it agrees with the agency's conclusion in the PRIA that the potential for CAFE improvement from vehicle aerodynamics is minimal due to the higher frontal area and drag coefficients inherent in light trucks compared with passenger cars. GM commented that aerodynamic headlamps will not have an impact on light truck CAFE in the 1988–89 timeframe. That company also noted that truck designs which included improved aerodynamics through the use of lower profile headlamps and more rounded sheet metal were not well received by the public in recent design clinics.

The NPRM cited the PRIA's conclusion that the effect of the comfort and convenience requirements on light truck CAFE will be negligible, since both the number of affected vehicles and weight impact are small. GM, Ford and Chrysler agreed that these requirements will not significantly affect CAFE.

With respect to the proposal to extend the applicability of the agency's standard on steering control rearward displacement, the NPRM cited the PRIA's similar conclusion that CAFE would not be significantly affected since the number of affected vehicles is believed to be small and the required modifications minimal. GM disagreed with this conclusion, stating that the standard would primarily affect the older model lines in its fleet and that significant mass increases may result from required vehicle changes. That company stated that the magnitude of the mass increases associated with the vehicle changes has not been determined, but may be relatively large and could negatively affect CAFE. Ford commented that the Econoline is its only vehicle anticipated to have significant potential for weight increase due to this proposal. It stated that since baseline testing has not been completed, specific corrective actions have not been identified and the weight effect of these changes remains an open issue. NHTSA currently anticipates that any final rule concerning this proposal would have an effective date of September 1, 1989, or later and therefore should not impact manufacturers' MY 1989 CAFE levels, significantly, if at all.

B. *Environmental Standards*

The NPRM cited several final and proposed changes in environmental standards which may affect CAFE.

The Environmental Protection Agency (EPA) published a proposal on July 1, 1985 (50 FR 27188), to provide test adjustment credits to light truck manufacturers for changes made in test procedures. Assuming that EPA's final rule is along the lines of the proposal, the rulemaking is not likely to have any significant effect on the manufacturers' projections discussed above.

The EPA requirement for control of diesel particulate matter became more stringent in MY 1987. NHTSA's NPRM noted that in the preamble

to the final rule establishing MY 1987 light truck fuel economy standards, the agency concluded that any impact of the diesel particulate requirement on fuel economy would be very small, i.e., much less than 0.1 mpg. GM commented that the standard will have a negative impact on its CAFE but that the impact will be small since diesel sales have declined. According to that company, the maximum impact on its CAFE in the MY 1988–89 timeframe is estimated to be 0.05 mpg. AMC commented that more stringent standards are reducing diesel engines, not solely because of technological difficulties, but because with the low sales volume it would be impossible to recover the engineering costs associated with development of control systems. That company argued that the impact on CAFE of a more stringent emissions standard is the total removal of a fuel-efficient engine from the market, not just an incremental loss in fuel economy due to meeting more stringent standards.

After analyzing the comments, the agency continues to believe that there will be little CAFE effect from the more stringent particulate standard since manufacturers do not plan on offering significant volumes of diesel engines that would require changes. The agency agrees with AMC that when volumes for an engine family drop below certain levels, it may become economically unattractive to spend the money necessary to certify compliance with the emissions standards. However, this is a business decision and not a direct result of the more stringent requirements to control emissions.

The EPA requirement for control of oxides of nitrogen (NOx) becomes more stringent in MY 1988. As noted in NHTSA's NPRM, EPA estimates that with the use of three-way catalyst technology, there will be no net loss in fuel efficiency and possibly even small gains. Moreover, since the EPA regulation provides for averaging compliance with the more stringent particulate standard and the oxides of nitrogen standard, manufacturers have greater flexibility to help ensure that there are little or no attendant fuel economy penalties.

GM commented that the recalibration required to meet the 1988 NOx standard decreases its light truck CAFE 0.3 mpg to 0.35 mpg from the level attainable if the standard were not changed. The company stated that this reduction assumes across-the-board use of closed loop throttle body injection and three-way catalysts for gasoline vehicles, and has been factored into its CAFE projections. Ford stated that it does not believe that EPA's overall assessment that there will be no net loss in fuel efficiency associated with the NOx standards is applicable to its vehicles. Ford argued that paired fuel economy data from its MY 1985 Federal and California vehicles show a fuel economy penalty of 1.3 percent to 5.3 percent (0.4 to 1.2 mpg) between the versions having the same control technologies. (California vehicles were required to meet a MY 1985 NOx standard that was more stringent than either the current or MY 1988 Federal standard.) In a subsequent submission dated March 26, 1986, Ford clarified its position, stating that the claimed penalty was actually a reduction in the potential benefit of new technology which would have accrued if it had not been employed to offset the change in emissions standards.

NHTSA believes that GM's and Ford's arguments about a fuel economy penalty associated with the more stringent NOx standards are consistent with EPA's position presented in the NPRM. That position is that with the use of three-way catalyst technology, the new NOx standard will not cause any net loss in fuel efficiency, compared to the fuel efficiency levels under the current NOx standard. There might even be small gains as a result of the new standard. The losses to which GM and Ford refer are actually "gains foregone" in the context of EPA's analysis, i.e., the loss is the difference in fuel economy capability of a closed loop three-way catalyst system calibrated to meet the current and new NOx standards. Thus, by adopting three-way catalyst technology, the manufacturers avoid any losses in fuel economy associated with the new NOx standards but do not achieve the gains that would be associated with such technology in the absence of the new standards.

AMC commented that other emission-related considerations are the increase in the useful life interval, limited maintenance intervals, and warranty liability. That company argued that because of these restrictions, manufacturers must reduce compliance/warranty risks by utilizing current technology with proven durability in the field. AMC stated that this has a direct effect on decisions to adopt newer fuel-efficient technology,

especially for the lower volume manufacturers, until after the technology has proven its durability in the field for 11 years/120,000 miles. AMC did not provide any data concerning how these types of considerations affect its CAFE. As a general matter, NHTSA believes it would be inappropriate to assume that manufacturers need to wait 11 years before deciding to adopt new technology for purposes of emissions and/or fuel economy. Manufacturers can instead use a combination of short-term testing that acts as a surrogate for real time testing and engineering judgment to make appropriate decisions concerning the adoption of new technology.

On September 8, 1986, EPA published an advance notice of proposed rulemaking (ANPRM) concerning more stringent HC exhaust emissions standards for light-duty trucks. EPA indicated that compliance with such standards could be required as early as MY 1989. The original comment closing date for the ANPRM was October 8, 1986, but the comment period was later extended to November 21, 1986. At this point, it is unclear what, if any, impact the proposed rule would have on fuel economy. If EPA should issue a final rule that affects MY 1989 fuel economy, NHTSA will consider at that time whether any action is appropriate.

Ford commented that EPA is expected to propose requiring on-board refueling vapor control systems and an increase in the nominal Reid vapor pressure of certification gasoline (fuel volatility level), which could be effective as early as MY 1989. NHTSA will consider the fuel economy implications of these changes if and when EPA takes action.

The California Air Resources Board (CARB) at its April 24–25, 1986, public hearings adopted more stringent NOx standards for compact trucks. Beginning in MY 1989, 50 percent of light trucks weighing from 0 to 4000 pounds inertia weight must meet a 0.4 gpm NOx standard. For models 1990 through 1993, 85 percent of compact light trucks must certify to the 0.4 mpg NOx standard. Ford, in a letter to NHTSA dated December 12, 1986, has claimed a 1990–91 CAFE risk of 0.05 mpg due to this phased-in NOx requirement. The effect on MY 1989 would be smaller, given the phase-in.

NHTSA is not aware of any plans on the part of EPA to promulgate noise regulations applicable to MY 1989 light trucks and therefore does not anticipate any attendant fuel economy penalties.

Need to Conserve Energy

Since 1975, when the Energy Policy and Conservation Act was passed, this nation's energy situation has changed significantly. For example, oil markets have been deregulated and the Strategic Petroleum Reserve has been established.

In 1977, the United States imported 46.4 percent of its oil needs and the value of imported crude oil and refined petroleum products was $67 billion (stated in 1984 dollars). While the import share of total petroleum demand declined after that year, the cost continued to rise to a 1980 peak level of $93.2 billion (1984 dollars). By 1985, the import share had declined to 28.7 percent at a cost of $46.7 billion (1984 dollars). During the first 10 months of 1986, the net import share rose somewhat, to 33.3 percent. (The dollar value of 1986 imports was not available at the time this notice was prepared.)

Moreover, imports from OPEC sources have declined, from a high of 6.2 million barrels per day and 70.3 percent of all imports in 1977 to 1.8 million barrels per day and 36.2 percent of imports in 1985. During the first 10 months of 1986, OPEC imports increased to 2.7 million barrels per day, representing 45.7 percent of total imports, but remained well below 1977 levels. As imports have shifted to non-OPEC sources, such as Mexico, Canada and the United Kingdom and as this country builds up its strategic stockpile, the United States' petroleum market has become less vulnerable to the political instabilities of some OPEC countries, as compared to the situation in the mid-1970's. The level of OPEC imports, however, does not by itself indicate the degree of U.S. vulnerability to an oil supply disruption caused by political instabilities in some OPEC countries. The market for crude oil is worldwide, and a supply disruption anywhere could lead to an increase in world price.

Overall, the nation is much more energy independent than it was a decade ago, when Congress established the fuel economy standards program. From 1975 to 1984, energy efficiency in the economy improved by 21 percent (*1984 Annual Energy Review,* Energy Information Administration (EIA), U.S. Department of Energy, p. 47). Domestic oil production was 5 percent higher in 1986

than it was in 1975, the value of the nation's imported oil bill declined 35 percent between 1980 and 1985, and the amount of imported oil from OPEC is 56 percent lower than the peak of 1977. As a percentage share of GNP, the net oil import bill fell from 2.8 percent in 1980 to 1.2 percent in 1985. In addition, the price of oil is now fully decontrolled, permitting consumers to make choices in response to market signals and allowing the market to adjust quickly to changing conditions. The Strategic Petroleum Reserve now contains over 500 million barrels that can be used to ameliorate the effect of supply interruptions. Thus, by any measure, the nation is in a stronger, and more efficient, energy position than it was a decade ago.

According to Energy Information Administration (EIA) and Data Resources, Inc. (DRI), projections, however, domestic production is expected to decline from a stable level of 10.6 MMB/D to between 7.5 MMB/D (DRI) and 8.3 MMB/D (EIA) by 1995. Net imports are expected to rise from 4.2 MMB/D to between 7.7 MMB/D (EIA) and 9.9 MMB/D (DRI) by 1995. NHTSA thus recognizes that available projections indicate a general consensus that imports may approach or exceed 50 percent of U.S. petroleum use by 1995. Future projections about petroleum imports are, of course, subject to great uncertainty. Indeed, oil imports are very difficult to project beyond a year or two. For example, the EIA's *1977 Annual Report to Congress* projected that net oil imports by the U.S. would, in the "reference case," reach 11 million barrels per day by 1985. Net imports in 1985 actually turned out to be 4.2 million barrels per day, less than half the level predicted in 1977.

GM's comment on the NPRM stated that the effect of "the deregulation of the oil industry and the existence of the Strategic Petroleum Reserve as well as continued conservation and the development of alternative energy sources, such as methanol, has been to place the U.S. in a much more secure energy position. That commenter urged that it is "important that NHTSA take these developments into account in explaining the 'need of the nation to conserve energy.'"

Chrysler commented that it believes that the need to conserve petroleum-based energy should remain a national priority, despite the transient period of falling fuel prices we are now experiencing. That company stated that there is every reason to expect that oil will again be in short supply, even within the lifetime of vehicles produced in the 1988–89 models years.

The Center for Auto Safety commented that the nation is facing a future of greater reliance on imported petroleum to fuel a vehicle fleet which includes an increasing share of light trucks. That organization argued that the Iraq-Iran war and other Middle East instabilities continue to threaten our national security, and cited a study by the National Academy of Sciences noting that the oil in the Strategic Petroleum Reserve will equal a decreasing number of days, supply in future years.

The prospect of increasing oil imports does raise concerns about national security and the total cost of imported oil. Quite apart from the issue of whether oil imports are likely to increase in the next decade, petroleum is a vital natural resource which is nonrenewable. The level of imports taken by itself, however, does not measure the vulnerability of the U.S. in these respects. The Nation's ability to handle a major oil supply disruption depends, among other factors, on the size and timely use of the Strategic Petroleum Reserve, on the extent to which energy markets are free of price and allocation controls, on fuel switching and substitution possibilities throughout the economy, and on the stocks held by other oil importing nations.

MY 1988 light trucks meeting the 20.5 mpg standard established by this rule will be more fuel-efficient than the average vehicle in the current light truck fleet in service, thus making a positive contribution to petroleum conservation. In addition, NHTSA believes that if imports do once again reach the 50 percent level, the Nation will remain in a much stronger energy position than was the case in the mid-1970's. The Nation's sources of oil imports are more diverse and less vulnerable to disruption, the Nation's energy efficiency is much higher, there is greater ability to substitute alternative sources of energy, and the absence of price controls permits the market to respond more easily to changes in supply and demand.

Determining the Maximum Feasible Average Fuel Economy Level

As discussed above, section 502(b) requires that

light truck fuel economy standards be set at the maximum feasible average fuel economy level. In making this determination, the agency must consider the four factors of section 502(e): technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the Nation to conserve energy.

A. *Interpretation of "Feasible"*

Based on dictionary definitions and judicial interpretations of similar language in other statutes, the agency has in the past interpreted "feasible" to refer to whether something is capable of being done. The agency has thus concluded in the past that a standard set at the maximum feasible average fuel economy level must: (1) be capable of being done and (2) be at the highest level that is capable of being done, taking account of what manufacturers are able to do in light of available technology, economic practicability, how other Federal motor vehicle standards affect average fuel economy, and the need of the Nation to conserve energy. In this rulemaking, as in earlier rulemakings, NHTSA has considered and weighed all four statutory factors of section 502(e) and has not merely adopted a level based on what was technologically capable of being done.

B. *Industrywide Considerations*

The statute does not expressly state whether the concept of feasibility is to be determined on a manufacturer-by-manufacturer basis or on an industrywide basis. Legislative history may be used as an indication of congressional intent in resolving ambiguities in statutory language. The agency believes that the below-quoted language provides guidance on the meaning of "maximum feasible average fuel economy level."

The Conference Report to the 1975 Act (S. Rep. No. 94–516, 94th Cong., 1st Sess. 154–5 (1975)), states:

> Such determination [of maximum feasible average fuel economy level] should therefore take industrywide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic manufacturers that currently exist, and the possible implications for the national economy and for reduced competition association (sic) with a severe strain on any manufacturer. . . .

It is clear from the Conference Report that Congress did not intend that standards simply be set at the level of the least capable manufacturer. Rather, NHTSA must take industrywide considerations into account in determining the maximum feasible average fuel economy level.

NHTSA has consistently taken the position that it has a responsibility to set light truck standards at a level that can be achieved by manufacturers whose vehicles constitute a substantial share of the market. See 49 FR 41251, October 22, 1984. The agency did set the MY 1982 light truck fuel economy standards at a level which it recognized might be above the maximum feasible fuel economy capability of Chrysler, based on the conclusion that the energy benefits associated with the higher standard would outweigh the harm to Chrysler (45 FR 20871, 20876; March 31, 1980). However, as the agency noted in deciding not to set the MY 1983–85 light truck standards above Ford's level of capability, Chrysler had only 10–15 percent of the light truck domestic sales, while Ford had about 35 percent. (45 FR 81593, 81599; December 11, 1980).

C. *Setting the MY 1989 Standards*

Based on the analysis described above and on manufacturer projections, the agency concludes that manufacturers can achieve the combined fuel economy levels in the following table:

Manufacturer	Approximate Market Share	Combined CAFE
Chrysler	13.0%	21.8–23.3 mpg
AMC	5.0%	23.3 mpg
Ford	25.0%	*21.0 mpg
GM	33.0%	20.5 mpg
Volkswagen	0.5%	19.1 mpg

*AMC's projection is unadjusted for risks.

As indicated above, foreign manufacturers other than Volkswagen only compete in the small

vehicle portion of the light truck market and are therefore expected to achieve CAFE levels well above GM, Ford and Chrysler, which offer full ranges of light truck models.

NHTSA has concluded that among the manufacturers with a substantial share of combined light truck sales, GM is the least capable manufacturer, with a MY 1989 combined fuel economy capability of 20.5 mpg.

The setting of maximum feasible fuel economy standards, based on consideration of the four required factors, is not a mere mathematical exercise but requires agency judgment. In setting the MY 1989 standards, the agency believes that the current very low gasoline prices affect both the benefits of differing levels of average fuel economy standards and the difficulties of individual automobile manufacturers facing higher standards, i.e., both of the considerations NHTSA must balance in setting maximum feasible standards taking industrywide considerations into account. (See the language of the Conference Report quoted above.)

NHTSA has concluded that 20.5 mpg is the maximum feasible combined standard for the 1989 model year. This level balances the potential petroleum savings associated with higher standards against the difficulties of individual manufacturers facing potentially higher standards.

The main benefit from setting higher fuel economy standards is the potential additional petroleum savings which would result. Since significantly lower gasoline prices result in reduced consumer demand for higher fuel economy, individual manufacturers may have less incentive, and ability, to improve their average fuel economy. This fact explains GM's difficulty in marketing technological improvements which increase fuel economy and Chrysler's current reconsideration of its product mix for future model years. There may, of course, be counterbalancing motivations for achieving higher fuel economy, such as a need or desire to earn credits for exceeding fuel economy standards.

The 20.5 mpg standard will be challenging for GM, without causing significant economic distortion, and act as an incentive for that company to achieve its maximum fuel economy capability. Since GM produces a third of all light trucks subject to fuel economy standards, a standard set at its level can make a substantial contribution to petroleum conservation.

NHTSA does not believe that a standard set at a level above GM's capability would be consistent with the requirement that standards be set taking industrywide considerations into account, given that company's market share. Even if the MY 1989 standard could be set at a level above GM's capability, however, the agency believes that it clearly could not be set above both Ford's and GM's capabilities, since those companies' combined market share approaches 60 percent. As noted previously, the agency estimate of Ford's maximum capability for MY 1989 is 21.0 mpg. Thus, any higher standard than 20.5 mpg could not exceed that value.

The precise effects on petroleum conservation of a standard set at Ford's projected capability are uncertain, although the effects can be bounded. The maximum theoretical additional energy savings associated with a standard set at that higher level can be determined by comparing hypothetical situations where GM and Ford would have combined average fuel economy levels of 21.0 mpg versus 20.5 mpg. Since most other manufacturers in the industry project MY 1989 CAFE above that of Ford's capability, a standard set at 21.0 mpg would not be expected to affect the petroleum consumption of trucks manufactured by that part of the industry. The difference in total gasoline consumption between these two hypothetical situations, over the *lifetime* of the MY 1989 fleet, would be 429 million gallons. The maximum yearly impact on U.S. gasoline consumption would be 49.5 million gallons, or roughly five hundredths of one percent of total motor vehicle gasoline consumption.

The agency believes, however, that any actual gasoline savings associated with a higher standard would be much less. While Ford would have an added incentive to achieve its maximum fuel economy capability, it is not clear in light of possible carryforward/carryback credits whether this would actually occur. GM could not likely improve its CAFE other than by restricting sales of its larger light trucks and engines. To the extent that would-be purchasers of such vehicles and engines transferred their purchases to Ford and Chrysler without those companies otherwise changing their product plans, there could be little or no effect on petroleum consumption.

While the agency recognizes that a higher standard could have some effect on gasoline consumption, it concludes that the effect would be much less than the theoretical maximum noted above and could be negligible.

A higher standard than 20.5 mpg could result in serious economic difficulties for GM. NHTSA believes that the first potential fuel-efficiency enhancing actions that GM or any other manufacturer would consider in response to a higher standard would primarily consist of marketing actions. For the reasons discussed earlier in this notice, however, the agency does not believe that marketing actions can be relied upon to significantly improve fuel economy. Assuming that such marketing actions were unsuccessful in whole or in part, GM would likely have to engage in product restrictions, including limiting the sales of larger engines and/or vehicles to improve its fuel economy. Such product restrictions could result in adverse economic consequences for GM, its employees, and the economy as a whole and unduly limit consumer choice, especially with regard to the load carrying needs of light truck purchasers.

The agency believes that the current situation of very low gasoline prices can create significant difficulties for individual manufacturers facing higher CAFE standards. As gasoline prices fall, consumer demand shifts toward larger vehicles and more powerful engines. While the magnitude of such shifts is limited to some extent by the fact that trucks are purchased largely with respect to work-performing capabilities, lower gasoline prices can nonetheless result in mix shifts which lower manufacturers' CAFE. The large magnitude of the recent drop in gasoline prices makes it particularly difficult for manufacturers such as GM to attempt to use marketing efforts to overcome such shifts in consumer demand.

NHTSA is particularly concerned about the impact of overly stringent CAFE standards on American jobs. In assessing this issue, NHTSA estimated the sales and job effects associated with the product restrictions that would be required to raise GM's CAFE by 0.5 mpg. As discussed in the agency's Final Regulatory Impact Analysis, such product restrictions could result in a sales loss to GM of 156,000 light trucks, which could translate into 9,180 lost jobs at GM and an additional 9,180 to 18,350 lost jobs in supplier companies.

Given GM's one-third share of the light truck market, its capability has a significant effect on the level of the industry's capability and, therefore, on the level of the standards. The agency believes that for GM, the 20.5 mpg standard balances the potentially serious adverse economic consequences associated with market and technological risks against that company's opportunities as the least capable manufacturer with a substantial share of sales. The agency concludes, in view of the statutory requirement to consider several factors, that the relatively small and uncertain energy savings associated with setting a standard above GM's capability would not justify the economic harm to that company, American workers, and the economy as a whole.

The agency recognizes that a 20.5 mpg standard is above the capabilities of Volkswagen. In the absence of some type of alternative light truck standard which it could meet (an issue which is addressed further below), Volkswagen would therefore be limited to two options: paying the statutory penalties associated with failure to comply with fuel economy standards (to the extent credits are not available) or drastic product actions. While the agency appreciates these difficulties, it also concludes that establishment of a standard less than 20.5 mpg would reduce or eliminate the incentives for GM to achieve its maximum capability and essentially render meaningless any impact the light truck CAFE program has on petroleum conservation. Given that Volkswagen represents less than one-half of one percent of the light truck market and in light of the above factors, NHTSA believes that it would be inappropriate to set industrywide standards based on its capability. In light of the statutory criteria, NHTSA concludes that the petroleum savings associated with the 20.5 mpg standard outweigh the difficulties to this company.

Manufacturer commenters suggested a number of different levels for the combined standard. Chrysler stated that given the present circumstances and uncertainties, it would not object if the agency sees fit to carry over the present 1987 light truck CAFE standard of 20.5 mpg to MY 1988–89. AMC stated that it should be considered the "primary manufacturer for the purpose of setting standards" and recommended a combined standard of 20.0 mpg. GM argued that due to such uncertainties as potential further mix shifts and

increased imports, beyond what it is currently projecting, a 20.5 mpg standard might be too stringent. That company stated that if its current forecasts prove to be unduly optimistic, it would then have to either petition for a lower standard or resort to product restrictions with attendant layoffs and negative impact on the economy in order to remain in compliance. Ford's comment on the NPRM recommended a MY 1989 standard of 21.0 mpg. Ford noted that although the level of its recommended standard is higher than the low end of its estimated capability when all potential risks are taken into account, it believes that the 21.0 mpg level represents a reasonable balancing of the risks and opportunities facing the company and, therefore, reflects its best estimate of Ford's maximum feasible average fuel economy capability.

NHTSA notes that AMC recommended a 20.0 mpg standard before revising upward its MY 1989 projection from 19.9 mpg to 21.3 mpg. While the 21.3 mpg figure does not include any adjustment to account for risks, the agency concludes that AMC can achieve a CAFE higher than the 20.5 mpg level of the MY 1989 standard.

The agency disagrees with GM's suggestion that a standard of 20.5 mpg might be too stringent in light of potential further mix shifts and increased imports. As discussed above, GM currently projects a MY 1989 CAFE of 20.9 mpg, based on a mix of models and engines that is comparable to what it experienced for MY 1986. The agency believes that a standard of 20.5 mpg adequately provides for the risks facing that company. With respect to Ford's suggestion for a standard of 21.0 mpg, the agency notes that it sets standards based on industrywide considerations.

The Center for Auto Safety (CFAS) urged that the MY 1989 standard be set at 24.0 mpg. That commenter's request appears to have been based on the manufacturers' projections cited in the NPRM, on its assertion that the manufacturers' projections are "considerably below true manufacturing potential," and on its contention that changing market conditions will help light truck fuel economy rather than cause it to deteriorate, as the percentage sales of compact and more fuel-efficient light trucks is expected to increase. CFAS also argued that GM and Ford have had at least five years leadtime to introduce new models and technologies for the 1989 standard.

NHTSA disagrees with CFAS's arguments supporting a 24.0 mpg standard. The agency's analysis of changes in the manufacturers' projections is fully discussed above. CFAS did not support its allegation concerning manufacturers' projections being below true manufacturing potential, other than to reference a comment it made in the agency's passenger automobile fuel economy rulemaking. The agency has analyzed the data underlying the manufacturers' light truck CAFE projections and has no reason to give this allegation any credence. While it is true that the percentage sales of compact light trucks is expected to increase, the agency does not believe that this shift is likely to cause any significant increase in the CAFE of GM and Ford, since estimated sales of their products are heavily weighted toward the larger vehicles. Ford indicated in its comment that significantly increasing its share of the compact truck market beyond projections would be difficult, since the Japanese manufacturers have emphasized that market. The agency agrees with that comment and believes that the same is true for GM. NHTSA also disagrees with CFAS's argument that GM and Ford have had at least five years leadtime for the 1989 standard. Unlike the situation with passenger automobile fuel economy standards, where a 27.5 mpg standard is in place indefinitely unless it is amended by the agency, no light truck fuel economy standard is in place until it is established by the agency.

As in past years, the agency has decided to continue setting 2WD and 4WD standards as an alternative to the combined standard. Separate 2WD/4WD standards allow manufacturers greater flexibility in planning to meet CAFE standards and do not discriminate against firms with truck fleets heavily weighted toward the generally less fuel efficient 4WD models.

NHTSA has concluded that GM is the least capable manufacturer with a substantial share of 4WD light truck sales, and has focused on its capability in establishing the separate 4WD standard. As discussed earlier in the notice, the agency concluded that 19.0 mpg is that company's maximum 4WD fuel economy capability. The final 4WD standard is being established at 19.0 mpg.

AMC has traditionally been the manufacturer primarily concerned about separate standards due to the high percentage of 4WD light trucks in

its fleet. AMC requested in its comment that the 4WD standard be set at 19.0 mpg. Moreover, that company subsequently raised its 4WD projection from 19.4 mpg to 20.8 mpg. Therefore, AMC will have no difficulty meeting the selected standard.

The agency notes that Chrysler has a lower 4WD fuel economy capability than GM, Ford and AMC. Chrysler projects that its 4WD CAFE could be as low as 17.5 mpg. However, in MY 1986, Chrysler's share of the 4WD market was less than 3 percent. Thus, that company did not have a substantial share of 4WD light truck sales. Moreover, since Chrysler can meet the combined standard, it is unnecessary for it to be able to meet the separate standards.

NHTSA has concluded that GM and Ford are the least capable manufacturers with substantial shares of 2WD light truck sales, and has focused on those manufacturers' capabilities in establishing the separate 2WD standard. As discussed earlier in the notice, the agency concluded that those companies' maximum, 2WD fuel economy capabilities are 21.5 mpg. The final 2WD standard is being set at 21.5 mpg.

AMC requested in its comment that the 2WD standard be set at 20.3 mpg. The company subsequently raised its MY 1989 2WD CAFE projection from 21.3 mpg to 22.6 mpg. NHTSA has concluded, based on its analysis of that company's projection, underlying product plan, and expected market conditions, that AMC can meet the 2WD separate standard of 21.5 mpg.

Volkswagen suggested as an alternative to establishing a combined standard within its capability that the agency consider alternate special consideration for limited product line truck manufacturers. In establishing the MY 1980–81 light truck CAFE standards, the agency did establish a separate standard in light of International Harvester's (IH) limited product line. See 43 FR 11995, March 23, 1978. The agency noted that IH had unique problems given its limited sales volume, restricted product line, the fact that its engines were derivatives of medium duty truck (above 10,000 pounds GVWR) engines, and the fact that it did not have experience with state-of-the-art emission control technology which the other manufacturers had obtained in the passenger automobile market. The agency emphasized, however, that the separate class was being established for only two model years' duration, concluding that IH should be able to achieve levels of fuel efficiency in line with other manufacturers within that time period either through purchasing engines from outside sources or by making improvements to current engines. The agency does not believe that Volkswagen's situation is similar to that of IH. While IH's difficulties were related to being newly subject to the fuel economy program, Volkswagen's CAFE difficulties are not. Moreover, establishing a separate standard for Volkswagen would be outside the scope of notice of the NPRM.

In consideration of the foregoing, 49 CFR Part 533 is amended as follows:

Table II in §533.3(a) is revised to read: S533.5 *Requirements.*

(a) * * *

§533.5(d) is revised to read:

(d) For model years 1982–89, each manufacturer may:

(1) Combine its 2- and 4-wheel drive light trucks (segregating captive import and other light trucks) and comply with the combined average fuel economy standard specified in paragraph (a) of this section; or

(2) Comply separately with the 2-wheel drive standards and the 4-wheel drive standards (segregating captive import and other light trucks) specified in paragraph (a) of this section.

TABLE II

Model Year	Combined standard		2-wheel drive light trucks		4-wheel drive light trucks	
	Captive imports	Others	Captive imports	Others	Captive imports	Others
1982	17.5	17.5	18.0	16.0	16.0	16.0
1983	19.0	19.0	19.5	19.5	17.5	17.5
1984	20.0	20.0	20.3	20.3	18.5	18.5
1985	19.5	19.5	19.7	19.7	18.9	18.9
1986	20.0	20.0	20.5	20.5	19.5	19.5
1987	20.5	20.5	21.0	21.0	19.5	19.5
1988	20.5	20.5	21.0	21.0	19.5	19.5
1989	20.5	20.5	21.5	21.5	19.0	19.0

Issued on: Feb 27, 1987

Diane K. Steed
Administrator

52 F.R. 6564
March 4, 1987

PREAMBLE TO AN AMENDMENT TO PART 533

Light Truck Average Fuel Economy Standards
Model Years 1990-91
(Docket No. FE-87-01; Notice 2)

ACTION: Final rule.

SUMMARY: This notice establishes average fuel economy standards for light trucks manufactured in Model Years 1990 and 1991. The issuance of the standards is required by Title V of the Motor Vehicle Information and Cost Savings Act. As in past years, the agency is establishing a combined standard for all light trucks, as well as alternate standards for two-wheel drive (2WD) and four-wheel drive (4WD) vehicles. Manufacturers may comply with either the combined standard or the alternate standards. For Model Year 1990, the combined standard is 20.0 mpg, and the alternate standards are 20.5 mpg for 2WD, and 19.0 mpg for 4WD. For Model Year 1991, the combined standard is 20.2 mpg, and the alternate standards are 20.7 mpg for 2WD, and 19.1 mpg for 4WD.

EFFECTIVE DATE: The amendments to the CAFE standards are effective May 5, 1988. The standards apply to the 1990 and 1991 model years.

Background

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973-74, Congress enacted the Energy Policy and Conservation Act. Congress included a provision in that Act establishing the automotive fuel economy regulatory program. That provision added a new title, Title V, "Improving Automotive Efficiency," to the Motor Vehicle Information and Cost Saving Act. Title V provides for the establishment of average fuel economy standards for cars and light trucks.

Section 502(b) of the Act requires the Secretary of Transportation to issue light truck fuel economy standards for each model year. The Act provides that the fuel economy standards are to be set at the maximum feasible average fuel economy level. In determining the maximum feasible average fuel economy level, the Secretary is required under section 502(e) of the Act to consider four factors: technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy. (Responsibility for the automotive fuel economy program was delegated by the Secretary of Transportation to the Administrator of NHTSA. (41 FR 25015, June 22, 1976)

Light truck average fuel economy standards have been established previously for model years through MY 1989. Recent rulemaking proceedings for light truck standards have reflected the fact that while manufacturers have implemented a number of technological changes to improve their light truck fuel economy, the manufacturers' fuel economy improvement capabilities have been limited by strong consumer demand for larger light trucks and larger displacement engines. The consumer demand for these vehicles is attributable largely to low gasoline prices and the vehicles' superior work-performing capabilities.

In light of higher consumer demand for larger trucks and engines, NHTSA found it necessary to reduce the MY 1985 light truck fuel economy standard from 21.0 mpg to 19.5 mpg (with corresponding changes in the alternative two- and four-wheel drive standards). (49 FR 41250, October 22, 1984) In that same final rule, the agency established a MY 1986 standard of 20.0 mpg. NHTSA subsequently set the MY 1987-89 standards at 20.5 mpg (50 FR 40398, October 3, 1985; 51 FR 15335, April 23, 1986; 52 FR 6564, March 4, 1987) This series of level standards reflects the effects of consumer demand.

On August 5, 1987, the Secretary of Transportation submitted to Congress draft legislation that would: (1) repeal the corporate average fuel economy standards for new model years, (2) retain and update the Environmental Protection Agency's (EPA) fuel economy labeling requirements, and (3) revise EPA's automotive fuel economy testing procedures to require that results simulate conditions of actual use. The legislation was proposed in light of a number of considerations, including the fact that the energy conservation goals that Congress sought to achieve by the CAFE program largely have been realized. Another is that a considerable body of economic opinion holds, however, that it was primarily the decontrol of the price of oil and changes in gasoline prices, not the fuel economy standards, that led to the increase

in fuel efficiency over the past decade. The nation might well have achieved similar results simply through the natural operation of the market. Moreover, it is clear that CAFE standards cause serious economic distortions in the marketplace. For example, while the standards exert pressure on manufacturers to sell a mix of vehicles to meet the required CAFE level, they do nothing to ensure that consumers will want to buy the mix the manufacturers offer. Indeed, if standards are set at too high a level, the manufacturers may only be able to meet the standards by restricting the sale of their larger vehicles and engines, resulting in the loss of American jobs and less choice for consumers. Also, CAFE standards place U.S. companies at a competitive disadvantage. The Secretary noted that there is strong evidence that the market will continue to provide the proper balancing of fuel efficient vehicles versus other vehicle characteristics such as size, safety, and performance, and concluded that the most sensible public policy is to repeal the CAFE standards program.

Until the draft legislation becomes law, NHTSA will continue to administer the existing law. Thus, this notice adopts CAFE standards for light trucks for Model Years (MY) 1990 and 1991.

NHTSA Questionnaire and Proposed Rule

On September 16, 1986, NHTSA published in the *Federal Register* a questionnaire requesting data on manufacturers' light truck fuel economy capabilities for MY 1990-1991. The agency requested specific information concerning manufacturers' product plans for MY 1990 and 1991. All of the American manufacturers responded to the questionnaire. One foreign manufacturer, Volkswagen, submitted a comment, indicating that there were no current forecasted changes to its 1987 product plan.

After analyzing the responses to the agency's questionnaire and reviewing other available data, NHTSA published a notice of proposed rulemaking (NPRM) on the establishment of light truck average fuel economy standards for MY 1990 and 1991. (See the November 12, 1987, issue of the *Federal Register,* 52 FR 43366.) The agency's November 1987 NPRM proposed ranges of possible standards for light trucks, with the combined standard for all light trucks within a range of 20.0 mpg to 21.0 mpg. As a compliance alternative to the combined standard, the agency also proposed separate standards for two-wheel (2WD) and four-wheel (4WD) drive vehicles. For 2WD vehicles, the agency proposed a range of 20.5 mpg to 21.5 mpg, and for 4WD vehicles a range of 19.0 mpg to 20.0 mpg. The agency stated that in view of factual uncertainties, the setting of standards outside the proposed ranges was possible, depending on the comments that might be submitted.

The agency received comments from General Motors, Ford, Chrysler (which now includes AMC), Volkswagen, the Department of Energy, and the National Automobile Dealers Association. These comments, and the agency's response to the comments will be discussed in subsequent sections on manufacturer projections and manufacturer capabilities.

Summary of Decision for MY's 1990 and 1991

Based on its analysis, the agency is establishing a combined average fuel economy standard for 1990 at 20.0 mpg, and a standard for 1991 of 20.2 mpg. Alternative separate standards of 20.5 mpg for 2WD light trucks and 19.0 mpg for 4WD are established for MY 1990, and standards of 20.7 mpg for 2WD and 19.1 mpg for 4WD are established for MY 1991.

Elements of Maximum Feasible Average Fuel Economy

The Need of the Nation to Conserve Energy

Since 1975, when the Energy Policy and Conservation Act was passed, this nation's energy situation has changed significantly. Oil markets were deregulated in 1981, permitting consumers to make choices in response to market signals and allowing the market to adjust quickly to changing conditions. The U.S. Strategic Petroleum Reserve (SPR) was built to ensure a supply of oil during any major supply disruption. In December 1987, the SPR contained 541 million barrels of oil, stored principally in underground caverns, that could be pumped back to the surface if needed.

Petroleum Imports and Prices. Since the 1975-80 period, significant progress has been made in the area of energy imports. In 1977, net oil imports were 46 percent of total supply, compared to 35 percent in 1986. The value of imported oil was $99 million in 1980, compared to a value of $38 million in 1986 (1986 dollars). (Note: these figures, and all later referenced figures in this document represent the most current data available to the agency.)

Gasoline prices declined dramatically until December 1986, when prices began to increase somewhat. While substantially lower oil prices in 1986 were welcomed by consumers, the lower prices increase concerns about the U.S. dependence on imported petroleum, particularly from the Middle East. Since the U.S. is a high cost producer of oil, relative to the rest of the world, lower prices make operation of some domestic wells unprofitable and reduce the incentives for future exploration. Also, lower prices increase consumer demand for oil. Since practically all of the world's excess production capacity is in OPEC countries, these factors contribute to increased levels of OPEC imports. In December 1986 and June 1987, OPEC, through agreement for production control,

achieved a price of $18 a barrel. This price continued through most of 1987, when prices slipped slightly due to some members exceeding production. It is expected that oil prices will remain near $18 a barrel during 1988.

Imports from OPEC were 36 percent of total imports in 1985 and 46 percent of total imports in 1986, as compared to 60 percent in 1975. In addition, even though the nation's volume of net imports increased 0.3 MMB/D during the first eleven months of 1987 (from the 1986 level of 4.29 MMB/D of 1986), OPEC's share of imports has remained at 46 percent. On balance, these factors indicate progress is being made. The current supply of oil appears more secure while the percent of imports attributable to OPEC oil has remained steady. Much of this progress is attributable to successful energy conservation efforts, both within and outside the transportation sectors of the economy.

Continued Need for Progress. Despite the progress which has been made, the current energy situation and emerging trends point to the continued importance of oil conservation. Oil continues to account for well over 40 percent of U.S. energy use, and 97 percent of the energy consumed in the transportation sector. While the U.S. is the second-largest oil producer, it contains only four percent of the world's proved oil reserves. Moreover, proved reserves have declined from a peak of 39.0 billion barrels in 1970 to 28.4 billion barrels in 1985.

According to 1986 Energy Information Administration (EIA) projections, domestic production is expected to decline from 10.3 MMB/D in 1986 to between 8.0 and 9.1 MMB/D in 1995 and between 6.9 and 9.1 MMB/D in 2000, depending on the price of oil. (Data available for the first eleven months of 1987 indicate domestic production at 10.0 MMB/D.) Net imports are projected to increase from 5.3 MMB/D in 1986 to between 6.4 and 9.6 MMB/D in 1995 and between 7.3 and 11.9 MMB/D in 2000. Thus, as a percentage of total U.S. petroleum use, EIA expects imports to rise from a 1986 level of 35 percent to between 41 and 55 percent of total supply in 1995 and between 45 and 63 percent in 2000. NHTSA notes, however, that future projections about petroleum imports are subject to great uncertainty. For example, the EIA's 1977 Annual Report to Congress projected that net oil imports by the U.S. would, in the "reference case," reach 11 MMB/D by 1985. Net imports in 1986 actually were 5.4 MMB/D, less than half the level predicted in 1977. (Data available for the first eleven months of 1987 indicate net imports at 5.8 MMB/D.) The level of oil imports remains an issue for the nation as a whole. In 1986, the U.S. imported $368.7 billion worth of goods and exported $224.4 billion, resulting in a deficit of $144.3 billion. To the extent the level of oil imports remains steady or decreases there is a positive effect on the nation's balance of trade problem.

In March 1987, the Department of Energy submitted a report to the President entitled "Energy Security." NHTSA believes that the following quotation from that report represents a useful summary of the current energy situation and national security:

> Although dependence on insecure oil supplies is . . . projected to grow, energy security depends in part on the ability of importing nations to respond to oil supply disruptions; and this is improving. The decontrol of oil prices in the United States, as well as similar moves in other countries, has made economies more adaptable to changing situations. Furthermore, the large strategic oil reserves that have been established in the United States (and to a lesser extent, in other major oil-importing nations) will make it possible to respond far more effectively to any future disruptions than has been the case in the past.
>
> The current world energy situation and the outlook for the future include both opportunities and risks. The oil price drop of 1986 showed how consumers can be helped by a more competitive oil market. If adequate supplies of oil and other energy resources continue to be available at reasonable prices, this will provide a boost to the world economy. At the same time, the projected increase in reliance on relatively few oil suppliers implies certain risks for the United States and the free world. These risks can be summarized as follows: If a small group of leading oil producers can dominate the world's energy markets, this could result in artificially high prices (or just sharp upward and downward price swings), which would necessitate difficult economic adjustments and cause hardships to all consumers. Revolutions, regional wars, or aggression from outside powers could disrupt a large volume of oil supplies from the Persian Gulf, inflicting severe damage on the economies of the United States and allied nations. Oil price increases precipitated by the 1978-79 Iranian revolution contributed to the largest economic recession since the 1930's. Similar or larger events in the future could have far-reaching economic, geopolitical, or even military implications.

The Role of Light Trucks in Energy Conservation. Total energy consumed by commercial, industrial, and transportation use sectors of the economy peaked in 1979, at 78.9 quadrillion Btu's, fell to a low of 70.5 quadrillion Btu's in 1983 and rose to 74.3 quadrillion Btu's in 1986. In 1986, petroleum accounted for 43 percent of all energy consumed by these three sectors. In the first eleven months of 1987, the transportation sector accounted for 63 percent of all petroleum consumed, with light trucks playing a growing role in this consumption.

Light truck registrations nearly doubled between 1973 and 1986 and light truck sales are projected to

increase 21 percent over the 1987-2000 period, compared to 14 percent for passenger cars. The light truck fleet's share of total oil consumption increased steadily from 6.4 percent in 1973 to 9.0 percent in 1980 and 12.1 percent in 1986. This increase in the light truck fleet's share of fuel consumption took place even as the average fuel economy of the on-road fleet of light trucks increased from an estimated 10.5 mpg in 1973 to 12.9 mpg in 1986. Clearly, light truck fuel economy will be an increasingly important determinant of the nation's level of petroleum consumption.

In its comments on the agency's NPRM, the Department of Energy (DOE) indicated that light trucks are driven farther annually (11,016 miles versus 9,560 miles) and last longer (14.9 years versus 10.9 years) than passenger cars. From this information, NHTSA has derived that the MY 1987 light truck fleet will consume 91 percent as much fuel as the MY 1987 passenger car fleet, even though light truck sales were 44 percent of the passenger car total.

All of these factors result in the conclusion that improved light truck fuel economy contributes to the nation's efforts at conserving fuel. Light trucks meeting the standards established by this rulemaking will continue to exceed the average fuel economy of the current light truck fleet in service, and will make a positive contribution to petroleum conservation.

Effect of Other Federal Standards.

In determining the maximum feasible fuel economy level, the agency must take into consideration the potential effects of other Federal standards. The following section discusses other government regulations — both in process and recently completed — that may have an impact on fuel economy capability.

Safety Standards. The agency has evaluated the potential impact on fuel economy of its safety standard rulemakings in the following areas: Federal Motor Vehicle Safety Standard (FMVSS) 208, Occupant Crash Protection; FMVSS 204, Steering Control Rearward Displacement; and FMVSS 108, Lamps, Reflective Devices and Other Associated Equipment.

FMVSS 208. As noted in the CAFE NPRM, the agency published a proposed rule on April 12, 1985, which would extend to light trucks FMVSS 208's dynamic testing requirements for manual lap/shoulder belts installed at the front outboard seating positions. As proposed, the standard would require dynamic testing using test dummies in 30 mile per hour barrier crashes to measure the level of protection offered by the vehicle's manual lap/shoulder belts. The proposed effective date was September 1, 1989, which would include MY 1990 and later vehicles.

The Final Regulatory Analysis (FRIA) to this CAFE rulemaking discusses the fact that the proposed regulatory impact analysis for the FMVSS 208 proposed rule notes that structural changes to a vehicle may be necessary to meet the standard, and that these changes could result in possible weight increases. However, the FMVSS 208 Preliminary Regulatory Impact Analysis (PRIA) also contains a performance comparison of three different vehicles with weight differences of nearly 1,000 pounds, with all of the vehicles meeting the standard. The PRIA goes on to state that there is no apparent relationship between the FMVSS 208 performance requirement and the weight of the vehicles, and that vehicles in the examined weight range could meet the standard. Thus, although the agency acknowledges that weight may have a potential negative effect on fuel economy levels, no commenter on the CAFE NPRM provided any data for the agency to review which would indicate that its analysis concerning weight effects should be reconsidered.

The agency published a final rule adopting the dynamic testing requirements for multipurpose passenger vehicles and trucks with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, with an effective date of September 1, 1991. While the agency concluded that it was practicable for these vehicles to comply with the standard, it also noted that there are a large number of vehicles that must be modified to meet the requirements. The first full model year covered by the FMVSS final rule will be MY 1992. However, Ford stated in its comments to this fuel economy rulemaking that compliance with FMVSS 208 will "undoubtedly result in higher weights and lower fuel economy, and many of these changes will begin to be phased-in during the 1990 and 1991 model years."

As indicated above, neither Ford, nor any other commenter on this fuel economy rulemaking provided any data to support this statement, and the agency has no data indicating specific weight increases or actual effect on fuel economy levels. To the extent that manufacturers' CAFE projections factor in structural changes to comply with FMVSS 208, the agency has not discounted this estimate. However, the agency has not made any specific adjustment to CAFE capabilities in consideration of the FMVSS 208 dynamic testing requirements.

FMVSS 204. The CAFE NPRM noted that the agency had published a proposed rule (see 50 FR 13402, April 4, 1985) which would extend the applicability of FMVSS 204 to light trucks with an unloaded vehicle weight of 4,000 pounds to 5,500 pounds. (The standard already applies to light trucks under 4,000 pounds unloaded vehicle weight.) In the PRIA to the FMVSS 204 proposal, the agency concluded that the proposed extension of the standard would not have a significant impact on weight. The agency published a final rule adopting the provisions of the proposed rule on November 23, 1987 (see 52 FR 44893), with an effective date of September 1, 1991. As with FMVSS

208, the first full model year covered by FMVSS 204 is MY 1992.

In extending FMVSS 204, the agency concluded that steering system modifications necessary to comply with the standard generally would entail an additional intermediate steering shaft with a co-axial slip joint for most light trucks, and that some vehicles might need additional structure to assure compliance, but that significant additional structure would not be necessary. While there may be some necessary changes which may be phased in before MY 1992, neither Ford nor GM commented on this standard in their CAFE comments. Chrysler indicated that the possible weight increase could decrease its CAFE estimates by 0.1 mpg, but provided no data to substantiate their views. To the extent that the manufacturers' projections take into account structural changes to comply with FMVSS 204, the agency has not discounted these. However, the agency made no specific adjustments in manufacturers' MY 1990-1991 fuel economy capabilities to reflect the extension of FMVSS 204.

FMVSS 108. Changes to the agency's lighting standard permit the use of smaller sealed beam headlamps, replaceable light source headlamps and lower mounting height. All of these changes should give a manufacturer greater design freedom to achieve lower aerodynamic drag and some weight reduction. While the agency believes that this opportunity could result in a positive effect on CAFE levels, it does not have specific data indicating possible drag reduction for light trucks. These positive effects may be counterbalanced by possible slow consumer acceptance of light truck styling for certain models which have been influenced by aerodynamic considerations. In the MY 1988-1989 CAFE rulemaking, GM stated that its 1988 pickup designs which have included aerodynamic features were not well received by the public in design clinics.

Noise standards. NHTSA is not aware of any plans on the part of EPA to promulgate noise regulations during the MY 1990-1991 time period, and therefore, does not anticipate any attendant fuel economy impacts.

Emission Regulations. In the NPRM, the agency discussed several actions by the Environmental Protection Agency (EPA) in the area of emissions, including: diesel particulate matter; control of oxides of nitrogen (NOx); HC exhaust emission requirements; and on-board vapor recovery.

Diesel Particulate Matter. On June 4, 1987, EPA proposed to amend the exhaust emission control requirements for particulate matter for 1987 and later model years. The proposal would apply to light-duty diesel trucks of 3,751 pounds or greater loaded vehicle weight, with standards becoming progressively more stringent in later model years. The particulate standard for light-duty diesel trucks with a loaded vehicle weight of 3,750 pounds or less would remain unchanged. The proposal was in response to a GM petition, which outlined a plan to develop control technology to substantially reduce particulate emissions from current control levels. In its comments on this CAFE rulemaking, GM indicated that it did not know what effect on fuel economy would result from the EPA rulemaking, but stated that ". . . any required technology such as a particulate trap may adversely impact fuel economy." VW stated in its response to the agency's CAFE questionnaire that ". . . Federal exhaust emission standards have prevented Volkswagen from continuing to provide the consumer with the previously offered Vanagon Diesel, the most fuel efficient version of the Vanagon. However, neither GM nor VW submitted any date for the agency to review. Ford data show no diesel engines in its 0-8,500 pound fleet, so there would be no impact for Ford. Since EPA has not issued a final rule, and NHTSA has received no data on which to base any adjustment in manufacturer CAFE capabilities, the agency has not made any adjustments in manufacturer CAFE capabilities for MY 1990-1991.

Oxides of Nitrogen. EPA established more stringent NOx standards for model year 1988, which typically require the use of a 3-way catalyst technology for spark ignition engines to avoid a fuel economy penalty. Essentially all spark ignition engines for MY 1988 have incorporated this technology.

On December 16, 1987, EPA published a final rule deferring the MY 1988 NOx standard to MY 1990 for some light trucks. (52 FR 47858) In its comments on the MY 1990-1991 CAFE rulemaking, Ford claims a reduction in fuel economy based on compliance with this more stringent NOx standard.

Since Ford already uses 3-way catalyst technology on all of its spark ignition light truck engines, the agency agrees that there may be some reduction in current fuel economy levels for the heavier light trucks when the NOx standard becoms more stringent in MY 1990. In determining Ford's capability, NHTSA has accepted the very slight fuel economy loss projected by Ford in its MY 1990 projections. However, the agency concludes that by MY 1991, as the company gains experience with calibrating engines to the more stringent NOx standard, Ford should be able to eliminate or substantially reduce the projected penalty. Accordingly, the agency has eliminated this claimed penalty in assessing Ford's MY 1991 fuel economy capability.

California NOx. In a related rulemaking, on April 25, 1986, the California Air Resources Board (CARB) adopted more stringent NOx standards for compact trucks sold in the state. The regulation phases in compliance, with 50 percent of light trucks weighing from 0 to 4,000 pounds inertia weight subject to the

standard in 1989, and 85 percent of vehicles in this class required to meet the standard for Model Years 1990 through 1993. Both Ford and GM have claimed that this standard will have a small negative effect on their fuel economy capability.

As in the case of the MY 1990 Federal NOx standard, NHTSA has concluded that there may be some initial fuel economy loss as the companies gain experience with calibrations for the more stringent standard. Therefore, in determining manufacturer capabilities, NHTSA has accepted the slight fuel economy loss projected for that model year. However, the agency has concluded that by MY 1991 companies should be able to eliminate or substantially reduce the projected penalty. Therefore, the agency has eliminated this claimed penalty in assessing MY 1991 fuel economy capabilities.

Hydrocarbon Emissions. On September 8, 1986, EPA published an Advance Notice of Proposed Rulemaking concerning more stringent HC exhaust emissions for light duty trucks. In their December 1986 responses to NHTSA's CAFE questionnaire, both GM and Ford commented that more stringent HC standards may have a negative effect on fuel economy capabilities. While GM did not quantify its concern, Ford estimated a risk of up to 1.0 mpg loss in CAFE. Ford iterated its comment in response to the current CAFE rulemaking.

It is unclear whether the HC rulemaking would have any effect on CAFE capabilities, and it also is not clear that EPA will issue its final regulations in time to affect MY 1990 and 1991 vehicles. In its ANPRM, EPA requested comment on its statutory authority to provide less than four years' leadtime for any change in standards for heavier light duty trucks. NHTSA will consider any potential impact on light truck fuel economy if and when EPA issues a final rule.

On-Board Refueling Vapor Control. On July 22, 1987, EPA proposed requirements for on-board refueling vapor control. In its NPRM, EPA estimated that on-board controls could result in a net weight gain of 4-5 pounds per vehicle. NHTSA estimates that this weight increase could reduce average measured fuel economy for the MY 1990-91 GM or Ford light truck fleets by about 0.01 mpg, if there were no secondary weight effects (such as weight increases for springs or vehicle structure to compensate for the added component weight) or changes made in the vehicle to offset the small performance loss due to the on-board weight addition. In its comments on the agency's NPRM, GM stated that it estimated a probable weight increase of 10 pounds.

NHTSA has concluded that there will be no effect on MY 1990 or 1991 light trucks. The principal reasons for this are first, EPA has not issued a final rule, and its NPRM indicated that the effective date for such a rule would be two or more years after the issuance of the final rule, and second, there is not enough information to assess what, if any, possible changes may occur should this rule become final.

EPA Test Procedures.

Adjustment Credits. On July 1, 1985, EPA published a proposed rule to adjust the CAFE of light truck manufacturers to offset changes that had been made in fuel economy test procedures. (50 FR 27188) In the agency's CAFE proposed rule, we stated that "the rulemaking is not likely to have any significant effect on the manufacturers' projections." On November 24, 1987, EPA withdrew its proposed rule, stating that its original assumptions regarding baseline model years were "overly simplistic" and that "the potential CAFE adjustments are relatively small and tend to sum to zero when considered over the model years involved." (52 FR 44996) The CAFE projections provided by the manufacturers in response to the agency's CAFE NPRM did not include any potential EPA test procedures adjustments. No changes have been made in NHTSA's fuel economy capability analysis to reflect such adjustments.

Gear Shift Indicator Lights. By letter to vehicle manufacturers, EPA has proposed to eliminate one of the two methods currently authorized to determine the fuel economy benefits of gear shift indicator lights. These dashboard lights are designed to inform drivers about the optimal speed, from a fuel economy standpoint, for shifting gears. EPA proposes to eliminate the driver usage rate survey, the method preferred by GM as a "more representative credit for actual shift indicator lights usage than the on-road survey." Whether EPA will eliminate one method is still an open question. In addition, although GM stated in its comments on the fuel economy NPRM that limiting the shift indicator lights usage verification to the on-road survey method "could further reduce fuel economy," they did not provide any data on which the agency could base a determination of effect on CAFE capability.

Other Standards.

On January 29, 1986, EPA proposed prohibiting "the manufacture, importation, and processing of asbestos in certain products," and the phasing out of asbestos in all other products. The implication of this rulemaking for motor vehicles is eliminating the use of asbestos in brake linings. The agency has no information to date which would indicate any fuel economy effects from replacing asbestos with another substance, although GM claimed in its comments on the agency's CAFE NPRM that this rule could add five pounds to a vehicle's weight. The agency has not made any determination concerning the effects of this rulemaking on CAFE, since EPA has not published

a final rule, and it appears that there will be no significant impact on brake designs for the MY 1990-1991 vehicles.

Industry Capability: Technological Feasibility and Economic Practicability

As part of its consideration of technological feasibility and economic practicability, the agency has evaluated both domestic and foreign manufacturers' fuel economy capabilities for MY 1990 and 1991. In making this evaluation, the agency has analyzed the manufacturers' current projections, and underlying product plans submitted to it in response to the NPRM, and has considered what, if any, additional actions the manufacturers could take to improve their fuel economy.

Manufacturer CAFE Projections

Ford

As discussed in the NPRM, Ford projected in December 1986 that it could achieve the following CAFE levels for MY 1990:

a combined range of 19.2 mpg to 20.5 mpg;
a 2WD range of 19.7 mpg to 21.0 mpg; and
a 4WD range of 18.4 mpg to 19.5 mpg.

For MY 1991, Ford's December 1986 projections were:

a combined range of 19.8 mpg to 20.5 mpg;
for 2WD, a range of 20.3 mpg to 21.1 mpg; and
for 4WD, a range of 18.7 mpg to 19.5 mpg.

In its December 1987 response to the agency's NPRM, Ford submitted the following estimates of its MY 1990 capabilities:

for its combined CAFE, a range of 19.9 mpg to 20.4 mpg;
for 2WD, a range of 20.3 mpg to 20.7 mpg; and
for 4WD, a range of 19.0 mpg to 19.9 mpg.

In this same submission, Ford estimated its MY 1991 capabilities as follows:

for its combined CAFE, a range of 19.9 mpg to 20.5 mpg;
for 2WD, a range of 20.3 mpg to 20.7 mpg;
and for 4WD a range of 19.0 mpg to 20.1 mpg.

By comparison, Ford's PMY (Pre-Model Year) 1988 report projects a combined CAFE of 20.3 mpg, 0.1 mpg lower than the high range of its December 1987 NPRM comment.

The NPRM noted that the December 1986 submission indicated that Ford considered the high ends of its projected ranges to be its most likely CAFE levels. The lower ends represent certain risks which were not taken into account in its primary estimates. While the total risk for both model years is the same — 1.3 mpg — Ford also identified possible technical opportunities for MY 1991 which could be used to offset some of the risk for that model year.

In its response to the NPRM, Ford indicated that its lower figures may more accurately represent achievable CAFE levels for both MY's 1990 and 1991. Ford's December 1987 estimates for its nominal combined MY 1990 and 1991 CAFE levels are lower than those it projected in December 1986. Ford attributes the lower estimate of December 1987 to a number of small adjustments, both positive and negative. Ford's concern is that the lower end of its estimates (19.9 mpg for both MY 1990 and 1991) is based on estimated risks which will impede achieving the estimated capability.

In its NPRM comments, Ford discussed its product plans to achieve its maximum CAFE level. Such plans include the use of electronic fuel injection across all trucks, improved new transmissions, reduced friction/parasitics in every truck model and the introduction of improved combustion features in many engines. Affecting the possible benefits of these plans, however, include the relatively low fuel prices projected through the 1990's, attendant mix shifts, strong competition within the compact classes, competitive product actions, potential effects of proposed Federal emissions standards and lower than projected benefits from new technology.

Model Year 1990. For MY 1990, the combined estimate includes refinements such as adjustments for actual MY 1988 fuel economy figures, technological changes, the impact of emissions standards, and vehicle design and mix changes.

Model Year 1991. For MY 1991, the changes in Ford's combined estimates relative to a year ago are the result of very similar adjustments to those made for MY 1990, with a 0.1 mpg possible increase in the combined estimate. For MY 1991, Ford's December 1987 submission indicates a slightly lower projection than its December 1986 projection for 2WD, but a small increase in capability level for its 4WD CAFE. These estimates can be ascribed to increased sales of new models.

(The details of Ford's and all other manufacturers' changes are subject to claims of confidentiality for confidential business information whose release could cause competitive harm. This requires the agency's discussion of Ford's projections, as well as the other manufacturers' projections, to be of a general nature.)

In discussing its current projections, Ford ascribes its lower CAFE capabilities to a number of risks, which, in Ford's view, make the lower estimated figure that which it will be likely to achieve for both MY's 1990 and 1991. In its comment on the proposed rule, Ford stated that:

> Incorporation of all containable technology has yielded a combined CAFE nominal forecast of 20.4 mpg for 1990 and 20.5 mpg for 1991. However, we believe that future CAFE levels reflecting "high probability" risks will keep our 1990-1991 CAFE status at 20.0 mpg... Additional market mix risks, which were an ex-

trapolation of market trends, have been included in the potential CAFE levels . . . thus identifying the full range of CAFE possibilities that could be as low as 19.9 mpg.

The risks projected by Ford fall into the following categories: the effect of other Federal standards; two levels of market risk, including mix shifts; technological risks; and other risks. The largest risk, estimated at about 0.3 mpg for MY 1990 and 0.3 mpg for MY 1991, is ascribed to volume shifts following current market trends. (This "risk mix" scenario reflects the mix projected in Ford's Pre-model Year Report for MY 1988. Ford also discusses a risk mix scenario, which estimates a risk 0.2 mpg for MY 1990 and 0.2 mpg for MY 1991.) Ford notes that this risk is due primarily to higher than planned market demand for full-size trucks, as well as customer demand for higher option content and higher performance vehicles. These trends have resulted in increased vehicle weight, engine size and axle ratios.

General Motors

As discussed in the NPRM, GM projected in December 1986 that it could achieve the following CAFE levels for MY 1990:

a combined CAFE of 20.5 mpg;
a 2WD CAFE level of 20.9 mpg; and
a 4WD CAFE level of 19.2 mpg.

For MY 1991, GM's December 1986 projections were:

a combined CAFE of 20.6 mpg;
for 2WD, a CAFE level of 21.0 mpg; and
for 4WD, a CAFE level of 19.3 mpg.

By way of comparison, GM's 1988 Pre-model Year report projects a combined CAFE level of 20.2 mpg for that year.

In its December 1987 response to the agency's NPRM, GM submitted the following MY 1990 CAFE levels:

for its combined CAFE, a range of 20.0 mpg to 20.4 mpg;
for 2WD, a CAFE level of 21.0 mpg; and
for 4WD, a CAFE level of 19.0 mpg.

In this same submission, GM estimated its MY 1991 CAFE levels as follows:

for its combined CAFE, a range of 20.0 mpg to 20.4 mpg;
for 2WD, a CAFE level of 21.0 mpg; and
for 4WD, a CAFE level of 19.1 mpg.

GM also noted in its comments to the NPRM that the combined CAFE for both years could be 0.4 mpg lower, due to possible increased consumer demand for performance.

Model Year 1990. The December 1987 estimates are slightly lower than the December 1986 estimates for the combined CAFE and the alternate 4WD CAFE, but its 1987 estimate indicates a slight increase of 0.1 mpg for its CAFE for 2WD vehicles. The change in the estimated combined CAFE level reflects the interaction of several fairly large changes. The principal reason, according to GM's submission, is due to product program changes such as engine changes, vehicle design and drive train changes. Other changes in the estimate reflect consideration of such things as more recent CAFE test results and anticipated model mix shifts.

Model Year 1991. The December 1987 estimates are slightly lower than the December 1986 estimates for the combined CAFE and the alternate 4WD, but also reflect a slight increase of 0.1 mpg for its CAFE for 2WD vehicles. These revised estimates reflect similar reasons for changes in the 1990 projections — that is, changes in product plans, CAFE test procedures, drive train changes and anticipated model mix shifts.

In its December 1987 submission, GM shows no change in its estimates between MY 1990 and MY 1991 for the combined or 2WD standards, but does indicate an increase of 0.1 mpg between MY's 1990 and 1991 for its 4WD vehicles. GM's submission indicates that several changes will occur between these two model years, but that the CAFE levels will remain relatively stable. The changes can be described generally as technological improvements and possible countervailing model mix shifts.

In its December 1987 submission, GM notes that substantial uncertainties ". . . make CAFE forecasting tenuous at best," and that although it projects its combined CAFE to be in the range of 20.0 mpg to 20.4 mpg for both MY's 1990 and 1991, even a standard of 20.0 mpg may be too stringent for these model years. As an example, GM states that these uncertainties, and in particular strong consumer demand for larger light trucks and larger displacement engines, have resulted in current projections for MY 1988 and 1989 that place GM below the combined CAFE standards. In its MY 1989 light truck rulemakings the agency noted that it thought it unlikely that GM could meet its projected CAFE level of 20.9 mpg.

GM's comment discussed at length what it considers to be these "substantial uncertainties," which include uncertainty over the price of gasoline, changing consumer purchasing patterns, the level of import truck sales, and the realization of product plans. GM goes on to state that:

> One of the most difficult uncertainties to forecast in the 1990-1991 time frame is the level of consumer demand for vehicle performance. With decreasing fuel prices, customers have been demanding more performance in the light-duty truck fleet. . . . This shows a marked increase in the sales weighted ratio of engine horsepower to vehicle weight (a commonly used performance indicator) between 1983 and 1987. Appendix B-II indicates this trend toward higher perfor-

mance is forecasted to continue through 1990 and 1991 MY.

Although our current CAFE forecast of 20.4 mpg for both 1990 and 1991 MY incorporates some of this continued market demand for increased performance, we anticipate that to remain competitive in the area of performance, additional product programs may have to be developed for those model years. Analysis indicates this could result in an estimated decrease in CAFE of 0.4 mpg for each year and represents the lower CAFE value in our forecasted range of 20.0 mpg to 20.4 mpg for 1990-1991 MY.

GM emphasizes in its comments that its projections for MY's 1990 and 1991 try to capture the possible increase in consumer demand for performance, but the projections themselves do not include adjustments for such unanticipated uncertainties as fuel prices, model mix shifts, realization of product programs and increases in import truck sales. GM states that these uncertainties could decrease its current CAFE forecasts, and its current estimates of the potential impact on employment, sales and consumer choice. GM presents three separate scenarios, based on three different CAFE standards, to indicate the possible impact on employment, sales, and consumer choice. While much of GM's submission is subject to a claim of confidentiality, the three scenarios can be described generally as follows.

Scenario 1 assumes that the MY 1987-1989 combined CAFE standard of 20.5 mpg will be the standard for MY's 1990 and 1991. If GM realizes the upper end of its estimated CAFE level (20.4 mpg), it states that actions needed to stay in compliance could mean the loss of 4,000 GM and suppliers' jobs. If GM only realizes the lower end of its estimated CAFE level (20.0 mpg), actions taken to remain in compliance would mean job losses totaling 10,000. GM also provided estimated volumes of vehicles most susceptible to restrictions (as well as specific models affected), to indicate the impact on consumer choice.

Scenario 2 assumes that 21.0 mpg will be the standard for MY's 1990 and 1991. If GM realizes the upper end of its estimated CAFE level (20.4 mpg), it states that actions needed to stay in compliance could have "dire effects" on GM, as well as the loss of 25,000 GM and suppliers' jobs. If GM only realizes the lower end of its estimated CAFE level (20.0 mpg), actions taken to remain in compliance would mean job losses totaling 42,000.

Scenario 3 assumes a CAFE standard of 20.0 mpg for MY's 1990 and 1991. While this coincides with GM's lower end forecast, GM states continuing concern that this CAFE level itself may be too high, given the number of substantial uncertainties outside of the manufacturers' control.

Chrysler

[NOTE: Since the time that responses to the agency's questionnaire were received in December 1986, Chrysler has purchased American Motors Corporation (AMC) and continues to produce many of its light truck product lines. Responses to the agency's 1986 questionnaire were submitted by both Chrysler and AMC. Comments on the agency's 1987 proposed rule were submitted by Chrysler, which includes data on its AMC vehicles. To facilitate the comparison of estimates submitted in December 1986 and December 1987, the agency has combined the separate submissions received from Chrysler and AMC in 1986. In consolidating the numbers, the agency did not make any adjustments for possible changes in the fleet since the two companies have become one. For example, AMC's full-size 4WD pickup and 4WD passenger-car based Eagle have been dropped during MY 1988. Since changes such as this represent a very small portion of Chrysler's fleet, the failure to make adjustments such as this should have negligible, if any, impact on the accuracy of the 1986 estimates. All future discussion will refer only to Chrysler.]

As discussed in the NPRM, Chrysler projected in December 1986 that it could achieve the following CAFE levels for MY 1990:

a combined CAFE of 23.1 mpg;
a 2WD CAFE level of 23.9 mpg; and
a 4WD CAFE level of 21.2 mpg.

For MY 1991, Chrysler's December 1986 projections were:

a combined CAFE of 23.1 mpg;
for 2WD, a CAFE level of 23.7 mpg; and
for 4WD, a CAFE level of 21.6 mpg.

By way of comparison, Chrysler's 1988 Pre-model Year report projects a combined CAFE level of 21.6 mpg for that year.

In its December 1987 response to the agency's NPRM, Chrysler submitted the following MY 1990 CAFE levels:

for its combined CAFE, 21.4 mpg;
for 2WD, a CAFE level of 22.0 mpg; and
for 4WD, a CAFE level of 20.0 mpg.

In this same submission, Chrysler estimated its MY 1991 CAFE levels as follows:

for its combined CAFE, 21.5 mpg;
for 2WD, a CAFE level of 22.0 mpg; and
for 4WD, a CAFE level of 20.2 mpg.

Model Year 1990. The December 1987 estimates are consistently lower than the December 1986 estimates for all three categories of CAFE standards: the combined CAFE, the alternate 4WD and alternate 2WD vehicle CAFE. Chrysler ascribes these drops to bas-

ing fuel economy levels for certain vehicles on more complete fuel economy data, as well as some reduction in the combined level due to engine changes and volume mix shifts.

Model Year 1991. The December 1987 estimates also are lower than the December 1986 estimates for all three categories of CAFE standards. Chrysler ascribes these lower estimates for MY 1991 to similar circumstances as those affecting its MY 1990 fleet. There may, however, be some increase in fuel economy due to technological improvements.

In its December 1987 submission, Chrysler shows some improvement in its CAFE between MY 1990 and MY 1991 for the combined and 4WD standards. It indicates no increase between MY 1990 and 1991 for its 2WD vehicles. Chrysler's submission indicates that several changes will occur between these two model years, but that the CAFE levels will remain relatively stable. The changes can be described generally as technological improvements and possible countervailing model mix shifts.

Chrysler did not provide detailed descriptions of its fleets for analysis, but the agency used its 1988 Pre-model Year (PMY) report as a baseline to analyze its MY 1990 and 1991 fleet fuel economy performance. The 1988 PMY report indicates a higher CAFE than Chrysler now forecasts for MY 1990-91. The agency believes that the changes between 1988 and 1990-1991 can be attributed to small mix shifts to large vehicles and engines and to changes in certain engine families. In addition, Chrysler has identified some technological improvements for MY 1990 and 1991 that have a countervailing positive effect on its fuel economy.

Chrysler did not identify risks in its comments, but it did note that its projections are based on three assumptions: (1) that the projected model mix accurately reflects future market demands; (2) that the variability of actual certification fuel economy test values is no greater than anticipated; and (3) that running changes in the products do not have an adverse cumulative effect. Chrysler requests the agency to establish the combined CAFE standard for both MY 1990 and 1991 at 20.5 mpg. While this is lower than its current projected capabilities, Chrysler argues that it is faced with many factual uncertainties, uncertainties acknowledged by the agency in its NPRM as possibly affecting CAFE levels. Chrysler states that "[i]n evaluating our product plans for the early 1990's, it is possible that certain programs could be delayed or canceled due to economic uncertainties, potentially affecting our current CAFE projections for that time period. Additionally, as we continue the process of refining Chrysler and AMC's product plans into one, our CAFE projections could be affected." Finally it states that market shifts to larger trucks or the effect of other Federal standards may have a greater than expected impact on CAFE capabilities.

Volkswagen

In its December 1986 response to the agency questionnaire concerning product plans, Volkswagen (VW) did not provide specific data, noting rather that its product plans for 1990 would not differ substantially from those of MY 1987. It did not include any information concerning its MY 1991 fleet. In response to the NPRM, VW did not provide any additional information on its future product plans. Rather, VW iterated its concern as a "single line" manufacturer, requesting that the agency consider this type of manufacturer's "unique situation" in establishing CAFE standards.

In assessing the data available to the agency, we note that VW's 1987 Mid-model Year Report indicates a combined CAFE of 18.9 mpg, but its 1988 Pre-model Year Report projects a combined CAFE of 20.5 mpg. This increase appears to be due to engine improvements and sales mix shifts.

Other manufacturers

Foreign manufacturers compete primarily in the small vehicle portion of the light truck market. While no comments were received from these manufacturers, the agency expects these companies in general to achieve CAFE levels well above GM, Ford, and Chrysler, which offer full ranges of light truck models. Based on 1988 Pre-model Year reports, the expected average fuel economy of the import fleet for the current model year is 24.2 mpg. (The agency notes, however, that the import fleet CAFE levels for light trucks have declined steadily from a high of 27.4 mpg in MY 1981, to its MY 1988 projected level of 24.2 mpg.) Except for Range Rover, with an expected CAFE level of 16.7 mpg for its single line of 4WD vehicles, all import manufacturers are projecting MY 1988 CAFE levels higher than GM, Ford, and Chrysler. The projection closest to the American manufacturers is Isuzu's 4WD fleet, with a projected level of 20.0 mpg. In contrast, Toyota projects a 2WD CAFE of 26.1 mpg, a 4WD CAFE of 23.0 mpg and Mazda projected a combined CAFE level of 24.8 mpg.

Possible Additional Actions to Improve MY 1990-91 CAFE

There are additional actions which, given sufficient time and resources, manufacturers may be able to take to improve their CAFE above the levels which are currently projected for MY 1990 and 1991. These actions may be divided into three categories: further technological changes to their product plans, increased marketing efforts, and product restrictions.

Further Technological Changes

The ability to improve CAFE by further technological changes to product plans is dependent on the availability of fuel-efficiency enhancing technologies which manufacturers are able to apply within available time.

The agency's FRIA discusses the panoply of fuel-enhancing technologies that may be available to improve CAFE performance. Some of these technologies have been incorporated already into all manufacturers' product lines, so no further CAFE improvement can be expected. Some of the technological improvements apply to diesel engines, which have limited potential since the use of diesel engines has dropped dramatically since the drop in gasoline prices in the early 1980's.

In considering which technologies to pursue as feasible, the agency considered the real constraint of adequate leadtime. Most commenters argued that inadequate leadtime is an impediment to technological changes. Ford, in its comment on the NPRM, stated that: "Additional actions to raise the 1990 and 1991 CAFE above the projected levels are limited by the lack of identifiable technologies or product actions which could be employed. Even if such actions could be identified, there exists insufficient lead time, engineering workload limitations and insufficient additional production capacity to effectuate reasonable changes."

The agency agrees that leadtime constraints limit the ability of manufacturers to achieve major technological improvements in their projected CAFE levels. For example, technological actions which would result in weight reduction of a vehicle are most likely infeasible except in the context of the retooling of a model or in the application of materials substitution. Materials substitution, however, which is feasible in the timeframe of this rulemaking would have limited fuel economy benefit. Once such a new design is established and tested as feasible for production, the leadtime necessary to design, tool, and produce components such as new body sheet-metal subsystems for mass production could be 22 to 29 months. Other potential major changes take even longer. Leadtimes for new vehicles are typically at least three years.

However, manufacturers may be able to achieve some additional CAFE improvements by increasing the penetration of technologies already in production for MY 1991. There are some opportunities to reduce engine friction, such as with roller cam followers or with reduced piston ring friction. Roller cam followers and piston ring friction reduction have the potential of increasing CAFE levels by up to 0.1 to 0.3 mpg, depending on manufacturer and scope of additional application. Another area of improvement for MY 1991 is the extension of some type of electronic control for automatic transmissions. The value of this technology to CAFE levels would depend on the extent to which these transmissions are in use and could be extended to further applications, or could be incorporated into the manufacturer's product plans.

In its comments on the NPRM, the Department of Energy provided a draft report on light truck fuel economy projections for MY 1990 and MY 1995, which was prepared by Energy and Environmental Analysis, Inc. (EEA). This draft report includes estimates of fuel economy benefits and costs for various technological improvements, similar to those described in Chapter III of the agency's FRIA. EEA's analysis of CAFE improvements for MY 1990 for different technologies were in the same range as the agency's except in three areas: individual port fuel injection, diesel engines, and reduced viscosity lubricants. EEA's cost estimates were similar or lower than the agency's, except in two areas: tires and aerodynamic improvements.

In estimating fuel economy improvements, EEA uses a baseline of MY 1986, while the agency used a baseline of MY 1988. In many cases, EEA's estimates prove inaccurate because of changes which have occurred since 1986, such as low gasoline prices. This situation has resulted in consumer demand for larger engines within each truck line, as well as larger versions of smaller trucks. While the agency's baseline figures reflect these trends, EEA's do not.

In addition, some of the improvements anticipated by EEA already have been incorporated into the MY 1988 fleets, thus negating the value of these as potential increases to fuel economy levels. For example, EEA ascribes fuel economy improvements to such things as low tension rings, port fuel injection, serpentine belts, throttle body injection, and roller cam followers. Some of the improvements introduced between 1986 and 1988 were used to offset the effects of complying with new emissions regulations. Further, EEA does not recognize changes in market conditions which have added to the effect of most fuel economy measures being negated. For example, in MY 1988 the manufacturers' fleets consist of bigger engines and bigger versions of smaller trucks.

We agree with EEA on the possible improvements due to roller cam followers and low tension rings, because manufacturers have either not implemented these changes, or have implemented them only partially. With regard to the other projected improvements, most were included in the manufacturers' December 1987 CAFE projections for MY 1990 and 1991.

In particular, EEA's report projects a two percentage point higher gain for individual port fuel injection than the agency's estimate. However, EEA also states that this technological improvement is not clearly cost-effective for CAFE improvement. For

direct fuel injection diesel and indirect injection diesel engines, EEA estimates a 5 to 10 percent greater improvement in CAFE than the agency. However, the agency notes that these estimates reflect replacing a gasoline engine with a diesel engine. However, if there were an actual substitution in comparable engine size, there would be degradation in performance. For equivalent performance levels, the improvement with diesel engines would be similar to the agency's estimate.

Finally, EEA projects higher improvements than the agency in the area of lubricants. Its report predicts a one percentage point higher upper range improvement for reduced viscosity lubricants and three percentage points for friction modified lubricants. The agency cannot assess these figures without more specific information about the baseline figures used by EEA in making its estimates. For example, projections based on older data can make assessment of the baseline unclear. In the area of lubricants this is especially important, since the kind of lubricant used before changing to a reduced viscosity lubricant can affect significantly the observed "improvement" in CAFE performance. (For example, if the lubricant used in a baseline engine was of a very high viscosity, the use of a low viscosity lubricant will improve significantly the fuel economy of the engine. The engine often must be redesigned, however, to operate satisfactorily with the lower viscosity lubricant.)

EEA's cost estimates were higher than the agency's for tires and aerodynamic improvements. The agency believes that there is no specific unit cost for aerodynamic improvements, since these changes are incorporated during the basic design phase of the vehicle and result from changing sheet metal contours. While the agency differs on the cost of tires, there does not appear to be practical room for improvement in this area, since most manufacturers already equip vehicles with tires of low rolling resistance.

Increased Marketing Efforts

As discussed in the NPRM, NHTSA believes that the ability to improve light truck CAFE by marketing efforts is relatively small. Light trucks are often purchased for their work-performing capabilities. This is particularly true for the larger, less fuel-efficient light trucks. Since the smaller light trucks cannot meet the needs of all light truck users, the manufacturers' ability to use marketing efforts to encourage consumers to purchase smaller light trucks instead of larger light trucks is limited.

As a practical matter, marketing efforts to improve CAFE are largely limited to techniques which either make fuel-efficient vehicles less expensive or less fuel-efficient vehicles more expensive. Moreover, the ability of a manufacturer to increase sales of fuel-efficient light trucks depends in part on increasing its market share at the expense of competitors or pulling ahead its own sales from the future. The ability of domestic manufacturers to make such sales increases is also affected by the strong competition in that market from Japanese manufacturers. While the Japanese manufacturers currently have an overall combined market share of about 21 percent of light trucks, their share for the smaller, more fuel-efficient light trucks is about 45 percent.

In addition, the improved fuel efficiency of all sizes of modern light trucks makes it more difficult to sell the small light trucks. The reason for this is that there are diminishing returns for consumers in terms of fuel economy from purchasing smaller light trucks as the fuel efficiency of larger light trucks increases. Also, as gasoline prices have declined, there are diminishing returns in terms of fuel cost savings from purchasing more fuel-efficient vehicles. Hence, an economically rational consumer will not be as concerned with improving fuel efficiency when gasoline prices are low, making it more difficult for a manufacturer to market its most fuel-efficient vehicles.

A problem with pulling ahead sales is that the manufacturers' CAFE levels for subsequent years are reduced. For example, if a manufacturer improves its MY 1990 CAFE by pulling ahead sales of fuel-efficient light trucks from MY 1991, its MY 1991 CAFE will decrease, compared with the level it would have been in the absence of any pull-ahead sales.

GM's comments on the NPRM noted particularly the difficulty in predicting any gains in CAFE through marketing incentives based on present and future projections of consumer purchasing preferences. What makes estimating these types of gains so difficult includes such factors as the uncertain future of world oil prices, the number of competitive entries in the compact segment, potential market countering actions by each competitor, and the price/cost advantage of imported models.

Given all of these factors, NHTSA concludes that the domestic manufacturers cannot significantly improve their MY 1990-91 CAFE's by increased marketing efforts.

Product Restrictions

As the agency discussed in its proposed rule, manufacturers could improve their CAFE by restricting their product offerings, e.g., limiting or deleting production of particular larger light truck models and larger displacement engines. However, such product restrictions could have significant adverse economic impacts on the industry and the economy as a whole. For example, the FRIA presents a scenario in which GM and Ford are assumed to restrict production of sufficient numbers of their least fuel-efficient light truck models to obtain a 0.5 mpg improvement in CAFE for MY 1990-1991. Under this scenario, for MY 1990 GM could suffer a sales loss of more than

157,000 light trucks, while Ford could experience a sales loss of more than 122,000 light trucks. For MY 1991, the FRIA indicates that GM could suffer a sales loss of up to 156,000 units of its projected MY 1991 light truck production, while Ford could suffer a sales loss of up to 126,000 units of its projected MY 1991 light truck production.

Because of the uncertainty regarding actual sales losses and the nature of personnel adjustments that would have to be made by manufacturers, no precise estimate of net employment effects can be made under this scenario. However, a rough estimate based on estimated lost sales indicates a potential loss of 18,600–56,000 jobs in the manufacturing and supplier industries. The gross estimates are the same for MY 1991. NADA, in its comments on the NPRM, asked the agency to consider the impact on motor vehicle dealers, as well as the effects on manufacturers and suppliers. NADA estimates that in 1987 there were 880,000 employees of franchised new-car dealers, of which approximately 200,600 were new and used vehicle salespersons. Assuming sales personnel are those most likely to be affected by a short-term decrease in sales volume, and using a similar "worst-case" scenario as above, the agency estimates a possible job loss of 2,300 for each model year.

In addition to the adverse sales and jobs impacts on the automotive industry, a wide range of businesses could be seriously affected to the extent that they could not obtain the light trucks they need for business use. Also, such product restrictions could run counter to the congressional intent that the CAFE program not unduly limit consumer choice. See H.R. Rep. No. 93-340, 94th Cong., 1st Sess. 87 (1975).

Given these considerations, NHTSA believes that significant product restrictions should not be considered as part of a manufacturer's capabilities to improve MY 1990-91 CAFE levels.

Manufacturer-Specific CAFE Capabilities

As discussed later in this notice, NHTSA is directed to take "industrywide considerations" into account in setting fuel economy standards. In carrying out this direction, the agency focuses on the least capable manufacturers with substantial shares of light truck sales.

For MY 1990-91, Ford is the "least capable manufacturer" with a substantial share of the combined and 2WD light truck sales, while GM is the "least capable manufacturer" with a substantial share of the market for 4WD light truck sales. (From calendar year 1987 sales figures, the agency estimates that Ford's share of the entire light truck market is 30 percent, while GM's is 32 percent. Chrysler's anticipated share is 17 percent.) Chrysler's CAFE projections for MY 1990-91 are higher than both GM's and Ford's, primarily because the Chrysler fleet is biased toward smaller trucks and does not cover as wide a range of models. While VW's achievable level may or may not be below that of GM and Ford, it does not have a substantial share of industry sales. (As reflected in its 1988 PMY report, VW estimates that its CAFE level for MY 1988 will be 20.5 mpg. Based on calendar year 1987 sales data, the agency estimates that VW will have less than 0.2 percent of light truck sales.)

Ford

Ford's MY 1990-91 CAFE projections are subject to a number of uncertainties, which Ford describes as risks.

Model Year 1990. While Ford projects a possible CAFE level of 20.0 mpg to 20.4 mpg, its comments argue that its actual CAFE could be as low as 19.9 mpg. The agency has analyzed the current projections by Ford and has made specific determinations concerning the validity of each of the risks detailed by Ford, as well as possible opportunities for Ford to increase its fuel economy. As stated previously, much of the data used to analyze manufacturer capabilities is subject to a claim of confidentiality. The agency summarizes its determinations as follows:

In its December 1987 comments on the NPRM, Ford stated that its nominal combined MY 1990 CAFE projection of 20.4 mpg could drop as low as 19.9 mpg, if all potential risks are realized. In its comments, Ford attributes a drop of 0.4 mpg in CAFE to technical risks, other risks (powertrain mix, capacity, etc.), and volume risk scenarios. Ford's baseline projections for MY 1990 included some increase in the compact truck share (relative to MY 1988 projections) of Ford's total volume. The company provided two potential volume risk scenarios for MY 1990: one in which the compact truck share grows at a slower rate than the baseline projection and one in which the compact truck share does not grow at all. Both scenarios result in a reduction of the company's MY 1990 projection, but the one in which the compact truck share does not grow at all results in an additional reduction over the scenario in which compact sales grow at a slower rate. Ford ascribes the additional drop in CAFE to the potential effects of the MY 1988 mix. Ford states:

> . . . recent market shifts have caused additional reductions in Ford's 1988 and 1989 CAFE projections, and will necessitate difficult and costly actions in an effort to shift mix back toward smaller trucks. This current difficulty is the result of higher than planned full-size market demand, as well as, customer demand for higher option content and higher performance vehicles. These trends have increased vehicle weight, engine size and axle ratios.

The agency acknowledges that customer preference limits the ability of the manufacturer to change vehi-

cle mix. Given the dynamic and interactive nature of an individual manufacturer's product plan, the product plans of the manufacturer's competitors, and consumer demand, analyzing mix assumptions is a highly complex matter. The agency notes that since many factors affect mix, sales mix changes between model years for a particular manufacturer may relate to several factors and may or may not indicate a trend with respect to overall industry consumer demand. For example, if a manufacturer introduces a new model, the high level of sales ordinarily associated with a new model may result in increased sales of whatever size class the vehicle happens to be, thereby altering the mix. Similarly, the removal from the market of a particular model, or the gradual aging and resultant reduction in popularity of a particular model also may result in mix effects. Thus, mix effects between model years for a particular manufacturer, which can have substantial effects on the manufacturer's CAFE level, need not result from a change in overall consumer demand.

Given these considerations, the agency has concluded that it is very unlikely that Ford will experience no growth in the compact truck share of the company's volume by MY 1990. First, it should be noted that Ford's projected MY 1988 mix has a smaller compact truck share than the company's most recent data for MY 1987. While the agency considers the 1988 Pre-model Year report to be reliable, to the extent that it contains data reflecting the three most recent sales months, it does not reflect the introduction by Ford of some new and smaller products by MY 1990. The introduction of new models almost certainly will result in some increase in small truck share and thus, CAFE performance.

In addition, while Ford is one of three manufacturers offering a full range of vehicles, which can bias sales toward larger vehicles, there has been a strong trend in the industry toward compact trucks. In MY 1987, compact pickups accounted for 35 percent of light truck production, compact vans and buses accounted for 18 percent of production and compact utility vehicles accounted for 12 percent of production. In consideration of all of the preceding, the agency accepts Ford's "1990" scenario projecting a risk of a slower rate in compact truck sales growth to changing market demands, but does not consider the additional "MY 1988" model shift risk of a decrease in mpg to be one which will affect Ford's MY 1990-1991 capability.

A related risk, raised by Ford as well as GM, is the concern that these manufacturers will lose market shares to imports in the compact area. The agency notes that there has not been a significant increase in the imported vehicles' market share in recent years. Much of this can be ascribed to the current strong value of the yen as opposed to the dollar, as well as the 25 percent tariff imposed on imported light trucks, which has reduced the previous price advantage of imported vehicles. However, in accepting Ford's "1990" risk scenario, the agency implicitly accepts the possibility that import truck sales may increase if the dollar begins to strengthen in relation to the yen.

Ford ascribes a further negative effect on CAFE levels to technological risks associated with introducing engine and transmission changes on certain models, the unavailability of certain parts to complete planned drive train changes, as well as issues related to CAFE testing. NHTSA consistently has recognized that there is a certain risk outside of the manufacturer's control which may result in lower than anticipated CAFE benefits from introducing new technologies. The introduction of a new technology may yield lower than expected benefits, which has nothing to do with the efforts of the manufacturer to introduce successfully such a change. Further, the agency accepts Ford's statements that it may need to make adjustments to its CAFE testing. And, finally, the agency acknowledges that Ford may plan the introduction of certain improvements, but that the amount of these improvements may be limited by actual personnel, supplies or plant restrictions. For example, while market demand may seem to create the opportunity for CAFE benefit through the introduction of planned technological improvements, actual physical constraints such as the availability of parts may restrict the realization of the entire benefit of the planned improvement, within the time between now and production of MY 1990 vehicles.

Finally, Ford ascribes risk in achieving its MY 1990 CAFE level due to changes in the California NOx regulations. As described in detail in the Federal Standards section of this preamble, there will be stricter Federal NOx standards for the heavier light trucks beginning in MY 1990. In determining Ford's capabilities, the agency included the very slight fuel economy loss projected by Ford for this model year.

On April 24 and 25, 1986, the California Air Resources Board adopted more stringent NOx standards for compact trucks. For model years 1990 through 1993, 85 percent of compact light trucks (weighing under 4,000 pounds inertia weight) must certify to a 0.4 grams per mile NOx standard. Ford ascribes a 0.05 mpg negative CAFE impact for both MY 1990 and 1991 due to this requirement. The agency acknowledges, as it does with the Federal NOx standard, that there may be a slight fuel economy loss for MY 1990 as Ford gains experience with calibrations for the more stringent standard.

In conclusion, the agency agrees with Ford that it faces certain risks, beyond the ability of the company to control or offset, that may result in its fuel economy level only reaching the lower end of its projected range of 20.0 mpg. The agency does not agree with the further reduction of 0.1 mpg based on Ford's PMY

1988 model mix projections. Further, the agency also believes that some, but not all risks actually will occur, or have fuel economy reducing results. In addition, although the agency has identified some specific technological improvements that may be implemented by manufacturers, it has determined that there is not adequate lead time for Ford to implement these changes for its MY 1990 fleet. Accordingly, the agency has determined that Ford's maximum feasible fuel economy capability for MY 1990 is 20.0 mpg.

MY 1991. Ford's projected range for MY 1991 reflects a possible 0.1 mpg increase, although it asserts that the risks present for the MY 1990 fleet continue to be risks for MY 1991. While the agency acknowledges the validity of the risks to the extent discussed above, we also have determined that additional leadtime for the MY 1991 fleet lessen the effect of certain risks. In addition, the agency believes that certain of the technological improvements discussed in B.1. of this preamble are possible to implement for MY 1991. Among the more promising of these technical opportunities for Ford are engine friction reduction programs such as low friction piston rings, roller cam followers and further application of certain transmission improvements. The agency also believes that, while gasoline prices have declined substantially since the early 1980's, these prices should remain stable through the early 1990's. Other risks anticipated for MY 1990 and 1991 may also be overcome by 1991, to the extent they are within the range of actions possible for Ford to make. For example, if the planned implementation of a certain technological improvement has been delayed because of plant capacity, this type of problem should be able to be worked out by MY 1991.

Regarding the Federal and California NOx standards, the agency has concluded that by MY 1991, as the company gains experience with calibrating engines to the more stringent NOx standard, Ford should be able to eliminate or substantially reduce the projected penalty. Therefore, the agency has eliminated this claimed penalty in assessing Ford's MY 1991 fuel economy capability.

Accordingly, the agency believes that with the added leadtime afforded Ford for MY 1991, several of the risks ascribed to MY 1990 can be overcome. Technological improvements identified as feasible earlier in this preamble should, to some degree, be able to be implemented by MY 1991. Consumer demand remains a continuing concern for Ford's fleet, but the introduction of new models should attract consumers to more fuel efficient vehicles. Further, the additional time to calibrate engines should dissipate the risk identified in connection with compliance with NOx requirements. For all of the above stated reasons, the agency has concluded that Ford's maximum feasible CAFE capability for MY 1991 is 20.2 mpg.

General Motors

GM attributes the 0.4 mpg risk in its MY 1990 and 1991 CAFE projections entirely to the possibility that continued market demand for performance will force a shift to higher horsepower engines in its truck fleet with the corresponding loss in fuel economy. As already discussed in the Manufacturer Estimates section of this preamble, GM also identified several other circumstances which it believes will affect its CAFE capability. These include GM product plans related to engine changes, model modification and drive train changes, as well as modification to previous estimates due to CAFE testing and other unplanned for model mix shifts. Although not quantified, GM also lists in its comments the potential risk possible in other Federal safety standards, emission standards, import fleet competition, and low gasoline prices.

In support of its position that demand for higher performance creates a real risk to its fuel economy performance, GM submitted a letter to the agency on January 15, 1988, describing the results of a consumer satisfaction survey of GM's light trucks. The data were acquired during each of the quarters of MY 1987 from buyers of GM and three competitive makes of trucks. The survey results indicated levels of consumer satisfaction with acceleration performance among a number of light truck manufacturers. While few details of the survey were provided (and those are subject to a claim of confidentiality), the agency notes from its own data, that GM's buyer satisfaction data do not correlate with the fleet average horsepower-to-weight ratio of the MY 1987 light trucks of the surveyed manufacturers.

In NHTSA's final rule on MY 1989 light truck CAFE standards (see 52 FR 6564), the agency concluded that GM's decision to increase horsepower in certain cases was an appropriate market-related action for the purpose of competing with certain vehicles produced by Ford, Chrysler, AMC, Nissan and Toyota. While the agency maintains this position, GM did not provide adequate information for the agency to assess the market demand for such plans for MY 1990 and 1991. Furthermore, GM's projections for MY 1990 and 1991 include a higher rate of increase in performance than in previous years. From the available data, the agency concludes that GM would have to affirmatively change its plans to lower its CAFE levels by 0.4 mpg. The agency has determined that GM's maximum feasible fuel economy level for MY 1990 is in a range from 20.0 mpg to 20.4 mpg. For MY 1991, GM's maximum feasible fuel economy level is in a range from 20.2 mpg to 20.4 mpg.

Other Manufacturers

Chrysler requested that CAFE standards be set within the range of the NPRM (20.0 mpg to 21.0 mpg), even though it projects combined CAFE levels of 21.4 mpg for MY 1990 and 21.5 mpg for MY 1991. Chrysler's 1988 PMY report estimates a CAFE level of 21.6 mpg. Chrysler's request that the agency establish a standard below its current projections appears to reflect its uncertainty concerning product plans since its acquisition of AMC. Chrysler does not constitute a least capable manufacturer with a substantial share of the market and, as in the past, the agency has not considered it appropriate to set the CAFE level based on Chrysler's capabilities. The agency also notes, however, that Chrysler should exceed the established CAFE standards for both MY 1990 and 1991.

The import manufacturers, except for VW, did not respond to the NPRM. In the past, the light truck fuel economy standards have not been difficult for most importers to achieve, because their fleets have been composed almost exclusively of small pickups, vans, and utility vehicles. VW's CAFE levels have not been as high as the CAFE standard in some of the preceding years, but VW currently is projecting a CAFE level of 20.5 mpg for MY 1988. This is above the standard established for MY 1990 and 1991 in this rulemaking.

The only other light truck import manufacturer that has not met the CAFE standards in recent years is Range Rover, which projects a 4WD CAFE of 16.7 mpg for MY 1988. Range Rover offers only one model for sale in the United States, a relatively heavy (4,750 pound equivalent test weight), 4WD utility vehicle that is imported in small quantities (3,600 units projected for MY 1988).

Several importers have 4WD fleets that will be close to the 4WD alternate standard of 19.5 mpg for MY 1988, including Nissan, Isuzu at 20.0 mpg, and Chrysler Imports. All of these importers also have 2WD vehicles, so they have the option of meeting the combined standard, which the agency believes they can do easily. Further, all of these importers' MY 1988 projections exceed the alternate 4WD CAFE standards for MY 1990 and 1991 established by this rule.

DOE's comment (in a draft report on light truck fuel economy prepared by EEA) on the NPRM contained projections for MY 1990 of 21.8 mpg for Ford, 22.0 mpg for GM, and 22.9 mpg for Chrysler. (The agency combined DOE's projections for Chrysler and AMC to achieve this latter number.) The EEA projection for Ford differs from the agency's projection of 20.0 mpg and exceeds Ford's actual and projected truckline fuel economies by one to two mpg. EEA's analysis does not recognize market trends toward heavier average weights within each truckline due to consumer demand for higher option content and larger versions within each truckline ("king cabs," etc.). For example, between MY 1986 and 1988, the average weights for types of light trucks (i.e., standard pickups, compact bus, etc.) within Ford's product line typically have risen by 100-200 pounds. This trend is projected to continue between MY 1988 and 1990, and is not captured in EEA's analysis. Thus, the new or expanded applications of fuel economy improving technologies tend to be offset by these market trends. Ford's model specific fuel economies have not, on average, improved between MY 1986 and its MY 1990 projection. Therefore, the agency has concluded that EEA's projections overstate the maximum feasible fuel economy levels.

EEA's projected average fuel economies for MY 1990, by truckline, are close to GM's, but typically are higher by several tenths of an mpg. These differences can be ascribed to different assumptions concerning sales mix of various truck types, and the application of certain technologies that are not consistent with GM's product line. For example, EEA's projections include the application of throttle body fuel injection on some engines on certain models that were already equipped with this feature in MY 1986. In addition, EEA ascribed value to the introduction of roller cam followers to more engines than is feasible to receive them by MY 1990. While we agree with EEA that the introduction or expansion of roller cam followers is a technology possible to be introduced in the time available for MY 1991, EEA's use of MY 1986 as a baseline skews the value of many of its projected possible improvements. EEA also ascribes a possible CAFE improvement for LT metric tires. The agency does not consider LT metric tires to be of any CAFE value, since it is the agency's understanding that these tires are merely the metrification of tire sizes, and provide no actual reduction in rolling resistance. In addition, as in the case of Ford, GM has experienced increased consumer demand for heavier versions within each truckline between MY 1986 and 1988, resulting in typical average weight increases of 125 to over 400 pounds. Furthermore, GM's average engine size within trucklines has risen between MY 1986 and 1988. These market trends are not captured in EEA's analysis. Thus, as in the case of Ford, NHTSA has concluded that EEA's projections overstate GM's maximum feasible fuel economy level.

2WD and 4WD CAFE levels. For alternate CAFE standards for 2WD and 4WD, the agency again looks to the least capable manufacturer with a substantial share of the market. For 4WD, this is GM with projected nominal CAFE levels of 19.0 mpg in MY 1990 and 19.1 mpg for MY 1991. The agency believes that these numbers represent fairly the capabilities of GM as a manufacturer of a 4WD fleet with the least fuel economy capability and that GM faces no unusual risk in meeting these levels. For 2WD, Ford appears to be the least capable manufacturer with the 2WD

CAFE range of 20.3 mpg to 20.7 mpg for both model years. The agency believes that all risk factors included in the lower value of this range will not occur, and, accordingly, Ford's 2WD CAFE capability for MY 1990 is 20.5 mpg. For MY 1991, as in the case of the combined standard, the agency believes that there is sufficient leadtime for Ford to apply some, if not all, of the technological improvements previously discussed, and to eliminate the negative CAFE effects of complying with the new California NOx standards. Accordingly, the agency concludes that Ford's 2WD CAFE capability for MY 1991 is 20.7 mpg.

Agency Determination of the Maximum Feasible Fuel Economy Level

As discussed above, section 502(b) requires that light truck fuel economy standards be set at the maximum feasible average fuel economy level. In making this determination, the agency must consider the four factors of section 502(e): Technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy.

Interpretation of "Feasible"

Based on dictionary definitions and judicial interpretations of similar language in other statutes, the agency has in the past interpreted "feasible" to refer to whether something is capable of being done. The agency has thus concluded in the past that a standard set at the maximum feasible average fuel economy level must: (1) be capable of being done and (2) be at the highest level that is capable of being done, taking account of what manufacturers are able to do in light of available technology, economic practicability, how other Federal motor vehicle standards affect average fuel economy, and the need of the nation to conserve energy.

Industrywide Considerations

The statute does not expressly state whether the concept of feasibility is to be determined on a manufacturer-by-manufacturer basis or on an industrywide basis. Legislative history may be used as an indication of congressional intent in resolving ambiguities in statutory language. The agency believes that the below-quoted language provides guidance on the meaning of "maximum feasible average fuel economy level."

The Conference Report to the 1975 Act (S. Rep. No. 94-516, 94th Cong., 1st Sess. 154-5 (1975)) states:

> "Such determination [of maximum feasible average fuel economy level] should take industrywide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic manufacturers that currently exist, and the possible implications for the national economy and for reduced competition association (sic) with a severe strain on any manufacturer. . . ."

It is clear from the Conference Report that Congress did not intend that standards simply be set at the level of the least capable manufacturer. Rather, NHTSA must take industrywide considerations into account in determining the maximum feasible average fuel economy level.

NHTSA has consistently taken the position that it has a responsibility to set light truck standards at a level that can be achieved by a manufacturer or manufacturers whose vehicles constitute a substantial share of the market. See 49 FR 41251, October 22, 1984. The agency did set the MY 1982 light truck fuel economy standards at a level which it recognized might be above the maximum feasible fuel economy capability of Chrysler, based on the conclusion that the energy benefits associated with the higher standard would outweigh the harm to Chrysler. (45 FR 20871, 20876; March 31, 1980) However, as the agency noted in deciding not to set the MY 1983-85 light truck standards above Ford's level of capability, Chrysler had only 10-15 percent of the light truck domestic sales, while Ford had about 35 percent. (45 FR 81593, 81599; December 11, 1980) More recently, both the MY 1988 and 1989 CAFE rulemakings acknowledged that the standards established would most likely be at levels higher than those achievable by VW. (51 FR 15335, 15345, April 23, 1986, and 52 FR 6564, 6575, March 4, 1987.)

Petroleum Consumption

The precise magnitude of energy savings associated with alternative light truck fuel economy standards is uncertain. The FRIA provides calculations for the hypothetical lifetime fuel consumption of the MY 1990-1991 domestic light truck fleets assuming those same fleets could and would achieve alternative CAFE levels. In estimating the effect of the proposed range of mpg values being considered on lifetime fuel consumption of the MY 1990 and 1991 fleets, the agency considered only the GM and Ford light truck fleets, since the product plans of other light truck manufacturers are unlikely to be affected by this rule.

Based on the average projected sales for GM and Ford during the 1990 and 1991 model years, a CAFE level of 21.0 mpg could hypothetically result in the use of 433 million fewer gallons over the fleet's lifetime compared to the MY 1989 standard of 20.5 mpg. A fuel economy level of 20.5 mpg would save 455 million gallons relative to a fuel economy level of 20.0 mpg. Relative to a CAFE of 20.0 mpg, a CAFE level of 20.2 mpg would save 185 million gallons. Corresponding estimates for 1991 are a savings of 448 million gallons for 21.0 mpg over 20.5 mpg, a savings of 471 million gallons for 20.5 mpg over 20.0 mpg, and a savings of 191 million gallons for 20.2 mpg over 20.0 mpg.

However, it is possible that manufacturers may be able to achieve higher CAFE levels only by restricting the sales of their large light trucks or more powerful engines. If this occurred, consumers might tend to keep their older, less fuel-efficient light trucks in service longer. Also, to the extent that a particular manufacturer might find it necessary to restrict sales of particular engines or vehicles, consumers may be able to transfer their purchases to another manufacturer which may have less difficulty meeting the CAFE standard, but can offer comparable engines or vehicles. Thus, the agency believes that the actual impacts, if any, on energy consumption of alternative higher fuel economy standards, could be much less than the theoretical calculations comparing different levels of industrywide CAFE.

Setting the 1990 and 1991 Standards

Based on the analysis described above and on manufacturer projections, the agency concludes that the manufacturers can achieve the combined fuel economy levels in the following table:

Manufacturer	1990 Combined CAFE (mpg)	1991 Combined CAFE (mpg)	Approximate Market Share* (percent)
Chrysler	21.4	21.5	17
Ford	20.0	20.2	30
GM	20.0–20.4	20.2–20.4	32
Volkswagen	20.5**	20.5**	less than 0.2

*Based on Calendar Year 1987 sales figures.
**VW submitted no CAFE projections in its comments on the NPRM. The values shown are from its 1988 PMY Report.

As noted previously, foreign manufacturers other than VW only compete in the small vehicle portion of the light truck market and are therefore expected to achieve CAFE levels well above Ford, GM and Chrysler, which offer full ranges of light truck models.

NHTSA has concluded that among the manufacturers with a substantial share of combined light truck sales, Ford is the least capable manufacturer, with a MY 1990 combined fuel economy capability of 20.0 mpg.

The setting of maximum feasible fuel economy standards, based on consideration of the four required factors, is not a mere mathematical exercise, but requires agency judgment. In determining the maximum feasible CAFE standard, NHTSA must weigh the benefits to the nation of a higher average fuel economy standard against the difficulty of individual manufacturers facing potentially higher fuel economy standards and industrywide considerations, as indicated in the legislative history of the fuel economy act. (See the language of the Conference Report quoted above.)

NHTSA has concluded that 20.0 mpg is the maximum feasible combined standard for MY 1990, and 20.2 mpg is the maximum feasible combined standard for MY 1991.

Ford projects a CAFE range of 19.9 mpg to 20.4 mpg for MY 1990, and a CAFE range of 19.9 mpg to 20.5 mpg for MY 1991. As discussed at length previously, the agency believes that several of the risks identified by Ford must be anticipated as happening, which limits their ability to achieve the higher end of their CAFE estimates. The principal factor offsetting these risks for MY 1991 is additional leadtime, which provides Ford the opportunity to implement alternative methods of improving its CAFE. Setting the MY 1990 standard at 20.0 mpg and the MY 1991 standard at 20.2 is well within the range of Ford's projections, without causing significant economic distortion. Further, it should act as an incentive for that company to achieve its maximum fuel economy capability. Since Ford represents nearly a third of all light trucks subject to fuel economy standards, a standard set at Ford's maximum feasible level can make a substantial contribution to petroleum conservation.

NHTSA does not believe that a standard set at a level above Ford's capability would be consistent with the requirement that standards be set taking industrywide considerations into account, given that company's market share and given the questionable effects of a higher standard on petroleum consump-

tion. Even if the MY 1990 and 1991 standards could be set at a level above Ford's capability, however, the agency believes that it could not be set above both Ford's and GM's capabilities, since those companies' combined market share exceeds 60 percent. As noted previously, the agency's estimate of GM's maximum capability for MY 1990 is 20.0 mpg–20.4 mpg and for MY 1991 is 20.2 mpg–20.4 mpg, similar to the standards being adopted for the two model years in this rulemaking.

The precise effects on petroleum conservation of a standard set higher than Ford's projected capability are uncertain. Since most other manufacturers in the industry project MY 1990 and 1991 CAFE levels above that of Ford's capability, a standard set at 20.5 mpg would not be expected to affect the petroleum consumption of trucks manufactured by that part of the industry. The agency believes that any actual gasoline savings associated with a standard set higher than Ford's capabilities would be minimal, given the comparative capabilities of other light truck manufacturers.

Restricting sales of its larger light trucks by either GM or Ford could result in purchasers of these vehicles and engines looking elsewhere for the same product. To a certain extent, sales of many light trucks are relatively inelastic; that is, purchasers buy light trucks with certain specifications based on actual work or recreational needs. To the extent that purchasers do transfer their sales to other manufacturers, there is little or no effect on petroleum consumption.

A higher standard than 20.0 mpg for MY 1990 or 20.2 mpg for MY 1991 could result in serious economic difficulties for Ford. While the agency concluded that Ford's capability for MY 1989 was 21.0 mpg, it also stated in the MY 1989 final rule that Ford's maximum achievable CAFE could be as low as 20.2 mpg. This conclusion was based primarily on the agency's analysis that virtually all of the decline in Ford's CAFE was due to reasons beyond the company's control. NHTSA believes that the first potential fuel-efficiency enhancing actions that Ford or any other manufacturer would consider in response to a higher standard with a short leadtime would consist primarily of marketing actions. For the reasons discussed earlier in this notice, however, the agency does not believe that marketing actions can be relied upon to significantly improve fuel economy. Assuming that such marketing actions were unsuccessful in whole or in part, Ford would likely have to engage in product restrictions, including limiting the sales of larger engines and/or vehicles to improve its fuel economy. Such product restrictions could result in adverse economic consequences for Ford, its employees, and the economy as a whole and unduly limit consumer choice, especially with regard to the load carrying needs of light truck purchasers.

The agency believes that the current situation of low, stable gasoline prices can create significant difficulties for individual manufacturers facing higher CAFE standards. Steady, low prices for gasoline have resulted in many consumers choosing larger vehicles and more powerful engines. While the magnitude of such shifts is limited to some extent by the fact that trucks are purchased largely with respect to work-performing or specific recreational capabilities, low gasoline prices can nonetheless result in mix shifts which lower manufacturers' CAFE. The magnitude of the recent drop in gasoline prices makes it particularly difficult for manufacturers such as Ford to attempt to use marketing efforts to overcome such shifts in consumer demand.

NHTSA is particularly concerned about the impact of CAFE standards on American jobs. In assessing this issue, NHTSA estimated the sales and job effects associated with the product restrictions that would be required for Ford to raise its CAFE by 0.5 mpg. As discussed previously, such product restrictions could result in a sales loss to Ford of as many as 122,000 light trucks for MY 1990 and 126,000 for MY 1991. This would translate into significant lost jobs at Ford and supplier companies.

Given Ford's thirty percent share of the light truck market, its capability has a significant effect on the level of the industry's capability and, therefore, on the level of the standards. The agency believes that for Ford, the MY 1990 CAFE standard of 20.0 mpg and the MY 1991 CAFE standard of 20.2 mpg balance the potentially serious adverse economic consequences associated with market and technological risks against that company's capabilities as the least capable manufacturer with a substantial share of sales. The agency concludes, in view of the statutory requirement to consider several factors, that the relatively small and uncertain energy savings associated with setting a standard above Ford's capability would not justify the economic harm to that company, American workers, and the economy as a whole.

All of the comments submitted on this rulemaking recommended that the agency adopt a combined CAFE standard within the range of 20.0 mpg–20.5 mpg. Different manufacturers requested different specific levels, based on their specific capabilities assessment. Ford requested that the standard be set "at levels no higher than 20.0 mpg" for both model years. Ford stated that "the very real uncertainties with respect to forecasts of future market conditions, technology and the effects of other Federal standards warrant establishment of the standards at a level no higher than the lower end of the range proposed by NHTSA." GM argued that the MY 1990 and 1991 combined CAFE standards need to be established "no higher than the lower proposed limit of 20.0 mpg. GM cited as uncertainties facing manufacturers factors such as "future fuel prices, market share of small

truck sales achieved by foreign manufacturers, and changes in consumer purchasing patterns." GM went on to say that "These uncertainties combine to place a full-line manufacturer, such as GM, at risk of failing to achieve CAFE forecasts. Therefore, light-duty truck standards established at the bottom of the range proposed by NHTSA (20.0 mpg) may prove to be too stringent for these model years."

Chrysler, while projecting fuel economy levels of 21.4 mpg for MY 1990 and 21.5 mpg for MY 1991, also requested that the combined CAFE standards for MY 1990 and 1991 be set within the proposed range. Chrysler faces somewhat different uncertainties than those faced by Ford and GM, since it is involved in reviewing product plans for the company in light of its recent purchase of AMC. Given this, Chrysler's comment indicated that it "would be supportive of NHTSA carrying over the present 1989 light truck combined CAFE standard of 20.5 mpg for the 1990-1991 model years."

In response to the NPRM, VW submitted only general comments, iterating its concern about its compliance efforts in light of the fact that it is a "single line" manufacturer, and renewing its earlier request that the agency establish separate standards for manufacturers in this situation. In its MY 1989 rulemaking, the agency explained that it had established a separate standard for MY 1980-81 for International Harvester (IH). In doing so, the agency acknowledged circumstances unique to IH, including not just its restricted product line, but also its limited sales volume, engines derived from medium duty truck (above 10,000 pound Gross Vehicle Weight Rating) engines, and that IH had no experience with state-of-the-art emission control technology which other manufacturers had gained in the passenger automobile market. The agency emphasized in this rulemaking that the alternate standard was being established only for two years, concluding that IH should be able to achieve levels of fuel efficiency in line with other manufacturers within that time period—either through purchasing engines from outside sources or by making improvements to current engines. In its MY 1989 rulemaking, NHTSA noted that VW's circumstances are not analogous to those of IH, for the above reasons, but also because most of IH's difficulty resulted from its newness at having to comply with fuel economy standards. Since VW has extensive experience in complying with the passenger car CAFE standards, this is not the case for them.

In the MY 1990-1991 NPRM, the agency again stated that it did not consider VW's request appropriate, noting that it tentatively declined to propose a separate standard to accommodate VW's limited line product status. VW's comments on the NPRM included the position that specific CAFE standards were difficult for a single line manufacturer, since they were denied the benefits of averaging. Finally, VW requested that "Should NHTSA be compelled to propose a specific standard for 1990-1991 model years, [we suggest] NHTSA establish CAFE standards no more stringent than the current standards and preferably set the new CAFE standards at or below the low end of the proposed range." VW provided no specific data with its comments. However, in its 1988 PMY Report, VW projects a CAFE level of 20.5 mpg, which is higher than the standards being established in this rulemaking for both MY 1990 and 1991. Accordingly, the agency does not believe that VW has further need to request special consideration for being a single line manufacturer, since its estimates exceed the new standard.

The only other comment submitted on this rulemaking was from the National Automobile Dealers Association (NADA). NADA supports the lower figure of each of the proposed standards, recommending that NHTSA establish 1990-1991 CAFE standards of 20.0 mpg for the combined standard, 20.5 mpg for the 2WD standard, and 19.0 mpg for the 4WD standard. NADA bases its recommendations on the current low fuel prices. In addition, however, NADA states that such actions as product restrictions to meet CAFE standards, by definition, make the standard economically impracticable, because consumer decisions to purchase specific types of light truck vehicles cannot be shifted by market incentives. NADA states what the agency has acknowledged in previous rulemakings, as well as elsewhere in this document: light trucks are most often purchased for their utility and performance characteristics. NADA states:

> Potential purchasers focus on vehicle utility and durability. Four-wheel drive options are essential for off-road commercial and recreational use and increasingly are purchased as an on-road safety feature. Four-wheel drive options add weight and lower vehicle fuel economy. Towing configurations or "packages" also add weight through larger engines and equipment. Towing characteristics are essential to meet the requirements of a booming recreational market as well as the needs of the farmer or construction contractor. Large vans have replaced over sized buses for moving smaller groups of people such as sports teams or workers. At the same time, small vans have replaced station wagons as the family vehicle and are increasingly equipped with four-wheel drive.

As in previous rulemakings, the agency has decided to continue 2WD and 4WD standards as an alternative to the combined standard. Separate 2WD/4WD standards allow manufacturers greater flexibility in planning to meet CAFE standards and do not discriminate against firms with truck fleets heavily weighted toward the generally less fuel efficient 4WD models.

NHTSA has concluded that GM is the least capable manufacturer with the substantial share of 4WD light truck sales, and has focused on its capability in establishing the separate 4WD standard. As discussed earlier in the notice, the agency concluded that 19.0 mpg is that company's maximum 4WD fuel economy capability for MY 1990, and 19.1 mpg for MY 1991. Both Ford and Chrysler appear likely to meet the 4WD standard. VW did not submit current data in response to the NPRM, and said in its December 1986 response to the agency's questionnaire that its product plans were not different from those of MY 1987. These projections included a 4WD CAFE level of 18.4 mpg. VW's 1988 PMY report projects a 4WD level of 18.6 mpg. The 18.4 mpg figure is below GM's estimated 19.0 mpg figure for 1990, although it is the same as Ford's broad estimate submitted for MY 1990. (Ford projects a MY 1990 4WD CAFE level in the range of 18.4 mpg to 19.5 mpg.) There is no other manufacturer close to this situation except Range Rover, a limited line manufacturer of a 4,750 pound 4WD utility vehicle. While Range Rover has no other models against which to balance its low 4WD CAFE level, VW projects a combined CAFE level of 20.5 mpg for MY 1988. If this trend continues VW will meet both the MY 1990 and 1991 CAFE combined standard. Since VW can meet the combined standard, it is unnecessary for it to be able to meet the separate standards.

NHTSA has concluded that Ford is the least capable manufacturer with a substantial share of 2WD light truck sales, and has focused on Ford in establishing the separate 2WD standard. Ford's projected 2WD capability for MY 1990 is a range of 20.4 mpg to 20.7 mpg and for MY 1991 20.3 mpg to 20.7 mpg. GM is projecting a 2WD CAFE level of 21.0 mpg for both model years and Chrysler is projecting 22.0 mpg for both years. Volkswagen did not submit current data, but indicated a MY 1988 2WD capability of 20.5 mpg in its Pre-model Year Report. As discussed earlier in the notice, the agency concludes that Ford's maximum 2WD fuel economy capability is 20.5 mpg for MY 1990 and 20.7 mpg for MY 1991. Accordingly, these are the 2WD CAFE levels adopted by the agency.

In consideration of the foregoing, 49 CFR Part 533 is amended as follows:

Table II in § 533.5(a) is revised as set forth below:

§533.5(d) is revised to read as follows:

(d) For model years 1982-91, each manufacturer may:

(1) Combine its 2- and 4-wheel drive light trucks (segregating captive import and other light trucks) and comply with the combined average fuel economy standard specified in paragraph (a) of this section; or

(2) Comply separately with the 2-wheel drive standards and the 4-wheel drive standards (segregating captive import and other light trucks) specified in paragraph (a) of this section.

Table II

Model Year	Combined Standard		2-wheel drive light trucks		4-wheel drive light trucks	
	Captive Imports	Others	Captive Imports	Others	Captive Imports	Others
1982	17.5	17.5	18.0	18.0	16.0	16.0
1983	19.0	19.0	19.5	19.5	17.5	17.5
1984	20.0	20.0	20.3	20.3	18.5	18.5
1985	19.5	19.5	19.7	19.7	18.9	18.9
1986	20.0	20.0	20.5	20.5	19.5	19.5
1987	20.5	20.5	21.0	21.0	19.5	19.5
1988	20.5	20.5	21.0	21.0	19.5	19.5
1989	20.5	20.5	21.5	21.5	19.0	19.0
1990	20.0	20.0	20.5	20.5	19.0	19.0
1991	20.2	20.2	20.7	20.7	19.1	19.1

Issued on Mar. 31, 1988.

Diane K. Steed
Administrator

53 F.R. 11074
April 5, 1988

PREAMBLE TO AN AMENDMENT TO PART 533
Light Truck Average Fuel Economy Standards
(Docket No. FE-88-03; Notice 3)
RIN 2127-AC 51

ACTION: Final rule.

SUMMARY: This notice establishes the average fuel economy standard for light trucks manufactured in model year (MY) 1992. Issuance of the standard is required by Title V of the Motor Vehicle Information and Cost Savings Act. For MY 1992, the combined standard for all light trucks manufactured by a manufacturer is 20.2 mpg. The agency is not setting optional separate two-wheel drive and four-wheel drive standards.

DATES: The amendment is effective May 4, 1990. The standard applies to the 1992 model year.

I. Background

Issuance of light truck fuel economy standards is required by section 502(b) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(b)). That section requires the Secretary of Transportation to set light truck fuel economy standards at the maximum feasible average fuel economy level for each model year after 1978. In determining maximum feasible average fuel economy levels, the Secretary is required under section 502(e) of the Act to consider four factors: technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy. See 15 U.S.C. 2002(e). Responsibility for the automotive fuel economy program was delegated by the Secretary of Transportation to the Administrator of NHTSA (41 FR 25015, June 22, 1976)). Pursuant to this authority, the light truck standards set most recently by the agency have been 20.0 mpg for MY 1990 and 20.2 mpg for MY 1991.

On January 6, 1989, NHTSA published in the *Federal Register* a Request for Comments seeking data on manufacturers' light truck fuel economy capabilities for model years (MY) 1992–94 (54 FR 436). All of the domestic light truck manufacturers responded, as did several foreign manufacturers.

After analyzing the responses to the Request for comments and reviewing other available data, NHTSA published a notice of proposed rulemaking (NPRM) proposing ranges of standards for light truck average fuel economy standards for MY 1992–94. 55 FR 3608 (February 2, 1990). For MY 1992, the proposed range was between 20.2 mpg and 21.0 mpg. For MY 1993, the proposed range was between 20.2 mpg and 21.5 mpg. The proposed range for MY 1994 was between 20.2 mpg and 22.0 mpg. These ranges were based on the agency's tentative evaluation of manufacturer capabilities. In past light truck CAFE rulemakings, the agency has provided manufacturers with the option of dividing their light trucks into two fleets, a two-wheel drive (2WD) fleet and a four-wheel drive (4WD) fleet and meeting a separate standard for each fleet. However, the NPRM noted NHTSA's intention to discontinue setting these separate alternative standards, in favor of a single standard, beginning with MY 1992. As discussed below, the final rule adopts this approach, and sets a single combined standard for MY 1992.

NHTSA has postponed final rulemaking for model years 1993 and 1994. The limited time available to promulgate a final rule for MY 1992 has precluded a thorough consideration of issues related to light truck CAFE standards for those latter model years. The later issuance of the final MY 1993–94 standards may also have the advantage of giving NHTSA the benefit of more definitive information about amendments to the Clean Air Act and their potential impact on fuel economy for those model years.

The agency received comments from General Motors, Ford, Chrysler, Nissan, the U.S. Department of Energy, the Natural Resources Defense Council, the Western Interstate Energy Board, the Energy Conservation Coalition and the National Automobile Dealers Association. The issues raised by the commenters are discussed below.

II. Summary of Decision for Model Year 1992.

Based on its analysis, the agency is establishing a combined average fuel economy standard for MY 1992 at 20.2 mpg. Alternative separate standards for 2WD and 4WD light trucks are not being established. A decision will be reached later this year with respect to the light truck standards for MY 1993–94.

III. Manufacturer Capabilities for MY 1992.

As part of its consideration of technological feasibility and economic practicability, the agency has evaluated manufacturers' fuel economy capabilities for MY 1992–94. In making this evaluation, the agency has analyzed manufacturers' current projections and underlying product plans and has considered what, if any, additional actions the manufacturers could take to improve their fuel economy. A more detailed discussion of these issues is contained in the agency's Final Regulatory Impact Analysis (FRIA), which has been placed in the docket for this rulemaking. Some of the information included in the FRIA, including the details of manufacturers' future product plans, has been determined by the agency to be confidential business information, release of which could cause competitive harm. The public version of the FRIA omits the confidential information.

A. Manufacturer Projections

General Motors: As discussed in the NPRM, General Motors (GM) projected in March 1989 that it could achieve a combined CAFE level of 20.6 mpg in MY 1992. In its March 1990 comments on the NPRM, GM has revised its projection slightly upward, to 20.7 mpg. GM attributes this slight increase in its MY 1992 projection to adjustments to projected powertrain and model mixes, and to minor adjustments of estimated MY 1992 fuel economy for certain models.

By comparison, in a pre-model year report submitted in December 1989, GM projected a MY 1990 CAFE of 19.6 mpg. The improvement projected by GM between MY 1990 and MY 1992 is attributable to several factors, including the introduction of the GEO Tracker to the domestic 4WD fleet, increased penetration of certain engine technologies and aerodynamic improvements, a slight weight decrease and a shift toward more efficient models, for a net improvement by MY 1992 over MY 1990 of 1.1 mpg.

However, in making its projection for MY 1992, GM noted that the actual level it achieved could be lower due to various uncertainties such as fuel prices, consumer demand for increased power and performance, new safety requirements and increasing competition in the light truck market. GM also stated that certain program risks (subject to a claim of confidentiality) could cause a decline in GM's projected MY 1992 CAFE to 20.5 mpg. GM recommended that the MY 1992 standard be set at or near the low end of the proposed range.

Ford

Ford projected in March 1989 that it could achieve CAFE levels of 19.9 mpg to 20.2 mpg in MY 1992. By comparison, in a pre-model year report submitted in December 1989, Ford projected a MY 1990 combined light truck CAFE of 20.1 mpg. In its March 1990 comments on the NPRM, Ford has revised its MY 1992 projection upward, to a range of between 20.1–20.5 mpg. Ford attributes the increase to several minor adjustments to its computer-generated projection, and to a number of small technology improvements. In addition, Ford's projection now takes into account the fuel economy benefits expected from the use of Fuel Economy Data Vehicles (FEDV's) in fuel economy testing. These changes raise Ford's MY 1992 projection to 20.5 mpg. However, the company believes this figure should be adjusted to account for risks and opportunities, and that when adjusted, the revised figure, corresponding to the low end of Ford's projection, is 20.1 mpg. These considerations include such factors as whether FEDV fleet testing will produce a benefit as high as that projected by Ford in its 20.5 mpg projection and by NHTSA in the NPRM (a 0.3 mpg gain), certain technological improvements achieving results higher or lower than anticipated, and potential mix shifts. Ford provides a 0.3 mpg increase based on potential FEDV testing benefits, but then factors in a 0.2 mpg risk for potential FEDV results below that level. In support of its analysis, Ford indicates that it only achieved a 0.04 mpg benefit from FEDV testing for MY 1989.

In its response to the NPRM, Ford also emphasized the potential effect on CAFE of factors beyond its control, including unforeseen but normal technological shortfalls from the technological changes listed in its comments, the potential for increased import market share and concomitant loss of domestic share in the compact truck market segment, and the pending safety requirements for light trucks. In addition, Ford indicated that continued low fuel prices could further increase the market demand for full-size light trucks, larger engines and increased optional equipment, causing a decline in its CAFE. Ford recommended that the MY 1992 standard be set at 20.2 mpg.

Chrysler

Chrysler projected in March 1989 that it could achieve a CAFE level of 21.0 mpg in MY 1992. By comparison, Chrysler's December, 1989 pre-model year report for MY 1990 indicated a MY 1990 CAFE of 21.6 mpg. The 0.6 mpg decline from MY 1990 to MY 1992 is a result of product changes and revised fuel economy estimates for certain models. In its March 1990 response to the NPRM, Chrysler projected its MY 1992 CAFE at 21.2 mpg. This additional projected increase is the result of several technical improvements now planned for MY 1992 along with revised fuel economy projections, which would raise Chrysler's fuel economy level 0.5 mpg. However, these changes are offset in part by revised

mix projections and product changes, for a net improvement of 0.2 mpg.

Several assumptions underlie Chrysler's fuel economy projection. These include assuming that the projected model mix accurately reflects market demands, that the variability of actual fuel economy test values is no greater than anticipated, and that running changes to its products do not have an adverse cumulative effect. Chrysler also pointed to the U.S. economy as a factor which could negatively impact its CAFE if economic conditions worsen to the point that they necessitate the delay or postponement of certain plans. The company also expressed concern about the potential CAFE impact of the increased safety requirements due to be imposed on light trucks by MY 1992. Because of these factors, Chrysler recommended a standard of 20.2 mpg for MY 1992, even though its current MY 1992 projection is 21.2 mpg.

Other Manufacturers

Volkswagen (VW) currently offers only one light truck model, the Vanagon compact bus. Volkswagen's combined light truck CAFE for MY 1990 is estimated at 21.0 mpg. VW indicated in its response to the January 1989 questionnaire that it has no significant plans to increase fuel economy by MY 1992. The company's product plans are indefinite, but may involve a larger engine, or a front wheel drive model.

Range Rover projected its light truck CAFE for MY 1989 at 15.3 mpg in April 1989. At that time, the company did not expect any significant fuel economy improvement by MY 1992. However, the company has projected its 1990 CAFE at 16.3 mpg, 1.0 mpg higher than their MY 1989 projection.

Other foreign light truck manufacturers only compete in the small vehicle portion of the light truck market and are therefore expected to achieve CAFE levels well above GM and Ford.

B. **Possible Additional Actions to Improve MY 1992 CAFE**

There are additional actions which the agency analyzed to improve manufacturers' CAFE's above the levels which they currently project for MY 1992. These actions may be divided into three categories: further technological changes to their product plans, increased marketing efforts, and product restrictions.

1. *Further Technological Changes*

The ability to improve CAFE by further technological changes to product plans is dependent on the availability of fuel efficiency enhancing technologies which manufacturers are able to apply within the available leadtime.

The agency's FRIA discusses the fuel efficiency enhancing technologies which are expected to be available by MY 1992. Limited leadtime is a constraint for MY 1992 on the increased use of these technologies. NHTSA recognizes that the leadtime necessary to implement significant improvements in engines, transmissions, aerodynamics and rolling resistance is typically about three years. Also, as the agency discussed in establishing the final rule for MY 1990–91, once a new design is established and tested as feasible for production, the leadtime necessary to design, tool, and test components such as new body sheet-metal subsystems for mass production is typically 22 to 29 months. Other potential major changes may take longer. Leadtimes for new vehicles are usually at least three years.

Given leadtime constraints, the agency does not believe that manufacturers can achieve significant improvements in their projected MY 1992 CAFE levels by additional technological actions. Some improvements are, of course, possible due to slight increases in the penetration of more fuel efficient technology or changes in model mix. However, such changes are likely to be market driven, and are not likely to provide an increase of more than 0.1 mpg for any manufacturer.

2. *Increased Marketing Efforts*

As discussed in the NPRM, NHTSA believes that the ability to improve light truck CAFE by marketing efforts is relatively small. Light trucks are often purchased for their work-performing capabilities. This is particularly true for the larger, less fuel-efficient light trucks. Since the smaller light trucks cannot meet the needs of all light truck users, the manufacturers' ability to use marketing efforts to encourage consumers to purchase smaller light trucks instead of larger light trucks is limited.

As a practical matter, marketing efforts to improve CAFE are largely limited to techniques which either make fuel-efficient vehicles less expensive or less fuel-efficient vehicles more expensive. Moreover, the ability of a manufacturer to increase sales of fuel-efficient light trucks depends in part on increasing its market share at the expense of competitors or pulling ahead its own sales from the future. The ability of domestic manufacturers to make such sales increases is also affected by the strong competition in that market from Japanese manufacturers. While the Japanese manufacturers currently have an overall combined market share of about 30 percent of light trucks, their share for the smaller, more fuel-efficient light trucks is about 45 percent.

A problem with pulling ahead sales is that the manufacturers' CAFE levels for subsequent years are reduced. For example, if a manufacturer improves its MY 1992 CAFE by pulling ahead sales of fuel-efficient light trucks from MY 1993, its MY

1993 CAFE will decrease, compared with the level it would have been in the absence of any pull-ahead sales attributable to marketing efforts. For this reason, a manufacturer cannot continually improve its CAFE simply by pulling ahead sales.

Given these considerations, NHTSA concludes that the domestic manufacturers cannot significantly improve their MY 1992 CAFE levels through increased marketing efforts.

3. *Product Restrictions*

As an alternative to technological improvements, manufacturers could improve their CAFE by restricting their product offerings (e.g., limiting or deleting production of particular larger light truck models and larger displacement engines). Such product restrictions could have adverse economic impacts on the industry and the economy as a whole. The FRIA presents a scenario as an example in which GM and Ford are assumed to restrict production of sufficient numbers of their least fuel-efficient light truck models to obtain a 0.5 mpg improvement in CAFE beyond their projected capabilities for MY 1992. Under this scenario, GM could suffer a sales loss of up to 171,000 light trucks for MY 1992, while Ford could experience a sales loss of more than 168,000 light trucks in MY 1992. The potential job losses under this scenario in manufacturing and supplier industries could total 23,000 to 68,000 for MY 1992. These numbers are probably overstated, since, as GM has stated in past light truck rulemakings, and Ford has stated in its comments on this rule, product restrictions of the type envisioned above would likely be considered only after attempting marketing efforts and restricting the availability of particular engines and axle ratios. Ford and GM both submitted analyses of the sales and employment impact of setting the standard at 0.5 mpg beyond their respective capabilities. Both manufacturers' analyses show impacts much less than those projected above. However, the scenario is illustrative of the types of impacts that could result from standards that exceed manufacturers' true capabilities. In addition to the adverse impacts on the automotive industry, a wide range of businesses could be seriously affected to the extent that they could not obtain the light trucks they need for business use.

The U.S. Department of Energy (DOE) commented that NHTSA's method of analysis yields estimates of economic impacts that are so much larger than those that would actually occur, that it may not be meaningful to consider them. Although not advocating the payment of fines as an alternative to compliance, DOE suggests that the fines paid in such a circumstance would be a better context in which to evaluate the maximum negative impacts of a standard 0.5 mpg above the manufacturers' capability.

DOE's illustration is as follows: A fine of $25 per truck (which would be the fine for falling 0.5 mpg below the standard) for approximately 4 million trucks would amount to $100 million, or $230 per truck for each truck that NHTSA assumes will not be sold in the scenario presented in the FRIA. If the fines were passed on to consumers in the form of price increases, DOE estimates the net loss of truck sales would be less than 10,000 vehicles. Using NHTSA's figures on the number of jobs per vehicle, DOE calculates that the maximum net loss of jobs would be less than 2,000.

NHTSA does not dispute DOE's analysis for the case where manufacturers choose to pay penalties rather than comply with a standard beyond their capability. However, NHTSA's analysis focuses on the maximum impacts that would occur if manufacturers chose to comply with the standard through product restrictions, or were forced to so comply because marketing or other measures were unsuccessful.

The agency believes it would be a meaningless exercise to estimate employment losses based on the assumption that manufacturers pay fines rather than restrict production to meet standards. No fuel savings would result from setting higher standards if manufacturers paid fines instead of actually raising their CAFE values. Under this scenario, higher fuel economy standards would merely result in higher truck prices, lower sales, and increasing unemployment, without any energy conservation benefits. This scenario is not appropriate for the agency to consider. Moreover, the agency believes the statute directs us to consider the maximum fuel economy level that manufacturers can *achieve,* rather than the impact of penalties paid if the standards are not achieved.

Ford's comments expressed concern that establishing a CAFE standard beyond its capability could result in a substantial loss of sales, adverse employment effect, and economic hardship. The company is also concerned that product restrictions could have a substantial impact on Ford's competitiveness by restricting the availability of certain engines in larger models, and possibly by requiring the deletion of some full-size products entirely. The company also stated that market research data show that the vehicles most likely to be restricted are used for a combination of commercial as well as personal uses.

In its comments, GM expressed concern about the impact of product restrictions on consumer choice and industry employment. GM also provided data showing the impact product restrictions would have on the availability of various models in its light truck fleet.

Given these considerations, NHTSA concludes

that significant product restrictions should not be considered as part of manufacturers' capabilities to improve MY 1992 CAFE levels.

C. **Manufacturer-Specific CAFE Capabilities**

As discussed later in this notice, NHTSA is directed to take "industrywide considerations" into account in setting fuel economy standards. In carrying out this direction, the agency focuses on the least capable manufacturer with substantial shares of light truck sales. For MY 1992, the agency has determined that Ford is the least capable manufacturer with a substantial share of sales. During MY 1989, Ford had a 26 percent share of combined light truck sales. By comparison, GM had a 33 percent share, and Chrysler a 21 percent share. VW does not have a substantial share of industry sales. Its MY 1989 market share was 0.08 percent.

GM, Ford and Chrysler's MY 1992 CAFE projections are subject to a number of uncertainties which are discussed above. NHTSA has fully considered these uncertainties in determining manufacturer-specific capabilities.

Ford: As discussed above, in March 1989, Ford projected a MY 1992 CAFE of 19.9 mpg to 20.2 mpg. In its March 1990 comments, Ford projects a CAFE of 20.1 mpg to 20.5 mpg. This range is the result of risks and opportunities which Ford believes could lead to a decrease of 0.4 mpg. Many of the technical risks and opportunities are each quite small. The agency believes they are likely to result in a small net gain of under 0.1 mpg. A more substantial uncertainty is the potential benefit, discussed above, for Ford to have additional vehicles tested as part of the fuel economy data vehicle (FEDV) program. In the NPRM, NHTSA stated that Ford could obtain a 0.3 mpg benefit from this test procedure, and adjusted its projection of Ford's capability accordingly. In Ford's comments on the NPRM, the company takes issue with NHTSA's analysis, pointing to its MY 1989 FEDV benefit of only 0.04 mpg. Ford also argued that correlation testing can have negative results.

Ford's CAFE projection for MY 1992 also shows a risk of nearly 0.3 mpg due to a potential mix shift toward less-efficient models. The agency believes this risk, although certainly possible, may be overstated.

On the other hand, the agency does not consider it likely that Ford can achieve the 20.5 mpg upper end of its projection for MY 1992. NHTSA acknowledges that Ford's MY 1992 CAFE could well be subject to at least some risk from both unfavorable mix shifts and FEDV testing shortfalls. The agency concludes that the maximum feasible CAFE for Ford in MY 1992 is 20.2 mpg. The agency also concludes that there is insufficient leadtime for Ford to introduce new programs or technologies beyond those already planned to increase its MY 1992 CAFE.

General Motors: In March, 1989, GM projected a MY 1992 CAFE of 20.6 mpg. In its March 1990 comments on the NPRM, GM revised its projection upward to 20.7 due to minor technical and mix adjustments. However, GM also indicated several uncertainties that could lower its projection by as much as 0.2 mpg. These risks were tied to mix shifts toward less efficient vehicles.

As with Ford's projection, NHTSA believes that GM's risk estimate is likely overstated. The agency concludes that GM is capable of achieving 20.8 mpg in 1992. Its CAFE can be increased by 0.1 mpg above its projection to 20.8 mpg if GM would drop the low-volume offering of the inefficient 7.4 litre C10 pickup.

DOE commented that the upper end of the CAFE ranges proposed in the NPRM (21.0 mpg for MY 1992) were achievable and represented the maximum feasible level. DOE's analysis was based on a linear interpolation between a base CAFE for each domestic manufacturer for MY 1987 and DOE's analysis of the manufacturers' capabilities for MY 1995. This methodology assumes both that DOE's MY 1995 projection is actually achievable and that each manufacturer has the capability to improve each year by the same fixed amount (about 0.4 mpg per model year). NHTSA questions both assumptions. Based on the manufacturers' submissions, GM will improve about 1.1 mpg between MY 1990 and MY 1992, but a large part of this is due to an unfavorable model mix in MY 1990 due to a short model year for compact pickups and utility vehicles. Ford will improve by 0.4 mpg and Chrysler will *decline* by 0.4 mpg between MY's 1990 and 1992.

The agency does not believe that DOE's extrapolation of CAFE values is a meaningful method to determine individual manufacturer capabilities for specific years, nor is it as accurate as an examination of product plans in establishing short term capabilities for individual manufacturers. NHTSA has provided DOE with comments on the draft report on which the MY 1995 projection is based, and does not believe that all issues have been resolved between DOE and NHTSA. NHTSA's concerns include the use of an old baseline which is now significantly out of date. The changes to the baseline that have occurred are due to both the introduction of new technology and market driven demand for a different model mix and higher performance. These changes make it difficult, if not impossible, for manufacturers to return to DOE's linear path of improvements, particularly given the leadtime remaining before the start of the 1992 model year. The agency is not convinced that the level of fuel econ-

omy improvements cited by DOE is either technologically achievable or economically practicable.

IV. Other Federal Standards

In determining the maximum feasible fuel economy level, the agency must take into consideration the potential effects of other Federal standards. The following section discusses other government regulations, both in process and recently completed, that may have an impact on fuel economy capability for MY 1992. For this final rule, the agency has not included any discussion of the impacts of regulations that take effect in MY 1993 or 1994. Comments received on those issues will be addressed during final rulemaking for MY 1993–94.

1. Safety Standards

As discussed by the FRIA, NHTSA has evaluated several safety rulemakings for their potential impacts on light truck fuel economy in MY 1992. These include revisions to FMVSS Nos. 208; *Occupant crash protection,* 204; *Steering control rearward displacement,* 202; *Head restraints,* 108; *Lamps, reflective devices and associated equipment,* 214; *Side door strength,* and 216; *Roof crush resistance-passenger cars.* In addition, the agency has evaluated proposed revisions to 49 Part 523, addressing vehicle classification for safety standards.

FMVSS No. 208. The agency published a final rule on November 23, 1987 (52 FR 44898) which requires that manual lap/shoulder belts installed at the front outboard seating positions of light trucks comply with the dynamic testing requirements of Standard No. 208. The rule applies to multipurpose passenger vehicles and trucks with a gross vehicle weight rating of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less, and is effective September 1, 1991. In the MY 1990–91 light truck fuel economy rulemaking (53 FR 11074, April 5, 1988), the agency concluded that this rule was unlikely to have a significant negative impact on fuel economy capabilities. Some existing light truck designs currently meet the requirements, and others may be able to meet the requirements with relatively minor changes.

In its response to NHTSA's request for comments on manufacturers' MY 1992–94 light truck fuel economy capabilities, Ford indicated that compliance with the dynamic testing requirement could increase the weight of some of its trucks by 35 to 150 pounds, and require other changes to support customer and competitive performance requirements.

In its comments on the MY 1992–94 fuel economy NPRM, Ford reiterated its penalty estimates, and also argued that NHTSA has not properly characterized the CAFE effect of safety standards such as Standard No. 208. Ford argues that since some of the effects of standards are included in the manufacturers' fuel economy estimates, the manufacturers are not being credited with application of fuel economy improvements that are offset by the weight of additional safety requirements.

Chrysler, while noting that the added weight to meet increased safety requirements for MY 1992 had resulted in a reduction of its fuel economy projection for MY 1992, did not specify an estimated fuel economy impact specifically for the dynamic testing requirement.

In its comments on the fuel economy NPRM, GM stated that the combined effects of the dynamic testing requirement and Standard No. 204 would result in weight increases from 28–57 pounds. However, GM noted that these effects are included in its MY 1992 projection.

Since the agency has accepted the manufacturers' weight projections for this rule, NHTSA believes no specific adjustment to their projections is needed to consider the impact of the dynamic testing requirement. The agency agrees with Ford's position that maintaining a constant fuel economy standard, at a time when safety and emissions standards are becoming stricter, effectively increases the stringency of the fuel economy standard. However, the agency carefully considers the impacts of safety and emissions requirements when setting CAFE standards.

In November 1988, NHTSA proposed to require all manufacturers to install lap/shoulder belts in all forward-facing rear outboard seating position in passenger cars, light trucks, multipurpose vehicles, and small buses. 53 FR 47982 (November 29, 1988). The proposed effective dates were September 1, 1989 for passenger cars other than convertibles, and September 1, 1991 for convertibles, light trucks, multipurpose passenger vehicles, and small buses.

NHTSA published a final rule (54 FR 25275, June 14, 1989) requiring all passenger cars manufactured after December 11, 1989 to be equipped with the rear outboard lap/shoulder belts. Most recently (54 FR 46257, November 2, 1989), the agency published a final rule extending these requirements to light trucks and multipurpose vehicles effective September 1, 1991. The November 1988 NPRM noted that manufacturers planned to voluntarily install the rear-seat lap/shoulder belts in virtually all vehicles by the effective date proposed in the rule for light trucks. The projected weight increases were 1.1–5.5 pounds per vehicle, depending on vehicle type.

In its March 1990 comments on the fuel economy NPRM, Ford claimed this requirement would result in weight increases from 17–30 pounds per vehicle, including secondary weight. These increases were included in Ford's MY 1992 CAFE projections.

Ford's weight increases are substantially higher than those included in the MY 1992–94 CAFE

NPRM because the agency erroneously used incorrect weight figures in that notice. NHTSA's revised estimate, using figures from the final rule on rear lap/shoulder belts, is a range of 8–40 pounds per vehicle.

Neither GM nor Chrysler provided specific estimates of the fuel economy impact of this standard.

Because NHTSA has not altered the weight projections provided by manufacturers, no adjustment in fuel economy projections is necessary to account for the impact of this standard.

FMVSS No. 204. NHTSA has also published a final rule extending the applicability of FMVSS No. 204; *Steering control rearward displacement* to cover additional light trucks. This rule, published November 23, 1987 (52 FR 44893), and effective September 1, 1991, extends the standard to light trucks with an unloaded vehicle weight of 4000 to 5500 pounds. While NHTSA indicated its belief that the proposal would not significantly affect weight (and hence CAFE), GM and Ford argued in their comments on the proposed rule that there could be significant weight impacts. However, the agency concluded in the final rule that the steering system modifications necessary to comply with the standard would entail only minor modifications that would not have significant additional weight or fuel economy impacts.

In comments responding to the fuel economy NPRM, Ford agreed with NHTSA that weight impacts from this standard were minimal. As discussed above, GM indicated that it had combined the impacts of this rule with those of the dynamic testing requirement. Chrysler only indicated that its projection included the impact of this standard. Since NHTSA has not altered the weight projections provided by the manufacturers, no adjustments to fuel economy projections to consider the impact of this standard are necessary.

FMVSS No. 202. On September 25, 1989, NHTSA published a final rule (54 FR 39183) to amend Standard No. 202 to extend the Standard's head restraint requirement to light trucks and multipurpose passenger vehicles effective September 1, 1991. This rule would have a very minor effect on MY 1992 light truck fuel economy. In the proposed rule, NHTSA estimated that it would add an average of seven pounds to each affected vehicle. The agency has calculated that this increase would reduce measured fuel economy by approximately 0.03 mpg. However, the agency estimates that 30 percent of light trucks are already equipped with head restraints, and that the effect on the fleet would be reduced to about 0.02 mpg.

Ford and Chrysler indicated in comments on the NPRM that they planned to equip all of their light trucks with head restraints by September 1, 1991. Thus, their CAFE projections for MY 1992 already include any negative weight effects. GM indicated in its comments on the head restraint NPRM that it planned to have head restraints on 80 percent of its light truck fleet by MY 1992, with restraints being phased in for the remainder of the fleet during MY 1993–94. Under the final rule on head restraints, GM will need to add head restraints to 20 percent of its MY 1992 light trucks. NHTSA has calculated that these changes could reduce GM's CAFE projection by 0.005 mpg.

In its comments on the fuel economy NPRM, GM stated that the weight impact of head restraints has already been considered for all trucks except the S/T and C/K models in MY 1992. The company indicated that these models would suffer a 4 lb. weight penalty. Ford estimated that the penalty would typically be 10 lbs. per vehicle. Chrysler provided no specific weight estimate. Each of these manufacturers indicated that they had considered the effect of Standard No. 202 in their MY 1992 projections. Since NHTSA has not altered the weight projections provided by the manufacturers, no adjustment to their fuel economy projections is needed.

FMVSS 108. Changes to the agency's lighting standard permit the use of smaller sealed beam headlamps, replaceable light source headlamps and lower mounting height. All of these changes should give manufacturers greater design freedom to achieve lower aerodynamic drag and some weight reductions, which could have positive impacts on CAFE. However, the agency does not have any data to estimate the reduction in drag that may be economically achievable for light trucks as a result of these changes. These positive effects may be counterbalanced by possible slow consumer acceptance of light truck styling for certain models which have been influenced by aerodynamic considerations. However, Ford indicated in its comments on the fuel economy NPRM that the changes to Standard 108 may permit more aerodynamic front end designs, and provide some opportunity for weight reduction.

The agency is considering whether to propose requiring new light trucks to be equipped with Center High Mounted Stop Lamps (CHMSLs). However, it is unlikely at this time that NHTSA would propose to make the requirement effective in MY 1992. Ford noted in its comments that if such a requirement were adopted, it would result in a weight increase of approximately two pounds.

FMVSS 216. On November 2, 1989 (54 FR 46275), NHTSA published an NPRM proposing to extend the roof crush protection requirements of Standard No. 216 to light trucks and multipurpose passenger vehicles with GVWRs of 10,000 pounds or less, with a proposed effective date of September 1, 1991. The NPRM estimated that there is already widespread

voluntary compliance with the requirements of Standard No. 216. NHTSA tentatively concluded in the fuel economy NPRM that since essentially all vehicles already comply with the proposed requirement, and only modest increases are anticipated for the few vehicles which do not meet the proposed performance levels, the extension of Standard No. 216 to light trucks is not expected to affect MY 1992 fuel economy capabilities.

In its response to the fuel economy NPRM, Ford commented that while most trucks meet the proposed crush standards, the roofs of most truck *lines* must be changed to enable all trucks to comply with the proposed standard. Ford estimated that this would add 2 to 10 pounds to the weight of affected vehicles. GM indicated that certain of its vehicles already comply, and that most other models would suffer a weight penalty of nine pounds. Chrysler provided no specific estimate on the impacts of complying with the roof crush requirements.

Because each of the companies has included the effect of FMVSS 216 in its fuel economy projection, no adjustment to manufacturer fuel economy projections is needed to account for the impact of this standard.

FMVSS 214. On December 22, 1989, the agency published an NPRM (54 FR 52826), proposing to extend the existing side-door strength requirements of Standard No. 214 to trucks, buses and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less, effective September 1, 1992.

NHTSA has estimated that the proposal, if adopted, could result in an average weight increase of 18–20 pounds per vehicle not including possible secondary weight, or 31–35 pounds including possible secondary weight. If the requirement takes effect as proposed, it would have no impact on MY 1992 fuel economy capabilities, except for new model introductions in prior model years that were designed to meet the proposed requirements. No manufacturers raised compliance with Standard 214 as having an impact on MY 1992 CAFE levels.

Vehicle classification. NHTSA proposed to establish a new vehicle classification system for determining the applicability of the Federal Motor Vehicle Safety Standards on October 17, 1988. (53 FR 40463). The proposed rule would not affect the classification of vehicles for fuel economy standards. The agency is not proposing to alter the definitions of "passenger automobile" or "light truck" as they appear in 49 CFR Part 523. However, vehicles that are defined as light trucks for the purpose of fuel economy standards would be the type of vehicle most affected by the proposed classification changes. Vehicles classified as light trucks for fuel economy standards include many vehicles currently classified as trucks or MPVs for the purpose of safety standards. However, as the agency proposed to amend its safety regulations in such a way as to ensure that re-classification, by itself, caused no change in the applicability of safety standards, adoption of the proposed classification rule would have no impact on manufacturers' fuel economy capabilities for MY 1992.

2. Noise Standards

The agency is not aware of any plans on the part of EPA to promulgate noise regulations during the MY 1992 time period, and therefore does not anticipate any attendant fuel economy impacts.

3. Emission Standards

Because of the pending legislation to amend the Clean Air Act, the potential fuel economy impact for a number of possible environmental requirements cannot be determined at this time. The primary impacts of the requirements contained in the proposed legislation would be concentrated in MY 1994 and later years. The Environmental Protection Agency (EPA) has two rulemakings either in progress or completed which could impact light truck fuel economy during MY 1992. These include a final rule addressing diesel particulate matter, and a proposed rule addressing evaporative emissions.

Diesel Particulate Matter. On October 31, 1988, EPA published a final rule at 53 FR 43870 amending the particulate standards for light duty diesel trucks with a loaded vehicle weight of more than 3,750 pounds. The amended standard is 0.13 gm/mi for model years 1991 and beyond. This rule was the result of a proposal in response to a petition from GM which outlined a plan to develop control technology to substantially reduce particulate emission from current control levels. However, in its comments on the MY 1990–91 proposed light truck standards, GM indicated that it did not know what effect on fuel economy would result from the EPA rulemaking, but stated that ". . . any required technology such as a particulate trap may adversely impact fuel economy." GM's MY 1992 light truck CAFE projections, however, do not indicate that the new standard is responsible for any loss of fuel economy. Thus, NHTSA has not made any adjustment to GM's fuel economy estimates to reflect the more stringent particulate standard. Neither Chrysler nor Ford have raised concerns about the fuel economy impact of the new standard.

Evaporative emissions. On January 19, 1990, EPA issued an NPRM proposing modifications to test procedures for control of evaporative emissions from running losses (55 FR 1914). This proposal would affect light duty vehicles fueled by gasoline or methanol. In its comments on the fuel economy NPRM, Chrysler mentioned a potential fuel economy pen-

alty for on-board vapor recovery. Since it appears unlikely that the requirements, if adopted, would go into effect by MY 1992, this impact has not been considered for purposes of this final rule.

4. EPA Test Procedures

Gear shift indicator lights. During the MY 1990–91 fuel economy rulemaking, EPA issued a letter to manufacturers proposing to eliminate one of the two methods currently authorized to determine the fuel economy benefits of shift indicator lights. These dashboard lights are designed to inform drivers about the optimal speed, from a fuel economy standpoint, for shifting gears. EPA proposes to eliminate the driver usage rate survey, the method preferred by GM as a "more representative credit for actual shift indicator light usage than the on-road survey," and allow only an on-road shift light survey. At this point, EPA has not made a decision on this issue. No manufacturers raised the issue of shift indicator lights in their comments in response to NHTSA's request for comments on manufacturers' MY 1992–94 light truck fuel economy capabilities. In its comments on the MY 1992–94 fuel economy NPRM, GM stated that its light truck CAFE could be adversely affected if EPA were to eliminate the driver usage rate survey. However, since EPA has not made a decision on the issue, NHTSA has not made any adjustment to fuel economy capabilities to consider this factor.

5. Other Standards

Asbestos. On January 29, 1986, EPA proposed to prohibit the "manufacture, importation, and processing of asbestos in certain products," and the phasing out of asbestos in all other products. The implication of this rulemaking for motor vehicles would be to eliminate the use of asbestos in brake linings, clutch facings, automatic transmissions and gaskets.

On July 12, 1989, EPA published a final rule (54 FR 29460) phasing in a prohibition of asbestos in almost all products. Asbestos brake linings are banned for use by original equipment manufacturers effective MY 1994. Asbestos clutch facings, automatic transmission components and virtually all asbestos gaskets are banned as of August 25, 1993. In its comments on the MY 1990–91 light truck fuel economy rulemaking, GM indicated that the phase out would increase vehicle weight approximately 5 pounds and reduce CAFE. However, GM provided no substantiation for its estimates. In response to NHTSA's request for comments on MY 1992–94 manufacturers' CAFE capabilities, no manufacturer indicated that this rule would have any potential impact on MY 1992 light truck fuel economy. However, in its comments on the fuel economy NPRM, GM indicated that while most necessary changes had been implemented, and therefore are included in the company's CAFE projections, certain changes had not yet been made. Specifically, the company anticipates a seven pound increase on the S/T models beginning in MY 1992. This increase will have a negligible impact (less than .01 mpg) on GM's MY 1992 capability. Because Ford is the least capable manufacturer for MY 1992, this has no impact on the level of the standard.

V. The Need of the Nation to Conserve Energy

The United States imported 15 percent of its oil needs in 1955. The import share had reached 35.8 percent by 1975, the year the Energy Policy and Conservation Act was passed, and peaked at 46.5 percent in 1977, at a cost of $74 billion (stated in 1988 dollars). While the import share of total petroleum supply declined after that year, the cost continued to rise to a 1980 peak of $102 billion (1988 dollars).

While the import share of petroleum supply declined through 1985, it has been increasing since that time. In 1985, the import share was 27.3 percent at a cost of $50 billion (1988 dollars). For 1988, net imports were 37.0 percent of total supply. For 1989, net imports were 43.5 percent of total supply. For January 1990, net imports reached 47.1 percent of total supply. Due to sharply lower petroleum prices, however, the value of imports declined from 1985 to 1988, from $50 billion to $37 billion (1988 dollars). Imports from OPEC also declined through 1985 but have been rising since that time. For 1989, OPEC imports accounted for about 52 percent of total import supply, up from almost 48 percent for 1988.

The nation's dependence on petroleum net imports since 1975 is summarized in the following table:

Year	Net Imports as Percent of U.S. Petroleum Products Supplied	
	From OPEC	From All Countries
1975 Average	22.6%	36.8%
1977 Average	33.5	46.4
* * * * *		
1985 Average	12.3	28.7
1988 Average	21.5	40.2
1989 Average	25.2	43.5

The current energy situation and emerging trends point to the continued importance of oil conservation. The United States now imports a higher percentage of its oil needs than it did during 1975, the year EPCA was passed, and the percentage of its oil supplied by OPEC is similar to that of 1975. Oil continues to account for well over 40 percent of U.S. energy use, and 97 percent of the energy consumed

in the transportation sector. While the U.S. is the second-largest oil producer, it contains only three percent of the world's proved oil reserves. Moreover, proved reserves in the U.S. have declined from a peak of 39 billion barrels in 1970 to 27 billion barrels in 1987.

According to the Energy Information Administration's (EIA) 1989 Annual Energy Outlook, domestic production for its "base case" projection is expected to decline from 10.5 MMB/D in 1988 to 8.6 MMB/D in 1995, and 8.5 MMB/D in 2000. Net imports are projected to increase from 6.3 MMB/D in 1988 to 9.3 MMB/D in 1995 and 10.2 MMB/D in 2000. Thus, as a percentage of total U.S. petroleum use, EIA expects imports to rise to 52 percent of total supply in 1995 (exceeding the previous 1977 high of 46.4 percent) and 55 percent in 2000.

In its comment to the docket for NHTSA's 1990 passenger car CAFE rulemaking, the Department of Energy (DOE) emphasized several points about transportation's role in U.S. oil use and the importance of rising fuel efficiency. DOE noted that the 11 MMB/D used by the transportation sector in 1986 is almost 80% of total U.S. fuel use of oil and over 90% of the critical light product use. Thus, DOE wanted NHTSA to consider the fact that any significant moderation in growing oil demand will require large transportation efficiency improvements. DOE also emphasized that the 1987 EIA oil demand forecasts assume that average new car efficiency will continue to improve, which DOE said does not seem likely given fuel economy trends (at least to the levels assumed by EIA), and that even with these projected increases in fuel efficiency, U.S. oil demand is projected to increase over 1.5 MMB/D by 2000.

The level of petroleum imports is only one aspect of the total energy conservation picture. Under EPCA and NEPA, for example, national security, energy independence, resource conservation, and environmental protection must all be considered.

In March 1987, the Department of Energy submitted a report to the President entitled "Energy Security." NHTSA believes that the following quotation from that report represents a useful summary of the national security and energy independence aspects of the current energy situation:

> Although dependence on insecure oil supplies is . . . projected to grow, energy security depends in part on the ability of importing nations to respond to oil supply disruptions; and this is improving. The decontrol of oil prices in the United States, as well as similar moves in other countries, has made economies more adaptable to changing situations. Furthermore, the large strategic oil reserves that have been established in the United States (and to a lesser extent, in other major oil-importing nations) will make it possible to respond far more effectively to any future disruptions than has been the case in the past.
>
> The current world energy situation and the outlook for the future include both opportunities and risks. The oil price drop of 1986 showed how consumers can be helped by a more competitive oil market. If adequate supplies of oil and other energy resources continue to be available at reasonable prices, this will provide a boost to a world economy. At the same time, the projected increase in reliance on relatively few oil suppliers implies certain risks for the United States and the free world. These risks can be summarized as follows: If a small group of leading oil producers can dominate the world's energy markets, this could result in artificially high prices (or just sharp upward and downward price swings), which would necessitate difficult economic adjustments and cause hardships to all consumers.
>
> Revolutions, regional wars, or aggression from outside powers could disrupt a large volume of oil supplies from the Persian Gulf, inflicting severe damage on the economies of the United States and allied nations. Oil price increases precipitated by the 1978–79 Iranian revolution contributed to the largest recession since the 1930's. Similar or larger events in the future could have far-reaching economic, geopolitical, or even military implications.

Light truck registrations nearly doubled between 1973 and 1986 and light truck sales are projected to increase 21 percent over the 1987–2000 period, compared to 14 percent for passenger cars. The light truck fleet's share of total oil consumption increased steadily from 6.4 percent in 1973 to 8.9 percent in 1980 to 12.1 percent in 1986 and to 12.3 percent in 1988. This increase in the light truck fleet's share of fuel consumption took place even as the average fuel economy of the on-road fleet of light trucks increased from an estimated 10.5 mpg in 1973 to 13.4 mpg in 1988. Clearly, light truck fuel economy will be an increasingly important determinant of the nation's level of petroleum consumption.

Information provided to NHTSA by the Department of Energy indicates that light trucks last longer (14.9 years versus 10.9 years) than passenger cars. Federal Highway Administration data indicate light trucks are driven farther annually (11,846 miles versus 10,119 miles) than passenger cars.

All of these factors result in the conclusion that improved light truck fuel economy contributes to the nation's efforts at conserving fuel. Light trucks meeting the standards proposed by this notice would be more fuel-efficient than the average vehicle in the

current light truck fleet in service, thus making a positive contribution to petroleum conservation.

VI. Determining the Maximum Feasible Average Fuel Economy Level

As discussed above, section 502(b) requires that light truck fuel economy standards be set at the maximum feasible average fuel economy level. In making this determination, the agency must consider the four factors of section 502(e): technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy. As with earlier CAFE rulemakings, NHTSA has considered and weighed all four statutory factors of section 502(e) in reaching its decision.

A. *Interpretation of "Feasible"*

Based on definitions and judicial interpretations of similar language in other statutes, the agency has in the past interpreted "feasible" to refer to whether something is capable of being done. The agency has thus concluded in the past that a standard set at the maximum feasible average fuel economy level must: (1) be capable of being done and (2) be at the highest level that is capable of being done, taking account of what manufacturers are able to do in light of technological feasibility, economic practicability, how other Federal motor vehicle standards affect average fuel economy, and the need of the nation to conserve energy.

B. *Industrywide Considerations*

The statute does not expressly state whether the concept of feasibility is to be determined on a manufacturer-by-manufacturer basis or on an industrywide basis. Legislative history may be used as an indication of Congressional intent in resolving ambiguities in statutory language. The agency believes that the below-quoted language provides guidance on the meaning of "maximum feasible average fuel economy level."

The Conference Report to the 1975 Act (S. Rep. No. 94–516, 94th Cong., 1st Sess. 154–5 (1975)) states:

> "Such determination [of maximum feasible average fuel economy level] should take industrywide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic manufacturers that currently exist, and the possible implications for the national economy and for reduced competition association (sic) with a severe strain on any manufacturer. . . ."

It is clear from the Conference Report that Congress did not intend that standards simply be set at the level of the least capable manufacturer. Rather, NHTSA must take industrywide considerations into account in determining the maximum feasible average fuel economy level.

NHTSA has consistently taken the position that it has a responsibility to set light truck standards at a level that can be achieved by manufacturers whose vehicles constitute a substantial share of the market. See 49 FR 41251, October 22, 1984. The agency did set the MY 1982 light truck fuel economy standards at a level which it recognized might be above the maximum feasible fuel economy capability of Chrysler, based on the conclusion that the energy benefits associated with the higher standard would outweigh the harm to Chrysler. 45 FR 20871, 20876; March 31, 1980. However, as the agency noted in deciding not to set the MY 1983–85 light truck standards above Ford's level of capability, Chrysler had only 10–15 percent of the light truck domestic sales, while Ford had about 35 percent. 45 FR 81593, 81599; December 11, 1980.

C. *Petroleum Consumption*

The precise magnitude of energy savings associated with alternative light truck fuel economy standards is uncertain. The FRIA provides calculations for the hypothetical lifetime fuel consumption of the MY 1992 domestic light truck fleets assuming those same fleets could and would achieve alternative CAFE levels. For example, assuming that manufacturers could achieve an average CAFE of 21.0 mpg for the MY 1992 domestic light truck fleet but instead achieved 20.2 mpg with the same number of sales, there could be a maximum difference in fuel consumption of 638 million gallons over the lifetime of the model year's fleet.

However, it is possible that manufacturers may be able to achieve particular higher CAFE levels only by restricting the sales of their large light trucks. If this occurred, consumers might tend to keep their older, less-fuel efficient light trucks in service longer. Also, to the extent that a particular manufacturer might find it necessary to restrict sales of its large light trucks, consumers may be able to transfer their purchases of those same types of vehicles to another manufacturer which may have less difficulty meeting the CAFE standard. Thus, the agency believes that the actual impacts, if any, on energy consumption of alternative higher fuel economy standards, would be less than the theoret-

ical calculations comparing different levels of industrywide CAFE.

D. The MY 1992 Standards

Based on its analysis described above and on manufacturers' projections, the agency concludes that the major domestic manufacturers can achieve the combined fuel economy levels listed in the following table:

Manufacturer	Approximate market share (MY 1989)	Combined CAFE
Chrysler	21.0%	21.2 mpg
GM	33.0%	20.8 mpg
Ford	26.0%	20.2 mpg

As indicated above, foreign manufacturers other than Volkswagen and Land Rover compete in only the small vehicle portion of the light truck market and are therefore expected to achieve CAFE levels well above those of GM, Ford and Chrysler, which offer full ranges of light truck models.

Unlike past years, the agency is not setting separate 2WD and 4WD standards as an alternative to the combined standard. The agency's decision on this issue is discussed in detail below.

The setting of maximum feasible fuel economy standards, based upon consideration of the four required factors, is not a mere mathematical exercise but requires agency judgment. Based on the preceding analysis and discussion, the agency concludes that Ford is the least capable manufacturer with a substantial share of sales and that 20.2 mpg is the maximum feasible combined standard for the 1992 model year. For the reasons discussed below, this level balances the potential petroleum savings associated with higher standards against the difficulties of manufacturers facing potentially higher standards.

Notwithstanding the projected product plans that the manufacturers have provided the agency and that are discussed, there is the potential for some decline in each manufacturer's CAFE. The above analysis has not covered the potential of mix shifts because of the possible adverse financial consequences to manufacturers and national employment of any large change in CAFE that is created by forced mix shifts. Nevertheless, the market may dictate changes in the light truck mix in response to fuel prices and availability. Continuing low fuel prices and plentiful supply may result in an increased demand for power and performance, while an unanticipated substantial increase in fuel prices could increase demand for more fuel-efficient models.

NHTSA believes there are serious questions whether a standard set at a level above Ford's capability would be consistent with the requirement that standards be set taking industrywide considerations into account, given that company's market share.

The precise effects on petroleum conservation of a higher standard are uncertain. The maximum theoretical additional energy savings associated with a standard set at a higher level can be determined by comparing hypothetical situations where GM and Ford would have combined average fuel economy levels of 21.0 mpg. Since most other manufacturers in the industry project MY 1992 CAFE above that of GM's capability, a standard set at 21.0 mpg would not be expected to affect the petroleum consumption of trucks manufactured by that part of the industry. The maximum difference in total gasoline consumption between these two hypothetical situations over the lifetime of the MY 1992 fleet would be 638 million gallons. The maximum yearly impact on U.S. gasoline consumption would be 74 million gallons, or roughly six hundredths of one percent of total motor vehicle gasoline consumption.

The agency believes, however, that any gasoline savings associated with a higher standard would actually be less than indicated by this projection. While such a standard would provide added incentive for GM to achieve its maximum fuel economy capability, it is not clear in light of earning possible carryforward/carryback credits that they might not achieve this increase anyway. Ford could not likely improve its CAFE other than by restricting sales of its larger light trucks and engines. To the extent that would-be purchasers of such vehicles and engines transferred their purchases to GM and Chrysler without those companies otherwise changing their product plans, there could be little or no effect on overall petroleum consumption.

A higher standard than 20.2 mpg could result in serious economic difficulties for Ford. Given lead-time constraints, NHTSA believes that the primary potential fuel-efficiency enhancing actions that Ford or any other manufacturer would consider in response to a higher standard would consist of marketing actions. For the reasons discussed earlier in this notice, however, the agency does not believe that marketing actions can be relied upon to significantly improve fuel economy. If such marketing actions were unsuccessful in whole or in part, Ford would likely have to engage in product restrictions, including limiting the sales of larger engines and/or vehicles to improve its fuel economy. Such product restrictions could result in adverse economic consequences for Ford, its employees and the economy as a whole and limit consumer choice, especially with regard to the load carrying needs of light truck purchasers.

Given Ford's 26 percent share of the light truck market in MY 1989, its capability has a significant

effect on the level of the industry's capability and, therefore, on the level of the standards. The agency believes that the 20.2 mpg standard balances the potentially serious adverse economic consequences associated with market and technological risks against potential fuel economy improvements. The agency concludes, in view of the statutory requirement to consider specified factors, that the relatively small and uncertain energy savings associated with setting a standard above Ford's capability would not justify the potential economic harm to that company and the economy as a whole.

In addition to the comments discussed above, the agency received comments from Nissan, the Natural Resources Defense Council (NRDC), the Energy Conservation Coalition (ECC), the Western Interstate Energy Board (WINB) and the National Automobile Dealers Association (NADA).

The ECC, in comments endorsed by NRDC, argued that in setting the CAFE standards, NHTSA should double the 3% annual rate of increase provided by the high end of the ranges proposed. This would result in a MY 1992 CAFE of 22.2 mpg, and an MY 1994 CAFE of 25 mpg. The ECC also stated it is essential to set standards now for model years after 1994 to provide manufacturers with adequate leadtime to achieve higher fuel economy levels. The comments claimed these increases would be cost-effective, and listed a number of potential technological improvements available to manufacturers. Finally, ECC provided statistics on the potential fuel savings achievable through higher CAFE standards for light trucks, and emphasized the U.S. transportation sector's role as a source of greenhouse gas emissions.

ECC does not explain the basis for their suggested levels. The commenter did not demonstrate why these levels would be feasible. As explained above, the agency has determined that the maximum feasible level for MY 1992 is 20.2 mpg. In addition, the short statutory deadline makes it impractical for the agency to set standards beyond MY 1992 at this time. NHTSA also notes that much of the technology listed in ECC's comments has already been extensively incorporated in the light truck fleet. The agency has included an analysis of carbon dioxide emissions associated with this CAFE standard in the Environmental Assessment prepared by the agency for this rulemaking and available from the Docket Section. Finally, the agency notes that the fuel economy levels and time frames for their implementation advocated by ECC exceed the scope of the NPRM.

NRDC, while endorsing the ECC comments, also expressed concern that the NPRM did not discuss NHTSA's decision to undertake a programmatic Environmental Impact Statement (EIS) to examine effects of the CAFE program. NRDC believes the agency's handling of fuel economy issues violates the National Environmental Policy Act, and that the agency has not adequately analyzed the relationship between fuel efficiency and carbon dioxide emissions. In response, NHTSA notes that it has provided an analysis of fuel economy and carbon dioxide emissions in its Environmental Assessment for this rulemaking, and is continuing its work toward the publication of a programmatic EIS for the CAFE program. To that end, the agency has issued a notice of intent to prepare a programmatic EIS (54 FR 37702, September 12, 1989), and is currently analyzing comments received in response to that notice.

WINB supports higher fuel economy standards than those proposed, although it does not provide specific levels. The comments note that the growing role of light duty trucks is a primary cause of the stagnation in the fleetwide CAFE of all light duty vehicles. WINB argues that the agency has not considered the economic implications of failing to increase light truck CAFE, and that domestic jobs will be lost as rising fuel prices shift demand toward more efficient, imported light trucks.

NHTSA believes that it has taken into account the economic implications of not setting higher standards. This issue is discussed in detail in the FRIA available from the Docket. The agency disagrees with WINB's assumption that significantly higher fuel prices are likely during the period affected by this rulemaking, and that this will result in significantly increased demand for more fuel-efficient vehicles. See the FRIA for a more detailed discussion of future fuel prices. The agency also disagrees that domestic jobs will be lost as a result of its decision. In response to apparent consumer demands, import manufacturers are now introducing larger, more powerful and less efficient light trucks. This trend gives no indication of reversing in the near future. Finally, the agency notes that promulgation of standards beyond the range proposed in the NPRM exceeds the scope of this rulemaking.

NADA recommended that the agency establish CAFE standards no higher than 20.2 mpg. This is the maximum feasible level in NADA's opinion, because of new regulatory constraints and the need to accommodate a wide range of consumer needs for utility and durability. NADA stated that NHTSA appears to have underestimated the potential impact of safety and emissions standards for MY 1992–94, although no specific data were provided.

NHTSA notes that, as discussed above, emissions impacts stemming from the pending Clean Air Act amendments are not anticipated until MY 1993 at the earliest. The agency also believes that its anal-

ysis has adequately accounted for the CAFE impacts of safety requirements affecting the MY 1992 fleet.

In its comments, Nissan projected that it would be in compliance with the upper end of the ranges proposed in the NPRM, and was thus not opposed to their adoption.

NHTSA has decided not to promulgate for MY 1992 the optional separate 2WD/4WD standards that have been promulgated for previous model years. A single combined standard is being issued instead. NHTSA is concerned that retaining the separate standards may actually decrease fuel economy by encouraging the production of the less fuel-efficient 4WD vehicles by full line manufacturers since these vehicles would not be averaged with 2WD trucks for compliance.

Separate 2WD and 4WD standards were originally intended to provide an alternative means of compliance to manufacturers that manufactured primarily 4WD vehicles that would reflect the specialized nature of their fleets without undue penalty. Since the separate standards were established, the manufacturers that were served by this system, American Motors and International Harvester, have, respectively, been acquired by Chrysler and stopped manufacturing light trucks. Thus, the original intended beneficiaries of the separate standards have disappeared.

The combined standard is a benefit to any manufacturer making predominantly 2WD models. It is a disadvantage to a manufacturer whose fleet consists entirely or mostly of 4WD vehicles. It is intended to take into account manufacturers that typically have a fleet with a majority of 2WD vehicles. NHTSA notes that there are only four manufacturers currently marketing fleets of predominantly 4WD vehicles. These are Daihatsu, Suzuki, Subaru and Range Rover. In MY 1990, Daihatsu, Suzuki and Subaru exceed by substantial margins the MY 1992 combined standard as well as the MY 1990 2WD standard by virtue of their fleets of small, fuel efficient models. Range Rover, on the other hand, does not meet the MY 1990 4WD standard because it markets only a single model, a 4WD utility vehicle with a fairly large engine. In contrast to the circumstances that existed in 1980, when American Motors and International Harvester had a combined share of just over 7 percent of the light truck market, Range Rover's projected share of the market for MY 1990 is much less than one percent. Range Rover's limited participation in the U.S. market does not warrant establishing separate 2WD and 4WD standards.

At present, most domestic and most import manufacturers choose to comply with the single, combined standard instead of the separate 2WD and 4WD standards.

Chrysler supported NHTSA's proposed decision to eliminate the separate 2WD and 4WD standards. Ford expressed no objection to the proposal, and NADA took no position on the issue. GM opposed the proposal on grounds that it would restrict full-line manufacturers' flexibility in complying with the light truck standard. The company stated that the separate standards moderate the adverse CAFE impact of increased consumer demand for 4WD vehicles.

NHTSA does not agree that separate standards are necessary to provide full-line manufacturers with flexibility. As noted above, the original intention behind the separate standards was to enable specialized manufacturers to more easily comply with the standards. The separate standards no longer serve this purpose. The agency believes that it already properly accounts for the potential increasing relative demand for 4WD vehicles and the resulting CAFE risks and potential mix effects when it sets the combined standard. Moreover, manufacturers are provided with flexibility in complying with the standard through the use of carryforward and carryback credits.

Based on these considerations, NHTSA has determined that the separate standards are no longer necessary. Accordingly, the MY 1992 standard contains only a combined standard for light trucks.

Manufacturers that have earned credits in past model years by complying with the separate 2WD and 4WD standards would still be able to use those credits to offset CAFE shortfalls within the three year carryforward period. *See,* 45 FR 83233 (December 18, 1980) and 44 FR 64943 (November 8, 1979).

In its March 1989 response to NHTSA's request for comments, Volkswagen suggested as an alternative to establishing a combined standard within its capability that the agency consider alternate special consideration for limited product line truck manufacturers. In establishing the MY 1980–81 light truck CAFE standards, the agency did establish a separate standard in light of International Harvester's (IH) limited product line. See 43 FR 11995, March 23, 1978. The agency noted that IH had unique problems given its limited sales volume, restricted product line, the fact that its engines were derivatives of medium duty truck (above 10,000 pounds GVWR) engines, and the fact that it did not have experience with state-of-the-art emission control technology which the other manufacturers had obtained in the passenger automobile market. The agency emphasized, however, that the separate class was being established for only two model years' duration, concluding that IH should be able to achieve levels of fuel efficiency in line with other manufacturers within that time period either through purchasing engines from outside sources or by making improvements to current engines. The

agency does not believe that Volkswagen's situation is similar to that of IH. While IH's difficulties were related to being newly subject to the fuel economy program, Volkswagen's potential CAFE difficulties are not. Under the Cost Savings Act, manufacturers are required to meet average fuel economy standards which are set based on industrywide considerations. For MY 1992, Volkswagen is projected to be well above the CAFE standard. Thus, NHTSA believes it is not appropriate to set a separate standard to accommodate Volkswagen's limited product line status.

PART 533—[AMENDED]

In consideration of the foregoing, 49 CFR Part 533 is amended as follows:

Table III is added to § 533.5(a) to read as follows:

§ 533.5 *Requirements.*

(a) * * *

TABLE III

Model year	Combined Standard	
	Captive Imports	Others
1992	20.2	20.2

3. § 533.5(e) will be added to read as follows:

(e) For model year 1992, each manufacturer shall comply with the average fuel economy standard specified in paragraph (a) of this section (segregating captive import and other light trucks).

Issued on March 30, 1990

Jerry Ralph Curry
Administrator

55 F.R. 12487
April 4, 1990

PREAMBLE TO AN AMENDMENT TO PART 533

Light Truck Average Fuel Economy Standards
Model Years 1993-1994

(Docket No. FE-88-03; Notice 4)
RIN:2127-AD 56

ACTION: Final rule.

SUMMARY: This notice establishes the average fuel economy standards for light trucks manufactured in model years (MY) 1993 and 1994. Issuance of the standards is required by Title V of the Motor Vehicle Information and Cost Savings Act. For MY 1993, the combined standard for all light trucks manufactured by a manufacturer is 20.4 mpg, an increase of 0.2 mpg over the MY 1992 standard. For MY 1994, the combined standard is 20.5 mpg. The agency is not setting optional separate two-wheel drive and four-wheel drive standards.

DATES: The amendment is effective May 6, 1991. The standards apply to the 1993 and 1994 model years.

Table of Contents

I. Background

Issuance of light truck fuel economy standards is required by section 502(b) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C 2002(b)). That section requires the Secretary of Transportation to set light truck fuel economy standards at the maximum feasible average fuel economy level for each model year after 1978. In determining the maximum feasible average fuel economy level, the Secretary is required under section 502(e) of the Act to consider four factors: technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy. See 15 U.S.C. 2002(e). Responsibility for the automotive fuel economy program was delegated by the Secretary of Transportation to the Administrator of NHTSA (41 FR 25015, June 22, 1976). Prior to the MY 1992–94 rulemaking, the light truck standards set most recently by the agency had been 20.0 mpg for MY 1990 and 20.2 mpg for MY 1991. On January 6, 1989, NHTSA published in the *Federal Register* a Request for Comments seeking data on manufacturers' light truck fuel economy capabilities for model years (MY) 1992–94 (54 FR 436). All of the domestic light truck manufacturers responded, as did several foreign manufacturers.

After analyzing the responses to the Request for Comments and reviewing other available data, NHTSA published a notice of proposed rulemaking (NPRM) proposing ranges of standards for light truck average fuel economy standards for MY 1992–94 (55 FR 3608, February 2, 1990). For MY 1992, the proposed range was between 20.2 mpg and 21.0 mpg. For MY 1993, the proposed range was between 20.2 mpg and 21.5 mpg. The proposed range for MY 1994 was between 20.2 mpg and 22.0 mpg. These ranges were based on the agency's tentative evaluation of manufacturer capabilities. In a final rule published April 4, 1990 (55 FR 12487), NHTSA set the combined standard for MY 1992 at 20.2 mpg.

In prior light truck CAFE rulemakings, the agency had provided manufacturers with the option of dividing their light trucks into two fleets, a two-wheel drive (2WD) fleet and a four-wheel drive (4WD) fleet and meeting a separate standard for each fleet. However, as explained in the final rule for MY 1992, the agency decided to discontinue setting these separate alternative standards beginning with MY 1992.

In response to the February 2, 1990 NPRM, the agency received comments from General Motors, Ford, Chrysler, Nissan, the U.S. Department of Energy, the Natural Resources Defense Council, the Western

Interstate Energy Board, the Energy Conservation Coalition and the National Automobile Dealers Association. The issues raised by the commenters are discussed below.

II. Summary of Decision

Based on its analysis, the agency is establishing a combined average fuel economy standard for MY 1993 at 20.4 mpg, and a combined average fuel economy standard for MY 1994 at 20.5 mpg. Alternative separate standards for 2HD and 4HD light trucks are not being established.

III. Manufacturer Capabilities for Model Years 1993 and 1994

As part of its consideration of technological feasibility and economic practicability, the agency has evaluated manufacturers' fuel economy capabilities for MY 1993–94. In making this evaluation, the agency has analyzed manufacturers' current projections and underlying product plans and has considered what, if any, additional actions the manufacturers could take to improve their fuel economy. A more detailed discussion of these issues is contained in the agency's Final Regulatory Impact Analysis (FRIA), a public version of which has been placed in the docket for this rulemaking. There is also a nonpublic version which includes some information, including the details of manufacturers' future product plans, that has been determined by the agency to be confidential business information, release of which could cause competitive harm. The public version of the FRIA omits the confidential information.

A. Manufacturer Projections

General Motors: As discussed in the NPRM, General Motors (GM) projected in March 1989 that it could achieve a combined CAFE level of 20.7 mpg in MY 1993 and 20.8 mpg in MY 1994. In its March 1990 comments on the NPRM, GM repeated its projection of 20.7 mpg for MY 1993, while lowering its projection for MY 1994 to 20.7 mpg. GM attributes this slight decrease in its MY 1994 projection to adjustments to projected powertrain and model mixes, and to minor adjustments of estimated MY 1994 fuel economy for certain models.

The 20.7 mpg figure represents an improvement over the level of 19.7 mpg projected by GM for MY 1990 in a mid-model year report submitted in August 1990. The improvement projected by GM after MY 1990 is attributable to several factors, including increased penetration of certain engine technologies and aerodynamic improvements, a slight weight decrease and a shift toward more efficient models, for a net improvement by MY 1992 over MY 1990 of 1.0 mpg.

Although the CAFE impacts of these changes carry over into MY 1993–94, they are offset by volume adjustments, corrected projections on new models, a projected shift to heavier or less efficient options, and new weight estimates for safety and environmentally related hardware, for a net projected increase of zero. For MY 1994, GM's adjustments are essentially the same as for MY 1993.

However, in making its projections for MY 1993–94, GM noted that the actual level it achieved could be lower due to various uncertainties such as fuel prices, consumer demand for increased power and performance, new safety requirements and increasing competition in the light truck market. GM also stated that certain program risks (subject to a claim of confidentiality) could cause a decline in GM's projected MY 1993–94 CAFE to 20.4 mpg. GM recommended that the MY 1993–94 standards be set at or near the low end of the proposed range.

Ford: Ford projected in March 1989 that it could achieve CAFE levels of 20.6 mpg combined in MY 1993 and 20.4 mpg combined for MY 1994. By comparison, in a mid-model year report submitted in July 1990, Ford projected a MY 1990 combined light truck CAFE of 20.0 mpg. In its March 1990 comments on the NPRM, Ford raised its projections for MY 1993–94. At that time, Ford projected a CAFE of 20.9 mpg in MY 1993, and 20.8 mpg for MY 1994. These most recent projections were said to be subject to several risks, discussed below, which could result of achieving a lower level of CAFE.

In its comments on the NPRM, Ford projected a MY 1992 CAFE of 20.5 mpg. The 0.4 mpg net increase between MY 1992 and MY 1993 is due to several minor improvements and other fleet changes that result in a 0.5 mpg increase, and to product changes that result in a decrease of 0.1 mpg. For MY 1994, Ford projected that stricter emissions standards would decrease its CAFE by 0.4 mpg, but that this would be offset in part by minor improvements and a shift toward more efficient models, for a net decrease of 0.1 mpg, to 20.8 mpg for MY 1994. The projected CAFE figures do not include the risks and opportunities raised by Ford which are discussed in Section C, below.

In its response to the NPRM, Ford also emphasized the potential effect on CAFE of factors beyond its control, including unforeseen but normal technological shortfalls from the technological changes listed in its comments, the potential for increased import market share and concomitant loss of domestic share in the compact truck market segment, and the pending safety requirements for light trucks. In addition, Ford indicated that continued low fuel prices could further

increase the market demand for full-size light trucks, larger engines and increased optional equipment, causing a decline in its CAFE. Ford recommended that the light truck CAFE standard be set at 20.2 mpg in MY 1993 and no higher than 20.5 mpg for MY 1994.

Chrysler: Chrysler projected in March 1989 that it could achieve a CAFE level of 21.0 mpg in MY 1992, 20.9 mpg in MY 1993 and 20.8 mpg in MY 1994. By comparison, Chrysler's July 1990 mid-model year report for MY 1990 indicated a MY 1990 CAFE of 21.7 mpg. As noted in the final rule for MY 1992, the decline from MY 1990 to MY 1992 is a result of product changes and revised fuel economy estimates for certain models. In its February 1990 response to the NPRM, Chrysler projected its MY 1992 CAFE at 21.2 mpg, its MY 1993 CAFE at 20.9 mpg, and its MY 1994 CAFE at 21.4. These increases over the March 1989 projections are due to adjustments in Chrysler's fuel economy program, amounting to a 0.4 mpg increase each model year, offset by factors such as product introduction revisions and volume adjustments amounting to a 0.2 mpg decrease in MY 1992, and a 0.4 mpg decrease in MY 1993–94. However, the March 1990 projection for MY 1994 also includes a 0.6 mpg increase attributed to product changes which have since been cancelled.

In its response to the NPRM, Chrysler suggested that the CAFE standards for MY 1993–94 remain at the same level as MY 1991 (20.2 mpg), despite Chrysler's projections that it would exceed these levels by a considerable margin. Chrysler's view on the appropriate CAFE standards was based upon several uncertainties that underlie its fuel economy projections for these model years. These include the impact of revisions to the Clean Air Act, market shifts to larger trucks, and the price of gasoline. Chrysler also pointed to the U.S. economy as a factor which could negatively impact its CAFE if economic conditions worsen to the point that they necessitate the delay or postponement of certain plans.

Other Manufacturers

Volkswagen (VW) currently offers only one light truck model, the Vanagon compact bus. Volkswagen's combined light truck CAFE for MY 1990 is estimated at 20.8 mpg. VW indicated in its response to the January 1989 questionnaire that it has no significant improvements planned to increase fuel economy by MY 1993–94. The company's product plans are indefinite, but may involve a larger engine, or a front wheel drive model.

Range Rover projected its light truck CAFE for MY 1989 at 15.3 mpg in April 1989. At that time, the company did not expect any significant fuel economy improvement. However, the company has projected its 1990 and 1991 CAFEs at 16.3 mpg, 1.0 mpg higher than its MY 1989 projection.

Other foreign light truck manufacturers only compete in the small vehicle portion of the light truck market and are therefore expected to achieve CAFE levels well above those of GM and Ford, the manufacturers whose fuel economy capabilities determine the MY 1993–94 standards.

B. Possible Additional Actions to Improve MY 1993–94 CAFE

There are additional actions which the agency analyzed that could be implemented by manufacturers to improve their CAFEs above the levels which they currently project for MY 1993–94. These actions may be divided into three categories: further technological changes to their product plans, increased marketing efforts, and product restrictions or mix shifts.

1. Further Technological Changes

The ability to improve CAFE by further technological changes to product plans is dependent on the availability of fuel efficiency enhancing technologies which manufacturers are able to apply within the available leadtime.

The agency's FRIA discusses the fuel efficiency enhancing technologies which are expected to be available by MY 1993–4. NHTSA recognizes that the leadtime necessary to implement significant improvements in engines, transmissions, aerodynamics and rolling resistance is typically about three years. Also, as the agency discussed in establishing the final rule for MY 1990–91, once a new design is established and tested as feasible for production, the leadtime necessary to design, tool, and test components such as new body sheet-metal subsystems for mass production is typically 30 to 36 months. Other potential major changes may take longer. Leadtimes for new vehicles are usually at least three years.

Given leadtime constraints, the agency does not believe that manufacturers can achieve significant improvements in their projected MY 1993–94 CAFE levels by additional technological actions. Some improvements are, of course, possible due to slight increases in the extent of installation of more fuel efficient technology or changes in model mix. However, such changes are likely to be market driven, and are not likely to provide a substantial increase for any manufacturer.

2. Increased Marketing Efforts

As discussed in the NPRM, NHTSA believes that the ability to improve light truck CAFE by marketing efforts is relatively small. Light trucks are often purchased for their work-performing capabilities. This is particularly true for the larger, less fuel-efficient light trucks. Since the smaller light trucks cannot meet the needs of all light truck users, the manufacturers'

ability to use marketing efforts to encourage consumers to purchase smaller light trucks instead of larger light trucks is limited.

As a practical matter, marketing efforts to improve CAFE are largely limited to techniques which either make fuel-efficient vehicles less expensive or less fuel-efficient vehicles more expensive. Moreover, the ability of a manufacturer to increase sales of fuel-efficient light trucks depends in part on increasing its market share at the expense of competitors or pulling ahead its own sales from the future. The ability of domestic manufacturers to make such sales increases is also affected by the strong competition in that market from Japanese manufacturers. While the Japanese manufacturers currently have an overall combined market share of about 30 percent of light trucks, their share for the smaller, more fuel-efficient light trucks is about 45 percent.

A problem with pulling ahead sales is that the manufacturers' CAFE levels for subsequent years are reduced. For example, if a manufacturer improves its MY 1993 CAFE by pulling ahead sales of fuel-efficient light trucks from MY 1994, its MY 1994 CAFE will decrease, compared with the level it would have been in the absence of any pull-ahead sales attributable to marketing efforts. For this reason, a manufacturer cannot continually improve its CAFE simply by pulling ahead sales.

Given these considerations, NHTSA concludes that the domestic manufacturers cannot significantly improve their MY 1993-94 CAFE levels through increased marketing efforts.

3. Product and Possible Mix Shifts

As an alternative to technological improvements, manufacturers could improve their CAFE by restricting their product offerings (e.g., limiting or deleting production of particular larger light truck models and larger displacement engines). Such product restrictions could have adverse economic impacts on the industry and the economy as a whole.

The FRIA presents a scenario as an example in which GM, Ford, and Chrysler (since Chrysler's projected capability for MY 1993 is below the range of up to 21.5 mpg proposed in the NPRM for MY 1993) are assumed to restrict production of sufficient numbers of their least fuel-efficient light truck models to obtain a 0.5 mpg improvement in CAFE beyond their projected capabilities for MY 1993. Under this scenario, GM could suffer a sales loss of up to 175,000 light trucks for MY 1993, while Ford could experience a sales loss of more than 159,000 light trucks, and Chrysler a sales loss of more than 89,000 light trucks in MY 1993. The potential job losses under this scenario in manufacturing and supplier industries could total 28,000 to 85,000 for MY 1993.

These numbers are probably quite overstated, since, as GM has stated in past light truck rulemakings, and Ford has stated in its comments on this rule, product restrictions of the type envisioned above would likely be considered only after attempting marketing efforts and restricting the availability of particular engines and axle ratios. Ford and GM both submitted analyses of the sales and employment impact of setting the standard at 0.5 mpg beyond their respective capabilities. Both manufacturers' analyses show impacts much smaller than those projected above. However, the scenario is illustrative of the types of impacts that could result from standards that exceed manufacturers' true capabilities. In addition to the adverse impacts on the automotive industry, a wide range of businesses could be seriously affected to the extent that they could not obtain the light trucks they need for business use.

Although the current Mid-East crisis has, in the short run, somewhat tilted consumer demand toward smaller and more fuel efficient light trucks, it is unclear whether this shift can be maintained, since work-performing capability and load capacity are the primary factors that determine consumers' long-term choices when purchasing light trucks.

The U.S. Department of Energy (DOE) commented that NHTSA's method of analysis yields estimates of economic impacts that are so much larger than those that would actually occur, that it may not be meaningful to consider them. Although not advocating the payment of fines as an alternative to compliance, DOE suggested that the fines paid in such a circumstance would be a better context in which to evaluate the maximum negative impacts of a standard 0.5 mpg above the manufacturers' capability.

NHTSA's response to this comment is discussed in detail in the final rule for MY 1992. NHTSA does not dispute DOE's analysis for the case where manufacturers choose to pay penalties rather than comply with a standard beyond their capability. However, NHTSA's analysis focuses on the maximum impacts that would occur if manufacturers chose to comply with the standard through product restrictions, or were forced to so comply because marketing or other measures were unsuccessful. Moreover, the agency believes the statute directs it to consider the maximum fuel economy level that manufacturers can *achieve*, rather than the impact of penalties paid if the standards are not achieved.

Ford's comments expressed concern that establishing a CAFE standard beyond its capability could result in a substantial loss of sales, adverse employment effect, and economic hardship. The company is also concerned about the potential impact of product restrictions, and indicated that market research data show that the vehicles most likely to be restricted are used for a combination of commercial as well as personal uses.

In its comments, GM also expressed concern about the impact of product restrictions on consumer choice and industry employment.

NHTSA concludes based on these considerations that significant product restrictions should not be considered as part of manufacturers' capabilities to improve MY 1993–94 CAFE levels.

C. Manufacturer-Specific CAFE Capabilities

As discussed later in this notice, NHTSA is directed to take "industrywide considerations" into account in setting fuel economy standards. In carrying out this direction, the agency focuses on the least capable manufacturer with substantial shares of light truck sales. For MY 1993, the agency has determined that Ford is the least capable manufacturer with a substantial share of sales. For MY 1994, GM is the least capable manufacturer. During MY 1990, Ford had a 26 percent share of combined light truck sales. By comparison, GM had a 32 percent share, and Chrysler a 22 percent share. VW does not have a substantial share of industry sales. Its MY 1990 market share was 0.17 percent. Similarly, Range Rover's sales accounted for 0.13 percent of the light truck market in MY 1990.

GM, Ford, and Chrysler's MY 1993–94 CAFE projections are subject to a number of uncertainties which are discussed above. NHTSA has fully considered these uncertainties in determining manufacturer-specific capabilities.

Ford: As noted above, in March 1989, Ford projected a MY 1993 CAFE of 19.8 mpg, and a MY 1994 CAFE of 20.0 mpg. In its March 1990 comments, Ford projected a CAFE of 20.9 mpg for MY 1993, and 20.8 mpg for MY 1994, subject to risks and opportunities which Ford believes could lead to a decrease of about 0.5 mpg in MY 1993, and 0.7 mpg in MY 1994. Many of the technical risks and opportunities are each quite small. Ford believes that its fuel economy testing program may not yield the anticipated benefits, resulting in a 0.2 mpg decrease for both MY 1993 and MY 1994. This is offset, however, by minor technological improvements in both years which would raise Ford's CAFE by 0.2 mpg. Ford also anticipates that new safety requirements which become effective in MY 1993 and MY 1994 could decrease CAFE by 0.1 mpg in MY 1993 and 0.2 mpg in MY 1994 due to increased weight. Ford also includes a risk that planned fuel economy improvements may not achieve the projected levels, resulting in a 0.2 mpg decrease for both model years, and a 0.3 mpg decrease for both model years based on potential market risks. Finally, Ford's base projection includes a 0.4 mpg penalty in MY 1994 to account for more stringent emissions standards.

Ford concludes that these factors could result in adjusted CAFEs of 20.4 mpg for MY 1993 and 20.2 mpg for MY 1994. (The MY 1994 figure reflects a correction for a 0.1 mpg error in Ford's fleet description.) The agency agrees that Ford's fuel economy data vehicle testing program may not yield the entire benefit that Ford anticipates, and that Ford's baseline should be reduced by 0.2 mpg in both MY 1993 and MY 1994 to reflect this risk. NHTSA's analysis indicates that the minor technological improvements planned by Ford would be likely to result in a potential net gain of nearly 0.2 mpg in both model years. The agency also agrees with Ford's assessment of the CAFE penalties for new safety requirements in these model years. Further, NHTSA does not wish to discourage the voluntary installation of safety features such as automatic occupant restraints by disallowing Ford's projected penalty for increased safety features. NHTSA believes that Ford's assessment of potential market risks is overly pessimistic, and that all the events which comprise that risk are unlikely to occur simultaneously. Thus, NHTSA has added 0.1 mpg to Ford's capability for each year. In addition, the agency believes that certain technological improvements which Ford discounted from its baseline due to potential emissions penalties should be reinstated. This would amount to a negligible improvement for MY 1993, but would increase Ford's CAFE by 0.1 mpg in MY 1994. Finally, as discussed below in Section IV, the agency does not believe that the recent Clean Air Act amendments are likely to result in significant light truck fuel economy impacts. The agency notes that no other manufacturer claimed a specific emissions penalty in its MY 1994 CAFE projection. Moreover, the phase-in schedule in the Clean Air Act was delayed by one year from that in the draft legislation under consideration when Ford made its estimate. Thus, in its analysis and comparison with other manufacturers' projections, NHTSA has not included this 0.4 mpg MY 1994 penalty deducted by Ford.

Taking these factors into account, NHTSA believes that Ford is capable of a CAFE of 20.6 mpg in MY 1993 and 20.9 mpg in MY 1994.

General Motors: As noted above, in March 1989, GM projected a MY 1993 CAFE of 20.7 mpg, and a MY 1994 CAFE of 20.8. In its March 1990 comments on the NPRM, GM revised its projection to 20.7 mpg for both MY 1993 and 1994 due to minor technical and mix adjustments. However, GM also indicated several uncertainties that combined could lower its projection by as much as 0.4 mpg for each year, for an adjusted CAFE of 20.3 mpg for both years. These risks were tied primarily to mix shifts toward less efficient vehicles.

As with Ford's projection, NHTSA believes that GM's market risk estimate is likely overstated. For example, as noted in the MY 1992 final rule, GM's CAFE can be increased if GM would drop the low-volume

offering of the fuel-inefficient 7.4 litre C10 pickup. Taking this consideration into account when analyzing GM's market risk, the agency believes that a reasonable adjustment for GM's market risk during MY's 1993 and 1994 is 0.1 mpg for each year. This decrease is offset because NHTSA believes that GM omitted from its baseline certain technological improvements for which it projects increasing market share during MY 1993–94, and which could produce a CAFE improvement of about 0.1 mpg in both model years. NHTSA concludes that GM is capable of a CAFE for MY 1993 and 1994 of 20.7 mpg.

As discussed at length in the MY 1992 final rule, the U.S. Department of Energy (DOE) commented that the upper end of the CAFE ranges proposed in the NPRM were achievable and represented the maximum feasible level. DOE's analysis was based on a linear interpolation between a base CAFE for each domestic manufacturer for MY 1987 and DOE's analysis of the manufacturers' capabilities for MY 1995. This methodology assumes both that DOE's MY 1995 projection is actually achievable and that each manufacturer has the capability to improve each year by the same fixed amount (about 0.4 mpg per model year). NHTSA questions both assumptions. Based on the manufacturers' submissions, GM will improve about 1.0 mpg between MY 1990 and MY 1994, but a large part of this is due to an unfavorable model mix in MY 1990 due to a short model year for compact pickups and utility vehicles. Ford will improve by 0.6 mpg and Chrysler will *decline* by 0.3 mpg between MY's 1990 and 1994.

The agency does not believe that DOE's extrapolation of CAFE values is a meaningful method to determine individual manufacturer capabilities for specific years, nor is it as accurate as an examination of product plans in establishing short-term capabilities for individual manufacturers. As explained in the MY 1992 final rule, NHTSA has provided DOE with comments on the draft report on which the MY 1995 projection is based, and does not believe that all issues have been resolved between DOE and NHTSA.

IV. Effect of Other Federal Standards

In determining the maximum feasible fuel economy level, the agency must take into consideration the potential effects of other Federal standards. The following section discusses other government regulations, both in process and recently completed, that may have an impact on fuel economy capability for MY 1993-94.

1. Safety Standards

As discussed in the FRIA, NHTSA has evaluated several safety rulemakings for their potential impacts on light truck fuel economy in MY 1993-94. This final rule does not address the impact of regulations that take effect in MY 1992. The CAFE impact of those regulations and issues raised by commenters concerning those regulations were addressed in the final rule for MY 1992.

The safety regulations evaluated by the agency for this rulemaking which are anticipated to become effective during MY 1993–94 include revisions to FMVSS Nos. 208; *Occupant crash protection,* 108; *Lamps, reflective devices and associated equipment,* 214; *Side door strength,* and 216; *Roof crush resistance-passenger cars.* In addition, the agency has evaluated proposed revisions to 49 Part 523, addressing vehicle classification for safety standards.

FMVSS No. 208. The agency published an NPRM on January 9, 1990 (55 FR 747) proposing to require automatic restraints on light trucks with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. The proposal would phase in the requirements, so that each manufacturer would be required to equip 20 percent of its light trucks manufactured between September 1, 1993 and August 31, 1994 with automatic restraints. From September 1, 1994 through August 31, 1995, 50 percent of each manufacturer's light trucks would have to be so equipped, and from September 1, 1995 on, all light trucks would be required to have automatic restraints. Thus, this proposal would have no direct impact on MY 1993 light trucks, and would affect only 20 percent of MY 1994 light trucks.

NHTSA has estimated the range of potential weight impacts (including secondary weight) from this proposed requirement to be between 5–36 pounds. Assuming manufacturers made changes to maintain constant acceleration performance despite the weight increases, fuel economy would be reduced about 0.05–0.10 mpg. However, since the requirement would only affect 20 percent of the MY 1994 fleet, the negative CAFE effect would be only 0.01–0.02.

In its response to the NPRM, Ford indicated the addition of driver-only passive restraints would add 20 to 50 pounds per affected vehicle, and that the addition of a passenger airbag would add 25 pounds, not including structural support. GM projected in its comments that airbags would add 17 to 24 pounds per affected vehicle. Chrysler noted that it did not include the impact of automatic restraints in its CAFE projections. No other comments were received on the potential impacts of automatic restraints on light truck CAFE.

Although NHTSA has not yet issued a final rule requiring automatic restraints for light trucks, the agency has included the weight impacts outlined by the manufacturers in assessing MY 1993–94 fuel economy capabilities. Even if the agency decides not to require automatic restraints for light trucks in the proposed

time frames, it does not want this MY 1993–94 CAFE rulemaking to discourage the voluntary installation of these systems in light trucks.

FMVSS 214. On December 22, 1989, the agency published an NPRM (54 FR 52826), proposing to extend the existing requirements of Standard No. 214 to trucks, buses, and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less, effective September 1, 1992.

NHTSA has estimated that the proposal, if adopted, could result in an average weight increase of 18–20 pounds per vehicle not including possible secondary weight, or 31-35 pounds including possible secondary weight. If the requirement takes effect as proposed, it could reduce MY 1993 and MY 1994 fuel economy levels by about 0.1 mpg.

Chrysler indicated in its comments that its projections included the effects of side door beams for MY 1993 and beyond. However, Chrysler did not provide a specific estimate of the fuel economy impacts of the proposed revisions to Standard No. 214. GM indicated that the side impact proposal would result in a 12–24 pound weight increase due to redesigned doors and glass. Ford stated that the proposal would result in a weight increase of 20–35 pounds per vehicle, depending on vehicle size and door configuration.

The weight impact estimates provided by the manufacturers are generally consistent with NHTSA's estimates. Since NHTSA has not altered the manufacturers' weight estimates, the potential impacts of this standard are included in the agency's fuel economy capability assessments.

FMVSS 108. Changes to the agency's lighting standard permit the use of smaller sealed beam headlamps, replaceable light source headlamps and lower mounting height. All of these changes should give manufacturers greater design freedom to achieve lower aerodynamic drag and some weight reductions, which could have positive impacts on CAFE. However, the agency does not have any data to estimate the reduction in drag that may be economically achievable for light trucks as a result of these changes. These positive effects may be counterbalanced by possible slow consumer acceptance of light truck styling for certain models which have been influenced by aerodynamic considerations. However, Ford indicated in its comments on the fuel economy NPRM that the changes to Standard 108 may permit more aerodynamic front end designs, and provide some opportunity for weight reduction.

On May 31, 1990, the agency published a NPRM (55 FR 22039) to require that new light trucks be equipped with Center High Mounted Stop Lamps (CHMSLs). The proposed effective date would be September 1, 1992, affecting MY 1993 and later light trucks. NHTSA estimates that this requirement would result in a weight increase of about one pound and that it would have a negligible impact on CAFE.

In its comments on the MY 1992–94 fuel economy NPRM, Ford estimated that CHMSLs would result in a two pound weight increase. This increase is included in Ford's fuel economy projections. GM did not mention FMVSS No. 108 in its response. Chrysler indicated that it has included CHMSLs in its projections, but it did not provide a specific estimate of the potential impact.

FMVSS 216. On November 2, 1989 (54 FR 46275), NHTSA published an NPRM proposing to extend the roof crush protection requirements of Standard No. 216 to light trucks and multipurpose passenger vehicles with GVWRs of 10,000 pounds or less, with a proposed effective date of September 1, 1991.

GM, Ford, and Chrysler all indicated in their comments that they had considered the fuel economy impacts of the proposal in their fuel economy projections. Since most light trucks already comply with the proposed requirements, and only modest weight increases are anticipated for those vehicles not meeting the proposal, the agency believes that this rulemaking will have a negligible impact on automakers' MY 1993–94 fuel economy capabilities.

Vehicle classification. NHTSA proposed to establish a new vehicle classification system for determining the applicability of the Federal Motor Vehicle Safety Standards on October 17, 1988 (53 FR 40463). The proposed rule would not affect the classification of vehicles for fuel economy standards. The agency is not proposing to alter the definitions of "passenger automobile" or "light truck" as they appear in 49 CFR Part 523. However, vehicles that are defined as light trucks for the purpose of fuel economy standards would be the type of vehicle most affected by the proposed classification changes. Vehicles classified as light trucks for fuel economy standards include many vehicles currently classified as trucks or MPVs for the purpose of safety standards. However, as the agency proposed to amend its safety regulations in such a way as to ensure that re-classification, by itself, causes no change in the applicability of safety standards, adoption of the proposed classification rule would have no impact on manufacturers' fuel economy capabilities for MY 1993–94.

2. Noise Standards

The agency is not aware of any plans on the part of EPA to promulgate noise regulations during the MY 1993–94 time period, and therefore does not anticipate any attendant fuel economy impacts.

3. Emission Standards

The Clean Air Act Amendments of 1990 impose new, more stringent emission standards on light trucks beginning in MY 1994. The amendments require that 40 percent of all light duty trucks up to 6,000 lbs GVWR meet more stringent standards for nonmethane hydrocarbons (NMHC), total hydrocarbons (HC), nitrogen oxides (NOx) and carbon monoxide (CO) in MY 1994. The remaining 60 percent of light duty trucks up to 6,000 lbs GVWR and those over 6,000 lbs GVWR would not be required to comply with the existing light duty standards until MY 1995 or 1996.

The Act includes new standards for CO emissions at low temperatures, with the requirements for light trucks beginning in MY 1994. The Act phases in CO requirements, requiring 40 percent of vehicles to comply in MY 1994. It also requires EPA to promulgate stricter evaporative HC emissions standards.

The revised Clean Air Act also requires light trucks to be equipped with onboard refueling vapor recovery systems. Such requirements must be effective in the fourth model year after the standards are promulgated, and EPA would be required to promulgate the standards within one year from enactment of the amendments. Thus, if the standards for onboard vapor recovery were issued during MY 1991, they would not take effect until MY 1995.

In their comments on the NPRM, manufacturers provided little definitive information on the CAFE impacts of the amendments since the future status of the amendments was unclear at that time. Chrysler indicated that it did "not know the task of meeting these standards, nor what effect there will be on fuel economy." GM assumed that stricter emissions standards could have a negative effect on fuel economy, and indicated that if the final Federal requirements were similar to the 1993 California standards, the fuel economy of each of its engines could be expected to decrease between 0 and 4½ percent. In addition, GM indicated that the more stringent HC standards could limit the application of some manual transmissions. Ford estimated that the proposed legislation would reduce its MY 1994 CAFE by 0.4 mpg, and included this penalty in its MY 1994 projection of 20.8 mpg. None of the other manufacturers included any emissions penalty in their CAFE projections.

EPA has indicated that, as a general rule, recent developments in emission control technology in the light duty fleet have allowed for decreases in emissions without losses in fuel economy. As an example, the use of computer controls to maintain the engine air-fuel ratio within a narrow range has made the use of three-way catalytic converters feasible. The use of these converters has in turn enabled manufacturers to optimize fuel economy while independently meeting emissions standards. Additionally, manufacturers are increasing the use of multipoint fuel injection on light trucks. This will provide a slight increase in fuel economy if it is not used to increase performance. EPA expects that the entire light truck fleet will be equipped with multipoint fuel injection by the mid-1990s.

The more stringent standards mandated by the Clean Air Amendments will likely be achieved by a combination of engine recalibration, catalyst reformulation, better air-fuel mixture control, and reformulated gasoline. Most of these changes will not affect fuel economy. Others are likely to provide some improvement in in-use fuel economy, and may provide some benefit during fuel economy testing for CAFE.

Although it appears that manufacturers can meet the emissions standards for the mid-1990s without suffering any significant fleet-wide fuel economy penalty, it is possible that there may be some initial, short-lived fuel economy losses. The limited emissions control engineering resources of the auto manufacturers must be utilized to meet stricter standards for both light trucks and passenger cars during these model years. Given the task of meeting more stringent standards on a wide variety of light truck powertrains, it is possible that some of the initial technologies and calibrations used to meet these standards may not be optimized. Consequently, some small loss of fuel economy is possible. Given the uncertainty in the development process, this effect cannot be precisely quantified. However, the agency has given consideration to these factors in setting the light truck CAFE standards in this final rule.

Diesel fuel quality. EPA published a final rule on August 21, 1990 (55 FR 34120) requiring a reduction in the permissible level of sulphur in diesel fuel, and a cap on aromatics at current levels for diesel fuel. The rule becomes effective October 1, 1993. The effect of this requirement will be to lower the particulate emissions from diesel engines operating on the fuel. By making it easier for diesel-powered vehicles to comply with emissions standards, this requirement potentially could improve the performance, and therefore marketability, of diesel-powered vehicles in the U.S., giving manufacturers an additional means to improve light truck CAFE.

Hydrocarbon emissions. On September 8, 1986, EPA published an advance notice of proposed rulemaking (ANPRM) concerning more stringent HC exhaust emissions for light-duty trucks. In December 1986, both GM and Ford commented that more stringent HC standards could have a negative impact on CAFE. This rulemaking has been superseded by the Clean Air legislation. Therefore, no potential impacts of this specific proposal were considered in determining the MY 1993–94 light truck CAFE standards.

Evaporative emissions. On January 19, 1990, EPA issued an NPRM proposing modifications to test procedures for control of evaporative emissions from running losses (55 FR 1914). This proposal would affect light duty vehicles fueled by gasoline or methanol, but it is expected to have no impact on fuel economy values as measured on the EPA test cycle. The Clean Air Act Amendments of 1990 require light trucks to be equipped with onboard vapor recovery systems in the fourth model year after standards are promulgated by EPA, in consultation with the Secretary of Transportation on the safety aspects of compliance. As mentioned above, NHTSA is not considering any impact of these systems on light truck fuel economy capabilities until MY 1995.

California air emissions standards. The California Air Resources Board (CARB) in 1986 adopted more stringent NOx standards for compact trucks sold in the state. The regulation phases in compliance, with 50 percent of light trucks weighing up to 3,750 pounds loaded vehicle weight subject to the standard in 1989, and 85 percent of vehicles in this class required to meet the standard for MY 1990–93. Beginning in MY 1994, all compact light trucks are subject to the standard. Both Ford and GM claimed in the MY 1990–91 rulemaking that this standard will have a small negative effect on their fuel economy capability. However, in that rulemaking, NHTSA concluded that by MY 1991, manufacturers should be able to eliminate or substantially reduce the projected penalty. California's standards for nonmethane hydrocarbons begin to become more stringent in MY 1993. In its response to the NPRM, GM indicated that the more stringent California HC standards scheduled to take effect in MY 1993 would result in a fuel economy loss from 0 to 1.5 percent depending on the characteristics of each engine. Ford also indicated that the Califonia standards would have a negative effect on fuel economy, although Ford did not distinguish between the impact of the California standards and the Federal Clean Air legislation in assessing that effect. As discussed above, NHTSA has considered the potential for reductions in light truck fuel economy capability due to new emissions requirements in setting the MY 1993–94 standards.

Chlorofluorocarbons. In response to the NPRM, GM indicated that manufacturers must develop substitutes for chlorofluorocarbons (CFCs) used in automotive air conditioning designs. Vermont has banned the registration of new vehicles using CFCs as a refrigerant beginning in MY 1993. GM indicated that replacing CFCs will result in a weight increase of around seven pounds per vehicle, and considerably more if sheet metal changes are necessary to accommodate new air conditioning systems. However, since NHTSA has not altered manufacturer's weight projections for this final rule, the potential impacts of this change are included in the agency's fuel economy capability assessments.

4. EPA Test Procedures

Gear shift indicator lights. During the MY 1990–91 fuel economy rulemaking, EPA issued a letter to manufacturers proposing to eliminate one of the two methods currently authorized to determine the fuel economy benefits of shift indicator lights. These dashboard lights are designed to inform drivers about the optimal speed, from a fuel economy standpoint, for shifting gears. EPA proposes to eliminate the driver usage rate survey, the method preferred by GM as a "more representative credit for actual shift indicator light usage than the on-road survey," and allow only an on-road shift light survey. At this point, EPA has not made a decision on this issue. No manufacturers raised the issue of shift indicator lights in their comments in response to NHTSA's request for comments on manufacturers' MY 1992–94 light truck fuel economy capabilities. In its comments on the MY 1992–94 fuel economy NPRM, GM stated that its light truck CAFE could be adversely affected if EPA were to eliminate the driver usage rate survey. However, since EPA has not made a decision on the issue, NHTSA has not made any adjustment to fuel economy capabilities to consider this factor.

5. Other Standards

Asbestos. On January 29, 1986, EPA proposed to prohibit the "manufacture, importation, and processing of asbestos in certain products," and the phasing out of asbestos in all other products. The implication of this rulemaking for motor vehicles would be to eliminate the use of asbestos in brake linings, clutch facings, automatic transmissions, and gaskets.

On July 12, 1989, EPA published a final rule (54 FR 29460) phasing in a prohibition of asbestos in almost all products. Asbestos brake linings are banned for use by original equipment manufacturers effective MY 1994. Asbestos clutch facings, automatic transmission components, and virtually all asbestos gaskets are banned as of August 25, 1993. In its comments on the MY 1990-91 light truck fuel economy rulemaking, GM indicated that the phase-out would increase vehicle weight approximately 5 pounds and reduce CAFE. However, GM provided no substantiation for its estimates. In response to NHTSA's request for comments on MY 1992–94 manufacturers' CAFE capabilities, no manufacturer indicated that this rule would have any potential impact on MY 1992 light truck fuel economy. However, in its comments on the fuel economy NPRM, GM indicated that while most necessary changes had been implemented, and therefore are included in the company's CAFE projections, certain changes had not yet been made. Specifically, the company anticipates

a 7-pound increase on the S/T models beginning in MY 1992. The effects are included in the agency's assessment of GM's fuel economy capability.

V. The Need of the Nation to Conserve Energy

The United States imported 15 percent of its oil needs in 1955. The import share had reached 35.8 percent by 1975, the year the Energy Policy and Conservation Act was passed, and peaked at 46.5 percent in 1977, at a cost of $62 billion (stated in 1982 dollars). While the import share of total petroleum supply declined after that year, the cost continued to rise to a 1980 peak of $87 billion (1982 dollars).

While the import share of petroleum supply declined through 1985, it has been increasing since that time. In 1985, the import share was 27.3 percent at a cost of $45 billion (1982 dollars). For 1988, net imports were 38.1 percent of total supply. For 1989, net imports were 41.6 percent of total supply. For January-August 1990, net imports reached 45.7 percent of total supply. Due to sharply lower petroleum prices, however, the value of imports declined from 1985 to 1989, from $45 billion to $39 billion (1989 dollars), but will undoubtedly be higher for 1990 because of the rapid increases in oil prices since the Iraqi invasion of Kuwait. Imports from OPEC also declined through 1985 but have been rising since that time. For the first 7 months of 1990, OPEC imports accounted for about 54 percent of total import supply, up from about 47 percent for 1989, and 51 percent for 1988.

The nation's dependence on petroleum net imports since 1975 is summarized in the following table:

Year	*Net Imports as Percent of U.S. Petroleum Products Supplied from*	
	OPEC	*All Countries*
1975 Average	22.0%	35.8%
1977 Average	33.6	46.5
* *	* *	*
1985 Average	11.6	27.3
1988 Average	20.3	38.1
1989 Average	23.8	41.6
1990 Average (First 6 mos.)	26.5	45.2

The current energy situation and emerging trends point to the continued importance of oil conservation. The United States now imports a higher percentage of its oil needs than it did during 1975, the year EPCA was passed, and the percentage of its oil supplied by OPEC is also somewhat higher than that of 1975. Oil continues to account for over 40 percent of U.S. energy use, and 97 percent of the energy consumed in the transportation sector. While the U.S. is the second-largest oil producer, it contains only 3-percent of the world's proved oil reserves. Moreover, proven reserves in the U.S. have declined from a peak of 39 billion barrels in 1970 to 27 billion barrels in 1988.

According to the Energy Information Administration's (EIA) 1990 Annual Energy Outlook, domestic production for its "base case" projection is expected to decline from 10.5 MMB/D in 1987 to 9.0 MMB/D in 1995, and 8.7 MMB/D in 2000. Net imports are projected to increase from 6.6 MMB/D in 1987 to 9.1 MMB/D in 1995 and 10.0 MMB/D in 2000. Thus, as a percentage of total U.S. petroleum use, EIA expects imports to rise to 50.3 percent of total supply in 1995 (exceeding the previous 1977 high of 46.4 percent) and 53.5 percent in 2000.

In its comment to the docket for NHTSA's 1990 passenger car CAFE rulemaking, the Department of Energy (DOE) emphasized several points about transportation's role in U.S. oil use and the importance of rising fuel efficiency. DOE noted that the 11 MMB/D used by the transportation sector in 1986 is almost 80 percent of total U.S. use of oil and over 90 percent of the critical light product use. Thus, DOE wanted NHTSA to consider the fact that any significant moderation in growing oil demand will require large transportation efficiency improvements. DOE also emphasized that the 1987 EIA oil demand forecasts assume that average new car efficiency will continue to improve, which DOE said does not seem likely given fuel economy trends (at least to the levels assumed by EIA), and that even with these projected increases in fuel efficiency, U.S. oil demand is projected to increase over 1.5 MMB/D by 2000.

The level of petroleum imports is only one aspect of the total energy conservation picture. Under EPCA and NEPA, for example, national security, energy independence, resource conservation, and environmental protection must all be considered. The importance of these issues is emphasized by the current conflict in the Persian Gulf, as well as by the prospect of the U.S.S.R. becoming an oil importer.

In March 1987, the Department of Energy submitted a report to the President entitled "Energy Security." NHTSA believes that the following quotation from that report represents a useful summary of the national security and energy independence aspects of the current energy situation:

> Although dependence on insecure oil supplies is . . . projected to grow, energy security depends in part on the ability of importing nations to respond to oil supply disruptions; and this is improving. The decontrol of oil prices in the United States, as well as similar moves in other countries, has made economies more adaptable to changing situations. Furthermore, the large

strategic oil reserves that have been established in the United States (and to a lesser extent, in other major oil-importing nations) will make it possible to respond far more effectively to any future disruptions than has been the case in the past.

The current world energy situation and the outlook for the future include both opportunities and risks. The oil price drop of 1986 showed how consumers can be helped by a more competitive oil market. If adequate supplies of oil and other energy resources continue to be available at reasonable prices, this will provide a boost to a world economy. At the same time, the projected increase in reliance on relatively few oil suppliers implies certain risks for the United States and the free world. These risks can be summarized as follows: If a small group of leading oil producers can dominate the world's energy markets, this could result in artificially high prices (or just sharp upward and downward price swings), which would necessitate difficult economic adjustments and cause hardships to all consumers.

Revolutions, regional wars, or aggression from outside powers could disrupt a large volume of oil supplies from the Persian Gulf, inflicting severe damage on the economies of the United States and allied nations. Oil price increases precipitated by the 1978–79 Iranian revolution contributed to the largest recession since the 1930's. Similar or larger events in the future could have far-reaching economic, geopolitical, or even military implications.

The continuing validity of the above quotation is verified by the recent events surrounding the Iraqi invasion of Kuwait in August 1990. Although there has been no noticeable oil supply disruption since the invasion, due in part to increased exports from other OPEC members to make up for the embargoed oil exports from Iraq and Kuwait, the market price of crude oil had an initial dramatic increase, and remains very unstable. This, coupled with the 5-cent per gallon increase in the Federal gasoline tax in December 1990, accentuates the need of the nation to conserve energy and the importance of improved vehicle fuel efficiency, both from an energy security and from an economic viewpoint.

The agency recognizes that the energy situation is affected in the near term by the current uncertainty about the outcome and length of time to resolve the situation in the Middle East. NHTSA believes it important to note that the fuel economy standards included in this final rule will not have near-term effects. They will not affect light truck fuel economy until the beginning of MY 1993, and then only gradually as these trucks replace older trucks. The long-term energy policy of the nation is being addressed by the National Energy Strategy (NES), which is being developed by the Department of Energy, with the cooperation of other government agencies, including the Department of Transportation.

This overall strategy will reflect careful examination of the need for energy conservation, and its impact on the components of the nation's economy, including the transportation sector. This examination includes overall transportation energy consumption, and not just increases in the fuel efficiency of the new vehicle fleet. Vehicle fleet turnover and vehicle miles of travel are critical determinants of energy consumption and must be considered in any analysis of policies affecting energy use by light duty vehicles. There are a number of conservation and energy efficiency measures being analyzed that will produce near-term energy savings that do not impose significant economic costs on the automotive industry or the public. The NES is due to be completed early this year.

With regard to this rulemaking, light truck registrations more than doubled between 1973 and 1989, and light truck sales are projected to increase 21 percent over the 1987–2000 period, compared to 14 percent for passenger cars. The light truck fleet's share of total oil consumption increased steadily from 6.4 percent in 1973 to 8.9 percent in 1980 to 12.1 percent in 1986 and to 12.5 percent in 1989. This increase in the light truck fleet's share of fuel consumption took place even as the average fuel economy of the on-road fleet of light trucks increased from an estimated 10.5 mpg in 1973 to 13.8 mpg in 1989. Clearly, light truck fuel economy will be an increasingly important determinant of the nation's level of petroleum consumption.

Information provided to NHTSA by the Department of Energy indicates that light trucks are used for a longer period of time (14.9 years versus 10.9 years) than passenger cars. Federal Highway Administration data indicate light trucks are driven farther annually (12,062 miles versus 10,382 miles) than passenger cars.

All of these factors result in the conclusion that improved light truck fuel economy contributes to the nation's efforts at conserving fuel. Light trucks meeting the standards proposed by this notice would be more fuel-efficient than the average vehicle in the current light truck fleet in service, thus making a positive contribution to petroleum conservation.

VI. Determining the Maximum Feasible Average Fuel Economy Level

As discussed above, section 502(b) requires that light truck fuel economy standards be set at the maximum feasible average fuel economy level. In making

this determination, the agency must consider the four factors of section 502(e): technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy. As with earlier CAFE rulemakings, NHTSA has considered and weighed all four statutory factors of section 502(e) in reaching its decision.

A. Interpretation of "Feasible"

Based on definitions and judicial interpretations of similar language in other statutes, the agency has in the past interpreted "feasible" to refer to whether something is capable of being done. The agency has thus concluded in the past that a standard set at the maximum feasible average fuel economy level must: (1) be capable of being done and (2) be at the highest level that is capable of being done, taking account of what manufacturers are able to do in light of technological feasibility, economic practicability, how other Federal motor vehicle standards affect average fuel economy, and the need of the nation to conserve energy.

B. Industrywide Considerations

The statute does not expressly state whether the concept of feasibility is to be determined on a manufacturer-by-manufacturer basis or on an industrywide basis. Legislative history may be used as an indication of Congressional intent in resolving ambiguities in statutory language. The agency believes that the below-quoted language provides guidance on the meaning of "maximum feasible average fuel economy level."

The Conference Report to the 1975 Act (S. Rep. No. 94-516, 94th Cong., 1st Sess. 154-5 (1975)) states:

> "Such determination [of maximum feasible average fuel economy level] should take industrywide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic manufacturers that currently exist, and the possible implications for the national economy and for reduced competition association (sic) with a severe strain on any manufacturer. . . ."

It is clear from the Conference Report that Congress did not intend that standards simply be set at the level of the least capable manufacturer. Rather, NHTSA must take industrywide considerations into account in determining the maximum feasible average fuel economy level.

NHTSA has consistently taken the position that it has a responsibility to set light truck standards at a level that can be achieved by manufacturers whose vehicles constitute a substantial share of the market. (See 49 FR 41251, October 22, 1984.) The agency did set the MY 1982 light truck fuel economy standards at a level which it recognized might be above the maximum feasible fuel economy capability of Chrysler, based on the conclusion that the energy benefits associated with the higher standard would outweigh the harm to Chrysler (45 FR 20871, 2086, March 31, 1989). However, as the agency noted in deciding not to set the MY 1983–85 light truck standards above Ford's level of capability, Chrysler had only 10–15 percent of the light truck domestic sales, while Ford had about 35 percent (45 FR 81593, 81599; December 11, 1980).

C. Petroleum Consumption

The precise magnitude of energy savings associated with alternative light truck fuel economy standards is uncertain. The FRIA provides calculations for the hypothetical lifetime fuel consumption of the MY 1993–94 domestic light truck fleets assuming those same fleets could and would achieve alternative CAFE levels. For example, the maximum difference in fuel consumption between the manufacturers' (GM, Chrysler, and Ford's) current capabilities for MY 1993 and a 21.0 mpg CAFE standard would be 395 million gallons over the lifetime of the model year's fleet.

However, it is possible that manufacturers may be able to achieve particular higher CAFE levels only by restricting the sales of their large light trucks. If this occurred, consumers might tend to keep their older, less-fuel efficient light trucks in service longer. Also, to the extent that a particular manufacturer might find it necessary to restrict sales of its large light trucks, consumers may be able to transfer their purchases of those same types of vehicles to another manufacturer which may have less difficulty meeting the CAFE standard. Thus, the agency believes that the actual impacts, if any, on energy consumption of alternative higher fuel economy standards, would be less than the theoretical calculations comparing levels of industrywide CAFE.

D. The MY 1993–94 Standards

Based on its analysis described above and on manufacturers' projections, the agency concludes that the major domestic manufacturers can achieve the combined fuel economy levels listed in the following table:

Manufacturer	Approximate market share	Combined CAFE	
	MY 1989	MY 1993	MY 1994
Chrysler	21.0%	20.9 mpg	20.8 mpg
GM	34.1%	20.7 mpg	20.7 mpg
Ford	26.1%	20.6 mpg	20.9 mpg

As indicated above, foreign manufacturers other than Volkswagen and Range Rover compete in only the small vehicle portion of the light truck market and are therefore expected to achieve CAFE levels well above those of GM, Ford, and Chrysler, which offer full ranges of light truck models.

As discussed in the MY 1992 final rule, beginning with MY 1992, NHTSA has decided not to promulgate separate 2WD and 4WD standards as an alternative to the combined standard.

The setting of maximum feasible fuel economy standards, based upon consideration of the four required factors, is not a mere mathematical exercise but requires agency judgment. Based on the preceding analysis and discussion, the agency concludes that Ford is the least capable manufacturer with a substantial share of sales for MY 1993, and that GM is the least capable manufacturer with a substantial share of sales for MY 1994. The agency has also concluded that 20.4 mpg is the maximum feasible combined standard for MY 1993, and 20.5 mpg is the maximum feasible combined standard for MY 1994.

As discussed above in Section IV, the Federal Clean Air legislation will result in more stringent vehicle emission standards. However, as stated by EPA, recent developments in emission control technology have allowed for decreases in emissions with no loss in fuel economy. The more stringent standards resulting from the legislation can probably be achieved by a combination of engine recalibration, catalyst reformulation, better air-fuel mixture control, and reformulated gasoline, without any resulting fleet-wide fuel economy penalty. Given the task of meeting more stringent standards on a wide variety of powertrains, it is possible that some of the technologies and calibrations may not be fully optimized in the first year or two of implementation. While this possible initial fuel economy loss cannot be precisely quantified, the agency has considered it and allowed some margin for its existence in setting the light truck CAFE standards for MY 1994.

NHTSA believes there are serious questions whether a standard set at a level above Ford's capability for MY 1993, or GM's capability for MY 1994 would be consistent with the requirement that standards be set taking industrywide considerations into account, given those companies' market shares.

Notwithstanding the projected product plans that the manufacturers have provided the agency and that are discussed above, there is the potential for some change in each manufacturer's CAFE. The above analysis has not covered the potential of mix shifts because of the possible adverse financial consequences to manufacturers and national employment of any large change in CAFE that is created by forced mix shifts. Nevertheless, the market may dictate changes in the light truck mix in response to fuel prices and availability. Low fuel prices and plentiful supply may result in an increased demand for power and performance, while a substantial increase in fuel prices could increase demand for more fuel-efficient models. The immediate marketplace reaction to the Iraqi invasion of Kuwait was for the sales proportion of light trucks to increase by about 4 percentage points in August and September 1990 over the July share.

The precise effects on petroleum conservation of a higher standard are uncertain. The maximum theoretical additional energy savings associated with a standard set at a higher level can be determined by comparing hypothetical situations where GM, Chrysler, and Ford would have combined average fuel economy levels of 21.0 mpg. Since most other manufacturers in the industry project MY 1993 CAFE above that of these manufacturers' capabilities, a standard set at 21.0 mpg would not be expected to affect the petroleum consumption of trucks manufactured by that part of the industry. The maximum difference in total gasoline consumption between these two hypothetical situations over the lifetime of the MY 1993 fleet would be 395 million gallons. The maximum yearly impact on U.S. gasoline consumption would be 46 million gallons, or roughly 300's of 1 percent of total transportation gasoline consumption.

The agency believes, however, that any gasoline savings associated with a higher standard would actually be less than indicated by this projection. While such a standard would provide added incentive for GM to achieve its maximum fuel economy capability, it is not clear in light of earning possible carryforward/carryback credits that they might not achieve this increase anyway. Ford and GM could not likely improve their CAFE levels other than by restricting sales of larger light trucks and engines. To the extent that would-be purchasers of such vehicles and engines transferred their purchases to Chrysler without that company otherwise changing its product plans, there could be little or no effect on overall petroleum consumption.

Higher standards than 20.4 mpg for MY 1993 and 20.5 mpg for MY 1994 could result in serious economic difficulties for Ford in MY 1993 or GM in MY 1994. Given leadtime constraints, NHTSA believes that the primary potential fuel-efficiency enhancing actions that Ford or any other manufacturer would consider in response to a higher standard would consist of marketing actions. For the reasons discussed earlier in this notice, however, the agency does not believe that marketing actions can be relied upon to significantly improve fuel economy. If such marketing actions were unsuccessful in whole or in part, the least capable manufacturer would likely have to engage in product restrictions, including limiting the sales of larger engines and/or vehicles to improve its fuel economy.

Such product restrictions could result in adverse economic consequences for that manufacturer, its employees and the economy as a whole and limit consumer choice, especially with regard to the load carrying needs of light truck purchasers.

Given Ford's 26 percent share and GM's 34 percent share of the light truck market in MY 1989, the capabilities of these manufacturers have a significant effect on the level of the industry's capability and, therefore, on the level of the standards. The agency believes that the 20.4 mpg standard for MY 1993 and the 20.5 mpg standard for MY 1994 balance the potentially serious adverse economic consequences associated with market and technological risks against potential fuel economy improvements. The agency concludes, in view of the statutory requirement to consider specified factors, that the relatively small and uncertain energy savings associated with setting a standard above Ford's capability for MY 1993 or above GM's capability for MY 1994 would not justify the potential economic harm to those companies and the economy as a whole.

As explained in the final rule for MY 1992, in addition to the comments discussed above, the agency received comments from Nissan, the Natural Resources Defense Council (NRDC), the Energy Conservation Coalition (ECC), the Western Interstate Energy Board (WINB), and the National Automobile Dealers Association (NADA).

The ECC, in comments endorsed by NRDC, argued that in setting the CAFE standards, NHTSA should double the 3 percent annual rate of increase provided by the high end of the proposed ranges. This would result in an MY 1992 CAFE of 22.2 mpg, and an MY 1994 CAFE of 25 mpg. The ECC also stated it is essential to set standards now for model years after 1994 to provide manufacturers with adequate leadtime to achieve higher fuel economy levels. The comments claimed these increases would be cost-effective, and listed a number of potential technological improvements available to manufacturers. Finally, ECC provided statistics on the potential fuel savings achievable through higher CAFE standards for light trucks, and emphasized the U.S. transportation sector's role as a source of greenhouse gas emissions.

ECC does not explain the basis for its suggested levels. The commenter did not demonstrate why these levels would be feasible. As explained above, the agency has determined that the maximum feasible levels for MY 1993–94 are 20.4 mpg and 20.5 mpg, respectively. NHTSA also notes that much of the technology listed in ECC's comments has already been extensively incorporated in the light truck fleet. The agency has included an analysis of carbon dioxide emissions associated with this CAFE standard in the Environmental Assessment prepared by the agency for this rulemaking and available from the Docket Section. Finally, the agency notes that the fuel economy levels and time frames for their implementation advocated by ECC exceed the scope of the NPRM.

NRDC, while endorsing the ECC comments, also expressed concern that the NPRM did not discuss NHTSA's decision to undertake a programmatic Environmental Impact Statement (EIS) to examine effects of the CAFE program. NRDC believes the agency's handling of fuel economy issues violates the National Environmental Policy Act, and that the agency has not adequately analyzed the relationship between fuel efficiency and carbon dioxide emissions. In response, NHTSA notes that it has provided an analysis of fuel economy and carbon dioxide emissions in its Environmental Assessment for this rulemaking, and is continuing its work toward the publication of a programmatic EIS for the CAFE program. To that end, the agency issued a notice of intent to prepare a programmatic EIS (54 FR 37702, September 12, 1989), and conducted a public scoping meeting on December 13, 1990.

WINB supports higher fuel economy standards than those proposed, although it does not provide specific levels. The comments note that the growing role of light duty trucks is a primary cause of the stagnation in the fleetwide CAFE of all light duty vehicles. WINB argues that the agency has not considered the economic implications of failing to increase light truck CAFE, and that domestic jobs will be lost as rising fuel prices shift demand toward more efficient, imported light trucks.

NHTSA believes that it has taken into account the economic implications of not setting higher standards. This issue is discussed in detail in the FRIA available from the Docket. The agency disagrees with WINB's assumption that significantly higher fuel prices are likely during the period affected by this rulemaking, and therefore disagrees that there will be a significantly increased demand for more fuel-efficient vehicles. See the FRIA for a more detailed discussion of future fuel prices. Despite the recent trend toward higher oil prices, the agency does not believe it can reliably assume that this trend will continue into the time frame addressed by this rulemaking. If the agency is wrong about energy prices and prices do increase, manufacturers will have a consumer-driven incentive to produce more fuel efficient light trucks. Such action would not introduce the economic risk inherent with manufacturer's attempts to shift the market through product restrictions or market incentives. This out-

come would benefit the nation in terms of energy conservation and reduce the manufacturers' risks in meeting the standards.

The agency also disagrees that domestic jobs will be lost as a result of its decision. In response to apparent consumer demands, import manufacturers are now introducing larger, more powerful, and less efficient light trucks. This trend gives no indication of reversing in the near future. Finally, the agency notes that promulgation of standards beyond the range proposed in the NPRM exceeds the scope of this rulemaking.

NADA recommended that the agency establish CAFE standards no higher than 20.2 mpg. This is the maximum feasible level in NADA's opinion, because of new regulatory constraints and the need to accommodate a wide range of consumer needs for utility and durability. NADA stated that NHTSA appears to have underestimated the potential impact of safety and emissions standards for MY 1992–94, although no specific data were provided.

NHTSA notes that emissions impacts stemming from the Clean Air Act amendments are discussed above, and were considered in setting the MY 1994 standards. The agency also believes that its analysis has adequately accounted for the CAFE impacts of safety requirements affecting the MY 1993–94 fleet.

In its comments, Nissan projected that it would be in compliance with the upper end of the ranges proposed in the NPRM, and was thus not opposed to their adoption.

In its March 1989 response to NHTSA's request for comments, Volkswagen suggested as an alternative to establishing a combined standard within its capability that the agency consider alternate special consideration for limited product line truck manufacturers. In establishing the MY 1980-81 light truck CAFE standards, the agency did establish a separate standard in light of International Harvester's (IH) limited product line. (See 43 FR 11995, March 23, 1978.) The agency noted that IH had unique problems given its limited sales volume, restricted product line, the fact that its engines were derivatives of medium duty truck (above 10,000 pounds GVWR) engines, and the fact that it did not have experience with state-of-the-art emission control technology which the other manufacturers had obtained in the passenger automobile market. The agency emphasized, however, that the separate class was being established for only two model years' duration, concluding that IH should be able to achieve levels of fuel efficiency in line with other manufacturers within that time period either through purchasing engines from outside sources or by making improvements to current engines.

The agency does not believe that Volkswagen's situation is similar to that of IH. While IH's difficulties were related to being newly subject to the fuel economy program, Volkswagen's potential CAFE difficulties are not. Under the Cost Savings Act, manufacturers are required to meet average fuel economy standards which are set based on industrywide considerations. For MY 1990, Volkswagen is projected to be well above the CAFE standard. Thus, NHTSA believes it is not appropriate to set a separate standard to accommodate Volkswagen's limited product line status.

533—[AMENDED]

In consideration of the foregoing, 49 CFR Part 533 is amended as follows:

1. The authority citation for Part 533 continues to read as follows:

Authority: 49 U.S.C. 1657, 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

2. Table III in § 533.5(a) is revised to read as follows:

§ 533.5 *Requirements.*

(a) * * *

TABLE III

Model Year	*Combined Standard*	
	Captive Imports	*Others*
1992	*20.2*	*20.2*
1993	*20.4*	*20.4*
1994	*20.5*	*20.5*

Issued on March 29, 1991.

Jerry Ralph Curry
Administrator

56 F.R 13733
April 4, 1991

PART 533—LIGHT TRUCK FUEL ECONOMY STANDARDS
(Docket No. FE 77-05; Notice 5)

S533.1 Scope. This part establishes average fuel economy standards pursuant to section 502(b) of the Motor Vehicle Information and Cost Savings Act, as amended, for light trucks.

S533.2 Purpose. The purpose of this part is to increase the fuel economy of light trucks by establishing minimum levels of average fuel economy for those vehicles.

S533.3 Applicability. This part applies to manufacturers of light trucks.

S533.4 Definitions.

(a) *Statutory terms.*

(1) The terms "average fuel economy," "average fuel economy standard," "fuel economy," "import," "manufacture," "manufacturer," and "model year" are used as defined in section 501 of the Act.

(2) The term "automobile" is used as defined in section 501 of the Act and in accordance with the determinations in 49 CFR 523.

(3) The term "domestically manufactured" is used as defined in section 503(b) (2) (E) of the Act.

(b) *Other terms.* As used in this part, unless otherwise required by the context—

"Act" means the Motor Vehicle Information Cost Savings Act, as amended by Pub. L. 94-163.

"Light truck" is used in accordance with the determinations in 49 CFR Part 523.

"Captive import" means, with respect to a light truck, one which is not domestically manufactured but which is imported in the 1980 model year or thereafter by a manufacturer whose principal place of business is in the United States.

"4-wheel drive, general utility vehicle" means a 4-wheel drive, general purpose automobile capable of off-highway operation that has a wheelbase of not more than 110 inches, and that has a body shape similar to 1977 Jeep CJ-5 or CJ-7, or the 1977 Toyota Land Cruiser.

"Limited product line light truck" means a light truck manufactured by a manufacturer whose light truck fleet is powered exclusively by basic engines which are not also used in passenger automobiles.

"Basic engine" means a unique combination of manufacturer, engine displacement, number of cylinders, fuel system (as distinguished by number of carburetor barrels or use of fuel injection), and catalyst usage.

S533.5 Requirements

(a) Each manufacturer of light trucks shall comply with the following average fuel economy standards, expressed in miles per gallon, in the model year specified as applicable:

(b) (1) For model year 1979, each manufacturer may:

(i) Combine its 2- and 4-wheel drive light trucks and comply with the average fuel economy standard in paragraph (a) for 2-wheel drive light trucks; or

(ii) Comply separately with the two standards specified in paragraph (a).

(2) For model year 1979, the standard specified in paragraph (a) for 4-wheel drive light trucks applies only to 4-wheel drive general utility vehicles. All other 4-wheel drive light trucks in that model year shall be included in the 2-wheel drive category for compliance purposes.

Table 1

Model year	2-wheel drive light trucks		4-wheel drive light trucks		Limited product line light trucks
	Captive imports	Other	Captive imports	Other	
1979		17.2		15.8	
1980	16.0	16.0	14.0	14.0	14.0
1981	16.7	16.7	15.0	15.0	14.5
1982	18.0	18.0	16.0	16.0	—

Table 2

Model year	Conbined Standard		2-wheel drive light trucks		4-wheel drive light trucks	
	Captive imports	Others	Captive imports	Others	Captive imports	Others
1982	17.5	17.5	18.0	18.0	16.0	16.0
1983	19.0	19.0	19.5	19.5	17.5	17.5
1984	20.0	20.0	20.3	20.3	18.5	18.5
1985	19.5	19.5	19.7	19.7	18.9	18.9
1986	20.0	20.0	20.5	20.5	19.5	19.5
1987	20.5	20.5	21.0	21.0	19.5	19.5
1988	20.5	20.5	21.0	21.0	19.5	19.5
1989	20.5	20.5	21.5	21.5	19.0	19.0
1990	20.0	20.0	20.5	20.5	19.0	19.0
1991	20.2	20.2	20.7	20.7	19.1	19.1

Table 3

Model year	Combined Standard	
	Captive Imports	Others
1992	20.2	20.2
[1993	20.4	20.4
1994	20.5	20.5]

(56 F.R. 13773—April 4, 1991. Effective: May 6, 1991)]

(c) For model years 1980 and 1981, manufacturers of limited product line light trucks may:

(1) Comply with the separate standard for limited product line light trucks, or

(2) Comply with the other standards specified in § 533.5(a), as applicable.

(d) For model years 1982-91, each manufacturer may:

(1) Combine its 2- and 4-wheel drive light trucks (segregating captive import and other light trucks) and comply with the combined average fuel economy standard specified in paragraph (a) of this section; or

(2) Comply separately with the 2-wheel drive standards and the 4-wheel drive standards (segregating captive import and other light trucks) specified in paragraph (a) of this section.

(e) For model year 1992, each manufacturer shall comply with the average fuel economy standard specified in paragraph (a) of this section (segregating captive import and other light trucks).

S533.6 Measurement and calculation procedures.

(a) Any reference to a class of light trucks manufactured by a manufacturer shall be deemed:

(1) To include all light trucks in that class manufactured by persons who control, are controlled by, or are under common control with, such manufacturer; and

(2) To exclude all light trucks in that class manufactured (within the meaning of paragraph (a) (1) of this section) during a model year by such manufacturer which are exported prior to the expiration of 30 days following the end of such model year.

(b) The average fuel economy of all light trucks that are manufactured by a manufacturer and are subject to S533.5(b) or to S533.5(c) shall be determined in accordance with procedures established by the Administrator of the Environmental Protection Agency under section 503(a) (2) of the Act.

42 F.R. 13807
March 14, 1977

PREAMBLE TO PART 535—THREE-YEAR CARRY FORWARD AND CARRYBACK FOR MANUFACTURERS OF LIGHT TRUCKS

(Docket No. FE 80-02; Notice 1)

ACTION: Final rule.

SUMMARY: This notice establishes regulations governing the transfer between model years of monetary credits earned by motor vehicle manufacturers for exceeding the average fuel economy standards for light trucks. Manufacturers have previously been able to apply credits to the year immediately preceding and to the year immediately following the year in which they are earned. Section 6(b) of the Automobile Fuel Efficiency Act of 1980 amended section 502 of the Motor Vehicle Information and Cost Savings Act to extend the number of years over which manufacturers can carry back or forward credits from one to three years. These regulations are promulgated pursuant to the Efficiency Act's direction that implementing regulations be issued not later than 60 days after the date of enactment. The provisions in these regulations are in almost all respects identical to the provisions in the statute for passenger automobile credits.

DATES: These regulations are effective upon publication in the *Federal Register.*

FOR FURTHER INFORMATION CONTACT:

Mr. Edward Glancy, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-2992)

SUPPLEMENTARY INFORMATION: Title V of the Motor Vehicle Information and Cost Savings Act establishes a program to improve automotive efficiency and conserve energy. Under that title, average (i.e., fleet) fuel economy standards are established for passenger automobiles and for light trucks. To discourage noncompliance with the standards and encourage exceeding the standards, the title provides a system of penalties and credits. Penalties are assessed against manufacturers which fail to comply with applicable fuel economy standards. The penalties are assessed at a rate of $5 per vehicle for each tenth of a mile-per-gallon by which the average fuel economy of a manufacturer's vehicles subject to a standard falls short of that standard. Monetary credits for exceeding the standards are earned at the same rate. This rate may be increased to up to $10 per tenth of a mile per gallon if the agency makes certain findings about the existence of substantial energy savings resulting from the change and the absence of any resulting adverse impacts. See section 508(d) of the Act. Under the law as originally enacted, credits earned in one year may be used to offset civil penalties in the immediately prior year, and, if excess credits remain, in the immediately subsequent year.

The Automobile Fuel Efficiency Act of 1980, signed into law on October 12, 1980, amended title V to make several changes relating to the earning and application of credits. One amendment increased the number of years that credits may be carried backward or forward to offset penalties from one to three years. That and another amendment provided that a manufacturer which fails to meet a fuel economy standard in a particular year will not be regarded as having engaged in unlawful conduct or be subject to civil penalties under either of two circumstances. The first circumstance occurs if the manufacturer had previously earned sufficient credits to offset the penalty. Second, a manufacturer could achieve the same result if it submits to the agency an acceptable plan for earning in the subsequent three years sufficient credits to offset the penalty and if the manufacturer actually earns those credits.

While section 502 of the Act, as amended, sets forth detailed provisions for the three-year carryback and carryforward of credits by passenger

automobile manufacturers, that section simply provides with respect to light trucks that credits for light truck manufacturers are to be earned and available to be taken into account "to the same extent and in the same manner" as provided for passenger automobile manufacturers. Section 502(1)(2) requires that regulations governing light truck credits be promulgated not later than 60 days after the enactment of the Efficiency Act. Thus, the regulations must be issued by December 9, 1980.

With one exception discussed below, the provisions in these regulations are essentially identical to the provisions in the statute regarding passenger automobile credits. As in the case of passenger automobile credits, the light truck credits are available first to be applied to the three years immediately preceding the year in which they are earned. Any residual amount of credits is then available to be applied to the three model years immediately following the year in which the credits are earned. In any year in which a manufacturer believes that its average fuel economy will not meet an applicable light truck fuel economy standard, the manufacturer may submit a plan demonstrating that it will earn sufficient credits in the next three years which when taken into account would allow the manufacturer to meet that standard. The NHTSA Administrator will approve any such plan unless the Administrator finds that it is unlikely that the plan will result in the manufacturer's earning sufficient credits to allow the manufacturer to meet the standard for the model year involved.

The difference mentioned above between the provisions for passenger automobile credits and those for light truck credits arises from differences in the way in which the statute treats passenger automobiles and light trucks. Special provision must be made for light truck credits since light truck fuel economy standards may be set for all light trucks together or for classes of light trucks while class standards cannot be set for passenger automobiles. Title V and its history provide that credits may not be applied across classes of light trucks. That is, credits earned for one class of light trucks may not be applied to offset penalties incurred for another class of light trucks. (See Conference Report on the Energy Policy and Conservation Act, H.R. Rep. No. 94-700, 94th Cong., 1st Sess. 159 (1975).) The prohibition against cross-class application of credits was previously discussed in a notice of interpretation published by the agency on November 8, 1979 (44 FR 64943).

This notice also reaffirms the policy set forth in the November 1979 notice of interpretation regarding transfer of credits by a manufacturer between a year in which the manufacturer complies with a single fuel economy standard applicable to all light trucks and a year in which it complies with several standards for different classes of light trucks. After seeking comments on the issue, the agency stated in its November 1979 notice that its policy would be to attempt to assure that credits are applied to offset civil penalties on the same types of light trucks as those which generated the credits. The notice stated that credits would be prorated according to the number of light trucks in the credit-earning class which would fall in the class subject to a civil penalty. The several examples given in that notice to illustrate the application of this procedure are still appropriate. Additional examples are set forth below to illustrate how this procedure will be applied in light of the manufacturers' choice in model years 1983-85 to comply with either a single standard for all light trucks or with optional separate standards for two-wheel drive (4x2) and four-wheel drive (4x4) light trucks.

For model years 1980-82, the agency established separate standards for 4x2 and 4x4 light trucks. Manufacturers are required to comply with those separate standards and do not have the choice of complying with a single standard. For model years 1983-85, however, the agency established a single combined standard for 4x2 and 4x4 light trucks, while giving manufacturers the choice of complying with optional separate standards.

If a manufacturer elects to comply with the optional separate standards for model year 1983, no prorating will be necessary since the classes for model years 1980-82 are identical to those in model years 1983-85 (except for limited product line manufacturers). Thus, credits earned by exceeding the 4x2 standard for model year 1982 could be fully applied against a failure to comply with the model year 1983 standard for those vehicles.

If a manufacturer elects to comply with the single, combined standard for 1983 and earns credits by exceeding that standard, application of those credits for failure to meet a standard in any of model years 1980-82 would require prorating.

The agency would prorate the model year 1983 credits according to the proportion of model year 1983 light trucks that are of the same type as the class whose standard was not met. Thus, if the manufacturer did not comply with the model year 1982 standard for 4x2 light trucks and 70 percent of the model year 1983 light trucks were 4x2, then 70 percent of the credits earned in model year 1983 could be applied against the penalty for that noncompliance.

Finally, if a manufacturer earns credits for exceeding any of the model year 1980-82 class standards and the manufacturer elects to comply with the single, combined standard for 1983, all credits earned by exceeding either or both of the separate standards for model years 1980-82 would be applicable to penalties incurred in model year 1983.

This notice is being issued without notice and comment for a variety of reasons. The requirement that the regulations be issued by December 9 made it impracticable in the agency's judgment to provide notice and opportunity for comment. The agency also finds that making such provision is unnecessary since the regulations are in almost all respects identical to the statute. Finally, this rule is exempted as an interpretative rule from the statutory requirements for notice and comment.

This final rule is being made effective upon publication in the *Federal Register.* The usual requirement for a 30-day delay in the effective date is not applicable as this is an interpretative rule.

In consideration of the foregoing, Part 535 is added to 49 CFR Chapter V.

Issued on December 9, 1980.

Joan Claybrook
Administrator

45 FR 83233
December 18, 1980

PART 535—THREE-YEAR CARRYFORWARD AND CARRYBACK OF CREDITS FOR LIGHT TRUCKS

Section

AUTHORITY: Sec. 9, Pub. L. 89-670, 80 Stat. 931 (49 U.S.C. 1657); Sec. 301, Pub. L. 94-163, 89 Stat. 901 (15 U.S.C. 2001); Sec. 6, Pub. L. 96-425, _____ Stat. _____ (15 U.S.C. 2002); delegation of authority at 49 CFR 1.50.

§ 535.1 Scope.

This part establishes requirements for governing 3-year carryforward and carryback of credits for manufacturers of light trucks.

§ 535.2 Applicability.

This part applies to manufacturers of light trucks.

§ 535.3 Definitions.

(a) *Statutory terms.* The terms "average fuel economy," "average fuel economy standard," "fuel economy," "manufacture," "manufacturer," and "model year" are used as defined in section 501 of the Act.

(b) *Other terms.* (1) "Act" means the Motor Vehicle Information and Cost Savings Act, as amended by Pub. L. 94-163 and 96-425.

(2) "Administrator" means the Administrator of the National Highway Traffic Safety Administration.

(3) The term "light truck" is used in accordance with the determinations in Parts 523 and 533 of this chapter.

(4) The term "class of light trucks" is used in accordance with the determinations in Part 533 of this chapter.

§ 535.4 3-year carryforward and carryback of credits.

(a) For purposes of this part, credits under this section shall be considered to be available to any manufacturer upon the completion of the model year which such credits are earned under paragraph (b) unless under paragraph (c) the credits are made available for use at a time prior to the model year in which earned.

(b) Whenever the average fuel economy for a class of light trucks manufactured by a manufacturer in a particular model year exceeds an applicable average fuel economy standard established in Part 533 of this chapter, such manufacturer shall be entitled to credit, calculated under paragraph (c), which—

(1) Shall be available to be taken into account with respect to the average fuel economy for the same class of light trucks of that manufacturer for any of the 3 consecutive model years immediately prior to the model year in which such manufacturer exceeds such applicable average fuel economy standard, and

(2) To the extent that such credit is not so taken into account pursuant to paragraph (b)(1) of this section, shall be available to be taken into account with respect to the average fuel economy standard.

(c)(1) At any time prior to the end of any model year, a manufacturer which has reason to believe that its average fuel economy for a class of light trucks will be below such applicable standard for the model year may submit a plan demonstrating that such manufacturer will earn sufficient credits under paragraph (b) within the next 3 model years which when taken into account would allow the manufacturer to meet that standard for the model year involved.

(2) Such credits shall be available for the model year involved subject to—

(i) the Administrator approving such plan; and

(ii) the manufacturer earning credits in accordance with such plan.

(3) The Administrator approves any such plan unless the Administrator finds that it is unlikely that the plan will result in the manufacturer earning sufficient credits to allow the manufacturer to meet the standard for the model year involved.

(4) The Administrator provides notice to any manufacturer in any case in which the average fuel economy of that manufacturer is below the applicable standard under Part 533 of this chapter, after taking into account credits available under paragraph (b)(1), and affords the manufacturer a reasonable period (of not less than 60 days) in which to submit a plan under this paragraph.

(d) The amount of credit to which a manufacturer is entitled under this section shall be equal to—

(1) the number of tenths of a mile per gallon by which the average fuel economy for a class of light trucks manufactured by such manufacturer in the model year in which the credit is earned pursuant to this section exceeds the applicable average fuel economy standard established in Part 533 of this Chapter, multiplied by

(2) the total number of light trucks in that class manufactured by such manufacturer during such model year.

(e) The Administrator takes credits into account for any model year on the basis of the number of tenths of a mile per gallon by which the manufacturer involved was below an applicable average fuel economy standard for a class of light trucks for the model year and the volume of that class of light trucks manufactured that model year by the manufacturer. Credits may not be applied between classes of light trucks, except as determined by the Administrator to account for changes made in the definitions of classes between model years. Credits once taken into account for any model year shall not thereafter be available for any other model year. Prior to taking any credit into account, the Administrator provides the manufacturer involved with written notice and reasonable opportunity to comment thereon.

45 F.R. 83233
December 18, 1980

PREAMBLE TO PART 537—AUTOMOTIVE FUEL ECONOMY REPORTS

(Docket No. FE 77–03; Notice 2)

This rule establishes the format and content requirements for semiannual reports on fuel economy to be submitted to the National Highway Traffic Safety Administration by automobile manufacturers. Section 505 of the Motor Vehicle Information and Cost Savings Act requires manufacturers to submit semiannual reports on whether and how they will comply with applicable average fuel economy standards and requires the Secretary of Transportation to promulgate rules governing those reports. Section 505 also authorizes the Secretary to require such reports as are necessary to enable him to implement the fuel economy provisions of the Act. This rule is intended primarily to satisfy the requirement for semiannual compliance reports. The reports are also necessary to enable the agency to prepare certain aspects of a statutorily required annual report to Congress regarding the fuel economy standards.

Effective date: December 12, 1977.

For further information contact:

Steve Kratzke
Office of Chief Counsel
National Highway Traffic Safety Administration
Washington, D.C. 20590
202–426–2992

Supplementary information:

Background information.

The National Highway Traffic Safety Administration (NHTSA) is establishing the format and content requirements for the semiannual automotive fuel economy reports to be submitted by all manufacturers of automobiles beginning with the 1978 model year. The requirements for these reports will appear in a new Part 537, added to NHTSA regulations in Title 49 of the Code of Federal Regulations by this action. This rule is issued pursuant to section 505(a) and (c) of Title V of the Motor Vehicle Information and Cost Savings Act, as amended ("the Act"). Authority to implement Title V was delegated by the Secretary of Transportation to the Administrator of NHTSA in a notice published on June 22, 1976, 41 FR 25015.

This final rule was preceded by a notice of proposed rulemaking ("NPRM") published April 11, 1977, at 42 FR 18867. The proposed rule would have required the manufacturers to report information on their automobiles produced in the current model year and on their automobiles that the manufacturers plan to produce in future model years, i.e., the five model years following the current model year. Most of the current model year information was intended to meet the requirement in section 505(a) for the manufacturers to submit semiannual compliance reports to the agency. The future model year data were intended to be used by the NHTSA primarily in establishing and amending future average fuel economy standards to meet the urgent national need for energy conservation and secondarily in evaluating future fuel economy standards for the purposes of preparing the annual reviews which section 502(a)(2) of the Act requires to be submitted to Congress. These data would offset the incompleteness of the manufacturers' voluntary submissions to the agency. A typical shortcoming is that the manufacturers tend to discuss their plans instead of their capabilities.

All comments to the NPRM were considered in developing this final rule. The major issues which have been raised, and their resolution, are described in the following discussion.

Summary of major differences between the proposed and final rules.

The portion of the proposed rules adopted by this notice is almost unchanged except for clarifying and narrowing changes. The major differences between the proposed and final rules are stated below.

(1) The 1978 pre-model year report is required to contain only the following information relating to passenger automobiles: the manufacturer's projected average fuel economy and views on the representativeness of the projection; model type fuel economy information; certain vehicle configuration technical information; and a general discussion of the manufacturer's marketing measures.

(2) The final rule does not adopt the proposed requirements for submitting current model year information regarding vehicle acceleration graphs, reduction of total drive ratio, impact of other Federal standards on fuel economy, impacts of efforts to comply with average fuel economy standards on automobile performance, material composition, additional compliance efforts, costs, gross income and market share, and engine system combinations and fuel systems.

(3) The final rule does not adopt the proposed requirements for submitting future model year information. Under those requirements, the manufacturer would have submitted information regarding projected average fuel economy, model type fuel economy and technological information, current fuel economy technology, future fuel economy technology, automobile technology and sales mix changes, weight reduction, reduction of total drive ratio, technological differences between passenger and nonpassenger automobiles, marketing measures, additional compliance efforts, impact of other Federal automobile standards on fuel economy, impacts of efforts to comply with average fuel economy standards on automobile performance, availability of capital, manufacturing costs, shifts in consumer demand, and gross income and market share.

(4) Supplementary reports are required only from manufacturers which previously reported in a semiannual report that they would comply with the applicable average fuel economy standards and then find that they will fail to comply. As proposed, the rule also required supplementary reports to be filed by manufacturers which previously reported that they would not comply with the standards and then find that the extent of their noncompliance will be greater than that reported and by manufacturers whose average fuel economy was just slightly above the standards and declining.

(5) The reporting responsibility for multistage automobiles has been assigned exclusively to the incomplete automobile manufacturers. The NPRM had proposed that the incomplete automobile manufacturer would always be required to report on its incomplete automobiles. It would have also required a report to be filed by an intermediate or final-stage manufacturer that exceeded certain maximum specifications for those multistage automobiles.

Scope and purpose of the reports.

Section 505(a) of the Act provides as follows:

> (1) Each manufacturer shall submit a report to the Secretary during the 30-day period preceding the beginning of each model year after model year 1977, and during the 30-day period beginning on the 180th day of each model year. Each such report shall contain (A) a statement as to whether such manufacturer will comply with average fuel economy standards under section 502 applicable to the model year for which such report is made; (B) a plan which describes the steps the manufacturer has taken or intends to take in order to comply with such standards; and (C) such other information as the Secretary may require.
>
> (2) Whenever a manufacturer determines that a plan submitted under paragraph (1) which he stated was sufficient to insure compliance with applicable average fuel economy standards is not sufficient to insure such compliance, he shall submit a report to the Secretary containing a revised plan which specifies any additional measures which such manufacturer intends to take in order to comply with such standards, and a statement as to whether such revised plan is sufficient to insure such compliance.

(3) The Secretary shall prescribe rules setting forth the form and content of the reports required under paragraphs (1) and (2).

Section 505(c)(1) of the Act requires every manufacturer to establish and maintain such records, make such reports, conduct such tests, and provide such items and information as the NHTSA may, by rule, reasonably require to carry out its duties under Title V. Section 502(a)(2) requires the NHTSA to transmit to the Congress not later than January 15 of each year a review of the average fuel economy standards; section 502(a)(3), (b) and (c) requires the NHTSA to establish average fuel economy standards; and section 502(a)(4) and (f) gives the NHTSA the authority to amend average fuel economy standards.

Several commenters urged that the rule require reports with a limited scope and purpose. Volkswagen of America, Inc. ("Volkswagen"), commented that any manufacturer projecting compliance with the currently applicable average fuel economy standards should be exempted from providing any business or technological data in its reports. Chrysler Corporation ("Chrysler") and Ford Motor Company ("Ford") made essentially the same point, commenting that a manufacturer projecting compliance with the average fuel economy standards should only be required to report its projected average fuel economy and the fuel economy levels and projected production level for each model type.

These suggestions are inconsistent with the plain meaning of the language of section 505(a). Apparently, Chrysler and Ford believe that the fuel economy values and projected production levels for each base level constitute the manufacturer's plans for achieving compliance. The agency disagrees. The fuel economy information and projected production levels describe only the result the manufacturer hopes to achieve. Section 505(a)(1)(B) specifically requires that the report also include a description of the steps that the manufacturer has taken or will take to achieve that result. The "steps" that can be taken to improve average fuel economy and achieve compliance generally fall into two categories: (1) technology improvements and (2) shifts in the mix of models and options offered for sale. The latter category includes the marketing measures undertaken to promote particular mix goals.

Further, the effective implementation of the fuel economy program requires that these semi-annual reports should also enable the Agency to monitor the degree of effort being made by the various manufacturers to improve their average fuel economy. This information is necessary for the agency and Congress to judge the sufficiency of the standards and statutory enforcement scheme, including the civil penalty formula, for obtaining improvements in average fuel economy. This information will also permit a comparison of the approaches being taken by the manufacturers to improve average fuel economy.

Applicability.

Mr. Andrew Pickens commented that the reporting requirements should only apply to manufacturers producing vehicles that use petroleum-based fuel.

This rule is applicable to only those manufacturers. Section 501(1) of the Act defines an "automobile" as "any 4-wheeled vehicle propelled by fuel . . ." Section 501(5) of the Act specifies:

> The term "fuel" means gasoline and diesel oil. The Secretary may, by rule, include any other liquid fuel or any gaseous fuel within the meaning of the term "fuel" if he determines that such inclusion is consistent with the need of the Nation to conserve energy.

Since the NHTSA has not included any fuel other than gasoline or diesel oil within the definition of fuel, no change is necessary in the proposed applicability provision to accommodate Mr. Pickens' concern.

Three low-volume manufacturers, Rolls Royce Motors International ("Rolls Royce"), Avanti Motor Corporation ("Avanti"), and Checker Motors Corporation ("Checker"), all indicated that, because of their limited staffs and resources, and their small impact on industry average fuel economy, their reports should be limited in scope. A low-volume manufacturer is one that produces fewer than 10,000 passenger automobiles worldwide annually. See section 502(c) of the Act and 42 FR 38374, establishing 49 CFR 525. Only Checker made specific suggestions. It suggested that low-volume manufacturers not be required to provide data on marketing measures or addi-

tional compliance efforts, since low-volume manufacturers generally produce specialized vehicles with a limited number of vehicle configurations.

This agency has no authority to apply selectively the explicit reporting requirements of section 505(a)(1)(A) and (B); that is, (A) a statement whether that manufacturer will comply with the applicable average fuel economy standards and (B) that manufacturer's plan describing the steps it has taken or will take to comply with the standard. The statute expressly requires each manufacturer to comply with those requirements. Based on appropriate distinctions between different groups of manufacturers, NHTSA may selectively apply reporting requirements adopted under the authority of section 505(a)(1)(C) and (c).

As stated above, marketing measures are one of the steps that the manufacturer can take to improve its average fuel economy level. As such, they are required by section 505(a)(1)(B) to be described in each semiannual report filed under section 505(a). The agency notes further that the fewer configurations that a manufacturer has, the simpler that reporting the manufacturer's marketing plans will, in all likelihood, be.

The information on additional compliance efforts and costs is not required to be included in the reports of any manufacturer. Therefore, there is no need to consider whether low volume manufacturers should be afforded special treatment in providing such information.

The NPRM proposed to allocate reporting responsibilities among multistage automobile manufacturers depending upon which manufacturer of a multistage automobile had become the manufacturer for standards compliance purposes under Part 529. See 42 FR 38369, July 28, 1977, for the text of Part 529. There are three types of multistage automobile manufacturers. The incomplete automobile manufacturer is the manufacturer that assembles the frame and chassis structure, power train, steering system, suspension system, and braking system. An intermediate manufacturer is a manufacturer, other than the incomplete automobile manufacturer or final-stage manufacturer, which performs manufacturing operations on an incomplete automobile. The final-stage manufacturer is the manufacturer that completes the production of the multistage automobile except for addition of readily attachable components and minor finishing operations. Part 529 generally treats the incomplete automobile manufacturer as the manufacturer of the multistage automobile. However, in certain circumstances specified in Part 529, the intermediate or final-stage manufacturer can become the manufacturer for purposes of certain Title V requirements.

The NPRM proposed that when an intermediate or final-stage manufacturer became the manufacturer of a multistage automobile for standards compliance purposes, that manufacturer would share the reporting responsibilities with the incomplete automobile manufacturer. It was proposed further that the report by the intermediate or final-stage manufacturers be limited to the same information as low-volume manufacturers are required to provide. The reasoning behind the latter proposal was that, compared to the incomplete automobile manufacturer, the intermediate or final-stage manufacturer would have less knowledge about the specifications of the technological aspects of the incomplete automobile that most significantly affect fuel economy. Additionally, an intermediate or final-stage manufacturer would have a negligible engineering staff because of the small size and less technical nature of its manufacturing operation. Most of these manufacturers are small enough to be low volume manufacturers. No comments were received on this subject.

Upon further reflection, the NHTSA has determined that the reports filed by intermediate and final-stage manufacturers would be of very limited value to this agency. Exceeding the specifications would typically cause the fuel economy data and technological information in their reports to differ only slightly from the data and information already submitted for these automobiles by the incomplete automobile manufacturers.

Further, the reports would cover a very small number of automobiles, i.e., only those incomplete automobiles for which the intermediate and final-stage manufacturers had exceeded the maximum specifications. It is anticipated that these maximum specifications will very rarely be exceeded by the intermediate and final-stage manufacturers, since doing so would require these manufacturers to recertify the automobiles for compliance

with the Clean Air Act and redetermine the fuel economy of the automobiles. These manufacturers would also be required to determine whether exceeding the weight maximum affected the automobiles' compliance with the Federal Motor Vehicle Safety Standards. This testing would be a relatively expensive process, particularly considering that these manufacturers would not have their own testing facilities available.

The agency is also mindful that the burden that would be imposed on the intermediate and final-stage manufacturers if they were required to prepare these reports would be greater relative to that imposed on larger manufacturers. As stated above, these manufacturers have a minimal engineering staff, if any.

After a reconsideration of all these factors, the NHTSA has determined under section 501(9) of the Act and Part 529 that the incomplete automobile manufacturer of a multistage automobile will always be considered its manufacturer for purposes of the Act's reporting requirements. This rule has been changed to provide that intermediate and final-stage manufacturers are not required to file reports.

The agency's re-examination of the implementation of this rule by multistage manufacturers has also resulted in several changes in the rule to facilitate the reports by the incomplete automobile manufacturer. The data in § 537.7(c) is generally required to be provided by model type. However, the incomplete automobile manufacturer does not always know what the model type of the multistage automobile will be when completed. Accordingly, the incomplete automobile manufacturer is required to provide the fuel economy information in § 537.7(c) and (e) by base level, rather than by model type. Further, the technical information in § 537.7(c)(4)(xviii)-(xxii) and (c)(5) requires knowledge of how the automobile will be completed, and, therefore, is not required to be provided by incomplete automobile manufacturers with respect to multistage automobiles.

Timing of the reports.

Section 505(a)(1) of the Act specifies the time periods during which semiannual reports for a model year must be submitted. The first report, called the "pre-model year report" in this rule, must be submitted during the 30-day period immediately preceding the model year. The second report, the "mid-model year report," must be submitted during the 30-day period beginning on the 180th day of the model year.

Ford commented that the EPA has designated the date on which comparable class fuel economy ranges become available as the beginning of the model year in a notice published November 10, 1976, 41 FR 49752, at 49756. Ford did not clearly indicate the basis for its belief that that notice, which dealt with fuel economy labeling requirements, contained any designation of the model year. Nowhere in the preamble to that notice did the EPA give any indication that it was making a determination of the model year.

Further, the language of the rule itself shows that the EPA was not making any determination of the model year. 40 CFR § 600.314(d)(1) reads: "The range will be made available on a date that coincides as closely as possible to the date of the general model year introduction for the industry." Rather than indicating that the beginning of the model year occurs on the date on which the EPA announces the comparable class ranges, this language indicates that the EPA recognized that the beginning of the model year is not dependent on and does not coincide with the announcement of the ranges. The EPA merely stated that the two dates should occur as close together as possible. After a review of EPA's November 10 notice, this agency has concluded that nowhere therein did the EPA make any determination of the model year. The EPA concurs with that conclusion.

Volvo of America, Inc. ("Volvo"), stated that its interpretation of the term "model year" as applied to foreign manufacturers was that the model year begins on the date when the first vehicle of the current model year is publicly offered for sale in the United States.

Section 501(12) of the Act defines "model year" as a manufacturer's annual production period which includes January 1 of the calendar year, and gives the EPA Administrator the authority to determine the manufacturer's annual production period. If a manufacturer has no annual production period or if the EPA does not determine when that period occurs, the manufacturer's model year is the calendar year.

To date, no determination of the "model year" has been made specifically for the purposes of section 505(a). In the rule specifying the 1978 model year fuel economy testing and calculation procedures (41 FR 38674, September 10, 1976), the EPA stated that the 1978 model year for domestic manufacturers would begin no earlier than August, 1977. This determination, however, was made without regard to section 505(a). Rather, it was made to provide all parties with 12 months advance notice of the applicable testing and calculation procedures, in accordance with the provisions of section 503(d) of the Act.

Based on its consultation with the EPA, this agency has come to the following conclusions in which EPA concurs. Since the EPA has not yet determined any annual production period for domestic or foreign automobile manufacturers applicable to section 505(a), the manufacturers have no annual production period for the purposes of section 505(a). Accordingly, under the terms of section 501(12), the section 505(a) model year for these manufacturers is the calendar year. Therefore, the pre-model year reports for 1978 must be submitted to this agency not earlier than December 2, 1977, and not later than December 31, 1977.

The use of the calendar year as the model year for the manufacturers puts both commenting manufacturers in a position at least as favorable as the ones they had requested. Ford will now have a period in which to prepare its 1978 pre-model year report that is several months longer than the one it would have had if its comment had been adopted. Since Volvo has generally introduced its new automobiles on January 1, this rule will, in effect, treat Volvo as it had requested.

The EPA has indicated to this agency that it will take appropriate action under Title V regarding the definition of model year to be used with respect to the submission of reports for the 1979 and subsequent model years.

This agency recognizes that some confusion may result from the use of one definition of model year to determine when the reports must be submitted and another definition to determine which automobiles are to be discussed in the reports. It should be emphasized that this determination of the model year is applicable only to the timing provisions of section 505(a) of the Act. The determination is made only to inform the manufacturers and the public precisely when these semiannual fuel economy reports must be submitted.

This determination does not mean that the manufacturers' reports must contain information on every automobile produced between January 1 and December 31 of each year. Section 505 specifies that the reports must indicate whether the manufacturer will comply with the average fuel economy standards applicable under section 502 to the model year for which the report is made, and the manufacturer's plan for achieving that compliance. Thus, the reports are to contain information only on automobiles produced during that model year. To determine the beginning of the model year to which a standard applies, the manufacturers must look to the relevant EPA determination of the model year for the purposes of section 502. Under the relevant EPA determination, the 1978 model year for the domestic manufacturers will run from approximately August 1977 to July 1978.

Based on its assumption that the pre-model year reports might be due in early September, Ford expressed concern that the NPRM would require it to submit one preliminary fuel economy average in its pre-model year report to the NHTSA and a different, second preliminary average to the EPA a short time later. The EPA currently requires all manufacturers to submit a preliminary average fuel economy calculation to that agency not later than 10 days after the manufacturer's public introduction date. 40 CFR 600.506–78. Ford stated that the submission of two different averages would be burdensome and that the first average would be less representative than the second. In the case of domestic manufacturers, the problem of being required to submit two different preliminary averages is obviated by the discussion above regarding the beginning of a model year for reporting purposes. Instead of having to submit their pre-model year reports perhaps several weeks before the submission of their preliminary average to the EPA, the domestic manufacturers will not have to submit those reports until several months after that submission to the EPA. There will not be any significant burden since the aver-

age submitted in the pre-model year report will be the same as the preliminary average submitted to the EPA, except as modified to reflect running changes and new model introductions made since the submission of that average to the EPA. Based on this agency's participation in EPA's 1977 model year pilot program for calculating the manufacturers' average fuel economies, NHTSA believes that all four of the major domestic manufacturers will have programmed computers to calculate their average fuel economy levels for 1978 and later model years, so that these manufacturers can quickly and at little cost determine the effects of changes in fuel economy or production data on their overall average.

Foreign manufacturers might still face the problem of being required to submit two separate calculations of their preliminary average fuel economy. If a manufacturer had its introduction date on January 1, as many foreign manufacturers do, the manufacturer would not be required to submit its preliminary average fuel economy calculation to the EPA until January 11. However, that manufacturer would be required to submit a preliminary average fuel economy in its report to the NHTSA, due not later than December 31. This agency would thus be faced with the prospect of receiving a preliminary average less representative than the one to be subsequently submitted to EPA.

To avoid this problem, this rule has been changed from what was proposed in the NPRM. Under this rule, a manufacturer is not required to include the fuel economy data required for the pre-model year report by § 537.7(b), (c)(1) and (2), and (c)(4) (xiv)–(xvi) and (xxiv), if that report is due to be submitted before the fifth day after the date by which the manufacturer is required to submit the preliminary determination of average fuel economy to the EPA under 40 CFR 600.506. Any manufacturer taking advantage of this opportunity is required to submit a supplementary report to this agency not later than the fifth day after the date by which that manufacturer must submit the preliminary determination. This supplementary report must contain all the information the manufacturer omitted from its semiannual report, pursuant to the above provision, and any revisions of the information previously submitted in the semiannual report as are necessary to reflect this new information.

Semiannual reports.

The short time remaining for the manufacturers to submit their 1978 pre-model year reports has necessitated a substantial reduction of the information required in that report. Under this rule, the report would cover passenger automobiles only. With respect to those automobiles, the manufacturer would provide its projected average fuel economy and views on the representativeness of the projection, its model type fuel economy information, certain vehicle configuration technical information, and a general discussion of the manufacturer's marketing measures. None of this information requires any new analytical work to prepare and, thus, should be readily available to the manufacturers for inclusion in a report to this agency.

Further, to alleviate the time pressures on the manufacturers and ensure the submission of full reports, the agency will not take enforcement action on timeliness grounds against any manufacturer which submits its pre-model year report by January 31, 1978.

Many commenters complained that the reporting requirements proposed in the NPRM would impose unreasonable and excessive additional testing costs. These complaints were primarily applicable to the proposed future model year reporting requirements. To the extent that the complaints were directed to the current model year reporting requirements, they appear to apply largely to items not adopted in this rule.

In the NPRM, the agency discussed its consideration of possible ways of avoiding the imposition of any new testing costs, and requested comments on the desirability of permitting a manufacturer to submit responses that were an estimate or a set or range of alternatives. To avoid abuse of that opportunity and ensure the usefulness of the estimates, the agency further proposed that any manufacturer submitting estimates or alternatives would be required to state the basis for each estimate or alternative, the major uncertainties associated with it, and the most likely value in the case of an estimate and the most likely alternative in the case of a set or range of alternatives. Despite the request for

comments on this proposed method, only one manufacturer addressed this issue. Volvo stated that permitting estimates would give the NHTSA more representative data, and make the manufacturer's task less burdensome.

To place the smallest burden on the industry consistent with the NHTSA's need for information, this rule permits manufacturers to submit estimates in response to requirements for data on marketing. A manufacturer may not provide estimates in response to the requirement for fuel economy data or technical specifications data. One of the primary purposes of the fuel economy data is to calculate average fuel economy. Gross estimates of fuel economy are unsuitable for making such an important and sensitive calculation. The rule accordingly requires the manufacturer to submit fuel economy values which have been approved by the EPA for specified vehicle configurations, if values have been approved. If a value has not been approved for a configuration, the manufacturer must submit any available unapproved fuel economy value developed through the use of EPA's test procedures or through analytical methods approved by the EPA. If none of the above types of values are available, the manufacturer is required to submit a fuel economy value based on tests or analyses comparable to the tests or analyses required by the EPA, and a description of the tests or analyses conducted by the manufacturer. The technical specifications can be easily determined at little or no expense. Further, almost all of that information must already be generated for purposes other than this rule.

Projected average fuel economy.

Commenters generally agreed that this was a necessary piece of information. As explained in the preamble to the NPRM, the NHTSA believes that submission of this information would be equivalent to a statement whether the manufacturer would comply with the applicable average fuel economy standards, as required to be included in the reports by section 505(a)(1)(A) of the Act.

Ford challenged the inclusion of a requirement that manufacturers state whether their projected average fuel economy is a sufficiently accurate representation for the purposes of assessing penalties and awarding credits under the Act. If it were not a sufficiently representative figure, the manufacturer would be required to explain how and why the insufficiency resulted, and what additional fuel economy data is necessary to correct the insufficiency. The need, if any, might be to develop fuel economy values for vehicle configurations for which no values are required to be provided. The manufacturer must also state any plans that it has to undertake the testing or analysis necessary to develop the data and to submit it to EPA under 40 CFR 600.509–78. Section 600.509–78 permits manufacturers to supplement voluntarily the fuel economy data that EPA requires from each manufacturer. As noted by EPA in its notice establishing section 600.509–78, that section's purpose is to accommodate the manufacturer who does not believe that the testing required by EPA provides a reasonable basis for making compliance determinations (41 FR 38674, at 38678; September 10, 1976).

The disclosure requirement is included in this rule because it is essential for the efficient functioning of the fuel economy program. It is in the interests of both the government and the industry that the manufacturers' calculated average fuel economies must be as truly representative of the manufacturers' average fuel economies as practicable. If the calculated average are too low, the manufacturers could have an undue financial burden imposed on them in the form of large, unwarranted penalties. To avoid an unwarranted penalty, a manufacturer might undertake costly and unwarranted vehicle modifications or unnecessary production shifts. If, on the other hand, the calculated averages are too high, the nation would be deprived of the total fuel savings envisioned by the Act and the manufacturers would be given an undue credit.

The EPA was aware of the importance of ensuring representative calculated average fuel economies and discussed the issue at length in its notice establishing the fuel economy testing and calculation procedures (41 FR 38674, at 38676, September 10, 1976). The disclosure requirement in this rule will supplement the EPA's efforts in 40 CFR 600.509–78 to ensure the representativeness of the calculated averages.

Requiring manufacturers to disclose deficiencies which they believe exist in the projected average and to disclose their plans for generating additional fuel economy data would enable the government to avoid duplicating the manufacturers' efforts to generate that data and the waste of public resources resulting from such duplication. It would also inform the government about the extent to which the manufacturers were not going to generate the additional data. The government could then decide whether to undertake any of the testing and analysis itself. Timing would be critical to the ability of the government to undertake any additional testing. The probability of the government's being able to locate readily the precise vehicle configurations needed will steadily decline as the end of a model year approaches. Further, the demand on the government's test facilities for emissions and fuel economy testing purposes requires that the government have some flexibility in scheduling any additional testing.

By requiring that apparent deficiencies in the projected average fuel economy be disclosed, the reporting regulation would aid in ensuring the steady and orderly implementation of the fuel economy program by resolving problems before the end of the model year when corrective actions might still be taken. The entire fuel economy program, which constitutes the primary element of the national effort to conserve gasoline, might be disrupted if deficiencies exist and are not revealed until it is too late to take any corrective action.

The establishment of an orderly procedure for identifying and reporting apparent deficiencies in projected average fuel economies should also aid in promoting public confidence in the fuel economy program. The success of the program depends in part on the faith of the public and the manufacturers in the fuel economy averages calculated for the manufacturers.

The burden imposed on the manufacturers by the disclosure requirement should be fairly small. If a manufacturer has not identified any deficiencies in its projected average fuel economy, it simply reports that fact. If, on the other hand, information available to the manufacturer leads it to believe that there are deficiencies, it simply reports the nature and cause of the deficiencies as well as any plans for reducing or correcting them.

After considering the benefits to be gained from the disclosure requirement and the minimal resulting burdens, the agency has determined that the requirement is both a necessary and a reasonable means for ensuring the smooth functioning of the fuel economy program.

Ford characterized this requirement as "an unfortunate effort to force manufacturers to waive their right to challenge the manner in which EPA, in consultation with DOT, developed fuel economy testing procedures and calculations under section 503 of the Act." The agency believes that Ford may not have understood the requirement and its purpose fully.

This disclosure requirement does not require that any manufacturer waive the opportunity to make such a challenge. A waiver is "the voluntary and intentional relinquishment of a known right, claim, or privilege." 28 Am. Jur. *Estoppel and Waiver* § 154 (1966). Without considering the other elements of a waiver, it may be seen from the absence of any relinquishment that no waiver is imposed by this requirement. If a manufacturer states and explains its beliefs regarding the representativeness of the projected average, it is not thereby precluded from restating those beliefs at a later time, such as when the final average is calculated. Alternatively, if a manufacturer states in one of its reports that, based on current information and analyses, there do not appear to be any deficiencies in the projection, the manufacturer is not precluded from subsequently stating that new information and analysis have revealed previously undiscovered deficiencies.

Model type fuel economy and technical information.

To provide the agency with the basis for a manufacturer's projected average fuel economy, the rule requires the manufacturer to provide fuel economy values for each model type of its automobiles and describe the fuel economy related technical information and specifications of each vehicle configuration on which the model type fuel economy values were based.

Ford commented that it was unlikely that the NHTSA could make use of the approach angle, departure angle, and breakover angle for all the passenger cars sold by Ford. These data, and the required axle clearance, minimum running clearance, and any other features which the manufacturer believes make an automobile capable of off-highway operation, were included in the NPRM to permit the NHTSA to determine whether the classification scheme of Part 523 was adequately differentiating automobiles capable of off-highway operation from other automobiles. The NHTSA now believes this purpose will be adequately served if the features that make an automobile capable of off-highway operation are provided only with respect to those automobiles claimed to be capable of off-highway operation as determined under Part 523. If the category "automobiles capable of off-highway operation" fails to include automobiles that the manufacturers believe should be included, the manufacturers will presumably inform the NHTSA of that belief.

Both Ford and Chrysler indicated that this fuel economy information should be required by base level, rather than model type. Neither manufacturer explained why the information should be provided in that fashion. Further, neither indicated that providing the information by model type would pose any significant problem for them. EPA procedures that the manufacturers are to follow to calculate their preliminary average fuel economies provide for determining fuel economy values for vehicle configurations, then base levels, and finally model types. The model type fuel economies are then used to calculate the average fuel economy. Conversion of base level fuel economies to model type fuel economies requires that the manufacturers simply follow the calculation procedure in 40 CFR 600.207–77(b). The manufacturers must perform these calculations in any event at essentially the same time to satisfy the EPA requirement for the preliminary average. NHTSA could not calculate the average since it would lack the necessary sales data to make the conversion from base level values to model type values. The agency has decided, therefore, to require the fuel economy information by model type.

Chrysler objected to providing the road load power at 50 miles per hour, stating that this would dramatically increase their testing costs. This requirement was not intended to impose any additional testing costs. To clarify that intention, the requirement has been reworded to provide that road load power information must be provided for an automobile only if a manufacturer has determined, for whatever purpose, that it differs from the road load setting prescribed for that automobile in 40 CFR 86.177–11(d). There is no requirement that the setting be determined for the purposes of preparing the fuel economy reports.

Both Chrysler and Toyota Motor Sales, U.S.A., Inc. ("Toyota"), objected to the proposed requirement that each manufacturer provide a graph of acceleration and velocity versus time from 0 to 60 miles per hour for each configuration. Toyota indicated that it does not plan models according to this index, and that this requirement would impose additional testing. Chrysler concurred in this latter statement.

This information was proposed to be required to show any effects of complying with increasingly more stringent fuel economy standards on the acceleration capabilities of the manufacturer's automobiles over a wide range of speeds. The NHTSA expects that these effects will be felt more at some speed ranges than at others. However, the NHTSA is uncertain of how accurately this acceleration data could be provided without any additional acceleration testing. If manufacturers like Toyota perform limited acceleration testing, e.g., test the acceleration of only certain models, those manufacturers might need to perform tests on the untested models so that they would have a reliable basis for estimating the acceleration for all the configurations listed in the report. To avoid imposing any additional testing, the agency has deleted the requirement for acceleration and velocity data from this rule.

Automobile technology and sales mix changes.

Avanti and Checker stated that they would be dependent upon their engine suppliers for information regarding changes in the technology used in their engines. The agency believes that by the time the pre-model year report is filed for a model year by one of these manufacturers, the

manufacturer should have been able to determine for itself or learn from the suppliers the differences in specifications between their engines for the current model year and those for previous model years. The agency expects the suppliers to cooperate to the extent necessary to enable these low-volume manufacturers to provide the required data.

Both Rolls Royce and Toyota indicated that they could not improve their fuel economy by changing the sales mix. However, the combined fuel economy of Toyota's subcompacts for the 1977 model year ranges between 24 and 41 miles per gallon, according to the Second Edition of the 1977 EPA/FEA Gas Mileage Guide. Shifts in its mix could enable Toyota to achieve a higher or lower average fuel economy. If a manufacturer produces only one model type, and that model type is in the same inertia weight class in both the current model year and immediately preceding model year, the manufacturer would have no sales mix changes to report. No burden is imposed on that manufacturer.

Marketing measures.

The NPRM contained a proposal that the manufacturer be required to state and describe its marketing measures for each model type of its automobiles. The rationale for requiring a description not only of marketing measures designed to aid a manufacturer in improving its average fuel economy, but also of those measures that would tend to have the opposite effect, was to provide the agency with the full context in which to evaluate the former set of measures.

As noted above, many of the manufacturers commented that the reports should not be required to include marketing information. This comment could not be adopted because section 505(a) requires inclusion of that information.

Toyota commented that it makes no special marketing efforts to improve its average fuel economy, since it produces only subcompacts, which Toyota characterized as very fuel efficient. This agency notes that the marketing efforts of certain manufacturers will not affect whether they achieve compliance with the fuel economy standards. If the lowest fuel economy for any model type produced by a manufacturer for the current model year equals or exceeds the applicable average fuel economy standard, the manufacturer's marketing efforts have no bearing on compliance and are not one of the steps the manufacturer has taken to achieve compliance. Such manufacturer cannot fail to comply with the standard, regradless of its marketing efforts, since any production mix will comply. Therefore, a manufacturer whose sales mix includes only models with fuel economy levels equal to or greater than the applicable average fuel economy standard is not required to include in its reports for that model year any discussion of its marketing measures.

Further, the agency has decided to reduce substantially the extent to which manufacturers must report marketing measures that will not aid the manufacturer in improving its average fuel economy. The final rule does not require a general description of all of the manufacturer's advertising, pricing, and dealer incentive programs.

The proposed requirement that the manufacturer describe how its use of advertising, pricing, and dealer incentives was designed to aid the manufacturer in improving its average fuel economy is adopted in this rule substantially as proposed in the NPRM. Both the pre- and mid-model year reports are required to include a description of the manufacturer's dealer incentive programs that will be implemented and a description of the manufacturer's advertising and pricing that will tend to aid the manufacturer in improving its average fuel economy during the current model year. Advertising and pricing programs that will tend to aid the manufacturer in improving its average fuel economy include all programs to promote the sales of model types whose average fuel economy equals or exceeds the applicable standards, and any programs to promote the sales of a model type below the standard in lieu of sales of a model type further below the standard. As a quantification of the manufacturer's advertising efforts, the final rule requires that each report state the amount to be spent to advertise each carline, with additional information to be provided regarding model types, if available. Additionally, the mid-model year reports must include a discussion of the marketing efforts actually made by the manufac-

turer during the first half of the model year. No retrospective reporting of marketing efforts made during the second half of the model year is required by this rule. Accordingly, this agency is considering further rulemaking to require the reporting of marketing efforts made during the second half of a model year in the pre-model year report for the following model year.

AMC was the only commenter that agreed that marketing information should be required in the report, and indicated its willingness to provide this information.

The NPRM proposed that the marketing information be provided by model type. However, Ford and Chrysler both indicated that the marketing information was not available by model type. Neither indicated how it was available, however. Most advertising appears to be by car line, with perhaps one model type or vehicle configuration being highlighted. Based on this pattern, the NHTSA believes that the information is available by car line to all manufacturers. Therefore, this rule has been changed to provide that the marketing information be provided by car line and, when available, by model type too.

Concerns were expressed by two manufacturers about their ability to provide the marketing data within the period specified in the NPRM. Chrysler stated that it would be very difficult to provide this information before the start of the model year, since the marketing measures change during the model year in response to the economic conditions and the competitive environment. Further, according to Chrysler, the data is not available in detail at the time required. Ford agreed with this assertion, and indicated that dealer incentives are approved during the model year.

None of these comments took into consideration the provision in the proposal for submitting estimates when precise answers cannot be given. Under this provision, which has been adopted in this rule, manufacturers may submit information about their planned advertising as estimates or as sets or ranges of alternatives. If no incentives are planned, then there would be none to report. Thus, these manufacturers should not encounter the types of problems they suggested.

Chrysler, Ford, and General Motors all indicated that if their marketing plans were disclosed, there would be severe anti-competitive effects. In view of this concern, this agency assumes that the manufacturers will request confidential treatment of this information. The NHTSA procedures for dealing with material claimed to be confidential are discussed below, in the section of this preamble on confidential information.

General Motors suggested that the NHTSA had incorrectly assumed that marketing measures control consumer demand. The NHTSA made no such assumption. The agency does believe that marketing measures can influence the consumer demand. The substantial advertising budgets, rebate programs and dealer incentives of the manufacturers indicate that they share this belief.

Reduction of (CID) (N/V), Impact of other Federal standards on fuel economy, Impacts of efforts to comply with average fuel economy standards on automobile performance, Material composition, and *Engine system combinations and fuel systems.*

These five items were proposed to be included in the current model year section of the proposed report primarily to verify predictions made by the manufacturers in the future model year section of previously submitted semiannual reports. Since the manufacturers are not required by this rule to provide future model year information, this current model year information would not serve its primary intended purpose, and the requirement for its submission is therefore deleted.

Additional compliance efforts. This item was proposed to be included in the reports to aid this agency in determining the feasibility of additional compliance efforts by a manufacturer projecting noncompliance with a standard. Section 505(a) does not require inclusion of this requirement in the rule. Upon a re-examination of this requirement, the NHTSA has determined that it could meets its information need better by exercising its authority under section 505(c) of the Act to send out a special order requiring specific, detailed information from a manufacturer which projects noncompliance. Accordingly, this rule does not include the requirement for this item.

Costs and *Gross income and market share.* Data on these subjects were proposed to be required in the reports so that the NHTSA could compare the effectiveness and costs of the different manufacturers' compliance strategies and assess the impacts of complying with the average fuel economy standards on the manufacturers individually and as an industry and on consumers. Requirements for these data have been deleted in view of the agency's decision to limit the scope of the report to compliance related purposes. When necessary to obtain information to enable NHTSA to make the assessments of the impacts of compliance on the manufacturers and consumers, it can use special orders.

Future model year data. The NPRM proposed that the manufacturers be required to include in their semiannual reports, beginning with the 1978 model year, information concerning their ability to improve future average fuel economy and the costs and other impacts that would result from making improvements. Ford commented that the proposal for reporting future model year information was very extensive and presented unique and troublesome problems for the industry in view of the scope of the information required, the ability of the industry to comply with the reporting requirements, and the potential effects of the reporting requirements on competition within the industry. Ford also questioned the usefulness of the information since much of the information is, according to that company, subject to change. To allow time for a more thorough consideration of these questions, Ford requested that the NHTSA publish a final rule on current model year information, and treat the section of the NPRM on future model year data as an advance notice of proposed rulemaking. Ford suggested that a new 60-day comment period on the future model year data be allowed, followed by a public hearing. Since section 505(a) does not require future model year reporting, Ford believes that NHTSA has no statutory deadline for promulgation of the future model year reporting requirement. AMC expressed substantially the same views.

Other manufacturers made the same point, although they expressed it in terms of the scope of the proposal and the purposes to be served by the information. Chrysler stated that the scope of the NPRM was excessive, and that the reporting requirements for current and future model years should be considered separately. According to Chrysler, the reporting rule should be used only to permit the NHTSA to determine whether the manufacturer will comply with the applicable average fuel economy standards. Chrysler also suggested that special orders be used to obtain any needed future model year information.

Rolls Royce, AMC, and British Leyland Motors Inc. ("British Leyland") all indicated that the scope of the proposed report was so broad that members of their engineering staffs would have to be withdrawn from their fuel economy improvement programs to collect and analyze the data required to comply with the proposed reporting requirements. To avoid this situation, British Leyland suggested that the purpose of the reports should be limited to obtaining data to evaluate the manufacturers' plans for compliance. Toyota and Peugeot also commented that the purpose of the reports should be limited to obtaining information sufficient to evaluate the manufacturers' plans for compliance.

With respect to the leadtime allowed, General Motors recommended that future model year data not be required to be reported in the 1978 model year, because of the short leadtime. Chrysler indicated that it would need at least twelve months after publication of the final rule to submit all the future model year data proposed in the NPRM. Volvo, on the other hand, indicated that it could thoroughly prepare this information in time for submission with the 1978 mid-model year report.

After considering these comments, the NHTSA has decided not to include any requirements for future model year information in the final rule. The agency agrees that the timing on establishing the reporting requirements for current model year information is more critical, given the provisions of section 505(a) of the Act, than the timing on establishing requirements for future model year information. The agency will continue to consider the various options open to it for obtaining future model year information, including issuing a new proposal or special orders.

Supplementary reports. Section 505(a)(2) requires that if a manufacturer indicated in its recent semiannuall report that it would comply with a fuel economy standard and then determines that its compliance plan is not sufficient to enable it to achieve compliance, the manufacturer must submit a revised plan specifying any additional measures that it will take to achieve compliance. Information on compliance plans and potential noncompliances would enable the agency to determine whether the manufacturers were making good faith efforts to comply with the standards. Using its authority under section 505(a) and (c), the agency intentionally went beyond this requirement in the NPRM.

The first case in which a supplementary report was proposed to be required was when a manufacturer's projected average fuel economy had decreased by 0.1 mile per gallon or more from its most recently reported average, and the resultant average was below the standard or less than 0.4 miles per gallon above the standard. This requirement was intended to alert this agency either that a manufacturer that had projected compliance might be in imminent danger of noncompliance, or that a manufacturer that had projected noncompliance had experienced a further decrease in its average fuel economy. The purpose of this requirement was to provide this agency with information explaining the declining average fuel economy and the steps that the manufacturer intended to take to minimize the decrease.

Both Ford and Chrysler objected to this proposal as burdensome and stated that it was their interpretation of section 505(a)(2) that supplementary reports were required only when a manufacturer's plans, as reported to the NHTSA, were no longer sufficient to ensure compliance with an applicable average fuel economy standard.

After a reconsideration of the proposed requirements and the comments received, the NHTSA has determined to narrow the rule so that it requires a supplementary report to be filed only in the circumstances specified in section 505(a)(2). As in the case of the future model year information, the agency desires to consider further the value and burden of requiring this information which is outside the nominal scope of section 502(a)(2). The NHTSA will monitor the reports filed under the standards, and consider whether supplemental reporting in addition to the minimum required by section 502(a)(2) of the Act should be required. Accordingly, this rule requires a supplementary report to be filed only if the manufacturer's average fuel economy for a particular model year in its most recent semi-annual report was equal to or greater than an applicable average fuel economy standard, and the manufacturer subsequently projects that its average fuel economy for that model year has fallen below that standard.

Ford and Chrysler expressed the fear that the NPRM would require overly frequent supplemental reporting. To reduce the frequency of supplemental reports, Ford and Chrysler suggested that a greater decrease than 0.1 mile per gallon be required to trigger the necessity for a supplementary report. No threshold is specified in this rule because none is necessary to accommodate the manufacturers' concerns about frequent supplementary reports. Under this rule, a manufacturer is not required to file more than one supplementary report to each semiannual report as a result of lower average fuel economy projections.

The second case in which a supplementary report was proposed to be required in the NPRM was when a manufacturer's statement concerning the representativeness of its average fuel economy is no longer an accurate statement of the manufacturer's views regarding that matter. This supplementary reporting requirement was intended to ensure that a manufacturer promptly raised and explained any concerns about the representativeness of the average and the possible need for additional fuel economy values.

Ford objected to this proposed supplementary reporting requirement based on Ford's interpretation that the NPRM would have required a supplementary report to be filed "whenever any statement with respect to the projected average fuel economy becomes partially or wholly inaccurate or incomplete." Ford stated that this would require daily reporting, and that the standard was so subjective as to be meaningless.

Ford apparently misinterpreted the proposed requirement. The NPRM proposed that a supplementary report be required when a manufac-

turer determined that its previous statements under § 537.7(b)(3) regarding the representativeness of an average do not accurately reflect its current views. This requirement is narrower than Ford understood it to be. A manufacturer's views about the representativeness will presumably change only after some analysis of these procedures by the manufacturers. Even if a manufacturer were to perform a new analysis every day, it seems implausible that each new analysis would yield a different result than the immediately preceding analysis. Since Ford did not explain why different results were likely, the NHTSA assumes that Ford's statement about daily reporting was based on some misinterpretation of this section.

In response to Ford's comment that the standard was too subjective, the language in the rule has been clarified. The rule requires a supplementary report to be filed when a manufacturer determines that its projected average fuel economy as reported to the NHTSA is less representative than the manufacturer previously reported it to be.

Supplementary information on the manufacturer's views about the representativeness of its projected average fuel economy is needed so that the NHTSA will be promptly informed about the possible need to determine fuel economy values for additional base levels or vehicle configurations. The information would be used to promote efficient, non-duplicative use of resources and to avoid the disruption of the fuel economy program, as explained above in the section of this preamble on semiannual reports. This supplementary reporting requirement imposes no burden on the manufacturer other than to record and submit the results of analyses it has already made.

Mercedes commented that manufacturers which produce for sale in the United States not more than 100,000 automobiles in a given model year should not be required to comply with the supplementary reporting requirements. The NHTSA has no authority to exempt such manufacturers from submitting a supplementary report when it no longer projects compliance since those supplementary reports are required from all manufacturers by section 502(a)(2). The agency continues to believe that supplementary reporting regarding the representativeness of a manufacturer's projected average fuel economy should be required from all manufacturers. It is important to ensure the compliance of all manufacturers, large and small, with the average fuel economy standards. Further, this reporting requirement should impose no significant burden on even the smallest of manufacturers. If a manufacturer has conducted some analysis and concludes that its average is not sufficiently representative, it simply reports that conclusion and the reasons therefor. Otherwise, the manufacturer submits no supplementary information regarding representativeness.

Toyota commented that the requirement that supplementary reports be filed within 30 days of the date when the manufacturer determines or should have determined that a supplementary report is required is too short a period for foreign manufacturers, particularly considering the time losses inherent in the language differences and communication problems confronting those manufacturers in non-English speaking countries. Toyota did not, however, suggest an alternative period. This agency has determined Toyota's comments have some merit and that a slightly longer time period to file the supplementary reports should be permitted. Accordingly, this rule requires the supplementary report to be received by the NHTSA not later than 45 days from the date on which the manufacturer determined, or with reasonable diligence could have determined, that a supplementary report was required. This 45-day period should be ample time to generate the material, draft and translate the report, and send it air mail to this agency.

None of the comments received by this agency were directed to the proposed content of the supplementary reports. This rule essentially follows the proposal in requiring that the manufacturer state the revised average fuel economy projection or the previously unreported element of unrepresentativeness of the projected average fuel economy, as appropriate, explain the new projection or element of representativeness, and show any changes to the previously submitted report which must be made in light of this newly reported information. To clarify the types of revisions that must be included in the supplementary reports, this rule specifies that the manufacturer no longer projecting compliance shall

include any additional technological improvements, sales mix changes, and marketing efforts it intends to make. If the manufacturer does not intend to attempt to take additional steps to achieve compliance, it must describe the steps it could take under § 537.7(f), relating to additional compliance efforts. In the case of a manufacturer that no longer believes its average fuel economy figure is as representative as it previously stated, the rule requires a statement of the reasons for the insufficient representativeness, the additional testing or analysis necessary to eliminate the insufficiency, and any plans of the manufacturer to undertake the additional testing or analysis.

Treatment of information claimed to be confidential business information. The NPRM set out format and content requirements for asserting and supporting a claim that certain information be withheld from public disclosure as confidential business information. In addition, the NPRM indicated a procedure by which the agency would consider and act upon claims for confidentiality. Since the publication of the NPRM, it has become clear to the agency that comprehensive regulations governing confidential business information, and information which is claimed to be confidential, are necessary. Such regulations are in preparation. The procedures and requirements in the final reporting regulation will be followed in the interim.

Several comments were received relating to the treatment of information which is claimed to be confidential business information. Chrysler stated that it did not "believe that a requirement of a showing of significant competitive damage is authorized by the Motor Vehicle Information and Cost Savings Act (as amended), but only that a showing of competitive damage is enough to require confidential treatment." The requirement of "significant" competitive damage proposed in the NPRM is drawn from the express terms of section 505(d)(1) of the Act. That section provides that the agency may withhold information from the public on the grounds that the information is confidential business information "*only* if the [Administrator] . . . determines that such information, if disclosed would result in *significant* competitive damage." (Emphasis added.) Chrysler provided no information, legislative history, or other argument in support of its belief that the Act, notwithstanding the terms of section 505(d)(1), does not require a showing of significant competitive damage to support a manufacturer's claim of confidentiality. Moreover, no other manufacturer made an argument similar to Chrysler's argument. Because of the express terms of section 505(d)(1), and the mandatory nature of its directive, the agency must reject Chrysler's argument.

Chrysler also claimed that certain categories or types of information, which Chrysler identified in its comments, should be entitled to "prima facie" confidential treatment when submitted. The agency agrees with Chrysler that some sort of class treatment of information claimed to be confidential business information would be extremely beneficial. Class determination will reduce the burdens on manufacturers asserting claims for confidentiality, as well as the agency's burden of evaluating claims for confidential treatment of information. Moreover, class determinations will also help to ensure evenhanded treatment of claims for confidentiality.

The agency also agrees with Chrysler that classes should provide for "prima facie" categorization, rather than "per se" categorization. The prima facie approach, by establishing a rebuttable presumption of confidentiality, or nonconfidentiality, will allow the agency the flexibility to give special consideration to special cases that may arise.

The agency, however, cannot agree with the categories of information which Chrysler claims should be afforded prima facie confidential treatment. The categories enumerated by Chrysler would include information that might be too general to be considered confidential business information, within the meaning of section 505(d)(1) of the Act. Moreover, the agency is unwilling to make a class determination of the confidentiality of certain kinds of information without providing the opportunity for comment from interested persons on the appropriateness of the class. Therefore, the agency will defer establishing classes of information for the purposes of determining business confidentiality until the rulemaking establishing procedures for the treatment of confidential information mentioned above is completed. The agency believes that the continued use of case-by-case determina-

tions of confidentiality for the interim period should not be unduly burdensome on the manufacturers or the agency.

Chrysler also commented that when a determination is made that certain information is confidential, that information should not be disclosed unless a "requester is able to make a substantial (as opposed to a casual [sic]) showing of need to review this information." Although Chrysler did not specifically reference it, this comment is presumably directed at the Administrator's power under section 505(d)(1) to release confidential business information when relevant to a proceeding under Title V of the Act. The agency has interpreted section 505(d)(1) as giving it the power to release confidential business information in a proceeding when it is in the public interest to do so. The determination of whether the release of confidential business information is in the public interest will usually entail a balancing of benefits and harms, both public and private, that may result from the release of information which has been determined to be confidential business information. Certainly, the need for the information may be an important factor in this balancing, as would other factors, such as the effect on competition resulting from the release of confidential business information. The agency agrees with Chrysler that these, as well as other factors, should be carefully considered before the exercise of the power to release admittedly confidential information. However, the agency cannot now assign weight to, or even identify, all the factors that should be considered prior to the release of confidential business information. The exercise of the 505(d)(1) power must proceed on a case-by-case basis.

Chrysler stated in its comments that a submitter of information should have ample opportunity to object to the proposed release of confidential business information, or to withdraw that information. The agency agrees that submitters of confidential information, or information claimed to be confidential, should have notice of, and opportunity to object to, the proposed release of that information. The NPRM and the final rule provide for such notice, as will the rule governing the treatment of confidential information. The submitter will have at least ten days, when feasible, between notice of intention to disclose and actual disclosure, during which time the manufacturer may make any objections or take any other action that it regards as appropriate.

The agency does not agree that the submitter of information should have, in any circumstances, the right to withdraw information which it has been lawfully required to submit. Such a right would give to the submitter of the information, rather than the agency, the power to determine what information should be made publicly available. Since Congress clearly gave this power to the agency in section 505(d)(1), Chrysler's comment must be rejected.

Although Ford, General Motors, and AMC made no comments specifically relating to the procedures for treating confidential business information, those manufacturers did express some concern about the harmful effects, especially harm to competition, that would result from disclosure of some of the information which the agency is requiring. Those comments did not explain how disclosure may occur. Presumably, there is no issue of accidental disclosure of information. The agency knows of no instance where confidential business information in the agency's possession was inadvertently or negligently disclosed to the public. The agency takes precautions to ensure that confidential information in its possession is not inadvertently released. Those precautions have been effective in the past, and there is no reason to believe that they will not continue to be effective.

To the extent that confidential information may be released under the power contained in section 505(d)(1), the statements made with respect to the Chrysler comments are applicable here. The agency will consider all the interests, including the interests of the competitive structure of the automobile industry, before releasing any confidential business information. The agency will not release any information or, indeed, take any action at all, unless the agency believes that its actions will be in the public interest.

Both Ford and General Motors were concerned that confidential business information may be included in the agency's report to the Congress. The agency's report to Congress will be a public document. Therefore, the agency would have to decide to disclose any confidential information

before placing it in the report. Given the nature of the report to the Congress, the agency believes it is unlikely that disclosure of confidential business information would be necessary for an informative and complete report to the Congress, and that there are no grounds for the manufacturers' concern in this regard.

A minor change has been made with respect to the NPRM's provisions for incorporation by reference of information in these reports. The NPRM had proposed that, when a document was incorporated by reference in this report, the manufacturer would be required to append a copy of the incorporated document to the report. The NHTSA has determined that this provision is unnecessary in the case of documents which have previously been submitted to NHTSA. With respect to documents incorporated by reference which have previously been submitted to the NHTSA, the manufacturer is required to clearly identify the document and indicate the date on which and by whom the document was submitted to the NHTSA.

Implementation costs. In accordance with Department of Transportation policy encouraging adequate analysis of the consequences of regulatory action (41 FR 16200, April 16, 1976), the agency has summarized below its evaluation of the economic and other consequences of this action on the public and private sectors. The total annual cost of implementing this final rule is expected to be less than $775,000 for the manufacturers and the Federal government. The share of the manufacturers would be $650,000, and that of the Federal government would be $125,000. The costs to the manufacturers will consist primarily of the additional administrative costs incurred to gather, tabulate, and submit the required information. The total costs for a manufacturer's semiannual and supplementary reports for a model year will range between $160,000 for a large manufacturer and $5,000 for a low volume manufacturer exempted under section 502(c) of Title V.

In light of the foregoing, Title 49, Code of Federal Regulations, is amended by adding a new Part 537, *Automotive Fuel Economy Reports.*

The program official and attorney principally responsible for the development of this rule are Anees Adil and Stephen Kratzke, respectively.

Issued December 7, 1977.

Joan Claybrook
Administrator

42 F.R. 62374
December 12, 1977

PREAMBLE TO AN AMENDMENT TO PART 537—AUTOMOTIVE FUEL ECONOMY REPORTS

(Docket Nos. FE 76-04; Notice 5; FE 77-03, Notice 4; 80-21, Notice 1)

ACTION: Final Rule.

SUMMARY: This notice makes conforming amendments to several of the agency's regulations deleting specific requirements for confidentiality determinations. These conforming amendments are needed as a result of the publication today of a new agency regulation governing requests for confidentiality determinations (Part 512). Since that new regulation supercedes the confidentiality provisions existing in several of the agency's other regulations, these conforming amendments are being made without notice and opportunity for comment.

EFFECTIVE DATE: These amendments are effective April 9, 1981.

FOR FURTHER INFORMATION CONTACT:
Roger Tilton, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-9511).

SUPPLEMENTARY INFORMATION: In accordance with the above, Title 49 of the Code of Federal Regulations is amended as follows.

Part 525, *Exemptions From Average Fuel Economy Standards,* is revised as follows:

(1) Section 525.6(g) (1) and (2) are deleted and replaced with the following:

(g) Specify and segregate any part of the information and data submitted under this part that the petitioner wishes to have withheld from public disclosure in accordance with Part 512 of this Chapter.

(2) Section 525.13 is deleted and section 525.12 is revised to read:

§ 525.12 Public inspection of information.

(a) Except as provided in paragraph (b), any person may inspect available information relevant to a petition under this Part, including the petition and any supporting data, memoranda of informal meetings with the petitioner or any other interested persons, and the notices regarding the petition, in the Docket Section of the National Highway Traffic Safety Administration. Any person may obtain copies of the information available for inspection under this paragraph in accordance with Part 7 of the regulations of the Office of the Secretary of Transportation (49 CFR Part 7).

(b) Except for the release of confidential information authorized by section 505 of the Act and Part 512 of this Chapter, information made available for public inspection does not include information for which confidentiality is requested under § 525.6(g) and is granted in accordance with Part 512 and sections 502 and 505 of the Act and section 552(b) of Title 5 of the United States Code.

Part 537, *Automotive Fuel Economy Reports,* is revised as follows:

(1) Section 537.5(c) (7) (i) and (ii) are deleted and replaced with the following:

(7) Specify any part of the information or data in the report that the manufacturer believes should be withheld from public disclosure as trade secret or other confidential business information in accordance with Part 512 of this Chapter.

(2) Section 537.12 is deleted and section 537.11 is revised to read:

§ 537.11 Public inspection of information.

(a) Except as provided in paragraph (b), any person may inspect the information and data submit-

ted by a manufacturer under this part in the docket section of the National Highway Traffic Safety Administration. Any person may obtain copies of the information available for inspection under this section in accordance with the regulations of the Secretary of Transportation in Part 7 of this title.

(b) Except for the release of confidential information authorized by section 505 of the Act and Part 512 of this Chapter, information made available under paragraph (a) for public inspection does not include information for which confidentiality is requested under § 537.5(c) (7) and is granted in accordance with Part 512 of this Chapter, section 505 of the Act, and section 552(b) of Title 5 of the United States Code.

Part 555, *Temporary Exemption From Motor Vehicle Safety Standards,* is revised as follows:

(1) Section 555.5(b) (6) is revised to read:

(6) Specify any part of the information and data submitted which petitioner requests be withheld from public disclosure in accordance with Part 512 of this Chapter.

(2) Section 555.10(b) is revised to read:

(b) Except for the release of confidential information authorized by Part 512 of this Chapter, information made available for inspection under paragraph (a) shall not include materials not relevant to the petition for which confidentiality is requested and granted in accordance with sections 112, 113, and 158 of the Act (15 U.S.C. 1401, 1402, and 1418) and section 552(b) of Title 5 of the United States Code.

Issued on December 30, 1980.

Joan Claybrook
Administrator

46 F.R. 2063
January 8, 1981

PREAMBLE TO AN AMENDMENT TO PART 537

Automotive Fuel Economy; Semi-annual Reports (Docket No. FE 77-03; Notice 7)

ACTION: Final rule.

SUMMARY: This notice amends the agency's automotive fuel economy reporting requirements by deleting certain information submission requirements. The deleted requirements applied to information the agency has determined to be no longer necessary for it to monitor the automotive industry's progress in achieving higher levels of average fuel economy. The agency is adopting this amendment as proposed, to permit the vehicle manufacturers to take advantage of the reduced requirements in the next reports required to be submitted. However, the agency will continue to evaluate comments responding to the request in its proposal regarding suggestions for further reductions in the requirements.

DATE: This action is effective on August 12, 1982.

SUPPLEMENTARY INFORMATION: Section 505 of the Motor Vehicle Information and Cost Savings Act requires each automobile manufacturer (other than those small manufacturers which have been granted an alternative fuel economy standard under section 502(c) of the Act) to submit to the agency semi-annual reports relating to that manufacturer's efforts to comply with average fuel economy standards. The Act specifies that each report must contain a statement as to whether the manufacturer will comply with average fuel economy standards for that year, a plan describing the steps the manufacturer has taken or will take to comply, and any other information the agency may require. Whenever a manufacturer determines that a plan it submitted in one of its reports is no longer adequate to assure compliance, it must submit a revised plan. Section 505(c) of the Act also authorizes the agency to require further reports to be submitted, as necessary for the agency to carry out its responsibilities under the Act. The Act requires the agency to issue rules establishing the form and content of all reports.

On December 12, 1977, in 42 F.R. 62374, the agency established form and content requirements for fuel economy reports. Those requirements were designed to elicit information necessary to monitor compliance with standards and to assist the agency in its standard-setting activities for passenger automobiles and light trucks. However, in light of the agency's determination that, for the foreseeable future, market forces appear to provide adequate incentive for the production of and demand for fuel efficient vehicles (see 46 F.R. 22243, April 16, 1981) and that the establishment of additional passenger automobile fuel economy standards is therefore unnecessary, some of the information required to be submitted in fuel economy reports was found to be no longer needed by the agency. Therefore, on February 22, 1982, the agency proposed deleting portions of its fuel economy reporting requirements which were originally established principally to assist future rulemaking. See 47 F.R. 7706.

The agency's December 1977 rule required the submission of five general categories of information: (1) the manufacturer's projected average fuel economy; (2) the projected fuel economy and sales for each model type; (3) a variety of technical and sales data for each vehicle configuration; (4) a description of technology and sales changes from the preceding model year which increase the manufacturer's average fuel economy, and of changes made during the model year which will affect average fuel economy; and (5) a description of marketing measures the manufacturer expects to use to improve average fuel economy. The proposed

revisions to the reporting requirements would have required the submission of the detailed configuration data only once per year, instead of requiring it for each semi-annual report, and would have deleted the requirements for submission of sales and technology change information and information on marketing measures.

The agency received ten comments on the proposed changes, eight from vehicle manufacturers and two from consumer organizations. The vehicle manufacturers generally supported the proposed reductions and suggested additional areas where information submission requirements might be reduced. The consumer organizations opposed the reductions, arguing that the agency should continue to establish fuel economy standards for each model year and that even if the agency merely monitors the need for future standards, much of the no-longer-required information would still be highly useful.

For the reasons set forth below, the agency disagrees with the arguments set forth by the two consumer groups. As an immediate measure, the agency is promulgating an amended reporting rule identical to the proposed amendment. This step was suggested by Ford Motor Company in its NPRM comments. Taking that action will permit a less stringent rule to be in effect in time for the preparation and submission of future reports. The agency will review the comments by the vehicle manufacturers to determine whether additional reductions in the reporting requirements are appropriate and consistent with the agency's statutory obligations.

The Environmental Policy Institute and the Center for Auto Safety both argued that the agency should not adopt the proposed modifications to the reporting rule because the agency should proceed to establish fuel economy standards for model years after 1985. Under section 502(a)(1) of the Act, Congress established an average fuel economy standard of 27.5 miles per gallon for passenger automobiles manufactured in the 1985 model year and thereafter. However, under section 502(a)(4) of the Act, the agency is authorized to amend the standard for 1985 or any model year thereafter to a level determined to be the maximum feasible average fuel economy level. The agency's April 16 notice announced the agency's determination that it is not now necessary to exercise the discretionary authority granted under section 502(a)(4) of the Act to issue additional passenger automobile standards, given current high gasoline prices and demand for fuel efficient vehicles and announced plans of the vehicle manufacturers to produce efficient vehicles. The agency reaffirmed that position in denying a petition from the Center for Auto Safety to commence rulemaking on such standards (see 46 F.R. 48383, October 1, 1981) and still remains of that view.

The standards-related information previously required to be submitted in the semi-annual reports and now being deleted was useful when the agency engaged in major fuel economy standard setting proceedings virtually every year, as it did from 1976-1980. However, even for those proceedings, it was necessary to supplement those reports with some detailed information obtained through the use of questionnaires and special orders to the manufacturers. The agency simply sees no need for the continued submission of certain information semi-annually. If changed circumstances create a need in the future for the issuance of additional passenger car standards, for example, the agency could obtain the necessary information in the same manner as in the earlier proceedings, i.e., through the use of questionnaires and special orders.

The Center for Auto Safety also argued that the fuel economy reporting rule should not be modified, since the agency still needs all the previously required data to fulfill its stated intent of monitoring the actions of the manufacturers in producing and marketing fuel efficient vehicles, as well as consumer demand for such vehicles. The agency disagrees. Long term trends in automotive fuel efficiency can be ascertained with less detailed and less frequently submitted information than is necessary to establish standards which must be enforced to the nearest 0.1 mile per gallon. Information on vehicle model types, along with the annual updates of more detailed configuration data, provides adequate information to assess such trends. Marketing measure information was more useful in times when manufacturers might have needed to use such measures to raise their average fuel economy levels enough to comply with applicable fuel economy standards. In the current market

situation, compliance with standards is typically assured by comfortable margins. Thus, marketing measures are targeted to problems associated with inventories of over-stocked vehicles. With regard to technological change information, this material is typically available to the agency in the trade press. It can also be derived from the configuration and model type data in many cases. Finally, running changes are generally minor, unplanned product revisions caused by parts shortages or driveability complaints by consumers, such as a change in tire type or in carburetor calibration. Major actions which could significantly affect fuel economy are rarely implemented as running changes.

The agency finds good cause for making this amendment effective immediately, since it would permit the manufacturers to avoid devoting resources to the preparation of information which the agency has determined to be of little value in carrying out its responsibilities. The immediate effective date is authorized under the Administrative Procedure Act for that reason and, since this rulemaking "relieves a restriction," within the meaning of 5 U.S.C. 553(d).

NHTSA has determined that this proceeding does not involve a major rule within the meaning of section 1, paragraph (b), of Executive Order 12291 because it is not likely to have an effect on the economy of $100 million or more, to result in a major increase in costs or prices, or to have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States firms to meet foreign competition. This action is also not significant for purposes of Department of Transportation procedures for internal review of regulatory actions. A regulatory evaluation of this action has been prepared and has been placed in the rulemaking docket for this notice. Copies of that document can be obtained from the agency's Docket Section at the address stated above.

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact of this rulemaking action on small entities. The agency certifies that this action will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis will not be required for this action. The agency has concluded that few, if any, manufacturers of passenger cars are small entities and that, in any event, any effect on such manufacturers will be positive in terms of reduced costs. NHTSA has also concluded that the environmental consequences of this action will be of such limited scope that they clearly will not have a significant effect on the quality of the human environment.

Issued on August 5, 1982.

Raymond A. Peck, Jr.
Administrator

47 F.R. 34985
August 12, 1982

PART 537—AUTOMOTIVE FUEL ECONOMY REPORTS

AUTHORITY: Section 9, Pub. L. 89-670, 80 Stat. 931 (49 U.S.C. 1657); Section 301, Pub. L. 94-163, 89 Stat. 901 (15 U.S.C. 2005); delegation of authority at 41 FR 25015, June 22, 1976.

§ 537.1 Scope.

This part establishes requirements for automobile manufacturers to submit reports to the National Highway Traffic Safety Administration regarding their efforts to improve automotive fuel economy.

§ 537.2 Purpose.

The purpose of this part is to obtain information to aid the National Highway Traffic Safety Administration in evaluating automobile manufacturers' plans for complying with average fuel economy standards and in preparing an annual review of the average fuel economy standards.

§ 537.3 Applicability.

This part applies to automobile manufacturers.

§ 537.4 Definitions.

(a) *Statutory terms.* (1) The terms "average fuel economy standard," "fuel," "manufacture," and "model year" are used as defined in section 501 of the Act.

(2) The term "manufacturer" is used as defined in section 501 of the Act and in accordance with Part 529 of this chapter.

(3) The terms "average fuel economy," "fuel economy," and "model type" are used as defined in Subpart A of 40 CFR Part 600.

(4) The terms "automobile," "automobile capable of off-highway operation" and "passenger automobile" are used as defined in section 501 of the Act and in accordance with the determinations in Part 523 of this chapter.

(b) *Other terms.* (1) The term "loaded vehicle weight" is used as defined in Subpart A of 40 CFR Part 86.

(2) The terms "axle ratio," "base level," "body style," "car line," "city fuel economy," "combined fuel economy," "engine code," "gross vehicle weight," "highway fuel economy," "inertia weight," "transmission class," and "vehicle configuration" are used as defined in Subpart A of 40 CFR Part 600.

(3) The term "nonpassenger automobile" is used as defined in Part 523 of this chapter and in accordance with determinations in that part.

(4) The terms "approach angle," "axle clearance," "breakover angle," "cargo carrying volume," "departure angle," "passenger carrying volume," "running clearance," and "temporary living quarters" are used as defined in Part 523 of this chapter.

(5) The term "incomplete automobile manufacturer" is used as defined in Part 529 of this chapter.

(6) The term "designated seating position" is used as defined in § 571.3 of this chapter.

(7) As used in this part, unless otherwise required by the context:

(i) "Act means the Motor Vehicle Information and Cost Savings Act (Pub. L. 92–513), as amended by the Energy Policy and Conservation Act (Pub. L. 94–163).

(ii) "Administrator" means the Administrator of the National Highway Traffic Safety Administration or the Administrator's delegate.

(iii) "Current model year" means:

(A) In the case of a pre-model year report, the full model year immediately following the period during which that report is required by § 537.5(b) to be submitted.

(B) In the case of a mid-model year report, the model year during which that report is required by § 537.5(b) to be submitted.

(iv) "Average" means a production-weighted average.

(v) "Sales mix" means the number of automobiles, and the percentage of a manufacturer's annual total production of automobiles, in each inertia weight class, which the manufacturer plans to produce in a specified model year.

(vi) "Total drive ratio" means the ratio of an automobile's engine rotational speed (in revolutions per minute) to the automobile's forward speed (in miles per hour).

§ 537.5 General requirements for reports.

(a) For each current model year, each manufacturer shall submit a pre-model year report, a mid-model year report, and, as required by § 537.8, supplementary reports.

(b) (1) The pre-model year report required by this part for each current model year must be submitted not more than 30 days and not less than 1 day before the 1st day of that model year.

(2) The mid-model year report required by this part for each current model year must be submitted not earlier than the 180th day and not later than the 209th day of that model year.

(3) Each supplementary report must be submitted in accordance with § 537.8(c).

(c) Each report required by this part must:

(1) Identify the report as a pre-model year report, mid-model year report, or supplementary report, as appropriate;

(2) Identify the manufacturer submitting the report;

(3) State the full name, title, and address of the official responsible for preparing the report;

(4) Be submitted in 10 copies to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590;

(5) Identify the current model year;

(6) Be written in the English language; and

[(7) Specify any part of the information or data in the report that the manufacturer believes should be withheld from public disclosure as trade secret or other confidential business information in accordance with Part 512 of this Chapter. (46 F.R. 2063—January 8, 1981. Effective: April 9, 1981)]

(d) Each report required by this part must be based upon all information and data available to the manufacturer 30 days before the report is submitted to the Administrator.

(e) (1) Any manufacturer may provide any item of information or data required by § 537.7 (e) as an estimate, or as a set or range of alternatives.

(2) Any manufacturer submitting estimates, or sets or ranges of alternatives as permitted by paragraph (e) (1) of this section, shall state:

(i) The method for determining them;

(ii) The major uncertainties associated with them; and

(iii) The most likely value in the case of an estimate and the most likely alternative in the case of a set or range of alternatives.

§ 537.6 General content of reports.

(a) *Pre-model year and mid-model year reports.* Except as provided in paragraph (c) of this section, the pre-model year report and the mid-model year report for model year 1978 and each model year thereafter must contain the information required by § 537.7(a).

(b) *Supplementary report.* Each supplementary report must contain the information required by §537.8(b) (1), (2), or (3), as appropriate.

(c) *Exceptions.*

(1) The pre-model year report for model year 1978 is required to contain only the information specified in § 537.7(b) and (c) (1)–(4) for passenger automobiles and a description of how the manufacturer will use marketing measures to aid in achieving the sales mix of passenger automobiles projected for that model year.

(2) The mid-model year report for model year 1978 is required to contain only the information specified in § 537.7(b)-(e) for passenger automobiles.

(3) The pre-model year report is not required to contain the information specified in § 537.7(b), (c) (1) and (2), or (c) (4) (xiv)–(xvi) and (xxiv) if that report is required to be submitted before the fifth day after the date by which the manufacturer must submit the preliminary determination of its average fuel economy for the current model year to the Environmental Protection Agency under 40 CFR 600.506. Each manufacturer that does not include information under the exception in the immediately preceding sentence shall indicate in its report the date by which it must submit that preliminary determination.

(4) The pre-model year report and the mid-model year report submitted by an incomplete automobile manufacturer for any model year are not required to contain the information specified in § 537.7(c) (4) (xviii)-(xxii) and (c) (5). The information provided by the incomplete automobile manufacturer under § 537.7(c) and (e) shall be according to base level instead of model type or carline.

§ 537.7 Pre-model year and mid-model year reports.

(a) (1) Provide the information required by paragraphs (b)-(e) of this section for the manufacturer's passenger automobiles for the current model year.

(2) After providing the information required by paragraph (a) (1) of this section, provide the information required by paragraphs (b)-(e) of this section for each class, as specified in Part 533 of this chapter, of the manufacturer's non-passenger automobiles for the current model year.

(b) (1) *Projected average fuel economy.* State the projected average fuel economy for the manufacturer's automobiles determined in accordance with § 537.9 and based upon the fuel economy values and projected sales figures provided under paragraph (c) (2) of this section.

(2) State the projected final average fuel economy that the manufacturer anticipates having if the changes described under paragraph (d) (1) (ii) will cause that average to be different from the average fuel economy projected under paragraph (b) (1) of this section.

(3) State whether the manufacturer believes that the projection it provides under paragraph (b) (2) of this section, or if it does not provide an average under that paragraph, the projection it provides under paragraph (b) (1) of this section, sufficiently represents the manufacturer's average fuel economy for the current model year for the purposes of the Act. In the case of a manufacturer that believes that the projection is not sufficiently representative for those purposes, state the specific nature of and reason for the insufficiency and the specific additional testing for derivation of fuel economy values by analytical methods believed by the manufacturer necessary to eliminate the insufficiency and any plans of the manufacturer to undertake that testing or derivation voluntarily and submit the resulting data to the Environmental Protection Agency under 40 CFR 600.509.

(c) *Model type fuel economy and technical information.* (1) For each model type of the manufacturer's automobiles, provide the information specified in paragraph (c)(2) of this section in tabular form. List the model types in order of increasing average inertia weight from top to bottom down the left side of the table and list the information categories in the order specified in paragraph (c)(2) of this section from left to right across the top of the table.

(2)(i) City fuel economy;

(ii) Highway fuel economy;

(iii) Combined fuel economy; and

(iv) Projected sales for the current model year.

(3) For each vehicle configuration whose fuel economy was used to calculate the fuel economy values for a model type under paragraph (c)(2) of this section, provide the information specified in paragraph (c)(4) of this section in tabular form. List the vehicle configurations, by model type in the order listed under paragraph (c)(2) of this section, from top to bottom down the left of the table and list the information categories across the top of the table from left to right in the order specified in paragraph (c)(4) of this section.

(4)(i) Loaded vehicle weight;

(ii) Inertia weight;

(iii) Cubic inch displacement of engine;

(iv) Number of engine cylinders;

(v) SAE net horsepower;

(vi) Engine code;

(vii) Fuel system (number of carburetor barrels or, if fuel injection is used, so indicate);

(viii) Emission control system;

(ix) Transmission class;

(x) Number of forward speeds;

(xi) Existence of overdrive (indicate yes or no);

(xii) Total drive ratio;

(xiii) Axle ratio;

(xiv) City fuel economy;

(xv) Highway fuel economy;

(xvi) Combined fuel economy;

(xvii) Projected sales for the current model year;

(xviii)(A) In the case of passenger automobiles, interior volume index, determined in accordance with Subpart D of 40 CFR Part 600;

(B) In the case of nonpassenger automobiles:

(1) Passenger-carrying volume, and

(2) Cargo-carrying volume;

(xix) Number of designated seating positions;

(xx) Performance of the function described in § 523.5(a)(5) of this chapter (indicate yes or no);

(xxi) Existence of temporary living quarters (indicate yes or no);

(xxii) Body style;

(xxiii) Frontal area;

(xxiv) Road load power at 50 miles per hour, if determined by the manufacturer for purposes other than compliance with this Part to differ from the road load setting prescribed in 40 CFR § 86.177-11(d);

(xxv) Optional equipment which the manufacturer is required under 40 CFR Parts 86 and 600 to have actually installed on the vehicle configuration, or the weight of which must be included in the curb weight computation for the vehicle configuration, for fuel economy testing purposes.

(5) For each model type of automobile which is classified as an automobile capable of off-highway operation under Part 523 of this chapter, provide the following data:

(i) Approach angle;

(ii) Departure angle;

(iii) Breakover angle;

(iv) Axle clearance;

(v) Minimum running clearance; and

(vi) Existence of 4-wheel drive (indicate yes or no).

(6) The fuel economy values provided under paragraphs (c)(2) and (4) of this section shall be determined in accordance with § 537.9.

(d) *Automobile technology and sales mix changes.* (1) For each inertia weight class of the manufacturer's automobiles—

(i) Describe the differences between the technology of its automobiles for the current model year and of its automobiles for the immediately preceding model year that result in its automobiles for the current model year

having higher fuel economy than its automobiles for the immediately preceding model year.

(ii) Describe any running changes that the manufacturer intends to make on its automobiles for the current model year that will affect the fuel economy of those automobiles.

(2) Describe any differences in the projected sales mixes of the inertia weight classes of the manufacturer's automobiles for the current model year and of the manufacturer's automobiles for the immediately preceding model year that result in its automobiles for the current model year having higher average fuel economy than its automobiles for the immediately preceding model year.

(e) *Marketing measures.* (1) Describe and quantify the manufacturer's advertising and automobile base price and equipment option pricing that will tend to aid the manufacturer in improving the average fuel economy of its automobiles for the current model year.

(2) Describe and quantify the manufacturer's dealer incentive programs that have been or will be implemented during the current model year for each carline of the manufacturer's automobiles.

(3) State the total number of dollars spent and to be spent on advertising for the current model year for each carline of the manufacturer's automobiles and, to the extent available, for each model type in that carline.

§ 537.8 Supplementary reports.

(a) (1) Except as provided in paragraph (d) of this section, each manufacturer whose most recently submitted semiannual report contained an average fuel economy projection under § 537.7 (b) (2) or, if no average fuel economy was projected under that section, under § 537.7(b) (1), that was not less than the applicable average fuel economy standard and who now projects an average fuel economy which is less than the applicable standard, shall file a supplementary report containing the information specified in paragraph (b) (1) of this section.

(2) Except as provided in paragraph (d) of this section, each manufacturer that determines that its average fuel economy for the current model year as projected under § 537.7 (b) (2) or, if no average fuel economy was projected under that section, as projected under § 537.7(b) (1), is less representative than the manufacturer previously reported it to be under § 537.7(b) (3), this section, or both, shall file a supplementary report containing the information specified in paragraph (b) (2) of this section.

(3) Each manufacturer whose pre-model year report omits any of the information specified in § 537.7(b), (c) (1) and (2), or (c) (4) (xiv)-(xvi) and (xxiv) shall file a supplementary report containing the information specified in paragraph (b) (3) of this section.

(b) (1) The supplementary report required by paragraph (a) (1) of this section must contain:

(i) Such revisions of and additions to the information previously submitted by the manufacturer under this part regarding the automobiles whose projected average fuel economy has decreased as specified in paragraph (a) (1) of this section as are necessary—

(A) To reflect the decrease and its cause;

(B) To describe any expanded use or introduction of technological improvements, production mix changes and marketing measures that the manufacturer intends to make to comply with the applicable average fuel economy standard; and

(C) To indicate a new projected average fuel economy based upon these additional measures.

(ii) An explanation of the cause of the decrease in average fuel economy that led to the manufacturer's having to submit the supplementary report required by paragraph (a) (1) of this section.

(2) The supplementary report required by paragraph (a) (2) of this section must contain—

(i) A statement of the specific nature of and reason for the insufficiency in the representativeness of the projected average fuel economy;

(ii) A statement of specific additional testing or derivation of fuel economy values by analytical methods believed by the manufacturer necessary to eliminate the insufficiency; and

(iii) A description of any plans of the manufacturer to undertake that testing or derivation voluntarily and submit the resulting data to the Environmental Protection Agency under 40 CFR 600.509.

(3) The supplementary report required by paragraph (a) (3) of this section must contain:

(i) All of the information omitted from the pre-model year report under § 537.6(c) (2); and

(ii) Such revisions of and additions to the information submitted by the manufacturer in its pre-model year report regarding the automobiles produced during the current model year as are necessary to reflect the information provided under paragraph (b) (3) (i) of this section.

(c) (1) Each report required by paragraph (a) (1) or (2) of this section must be submitted in accordance with § 537.5(c) not more than 45 days after the date on which the manufacturer determined, or could have determined with reasonable diligence, that a report is required under paragraph (a) (1) or (2) of this section.

(2) Each report required by paragraph (a) (3) of this section must be submitted in accordance with § 537.(c) not later than five days after the day by which the manufacturer is required to submit a preliminary calculation of its average fuel economy for the current model year to the Environmental Protection Agency under 40 CFR 600.506

(d) A supplementary report is not required to be submitted by the manufacturer under paragraphs (a) (1) or (2) of this section:

(1) With respect to information submitted under this Part before the most recent semi-annual report submitted by the manufacturer under this Part, or

(2) When the date specified in paragraph (c) of this section occurs:

(i) During the 60-day period immediately preceding the day by which the mid-model year report for the current model year must be submitted by the manufacturer under this Part, or

(ii) After the day by which the pre-model year report for the model year immediately following the current model year must be submitted by the manufacturer under this Part.

§ 537.9 Determination of fuel economy values and average fuel economy.

(a) *Vehicle configuration fuel economy values.*

(1) For each vehicle configuration for which a fuel economy value is required under paragraph (c) of this section and has been determined and approved under 40 CFR Part 600, the manufacturer shall submit that fuel economy value.

(2) For each vehicle configuration specified in paragraph (a) (1) of this section for which a fuel economy value approved under 40 CFR 600 does not exist, but for which a fuel economy value determined under that Part exists, the manufacturer shall submit that fuel economy value.

(3) For each vehicle configuration specified in paragraph (a) (1) of this section for which a fuel economy value has been neither determined nor approved under 40 CFR Part 600, the manufacturer shall submit a fuel economy value based on tests or analyses comparable to those prescribed or permitted under 40 CFR Part 600 and a description of the test procedures or analytical methods used.

(b) *Base level and model type fuel economy values.*

For each base level and model type, the manufacturer shall submit a fuel economy value based on values submitted under paragraph (a) of this section and calculated in the same manner as base level and model type fuel economy values are calculated for use under Subpart F of 40 CFR Part 600.

(c) *Average fuel economy.*

Average fuel economy must be based upon fuel economy values calculated under paragraph (b) of this section for each model type and must be calculated in accordance with 40 CFR 600.506, using the configuration specified in 40 CFR 600.506(a) (2), except that fuel economy values

for running changes and for new base levels are required only for those changes made or base levels added before the average fuel economy is required to be submitted under this Part.

§ 537.10 Incorporation by reference.

(a) A manufacturer may incorporate by reference in a report required by this Part any document other than a report, petition, or application, or portion thereof submitted to any Federal department or agency more than two model years before the current model year.

(b) A manufacturer that incorporates by reference a document not previously submitted to the National Highway Traffic Safety Administration shall append that document to the report.

(c) A manufacturer that incorporates by reference a document shall clearly identify the document, and, in the case of a document previously submitted to the National Highway Traffic Safety Administration, indicate the date on which, and the person by whom, the document was submitted to this agency.

§ 537.11 Public inspection of information.

[(a) Except as provided in paragraph (b), any person may inspect the information and data submitted by a manufacturer under this part in the docket section of the National Highway Traffic Safety Administration. Any person may obtain copies of the information available for inspection under this section in accordance with the regulations of the Secretary of Transportation in Part 7 of this title.

(b) Except for the release of confidential information authorized by section 505 of the Act and Part 512 of this Chapter, information made available under paragraph (a) for public inspection does not include information for which confidentiality is requested under § 537.5(c)(7) and is granted in accordance with Part 512 of this Chapter, section 505 of the Act, and section 552(b) of Title 5 of the United States Code. (46 F.R. 2063—January 8, 1981. Effective: April 9, 1981)]

PREAMBLE TO PART 538
Minimum Driving Range for Dual Energy and Natural Gas Dual Energy Passenger Cars

(Docket No. 89-09; Notice 3)
RIN 2127-AD02

ACTION: Final rule.

SUMMARY: This rule establishes minimum driving range standards for the operation of dual energy and natural gas dual energy passenger automobiles on non-petroleum fuel. Promulgation of minimum driving range standards for these vehicles is required by the 1988 amendments to the Motor Vehicle Information and Cost Savings Act. Dual energy passenger automobiles are those capable of operating on alcohol and either gasoline or diesel fuel, and natural gas dual energy passenger automobiles are those capable of operating on natural gas and either gasoline or diesel fuel. The minimum range for dual energy passenger automobiles is 200 miles, and the minimum range for natural gas dual energy passenger automobiles is 100 miles. A new passenger automobile which meets the applicable range and other criteria established by the 1988 amendments qualifies to have its fuel economy calculated according to a special procedure. Under that procedure, a relatively high fuel economy figure is assigned the vehicle thus encouraging its production as a way of facilitating a manufacturer's compliance with the Corporate Average Fuel Economy Standards.

This notice also establishes procedures for manufacturers to follow in petitioning the agency to establish a lower driving range for a particular model or models of natural gas dual energy passenger automobiles and for the agency to follow in establishing such lower ranges. It also enables the agency to set lower ranges for specific models of natural gas dual energy automobiles on its own initiative.

This rulemaking was initiated on June 15, 1989 (54 FR 25539), with the publication of a request for comments on the minimum driving range criteria. A notice of proposed rulemaking was published on February 16, 1990 (55 FR 5633).

DATES: These requirements are effective May 29, 1990.

SUPPLEMENTARY INFORMATION: This final rule establishes minimum driving range requirements for dual energy and natural gas dual energy passenger automobiles. Dual energy passenger automobiles are those which are capable of operation on alcohol and gasoline or diesel fuel. Natural gas (NG) dual energy passenger automobiles are those which are capable of operation on natural gas and either gasoline or diesel fuel. This preamble will use these terms to distinguish between these two types of vehicles. The term "dual fuel" vehicles will be used to refer collectively to both types of vehicles.

1. *Statutory Background*

Section 6 of the Alternative Motor Fuels Act of 1988 (Pub. L. 100–494, October 14, 1988) amended the fuel economy provisions of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act) by adding a new section 513, containing incentives for the manufacture of vehicles designed to operate on alternative motor fuels, including dual fuel vehicles. Section 513 provides, inter alia, that the Secretary of Transportation must establish, by April 16, 1990, two minimum driving ranges, one for dual energy automobiles when operating on alcohol, and the other for natural gas dual energy automobiles when operating on natural gas. In establishing the driving ranges, the Secretary is required to consider the purposes of the Alternative Motor Fuels Act, consumer acceptability, economic practicability, technology, environmental impacts, safety, driveability, performance, and any other factors the Secretary deems relevant.

The Act and its legislative history make clear that the driving ranges are to be low enough to encourage the production of dual fuel passenger automobiles, yet not so low that motorists would be discouraged by a low driving range from actually fueling their vehicles with the alternate fuels. Section 513(h)(2)(C) provides that the range for dual energy automobiles may not be less than 200 miles. Section 513(h)(2)(B) allows passenger automobile manufacturers to petition the agency to set a lower range for a particular model or models than the general range established by the agency for all models. However, the range may not be reduced to less than 200 miles for any model of dual energy automobile.

Neither minimum driving range is a mandatory

requirement, but one of several statutory criteria which a new passenger automobile must satisfy in order to fall within the definition in section 513(h) for dual energy or natural gas dual energy automobiles. The other criteria which a passenger automobile must meet in order to be considered a dual energy automobile are that it be an automobile:

"(i) which is capable of operating on alcohol and on gasoline or diesel fuel;

(ii) which provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the Federal Government, while operating on alcohol as it does while operating on gasoline or diesel fuel; (and)

(iii) which, for model years 1993 through 1995, and, if the Administrator of the Environmental Protection Agency determines that an extension of this clause is warranted, for an additional period ending not later than the end of the last model year for which section 513(b) and (d) applies, provides equal or superior energy efficiency, as calculated during fuel economy testing for the Federal Government, while operating on a mixture of alcohol and gasoline or diesel fuel containing exactly 50 percent gasoline or diesel fuel as it does while operating on gasoline or diesel fuel[.]"

The other criteria which a passenger automobile must meet in order to be considered a natural gas dual energy automobile are that it be an automobile:

"(i) which is capable of operating on natural gas and on gasoline or diesel fuel; (and)

(ii) which provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the Federal Government, while operating on natural gas as it does while operating on gasoline or diesel fuel[.]"

By meeting these criteria, dual fuel automobiles qualify for special treatment in the calculation of their fuel economy for purposes of their manufacturers' compliance with the Corporate Average Fuel Economy Standards starting in MY 1993. The fuel economy of a dual energy passenger automobile would be the average of two values, the automobile's fuel economy when operating on gasoline or diesel fuel, and its fuel economy when operating on alcohol. Section 513(a) provides that, for the purposes of calculating that latter value, a gallon of alcohol is considered to contain 0.15 gallons of gasoline or diesel fuel. Thus, an automobile that runs 20 miles on a gallon of alcohol would be considered to have a fuel economy of 133 miles per gallon ((1/.15) × (20)) when operating on alcohol.

Similarly, the fuel economy of a natural gas dual energy passenger automobile would be the average of two values, the automobile's fuel economy when operating on gasoline or diesel fuel, and its fuel economy when operating on natural gas. Section 513(c) provides that, for the purposes of calculating the fuel economy of an automobile while operating on natural gas, 100 cubic feet of natural gas is considered to contain 0.823 gallons equivalent of natural gas and a gallon equivalent of natural gas is considered to contain 0.15 gallons of gasoline or diesel fuel.

Manufacturers can take advantage of these special calculation procedures in model years 1993 through 2004. The agency is authorized to extend this period up to an additional four years if it issues a rule for that purpose before January 1, 2002.

Section 513(g) limits the CAFE benefit that a manufacturer can receive in any single model year from producing automobiles that meet the above requirements. The total increase permitted in a manufacturer's Corporate Average Fuel Economy (CAFE) is 1.2 miles per gallon in any of model years 1993 through 2004 in which the manufacturer produced those automobiles and 0.9 miles per gallon in any of model years 2005 through 2008, if the Secretary determines that an extension of the provision beyond model year 2004 is warranted.

The agency notes that the statute does not require that all or even some minimum number or percentage of a manufacturer's passenger automobiles be capable of achieving the minimum driving ranges in order for any of its automobiles to qualify for the incentives. However, automobiles that do not meet the applicable minimum driving range do not qualify.

NHTSA concludes that the fuel economy value for each model type as determined using EPA test procedures is the appropriate measure for purposes of section 513. Sections 513(b) and (d) specify that the measurements are to be made under section 503(d). The latter provides that, except for the purposes of labeling under section 506, the procedures used shall be those "utilized by the EPA Administrator for model year 1975 . . . or procedures which yield comparable results."

2. *Regulatory Background*

As a first step in establishing minimum driving range criteria for dual fuel vehicles, NHTSA published a Request for Comments on June 15, 1989 (54 FR 25539). The notice asked several questions regarding dual energy passenger automobiles and natural gas dual energy passenger automobiles relative to the following criteria: consumer acceptability; economic practicability; technology; environmental impacts; safety; driveability; and performance.

Comments were received from several manufacturers and natural gas associations. Based largely on information obtained from these comments,

NHTSA published a notice of proposed rulemaking (NPRM) on February 16, 1990 (55 FR 5633). This notice proposed a minimum driving range requirement for dual energy passenger automobiles of 200 miles on one tank of alcohol fuel in order to be treated as a dual energy automobile, and a minimum range of 100 miles between refueling stops for a passenger automobile operating on natural gas to be treated as a NG dual energy automobile and thus qualify for the incentive provided in section 513. The NPRM also proposed procedures to enable manufacturers to petition the agency to set a lower minimum standard for specific models of NG dual energy vehicles unable to comply with the generally applicable standard. These procedures would not be available for dual energy vehicles since the proposed generally applicable standard was set at the statutory minimum of 200 miles.

As stated in the NPRM, the agency tentatively concluded these levels satisfy the twin goals of being low enough to encourage the production of dual fuel passenger automobiles, yet high enough to ensure that motorists not be discouraged from actually fueling and driving those automobiles on the alternative fuels.

3. *Dual Energy Driving Range Requirements*

NHTSA received comments on the NPRM from General Motors (GM), Ford, Chrysler, Nissan, Volvo, the Center for Auto Safety (CFAS), the National Automobile Dealers Association (NADA) and one individual commenter. GM, Ford, Chrysler, Nissan, Volvo, and CFAS supported the proposed 200 mile minimum range. NADA recommended a 250 mile minimum, while the individual commenter recommended a 275 mile minimum driving range.

In support of the 200 mile minimum, the manufacturers indicated that a minimum range above this level could result in the need for extensive modifications and redesign of vehicles. Volvo simply indicated that vehicle redesign would be necessary to accommodate the larger fuel tanks that would be required. GM stated that its current vehicles do not have unused space around the fuel tank, and that as a result, larger fuel tanks would require substantial redesign, consuming considerable engineering, tooling and testing resources. GM also indicated the redesign process would be costly, and could delay the introduction of dual energy vehicles. The company also noted that the increased cost and resulting price increase could discourage potential customers from purchasing the vehicles.

Chrysler stated that while minor increases in fuel tank capacity (1.5–2.0 gallons) could be accomplished for an estimated cost of $20–$25 per vehicle, more substantial increases would necessitate major design changes. Chrysler believes that a 5–10 percent increase beyond that stated above could add $75–$100 to the price of these cars. While not providing specific figures, Ford shared Chrysler's position that a slight increase in the tank capacity of some models may be possible at relatively low costs, but that significant redesign would be necessary to substantially increase capacity, and that the cost of doing so would impair the marketability of dual energy vehicles.

Ford also suggested that NHTSA revise §538.5 of the proposed rule to refer to "nominal usable fuel tank capacity" instead of "full tank capacity." The former has a common industry understanding, and is used in the manufacturers' applications to EPA for certification. It also takes into account the fact that certain areas within each tank design cannot be filled with fuel (e.g., areas above the filler inlet opening). NHTSA agrees that this term more accurately reflects usable capacity, and has revised the final rule accordingly.

Although CFAS supported the 200 mile range, its support is based on its general opposition to increased use of methanol as a motor fuel, and because of its opposition to the granting of CAFE credits to manufacturers of dual fuel vehicles. However, these issues are beyond the scope of this rulemaking. NHTSA notes, moreover, that the CAFE credits for manufacturers of dual fuel vehicles complying with the other requirements set out above are mandated by statute.

NADA supported a 250 mile range due to concerns about consumer acceptability. The Association believes that vehicles capable of only a 200 mile range will be unacceptable to consumers. In addition, NADA stated that the vast majority of MY 1989 passenger automobiles could achieve a 250 mile range, and that those vehicles which are likely candidates for conversion to dual energy vehicles, but cannot currently meet that criterion could be modified at a reasonable cost by MY 1993. NADA disagrees with NHTSA's assumption in the NPRM that the reduced range of dual energy vehicles would be offset by improved performance characteristics, because NADA believes this assumption is only valid if the alternative fuels are reasonably available.

The individual commenter recommended a 275 mile minimum range based upon marketing and geographical concerns. The commenter believes that a 200 mile range is not practical, and therefore is not marketable, and that minivans and other vehicles that blur the "conventional distinction between cars and trucks" will be the primary candidates for conversion to dual energy operation. The commenter maintains that these vehicles have greater fuel storage capacity. However, no data was supplied to support this contention. In addition, no information was provided to support the commenter's claim that 275 miles was an achievable range for the passenger

automobiles that are the subject of this rulemaking. NHTSA notes that under the Cost Savings Act, minivans and other "hybrid vehicles" are not considered "passenger automobiles," and are therefore not subject to the minimum driving range requirement or the CAFE incentives.

The commenter had other suggestions for improving the marketability of dual energy vehicles, including relaxing safety requirements. Those suggested actions are beyond the scope of this rulemaking.

The substantial majority of commenters supported NHTSA's proposed 200 mile minimum range for dual energy passenger automobiles. As noted above, the purpose behind the minimum range requirement is to encourage the manufacture and sale of dual energy vehicles. The agency believes that the range should be set at a level that would not impose unreasonable increased costs for fuel tank and structural changes in order to achieve that range. As pointed out by several commenters, these costs would be passed on in the form of higher vehicle prices to consumers, thereby affecting the competitiveness of these vehicles in the marketplace. NHTSA believes further that the range should be set at a level which gives the manufacturers broad flexibility in selecting the models to be offered with dual energy capability.

At the same time, NHTSA recognizes the importance of ensuring that the vehicles produced have a large enough range so as to be considered practical choices for consumers. It is likely that some consumers would reject a vehicle capable of only a 200 mile range.

However, since the range will be a minimum, not a maximum, and since consumer acceptability will be an important consideration of manufacturers in selecting which vehicles to offer with dual energy capability, the agency anticipates that the vast majority of dual energy vehicles offered for sale would likely be capable of driving ranges considerably higher than this minimum. As Ford noted in its response to the agency's Request for Comments, nearly 80 percent of its MY 1989 passenger fleet would be capable of achieving at least a 250 mile range if converted to dual energy operation. Likewise, GM noted that nearly 70 percent of its MY 1989 fleet would be above that figure. NHTSA believes that, instead of choosing to make all existing models available as dual energy models, manufacturers are likely to select those models capable of higher ranges as candidates for dual energy use. Consumers concerned about the range could choose those models. Moreover, since these vehicles have the potential to operate on alcohol, conventional fuels, or a combination of the two, consumers will always have the option of using conventional fuel in those instances where the reduced range is likely to create unusual problems (e.g., long distance travel through areas where alcohol fuels may not be easily available).

Based on its consideration of the available information, including the comments received and the factors set out in the Alternative Fuels Act, the agency concludes that 200 miles is an appropriate minimum driving range for dual energy passenger automobiles. The 200-mile range can be achieved without any increase in the size of existing fuel tanks, which would be used for both types of fuel. Thus, the agency believes the range is consistent with available technology.

Based on the comments received, NHTSA believes that setting a minimum driving range substantially higher than 200 miles would, in some instances, require fuel tanks that would be significantly larger than current tanks. In order to install a tank of that size, a manufacturer would have to redesign its automobiles. As noted in the manufacturer comments discussed above, the costs of doing so could be significant. In their comments, the manufacturers expressed a reluctance to redesign their automobiles and install larger tanks in order to achieve an alcohol driving range equivalent to that of a petroleum fuel passenger automobile. They stated that such a redesign could be extremely expensive and could make it necessary to recertify compliance with applicable Federal safety standards (e.g., FMVSS 301, Fuel System Integrity).

The 200 mile standard means that automobile manufacturers will not have to make compensatory design changes to ensure that the weight of a larger tank loaded to capacity with fuel would not adversely affect the braking, handling or performance of existing automobiles. A larger tank would exacerbate the variation in a vehicle's weight between the times that it has a full tank and the times that it has a nearly empty one. Manufacturers must design vehicles to take into account the effects which such variations in vehicle weight have on vehicle handling and braking. In addition, manufacturers would have to recertify that the vehicle, when loaded to its maximum weight, still meets all applicable safety standards.

Driving range for natural gas dual energy automobiles

The Alternative Fuels Act also requires that a minimum driving range be established for natural gas (NG) dual energy automobiles, although it does not specify that the range must equal or exceed some minimum value. The NPRM proposed a minimum range of 100 miles for NG dual energy automobiles.

GM, Ford, Chrysler, CFAS, NADA, the American Gas Association (AGA) and one individual commenter provided comments on the proposed range for NG dual energy vehicles.

GM suggested that the agency does not need to set a minimum range for NG dual energy automobiles at this time, but did not take issue with the 100 mile range coupled with the petition procedure which would enable manufacturers to petition for a lower minimum range for specific models of NG dual energy vehicles. The company pointed out that increasing the range of NG dual energy vehicles would be accomplished by using more or larger high pressure cylinders. This would result in increased costs and less storage space, as the cylinders are typically located in the trunk. GM is also concerned about the impact on driveability and potential loss of fuel economy from additional gas cylinders.

NHTSA notes that it has no discretion as to whether to set a minimum range for NG dual energy vehicles. Such a range is explicitly required by section 513(h)(2)(A) of the Cost Savings Act. The agency agrees that increasing the driving range of NG dual energy vehicles by increasing fuel storage space can have negative impacts on driveability and fuel economy.

Ford and Chrysler both supported the proposed range for NG dual energy vehicles, but both noted that they did not have a great deal of information on these vehicles. Ford emphasized that the costs of conversion to NG dual energy vehicles are very preliminary, and are likely to exceed by several times the incremental costs mentioned in the NPRM.

The AGA supported the proposed minimum range, and stated that the natural gas industry has concluded that the most cost effective current target for natural gas use is the fleet vehicle that returns to a central refueling station after each shift. AGA emphasized that it views NG dual energy propulsion as a technology "bridge" between current technology and improved future technology.

In its comments, the Association stated that since the targeted vehicles are those with access to a centralized refueling facility, they need not exceed the driving ranges that are now attained with natural gas conversion equipment now in use. The comments did not specify what this range is. Another consideration raised by the AGA concerned the use of NG dual energy propulsion in utility vehicle fleets. The AGA stated that these vehicles are frequently used to provide power for equipment, lighting and communications at service locations, and that this prolonged idling will reduce the effective driving range of these vehicles. However, NHTSA notes that the vehicles used in these applications are not typically passenger automobiles; rather, they are light trucks or MPVs which are not subject to this rulemaking.

NADA concurred that NG dual energy vehicles are likely to be used primarily in fleet service, with centralized refueling facilities, but did not express an opinion on the proposed minimum range.

CFAS recommended that the minimum range be set at 200 miles or slightly lower, because it believes a 100 mile range is impractical even for fleet applications, as vehicles would be unable to travel more than 50 miles away from refueling facilities. While CFAS says that direct use of natural gas is considerably more efficient than the use of natural gas to produce methanol, and that natural gas has environmental benefits, it opposes encouraging the use of natural gas through the granting of CAFE credit. CFAS believes it is inappropriate for manufacturers to receive this credit for manufacturing a car that is likely to see little use with natural gas.

CFAS provided no information to support its recommendation of a 200 mile range as a practical range. Based on the information available to it, NHTSA believes that a minimum range at that level would be viewed as impractical by manufacturers and would serve to discourage the production of NG dual energy vehicles. While CFAS's objections to the incentives chosen by Congress to encourage the use of alternative fuels are beyond the scope of this rulemaking, NHTSA notes that it is unlikely that consumers would be willing to pay the considerable increased costs for a NG dual energy automobile unless they actually intended to operate it on natural gas. NHTSA thus disagrees with the group's position that manufacturers will, in effect be receiving a CAFE "bonus" for producing vehicles that are unlikely to be operated on natural gas.

The individual commenter recommended that the minimum range for NG dual energy vehicles be set at 200 miles for the same reasons that he recommended a higher range for dual energy vehicles. These are discussed above. Like CFAS, he provided no information to support his contention that such a range is achievable. NHTSA disagrees with this recommendation for the reasons stated above.

NHTSA believes that a 100-mile range will not lead to the production of vehicles with so low a natural gas operating range that it would impede the development and sale of natural gas dual energy vehicles. The agency notes that a natural gas dual energy vehicle still has the gasoline fuel tank as a range extender. In addition, the 100-mile criterion represents a minimum range that would likely be exceeded by vehicle manufacturers. Market forces will assure that vehicles will not be produced unless purchasers are satisfied with their capabilities.

Based on its consideration of the information available, including the comments discussed above,

and the factors set forth in the Alternative Motor Fuels Act, the agency concludes that NG dual energy passenger automobiles can achieve a minimum driving range of 100 miles while operating on natural gas.

On average, the cost of natural gas fuel tanks needed to achieve a 100 mile range would be from $386–$579, depending on design and construction material.

In order to achieve a higher range, vehicles would have to be equipped with additional storage tanks. Doing this would pose significant problems since weight and available space are limiting factors. As noted above, for the 100-mile range, the additional tanks would cost $386 to $579 and add $46 to lifetime fuel costs due to the added weight. In addition, these tanks would reduce available trunk space by about 3.4 cubic feet. The added weight would have a negative impact on vehicle performance and driveability.

The agency believes that the 100 mile range is sufficient to meet the needs of the likely purchasers of natural gas dual energy automobiles. The agency agrees with the commenters that suggest the most likely passenger automobiles that would be converted to burn natural gas are fleet passenger automobiles and taxis because of their high annual fuel consumption and access to central company-owned refueling facilities. Access to such facilities would enable these companies to accommodate the range established by this rule. This range might be less adequate for private owners of natural gas passenger automobiles since they may have limited access to natural gas refueling facilities. Therefore, for the private owner, driving range is likely to be a major factor in the selection of a natural gas dual energy automobile until refueling facilities are more plentiful. The agency believes that the 100 mile range represents an achievable level, consistent with available technology which will not be unduly impractical or have negative impacts upon consumer acceptability, vehicle driveability or performance.

Presently, the agency is not aware of any significant safety risks associated with alcohol or natural gas fuel for dual energy passenger automobiles attributed specifically to the magnitude of vehicle driving range or fuel tank size. All gasoline and diesel-powered automobiles are required to comply with FMVSS No. 301; *Fuel System Integrity.* Alcohol-powered vehicles are likewise required to comply with Standard 301. The natural gas fuel system of a natural gas dual energy vehicle will not be required to comply with Standard 301 because that standard applies only to vehicles which use a fuel having a boiling point above 32° F, while natural gas has a boiling point below 32° F. NHTSA expects to publish advance notices of proposed rulemaking later this year as part of its effort to determine whether additional requirements are necessary to enhance the safety of vehicles operating on alcohol or natural gas.

Procedures establishing lower driving ranges for particular models of natural gas dual energy automobiles

Section 513(h)(2)(B)(i) requires that the rule establishing the driving ranges also allow the agency to determine that a specific model or model type may have a lower range than the generally established range and establish procedures for manufacturers to petition the agency to specify such a lower range. As noted above, section 513(h)(2)(B)(ii) provides that lower ranges may not be established for dual energy automobiles if the agency selects the 200 mile statutory minimum as the driving range for those automobiles. Since this notice establishes that minimum value, the petitioning procedures apply only to natural gas dual energy automobiles. NHTSA received no comments on the substance of the proposed procedure for petitions, and the final rule makes no changes to these procedures.

The procedures specify that petitioning manufacturers must address each of the factors which the agency is required by section 513(h)(2)(D) to take into account in establishing lower driving ranges, i.e., the purposes of the Alternative Motor Fuels Act of 1988, consumer acceptability, economic practicability, technology, environmental impact, safety, driveability, performance, and any other factors the agency deems relevant. This notice does not establish any additional factors.

Following its receipt of a petition, the agency will publish a notice summarizing the petition and inviting public comment. Then the agency will consider the comments and other available information and publish a final decision in accordance with section 513(h)(2)(D).

In consideration of the foregoing, 49 CFR is amended by adding Part 538 to read as follows:

1. The authority citation for Part 538 reads as follows:

Authority: Sec. 6, Pub. L. 100–494, 100 Stat. 2448 (15 U.S.C. 2013); delegation of authority at 49 CFR 1.50.

2. A new Part 538 is added to read as follows:

PART 538—DRIVING RANGES FOR DUAL ENERGY AND NATURAL GAS DUAL ENERGY PASSENGER AUTOMOBILES

Secs.

§ 538.1 Scope.

This part establishes minimum driving range criteria to aid in identifying passenger automobiles that are either dual energy automobiles or natural gas dual energy automobiles. It also establishes procedures by which manufacturers may petition for a lower driving range for a specific model of natural gas dual energy automobile and by which the agency may grant or deny such petitions.

§ 538.2 Purpose.

The purpose of this part is to specify one of the criteria in section 513(h) of the Act for identifying dual energy and natural gas dual energy passenger automobiles that are manufactured in model years 1993 through 2004. The fuel economy of these passenger automobiles is calculated in a special manner so as to facilitate the compliance of their manufacturers with the Corporate Average Fuel Economy Standards set forth in Part 531 of this title and thereby encourage the production of such vehicles.

§ 538.3 Applicability.

This part applies to manufacturers of passenger automobiles that are either dual energy or natural gas dual energy passenger automobiles manufactured during model years 1993–2004.

§ 538.4 Definitions.

(a) Statutory terms. (1) The terms *dual energy automobile, natural gas dual energy automobile,* and *alcohol* are used as defined in section 513 of title V of the Act.

(2) The terms *automobile* and *passenger automobile*, are used as defined in section 501 of the Act and in accordance with the determinations in part 523 of this chapter.

(3) The term *manufacturer* is used as defined in section 501 of the Act and in accordance with part 529 of this chapter.

(4) The term *model year* is used as defined in section 501 of the Act.

(5) As used in this part, unless otherwise required by the context: *Act* means the Motor Vehicle Information and Cost Savings Act (Pub. L. 92–513), as amended.

(b) Other terms. The terms *average fuel economy, fuel economy,* and *model type* are used as defined in subpart A of 40 CFR part 600.

§ 538.5 Minimum driving range.

(a) The minimum driving range which a passenger automobile must have in order to be treated as a dual energy automobile pursuant to section 513(1)(C) of the Act is 200 miles when operating on its nominal usable fuel tank capacity of alcohol fuel.

(b) Except as provided in § 538.7, the minimum driving range which a passenger automobile must have in order to be treated as a natural gas dual energy automobile pursuant to section 513(1)(D) of the Act is 100 miles when operating on its nominal fuel tank capacity of natural gas.

(c) The Administrator may determine that a specific model type or types of natural gas dual energy automobiles may have a lower range than that specified in paragraph (b) of this section and still qualify as a natural gas dual energy automobile for purposes of the section. In making such a determination, the Administrator takes into account the factors specified in § 538.7(f).

§ 538.6 Measurement of driving range.

The driving range of a passenger automobile model type is determined by multiplying the combined EPA city/highway fuel economy when operating on the alcohol or natural gas fuel by the nominal usable fuel tank capacity in gallons, of the fuel tank containing the alcohol or natural gas. The combined EPA city/highway fuel economy is the value determined by the procedures established by the Administrator of the Environmental Protection Agency under section 503(d) of the Act and set forth in 40 CFR 600.

§ 538.7 Petitions for reduction of minimum driving range.

(a) A manufacturer of a model type of passenger automobile capable of operating on both natural gas and either gasoline or diesel fuel may petition for a reduced minimum driving range for that model type in accordance with paragraphs (b) through (c) of this section.

(b) Each petition shall—

(1) Be addressed to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

(2) Be submitted not later than the beginning of the first model year in which the petitioner seeks to have the model type treated as a natural gas dual energy automobile.

(3) Be written in the English language.

(4) State the full name, address, and title of the official responsible for preparing the petition, and the name and address of the petitioner.

(5) Set forth in full data, views and arguments of the petitioner, including the information and data specified in § 538.7(b) and the calculations and analyses used to develop that information and data. No documents may be incorporated by reference in a petition unless the documents are submitted with the petition.

(6) Specify and segregate any part of the information and data submitted under this section that the petitioner wishes to have withheld from public disclosure in accordance with Part 512 of this chapter.

(c) Each petitioner shall include the following information in its petition.

(1) Identification of the model type or types for which a lower driving range is sought under this section.

(2) For each model type identified in accordance with paragraph (c)(1):

(i) The driving range sought for that model type.

(ii) The number of years for which that driving range is sought.

(iii) A description of the model type, including car line designation, engine displacement and type, natural gas fuel tank location and capacities, transmission type and average fuel economy when operating on:

(A) Natural gas, and

(B) Gasoline or diesel fuel.

(iv) An explanation of why the petitioner cannot modify the model type so as to meet the generally applicable minimum range, including the steps taken by the petitioner to improve the minimum range of the vehicle, as well as additional steps that are technologically feasible, but have not been taken. The costs to the petitioner of taking these additional steps shall be included.

(3) A discussion of why granting the petition would be consistent with the following factors:

(i) The purposes of the Alternative Motor Fuels Act, including encouraging the development and widespread use of natural gas as a transportation fuel by consumers, and the production of passenger automobiles capable of being operated on both natural gas and gasoline/diesel fuel;

(ii) Consumer acceptability;

(iii) Economic practicability;

(iv) Technology;

(v) Environmental impact;

(vi) Safety;

(vii) Driveability; and

(viii) Performance.

(d) If a petition is found not to contain the information required by this section, the petitioner is informed about the areas of insufficiency and advised that the petition will not receive further consideration until the required information is received.

(e) The Administrator may request the petitioner to provide information in addition to that required by this section.

(f) The Administrator publishes in the *Federal Register* a notice of receipt for each petition containing the information required by this section. Any interested person may submit written comments regarding the petition.

(g) In reaching a determination on a petition submitted under this section, the Administrator takes into account:

(1) The purposes of the Alternative Motor Fuels Act, including encouraging the development and widespread use of methanol, ethanol and natural gas as transportation fuels by consumers, and the production of alternative fuel powered motor vehicles;

(2) Consumer acceptability;

(3) Economic practicability;

(4) Technology;

(5) Environmental impact;

(6) Safety;

(7) Driveability; and

(8) Performance.

(i) The purposes of the Alternative Motor Fuels Act, including encouraging the development and widespread use of methanol, ethanol and natural gas as transportation fuels by consumers, and the production of alternative fuel powered motor vehicles;

(ii) Consumer acceptability;

(iii) Economic practicability;

(iv) Technology;

(v) Environmental impact;

(vi) Safety;

(vii) Driveability; and

(viii) Performance.

(h) If the Administrator grants the petition, the petitioner is notified in writing, specifying the model years for which it applies. He also publishes in the *Federal Register* a notice of the grant and the reasons for it.

(i) If the Administrator denies the petition, the petitioner is notified in writing. He also publishes in the *Federal Register* a notice of the denial and the reasons for it.

Issued on April 18, 1990

Jeffrey R. Miller
Deputy Administrator

55 F.R. 17611
April 26, 1990

PART 538—DRIVING RANGES FOR DUAL ENERGY AND NATURAL GAS DUAL ENERGY PASSENGER AUTOMOBILES

S538.1 Scope.

This part establishes minimum driving range criteria to aid in identifying passenger automobiles that are either dual energy automobiles or natural gas dual energy automobiles. It also establishes procedures by which manufacturers may petition for a lower driving range for a specific model of natural gas dual energy automobile and by which the agency may grant or deny such petitions.

S538.2 Purpose.

The purpose of this part is to specify one of the criteria in section 513(h) of the Act for identifying dual energy and natural gas dual energy passenger automobiles that are manufactured in model years 1993 through 2004. The fuel economy of these passenger automobiles is calculated in a special manner so as to facilitate the compliance of their manufacturers with the Corporate Average Fuel Economy Standards set forth in Part 531 of this title and thereby encourage the production of such vehicles.

S538.3 Applicability.

This part applies to manufacturers of passenger automobiles that are either dual energy or natural gas dual energy passenger automobiles manufactured during model years 1993-2004.

S538.4 Definitions.

(a) *Statutory terms.* (1) The terms "dual energy automobile," "natural gas dual energy automobile," and "alcohol" are used as defined in section 513 of Title V of the Act.

(2) The terms "automobile" and "passenger automobile," are used as defined in section 501 of the Act and in accordance with the determinations in Part 523 of this chapter.

(3) The term "manufacturer" is used as defined in section 501 of the Act and in accordance with Part 529 of this chapter.

(4) The term "model year" is used as defined in section 501 of the Act.

(5) As used in this part, unless otherwise required by the context: "Act" means the Motor Vehicle Information and Cost Savings Act (Pub. L. 92-513), as amended.

(b) *Other terms.* The terms "average fuel economy," "fuel economy," and "model type" are used as defined in Subpart A of 40 CFR Part 600.

S538.5 Minimum driving range.

(a) The minimum driving range which a passenger automobile must have in order to be treated as a dual energy automobile pursuant to section 513(1)(C) of the Act is 200 miles when operating on its nominal usable fuel tank capacity of alcohol fuel.

(b) Except as provided in § 538.7, the minimum driving range which a passenger automobile must have in order to be treated as a natural gas dual energy automobile pursuant to section 513(1)(D) of the Act is 100 miles when operating on its nominal fuel tank capacity of natural gas.

(c) The Administrator may determine that a specific model type or types of natural gas dual energy automobiles may have a lower range than that specified in paragraph (b) and still qualify as a natural gas dual energy automobile for purposes of the section. In making such a determination, the Administrator takes into account the factors specified in § 538.7(f).

S538.6 Measurement of driving range.

The driving range of a passenger automobile model type is determined by multiplying the combined EPA city/highway fuel economy when operating on the alcohol or natural gas fuel by the nominal usable fuel tank capacity in gallons, of the fuel tank containing the alcohol or natural gas. The combined EPA city/highway fuel economy is the value determined by the procedures established by the Administrator of the Environmental Protection Agency under section 503(d) of the Act and set forth in 40 CFR 600.

S538.7 Petitions for reduction of minimum driving range.

(a) A manufacturer of a model type of passenger automobile capable of operating on both natural gas

and either gasoline or diesel fuel may petition for a reduced minimum driving range for that model type in accordance with paragraphs (b)-(c).

(b) Each petition shall—

(1) Be addressed to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

(2) Be submitted not later than the beginning of the first model year in which the petitioner seeks to have the model type treated as a natural gas dual energy automobile.

(4) State the full name, address, and title of the official responsible for preparing the petition, and the name and address of the petitioner.

(5) Set forth in full data, views and arguments of the petitioner, including the information and data specified in § 53B.7(b) and the calculations and analyses used to develop that information and data. No documents may be incorporated by reference in a petition unless the documents are submitted with the petition.

(6) Specify and segregate any part of the information and data submitted under this section that the petitioner wishes to have withheld from public disclosure in accordance with Part 512 of this chapter.

(c) Each petitioner shall include the following information in its petition.

(1) Identification of the model type or types for which a lower driving range is sought under this section.

(2) For each model type identified in accordance with paragraph (c)(1):

(i) The driving range sought for that model type.

(ii) The number of years for which that driving range is sought.

(iii) A description of the model type, including car line designation, engine displacement and type, natural gas fuel tank location and capacities, transmission type and average fuel economy when operating on (1) natural gas, and (2) on gasoline or diesel fuel.

(iv) An explanation of why the petitioner cannot modify the model type so as to meet the generally applicable minimum range, including the steps taken by the petitioner to improve the minimum range of the vehicle, as well as additional steps that are technologically feasible, but have not been taken. The costs to the petitioner of taking these additional steps shall be included.

(3) A discussion of why granting the petition would be consistent with the following factors:

(i) The purposes of the Alternative Motor Fuels Act, including encouraging the development and widespread use of natural gas as a transportation fuel by consumers, and the production of passenger automobiles capable of being operated on both natural gas and gasoline/diesel fuel;

(ii) Consumer acceptability;

(iii) Economic practicability;

(iv) Technology;

(v) Environmental impact;

(vi) Safety;

(vii) Driveability; and

(viii) Performance.

(d) If a petition is found not to contain the information required by this section, the petitioner is informed about the areas of insufficiency and advised that the petition will not receive further consideration until the required information is received.

(e) The Administrator may request the petitioner to provide information in addition to that required by this section.

(f) The Administrator publishes in the *Federal Register* a notice of receipt for each petition containing the information required by this section. Any interested person may submit written comments regarding the petition.

(g) In reaching a determination on a petition submitted under this section, the Administrator takes into account:

(i) The purposes of the Alternative Motor Fuels Act, including encouraging the development and widespread use of methanol, ethanol and natural gas as transportation fuels by consumers, and the production of alternative fuel powered motor vehicles;

(ii) Consumer acceptability;

(iii) Economic practicability;

(iv) Technology;

(v) Environmental impact;

(vi) Safety;

(vii) Driveability; and

(viii) Performance.

(h) If the Administrator grants the petition, the petitioner is notified in writing, specifying the model years for which it applies. He also publishes in the *Federal Register* a notice of the grant and the reasons for it.

(i) If the Administrator denies the petition, the petitioner is notified in writing. He also publishes in the *Federal Register* a notice of the denial and the reasons for it.

55 F.R. 17611
April 26, 1990

PREAMBLE TO PART 541

Vehicle Theft Prevention Standard and Selection of Covered Major Parts—Motor Vehicle Theft Law Enforcement Act of 1984 [Docket No. T84-01; Notice 7]

ACTION: Final rule.

SUMMARY: This rule establishes a vehicle theft prevention standard, as required by the Motor Vehicle Theft Law Enforcement Act of 1984. The standard contains performance requirements for inscribing or affixing identification numbers onto original equipment major parts and the replacement parts for those original equipment parts on passenger motor vehicle lines selected as high theft lines. The rule also specifies which parts are the major parts that must be so identified. Finally, it sets forth the manner and form for certifying compliance with the standard.

EFFECTIVE DATE: April 24, 1986. This means that the theft prevention standard applies to passenger cars and major replacement parts beginning with the 1987 model year.

SUPPLEMENTARY INFORMATION: The Motor Vehicle Theft Law Enforcement Act of 1984 (Theft Act; Pub. L. 98-547) added Title VI to the Motor Vehicle Information and (Cost Savings Act). Title VI requires NHTSA, by delegation from the Secretary of Transportation, to promptly complete a series of rulemaking actions designed to mount a comprehensive attack on the problem of vehicle theft. This rule contains the most significant of those mandated rulemaking actions, the theft prevention standard setting forth the performance criteria for affixing or inscribing covered major parts of passenger motor vehicles with identifying numbers or symbols, as required by section 602 of the Cost Savings Act (15 U.S.C. 2022). Additionally, this rule carries out the following statutory mandates:

1) it identifies the major parts that must be marked, as specified in section 603(a)(2);

2) it establishes the cost limitation for marking major replacement parts, as specified in section 604; and

3) it establishes the form and manner of certifying compliance with the theft prevention standard, as specified in section 606(c) of the Cost Savings Act.

The Notice of Proposed Rulemaking

To carry out these statutory mandates, NHTSA published a notice of proposed rulemaking (NPRM) at 50 FR 19728, May 10, 1985. The agency has received more than 240 comments on the NPRM, representing the opinions of vehicle and parts manufacturers, law enforcement groups, insurers, automobile dealers, members of Congress, direct importers of vehicles, and individual consumers. "Direct importers" are individuals and commercial enterprises that obtain foreign cars not originally manufactured for sale in the United States, bring those cars into this country under bond, and modify the cars so that they can be certified as being in compliance with the U.S. vehicle safety, emissions, and bumper standards. Each of these comments has been considered and the most significant points are addressed below.

The NPRM contained a detailed background discussion of the provisions of the Theft Act and explained in detail the agency's rationale for proposing each of the requirements. This preamble follows the same organizational format used in the NPRM, so that readers can easily compare the two documents. A brief summary highlighting the most important points of this final rule follows.

Highlights of this Final Rule

1. Markings for Covered Original Equipment Major Parts.

Original equipment covered major parts must be marked with the full 17 character U.S. vehicle identification number (VIN), except for engines and transmissions used by certain manufacturers. Manufacturers marking engines and transmissions with a VIN derivative, consisting of at least the last 8 characters of the VIN, as of the enactment date of the Theft Act may continue to use those derivatives. Section 604(b) of the Cost Savings Act provides that manufacturers engaged in identifying their engines and transmissions in a manner which "substantially complies" with the requirements of this standard shall not be required to conform to any identification system which imposes greater costs than those being incurred under the "substantially complying" identification system. NHTSA deems 8-character VIN derivatives to be substantially in compliance with this standard.

The performance requirements for both labels and other markings have been adopted substantially as proposed in the NPRM. The only noteworthy difference is in the "footprint" requirement for labels. In response to the comments, the proposed requirement has been clarified in this final rule. Removal of a label must leave some residual part of the label or adhesive on the part, such that an investigator could detect that a label was originally present on the part.

2. Covered Major Parts.

This standard specifies 14 major parts as the covered major parts as the covered major parts which must be marked, if present, on all vehicles in lines selected as high theft lines. Those 14 parts consist of the 12 major parts proposed in all three of the alternatives set forth in the NPRM, plus the two rear doors for 4-door vehicles. Two-door cars will be required to have only 12 parts marked.

3. Markings for Replacement Parts.

Replacement parts for covered original equipment parts are required to be marked with the letter "R" and the manufacturer's logo, for purposes of this standard, and with the symbol "DOT", as a certification of compliance with this standard, as proposed in the NPRM. Such markings are subject to the same performance requirements as the markings on original equipment parts. This standard also establishes a cost limit of five dollars (in 1984 dollars) for marking each replacement part.

4. Target Areas for Parts Marking.

The agency had proposed that both original equipment and replacement parts be marked in a 5 centimeter X 5 centimeter target area, and that these target areas be separated by at least 15 centimeters. Many commenters suggested that this small target area was too restrictive and unnecessary to achieve the intended purpose. NHTSA was persuaded by these comments. Accordingly, this theft prevention standard requires the original vehicle manufacturers to designate target areas for marking both original equipment and replacement parts. The target area for the original equipment parts cannot exceed 50 percent of the total surface area of the part surface on which the marking will appear, and the target area for replacement parts cannot exceed 25 percent of the total surface area of the surface on which the marking will appear. The boundaries of the different target areas must be separated by at least 10 centimeters at all points along those boundaries. The vehicle manufacturers will be required to inform NHTSA of the target areas they have designated on each of the parts.

5. Who May Certify Compliance with this Standard.

The NPRM proposed that only original vehicle manufacturers be allowed to certify compliance with this theft prevention standard. The proposal would have had the effect of prohibiting direct importers from importing any high theft vehicles into the U.S. This proposal was based on the Theft Act's prohibition against importing non-complying vehicles into the U.S., together with the Theft Act's ambiguity as to whether persons besides the original manufacturer should be allowed to certify compliance. The proposal was also based on the agency's tentative conclusion that limiting certification authority would enhance the security of the marking technologies and the enforcement of this theft prevention standard.

Upon further consideration, NHTSA has decided that this regulation should not prohibit direct imports of vehicles. NHTSA also believes that the

rulemaking record supports the law enforcement concerns expressed in the NPRM. Accordingly, this theft prevention standard sets forth special requirements for direct imports of vehicles in high theft lines. Such vehicles must:

(1) Be marked with the original Euro-VIN, and not a "home-made" U.S. VIN;

(2) Be marked by inscribing the required markings, and may not have labels affixed to the parts to satisfy this standard; and

(3) Be marked before the vehicle is imported into the U.S. This final requirement is explicitly set forth in section 607(a)(1) of the Cost Savings Act. Accordingly, the agency has concluded that it cannot adopt the suggestion in some of the comments that it implement a bonding program for direct imports, similar to that in effect for the bumper and safety standards. To implement this requirement, this rule specifies that direct importers of high-theft vehicles must certify compliance with this theft prevention standard, by having a certification label permanently affixed to each covered vehicle before it is imported into the United States.

A detailed discussion of these issues and other issues raised during the comment period follows.

The Theft Prevention Standard

A. Original Equipment Parts

As noted in the NPRM, Title VI of the Cost Savings Act requires NHTSA to promulgate a theft prevention standard, which must be a minimum performance standard for the identification of the covered original equipment and replacement major parts of new passenger motor vehicles. This identification is to be achieved by inscribing or affixing numbers or symbols to such parts. The first question addressed in the NPRM concerned the numbers or symbols that should be used to identify original equipment major parts.

1. The full vehicle identification number (VIN) must be inscribed or affixed to all covered major original equipment parts, except the engine and transmission.

The NPRM proposed that the full 17 character VIN be required as the indentifying number to be inscribed or affixed to the covered major original equipment parts, for three reasons. First, the full VIN represents a unique signature which cannot be repeated on any two vehicles during a 30-year period. Second, the full VIN is the basis for the National Crime Information Center's (NCIC) vehicle theft reprting system, which is used by law enforcement officials around the nation to detect and track stolen vehicles. Third, since the full VIN is now in common use for all law enforcement agencies, its continued use would cause minimal disruption in the personnel training and records kept by those agencies. However, the agency also sought public comment on the use of VIN derivatives as the identifying numbers.

Several of the commenters supported the agency's proposed requirement to use the full VIN. These commenters included all the law enforcement organizations, groups organized to try to reduce auto thefts, and Jaguar and Mercedes. Mercedes specifically stated that the use of a VIN derivative would require at least 8 characters to be unique, so the cost advantages of allowing the use of VIN derivatives would be minimal.

On the other hand, many of the vehicle manufacturers argued that they should be allowed to use VIN derivatives. The suggestions ranged from Honda's that manufacturers be required to use only the last 6 characters of the VIN to Volkswagen's that the manufacturers be required to use 11 characters of the VIN. Both General Motors (GM) and the United States Department of Justice urged that manufacturers be required to use the full 17 character VIN on labels, but be permitted to use a VIN derivative if they used other methods of identification, provided that the VIN derivative was also unique.

NHTSA seriously considered allowing the use of VIN derivatives if those derivatives contained enough characters to ensure that they would also be unique. However, NCIC has sent the agency a letter explaining that it has designed its theft reporting system to reject any inquiries concerning stolen vehicles manufactured in 1981 and all subsequent model years which do not consist of the full 17 character VIN. NCIC stated that it had discussed allowing the use of VIN derivatives with state and local law enforcement officials, and the reaction from those officials was "very negative". This reaction was based on the administrative burden which would result from not having a uniform length for reporting the identifying numbers for stolen and recovered vehicles and parts. This would lead to uncertainty that the reporting police department had properly entered the correct VIN derivative of a stolen vehicle, because of the var-

ying lengths of derivatives which could be entered into the tracking system. Such uncertainty would force the law enforcement agencies and officers to expend significant time and effort in checking the accuracy of the reports before arresting suspected criminals in possession of the stolen vehicles. The lost time could result in being unable to arrest the suspect or seize the stolen vehicle.

If they did not expend this time and effort, the law enforcement groups stated their concerns about potential liability. The law enforcement groups would be accused of an improper arrest or vehicle seizure if they were to erroneously identify a vehicle or part as stolen. Such erroneous identifications would inevitably result, according to the law enforcement groups, if they are forced to try to reconstruct quickly the full VIN from a VIN derivative.

One of the primary purposes of the Theft Act is to make it easier for law enforcement agencies to establish that a vehicle or a major part is stolen. See H.R. Rep. No. 1087, 98th Cong., 2d Sess. at 2-3 (1984) (hereinafter referred to as "H. Rept."). If this purpose is to be promoted, this standard must ensure that police officers learning of suspicious, potentially stolen vehicle parts can quickly verify whether those parts are stolen. If this standard were to allow parts to be marked with VIN derivatives, the time necessary to positively identify a part as being from a stolen vehicle would be substantially longer than if the parts were marked with the full VIN. Police officers cannot be expected to wait to learn the true status of parts while the VIN derivative is reconstructed into a full VIN through contacts with the vehicle manufacturer or a private agency.

Further, NCIC has informed the agency that a review of its active record of stolen vehicles currently lists 12,382 cases where the last 8 characters of the VIN are identical in two or more cases. Hence, a match of the last 8 characters of the VIN would not by itself justify seizing the vehicle or arresting the driver. If NHTSA were to permit the use of VIN derivatives for marking parts, it would have to require the use of a least 11 characters of the VIN (the first three characters and the last eight) to ensure the derivative was unique. The cost differences for the vehicle manufacturer to mark the full VIN instead of a shortened 11-character VIN derivative are not significant, and will not cause any manufacturer to exceed the fifteen dollar cost limitation. Additionally, VIN derivatives would require NCIC to restructure its data base, a complex and costly task. Finally, the full 17-character VIN includes the check digit, the purpose of which is to provide a means for verifying the accuracy of any VIN transcription. As such, the check digit ensures that the VIN of a stolen vehicle has been correctly entered. It also quickly shows when a VIN has been altered in an effort to disguise the fact that a vehicle is stolen. Accordingly, the agency has determined that the full 17-character VIN should be marked on covered original equipment major parts.

There is, however, one exception to this requirement. Section 604(b) of the Cost Savings Act [15 U.S.C. 2024(b)] specifies that "any manufacturer engaged in identifying engines or transmissions on the effective date of this title *in a manner which substantially complies with the requirements of the theft prevention standard*" shall not be required to conform to any identification system which imposes greater costs on the manufacturer than those being incurred as of such effective date. This statutory requirement means that the agency must determine what sort of identification system for engines and transmissions substantially complies with the requirements of this standard.

To the agency's knowledge, all manufacturers currently stamp an identifying number on their engines and transmissions. The NPRM stated that all manufacturers currently stamp their engines and transmissions with a VIN derivative, but the vast majority of manufacturers commented that this statement was not true. GM marks its engines and transmissions with a 9-character VIN derivative, and Ford and Chrysler mark those parts with an 8-character VIN derivative. The agency has no information indicating that any other manufacturers mark their engines and transmissions with a VIN derivative.

Two issues are thus presented. First, NHTSA must determine whether manufacturers that mark their engines and transmissions with a number other than a VIN derivative "substantially comply" with the requirement that all covered major parts be marked with the full VIN. Second, NHTSA must determine whether manufacturers that mark their engines and transmissions with 8- or 9-character VIN derivatives can be said to substantially comply with that requirement.

With respect to the markings not derived from the VIN, NHTSA has concluded that such markings do not substantially comply with the requirement that a full 17-character VIN be marked on covered original equipment major parts. Such markings do not provide law enforcement officers with a means for quickly checking whether the component came from a stolen vehicle, because the NCIC data system relies on the VIN. The non-VIN markings consist of numbers generated and assigned by each individual manufacturer. The method for assigning the number is in the nature of a sequential production number for the particular engine or transmission. Accordingly, the number itself does not provide any means for quickly ascertaining the vehicle in which the component was installed, nor does the number identify the model year of the vehicle in which the component was installed. Thus, these markings neither substantially meet the identification requirements of this standard (the full 17-character VIN), nor achieve the purpose of these requirements (allowing law enforcement officers to quickly check whether covered major parts were originally installed on stolen vehicles).

BMW, Mercedes-Benz, Jaguar, Mazda, and the Automobile Importers of America (AIA) all stated that such markings should be found to substantially comply with the requirement that a full VIN be marked on covered original equipment parts. Some of these commenters stated that law enforcement officials from the countries in which the vehicles are produced have asked the manufacturers *not* to mark their engines and transmissions with a VIN derivative, because other numbering systems, according to those law enforcement officials, reduce the likelihood of thieves successfully altering these numbers.

NHTSA does not believe that this point is relevant in determining whether these non-VIN related markings "substantially comply" with the identification requirements for original equipment parts contained in this theft prevention standard. However, as explained above, the NCIC strongly prefers that the full VIN be marked as the identifier on covered parts. NHTSA believes it is more important that the preferences of the NCIC be accommodated in this theft standard than the preferences of law enforcement officials in other countries, since the theft standard applies only to vehicles sold in the United States. The preferences of foreign law enforcement officials can be accommodated in the case of engines and transmissions for vehicles not designed to be sold in the United States.

AIA commented that a requirement forcing manufacturers to change their existing marking systems would require the stamping equipment to be reprogrammed, or might even require new stamping equipment. Further, the AIA stated that such a requirement would impose the significant administrative burden of separating U.S. engine blocks and transmission housings from the blocks and housings made for the rest of the world.

NHTSA recognizes that complying with a requirement to mark the VIN on engines and transmissions, or any other requirement, imposes costs and administrative burdens on the manufacturers. NHTSA must determine whether the requirement is necessary to carry out the purposes of the Theft Act, while imposing costs which can be met within the fifteen dollar per vehicle limit established for this theft prevention standard. As explained above, law enforcement officials have explained that they need parts identified with the VIN, if they are to effectively carry out the purposes of the Theft Act. In NHTSA's judgment, the requirement to mark the VIN on engines and transmissions, as well as the other covered major parts, will not cause any manufacturer to exceed the fifteen dollar cost limit. Hence, any burdens imposed by this requirement are consistent with the intent and provisions of the Theft Act.

AIA noted the practive whereby manufacturers purchase or supply engines and transmissions to other manufacturers, and stated that most of those parts are marked by the original manufacturer. AIA argued that requiring the vehicle manufacturer to obliterate these numbers and replace them with VINs would "not only be costly, but could also be very confusing to law enforcement officials." Additionally, AIA argued that requiring obliteration and new markings would violate the requirement of section 602(d)(1)(A) of the Cost Savings Act. That section provides that this theft prevention standard may not require any original equipment part to have more than a single identification.

This theft prevention standard does not require manufacturers to obliterate markings inscribed by other manufacturers, nor does it require any part to have more than a single identification. This standard requires only that the engines and transmissions be marked with the VIN. Any other iden-

tification markings on those parts are not required by the standard, so their presence or absence is irrelevant for the purposes of section 602(d)(1)(A).

In the case of manufacturers currently marking their engines and transmissions with a VIN derivative, the agency has considered whether those manufacturers that use at least an 8-character VIN derivative, consisting of the last 8 characters of the VIN, can be said to substantially comply with the requirement that covered major parts be marked with the full 17-character VIN. As noted above, an 8-character VIN derivative is not unique. This is because it does not identify the manufacturer of the vehicle or the vehicle attributes, nor does it include the check digit. Accordingly, the agency determined that it would be inappropriate to allow an 8-character VIN derivative for the marking of all covered major parts.

However, an 8-character VIN derivative consisting of the last 8 characters of the VIN does identify the model year of the vehicle, the plant at which it was assembled, and the sequential production number of the vehicle. Trained investigators will be able to identify the manufacturer of an engine or transmission, by noting the particular design characteristics of the component. The manufacturer of the engine or transmission is not necessarily the manufacturer of the vehicle, as noted by AIA in its comments and discussed above. Hence, there will be some instances where the 8-character VIN derivative would not enable investigators to confirm immediately that an engine or transmission was installed in a stolen vehicle.

Permitting the use of VIN derivatives on engines and transmissions does not present as serious a law enforcement problem as would be presented if all covered major parts were permitted to be marked with VIN derivatives. Engines and transmissions are bulkier, heavier, and not as easy to transport as the other major parts of a car. Thus, police officers are more likely to have the time necessary to allow for a reconstruction of the full VIN from the 8-character VIN derivatives marked on these components. That reconstruction can be made reasonably quickly in the majority of cases, where the manufacturer of the engine or transmission and the manufacturer of the vehicle are the same.

After considering these facts, NHTSA has concluded that VIN derivatives consisting of at least the last 8 characters of the full VIN can be said to "substantially comply" with the requirement of this standard that the 17-character VIN be marked on all covered parts. To the agency's knowledge, Chrysler, Ford, and GM are the manufacturers currently using at least an 8-character VIN derivative, consisting of the last 8 characters of the VIN, to identify their engines and transmissions. They and any other manufacturers using these VIN derivative markings on their engines and transmissions as of October 24, 1984, the date of enactment of the Theft Act, may continue using those VIN derivatives instead of the 17-character VIN to mark the engines and transmissions. All other vehicle manufacturers will be required to identify their engines and transmissions with the 17-character VIN.

Toyota stated that only one engine part should be required to be marked. Section 602(d) of the Cost Savings Act specifies that a part cannot be required to have more than a single identification, and the NPRM did not propose more than one marking for any part. For the purposes of this part, the engine should be marked on the block and the transmission should be marked on the housing. No other markings are required.

Ford stated that the proposed language, allowing engines and transmissions being marked with a VIN derivative as of the day before the effective date of this theft prevention standard to continue using that derivative for identification required by this theft prevention standard, appeared to be inconsistent with the requirement in section 604(b), which prohibits the agency from requiring manufacturers to conform to a more costly identification system for its engines and transmissions if the manufacturer was already engaged in identifying the engines and transmissions in a manner that substantially complies with this standard. Under the proposed language, Ford believed that new engine and transmission designs which were not being marked with a VIN derivative as of the day before the effective date of the theft prevention standard, because they were not yet in production, would be required to be marked with the full VIN. This, it was asserted, would conflict with the explicit requirement of section 604(b) that a *Manufacturer* whose identification system substantially complied with the requirements of the theft prevention standard could not be required to undertake an identification system which imposed

greater costs. NHTSA agrees with Ford on this point, and has modified the language to reflect this change.

Ford also commented that the NPRM proposed that manufacturers marking engines and transmissions with an acceptable VIN derivative *as of the effective date of the standard* would be permitted to continue such marking of those components. Ford correctly noted that section 604(b) refers to manufacturers using such markings *as of the effective date of the Theft Act* being permitted to continue using such markings. This final rule has been modified to reflect the language of section 604(b) of the Cost Savings Act.

2. The theft prevention standard must be a performance standard, which is practicable and which employs relevant, objective criteria.

The legislative history is very clear on the type of standard which must be promulgated. Page 10 of the House Report reads as follows:

> The DOT will establish the tests or general criteria which the identification must meet, but not how it is to be inscribed or affixed. That is the choice of each manufacturer. For example, we understand that a tamper-resistant label exists. If it can meet the performance tests or general criteria prescribed by the standard, the manufacturer may choose to use it to comply with the standard.

Because of this clearly expressed Congressional intent, this final rule does not adopt the suggestions in some of the comments that the agency mandate the use of a particular marking system, such as stamping, glass etching, or some patented marking systems. Several commenters asserted that the use of a particular marking system would ensure the greatest effectiveness for the theft prevention standard. However, NHTSA has no authority to mandate the use of any particular marking system. NHTSA has authority only to establish performance criteria that will accomplish the purposes of the Theft Act. The manufacturers are free to select any marking system that satisfies those criteria.

NHTSA believes that the performance criteria specified for labels in this final rule are objective, and will ensure that labels will serve effectively the purposes of the Theft Act. The criteria specified for non-label forms of identification are less rigorous, because methods such as etching or stamping the identification into the metal or the glass are inherently more permanent. Alterations of such identifications would be detectable by trained investigators. The criteria for the non-label forms of identification are intended primarily to ensure that the marking will be readily accessible to investigators.

(a) The inscription or affixation must meet size and style requirements to ensure that it is clearly legible to investigators.

The NPRM proposed that the inscription or affixation of the VIN on covered major parts meet the same size and style requirements as the VIN is required to meet in sections 54.6, 54.7, and 54.8 of Standard No. 115 (49 CFR §571.115). Briefly stated, this meant that the characters would have a minimum height of 4 millimeters (mm), would consist of the Arabic or Roman numerals and/or letters set forth in Table 1 of 49 CFR §571.115, and would consist of capital, sans-serif characters.

Many manufacturers commented that the proposed 4mm size was larger than was necessary for the characters. NHTSA proposed this minimum size to ensure that the identification would be clearly legible to investigators. However, a number of commenters observed that the 4 mm height is specified in Standard No. 115 to ensure that the VIN can be easily read through the vehicle's windshield. In the case of the theft prevention standard, these commenters stated that the parts will be examined by trained investigators carefully examining the parts to find the VIN. Several manufacturers and the National Automobile Theft Bureau (NATB) suggested that the minimum height for the characters be reduced to 3/32 inch (approximately 2.5mm), which is the same size as is currently specified for the information required to appear on vehicle certification labels by 49 CFR Part 567.

NHTSA has further considered this issue, and determined that the certification labels required by Part 567 are partly intended to provide information to knowledgeable persons specifically looking for that information. This is analogous to the purpose that the parts marking requirements are intended to fulfill. The 3/32 inch minimum height requirement has been wholly satisfactory for the purposes of Part 567. NHTSA has, therefore, decided not to require larger characters for this theft prevention standard. Accordingly, this final rule adopts the minimum character height requirement currently specified in Part 567, i.e., 3/32 inch.

Ford and GM both specifically commented that the sans-serif requirement for the characters should be deleted. Ford stated that their printers are not technically sans-serif, but that no party has experienced any difficulty in reading the characters. Ford suggested that the agency specify the use of block capital letters and numerals, as is done for the vehicle certification labels in Part 567. GM showed the characters as printed in the "positive identification" system. The positive identification system consists of block capital letters and numerals, but gives unique characteristics to each character so that it is more difficult to alter a character to resemble a different character. GM stated that those characters are readily legible, but asked for the agency's opinion as to whether those characters would satisfy the sans-serif requirement.

Again, the purpose of the proposed sans-serif requirement was to ensure that the markings would be legible to the trained investigators examining the parts. The presence of small serifs would not affect that legibility. Therefore, the agency is not adopting the proposed sans-serif requirement. Instead the agency is adopting a requirement that the identification consist of block capital letters and numerals. This requirement is identical to the style requirements of Part 567. It is the agency's opinion that the GM "positive identification" characters appear to satisfy this requirement.

(b) The inscription or affixation must be as permanent as possible.

The NPRM stated that the identification (whether affixed or inscribed) should be made in such a way that, under normal conditions of wear, tear, and repair, the identification would continue to meet the other performance requirements of the theft prevention standard for the average life of the car, which the NPRM stated to be 10 years. However, the NPRM proposed only that the markings be "permanent", and did not establish any number of years during which the markings would have to satisfy the other performance requirements of this standard. The NPRM also sought comments on requiring only that the marking remain legible for the average length of time during which cars are generally susceptible to high theft rates.

The commenters agreed with the agency's tentative judgment that it would not serve the purposes of the Theft Act to require the markings to remain legible only for the average length of time during which cars are generally susceptible to high theft rates. The theft investigators noted that many cars are stolen after the initial high theft period. If the identification is permitted not to be visible on those parts, it would tend to make such vehicles more attractive to professional thieves. This plainly would not serve the theft deterrent purposes of the Theft Act. No commenters argued in favor of adopting this alternative. For the reasons set forth above, this alternative has not been adopted in this final rule.

Many of the theft investigators urged the agency to specify some minimum period of time during which the markings would have to satisfy all the other performance requirements of this standard. The International Association of Auto Theft Investigators urged that there be a minimum 8 year life for labels, while the Coalition to Halt Automotive Theft (CHAT) urged that labels have a 10 year minimum life.

On the other hand, Chrysler, Ford, and GM all supported the idea of adopting the proposed permanence requirement without specifying a minimum time period as a definition of that concept. GM stated that Part 567 has used the word "permanent" without specifying any time period, and that the vehicle certification labels have been affixed so that there have been no significant disagreements between the manufacturers and the agency as to the meaning of the word. Ford stated its opinion that any greater specificity than "permanent" would require the agency to develop a performance test to measure whether the markings were permanent.

This rule adopts the proposed requirements on permanency, that is, it does not specify any minimum number of years during which the markings must continue to satisfy the other performance requirements of this standard. As noted by GM, this term has served its intended purpose when used in Part 567, and is a concept with which the manufacturers and the agency have had experience. The purpose of Part 567 was explained thusly in the preamble to the final rule establishing that Part: "The intent of the regulation is that the label should remain in place and legible for

the life of the vehicle and not be easily transferable to another vehicle." 34 FR 1147; January 24, 1969. NHTSA believes that the purpose underlying the permanency requirement in Part 567 and this theft prevention standard are sufficiently similar that it is appropriate to express those requirements in the same way. Should that belief be shown to be incorrect, because the labels are not remaining affixed and legible for the life of the vehicle, the agency will initiate rulemaking to specify some minimum length of time during which the labels must satisfy the other requirements of this standard. However, such rulemaking would be premature at this time.

VW asked what the term "permanent" means in this standard. As noted above, it means exactly what it means when used in Part 567. That is, the label should remain in place and legible for the life of the vehicle.

Toyota stated that there was no way of knowing if labels will satisfy the permanence requirement, so this requirement should be deleted. NHTSA does not understand this comment, since Toyota's vehicles presumably comply with the "permanence" requirement in Part 567. NHTSA believes that either Toyota or the label manufacturer can obtain data, through tests or other means, showing whether labels will remain affixed and legible for the life of the car. Those data would form the basis for certifying compliance with this requirement.

Moreover, as stated above, this is a performance standard that sets forth general criteria which must be satisfied by whatever means of marking the manufacturer chooses. If Toyota is unable to certify that its labels will satisfy the permanence requirement, it will have to use stamping, etching, or some other method of marking its parts. The criterion of permanence is very important if this standard is to carry out the intent of the Theft Act. It seems obvious that markings that, after a short period of time, are not present on the vehicle or are not legible to investigators do not serve the purposes of the Theft Act.

c) Locations selected for labels must provide protection from damage as a result of normal maintenance and exposure conditions while still being visible to investigators without further disassembly once the parts are removed from the vehicle.

The NPRM proposed that labels be protected from damage as a result of normal vehicle repair and maintenance and exposure conditions. Inscriptions would not be subject to this requirement, because such marking methods are inherently more durable than labels. Accordingly, the agency does not believe it is necesary to specify protection from damage requirements for inscribed markings. If experience shows that the manufacturers are not locating those markings so as to protect them from damage, NHTSA will consider initiating rulemaking to amend this standard. All means of identification would be subject to the requirement of visibility to investigators without further disassembly once the parts are removed from the vehicle.

The National Automobile Dealers Association (NADA) stated that the legislative history of the Theft Act specifically instructs NHTSA to "consider the location of the number so that it will not be easily susceptible to damage in the normal course of *dealer preparation (for such procedures as rustproofing and undercoating),* or be easily damaged in the course of repair, or regular automobile maintenance by repair shops or car owners;" H. Rept. at 12 (Emphasis added). NADA urged the agency to modify the proposal to explicitly require that the label be protected from damage during dealer preparation operations. NHTSA believes that such a requirement is very closely related to its proposal. Further, it is consistent with the legislative history and needed to ensure that the labels will not routinely be obscured or damaged before the vehicle is sold to the first purchaser. Therefore, this final rule adds this requirement.

Ford commented that the locations chosen for the labels cannot protect the labels against possible damage during a collision and subsequent repairs, where the part might need bumping, grinding and repainting to be repaired. Neither the NPRM nor this final rule require the labels to be protected from damage during every repair for collision damage. Even inscriptions might well be obliterated or rendered illegible during some collision repairs. This rule does not require manufacturers to do the impossible; i.e., certify that labels will never be damaged during any work which might be performed on the part.

However, the legislative history states: "The Committee believes, as already noted, that one of the major factors that the Secretary and the manufacturers should consider in rulemaking is the location of the identification number in relation

of the future repairability of the major part. *The location selected should, to the greatest extent possible, not be a spot likely to be damaged in what is an economically repairable accident, if possible."* H. Rept. at 24-25 (Emphasis added). It is hard to imagine a clearer expression of Congressional desire that the identification on covered major parts should be located so that it will not be damaged during most collision repairs. Hence, placing the labels on the fenders at the height of other vehicles' bumpers would seem to be precluded, since that is the area most likely to need the bumping and grinding to repair collision damage, as noted in Ford's comments.

It is imperative that the identification numbers not be destroyed or rendered illegible during repair and maintenance operations, to the greatest extent practicable, since destroyed or illegible labels will serve the interests of no one but auto thieves. To ensure the efficacy of the labels, this rule simply requires that which Congress intended; namely, that the vehicle manufacturers use their engineering judgement when deciding where to apply the labels, so that those labels will be:

(1) in a place where they won't be disturbed by the use of any tools necessary in the installing, adjusting, or removing of the part or adjoining parts, or any portion thereof;

(2) on a portion of the part not likely to be damaged in a collision; and

(3) protected from damage during normal dealer preparation procedures.

To clarify what is required of vehicle manufacturers, this rule specifies that the label shall be placed on an interior surface of the part as it is installed in the vehicle, if this placement is practicable, and that the label shall be positioned to satisfy the three criteria specified above.

GM commented that the requirement that labels be protected from damage during maintenance and repair of the vehicle should be deleted. GM stated that it was not clear how the manufacturer could certify compliance with the requirement that the label was protected from damage as the result of repair and maintenance. As noted above, the manufacturers are required only to ensure that the labels are protected from damage during foreseeable repair and maintenance operations and during normal dealer preparation operations. The manufacturer specifies the procedures its dealers are to follow during these operations, and recommends the tools to be used during such operations. Accordingly, the manufacturer already knows the procedures it has specified and the portions of the part most likely to be damaged in a collision. The manufacturer is simply required to cerify that it has used this knowledge when deciding where to position the labels on its covered major parts.

VW commented that the agency should allow the use of an integral paint mask, so that the labels can be put on the parts before the vehicle is painted or rustproofed. Such a procedure is permissible under this standard, provided that the paint mask is removed from the label. If the mask were not removed, the identification would not satisfy the requirement that it be visible without further disassembly once the vehicle part has been removed from the vehicle. That requirement is essential if this theft prevention standard is to facilitate the quick and easy identification of parts by trained investigators.

Mazda asked that vehicle hatchbacks be allowed to be marked beneath the trim panels. Otherwise, Mazda commented, the identification marking would be visible to vehicle occupants. This rule does not permit any covered major parts to have identification marks hidden behind trim panels. One of the major purposes of this theft prevention standard is to enable law enforcement officers to quickly determine if a motor vehicle part is stolen. If those officers must disassemble the part to look for the appropriate identification markings, their task would be more difficult. NHTSA believes that the purpose of the Theft Act was to make the task of law enforcement officers as simple as possible, without imposing significant costs on vehicle manufacturers. No greater costs are imposed by requiring the markings to be visible to investigators. Therefore, the requirement for visibility is adopted as proposed.

Target Areas. To ensure that the identification markings are readily located by investigators, the NPRM proposed that those markings be placed in the same 5 centimeter X 5 centimeter (cm) area on each part of that type produced by the manufacturer. The manufacturers were free to select any 5 cm X 5 cm area as the target area, provided of course that the target area met the requirements of protecting the identification from damage during normal repair, maintenance, and dealer preparation operations and was visible to investigators without further disassembly. Comments were requested on whether this target area should

be required to remain unchanged for the entire production run of the covered major parts or whether the manufacturers should be allowed to change this target area every model year.

Most of the manufacturers asked for some modification to the proposed 5 X 5 cm target area. Ford stated that a target area was unnecessary. Chrysler stated that a target area was incompatible with mass production techniques. VW stated that a 5 X 5 cm target area was both unreasonable and unnecessary. Nissan asked that the target area be expanded to 5 X 6 cm. Mercedes and Saab asked that the target area be expanded to 10 cm X 10 cm. GM asked that the target area be expanded to 15 cm X 15 cm. Mazda urged the agency to require only that some part of the identification be within the 5 cm X 5 cm target area.

In response to these comments, NHTSA has carefully examined the reasoning behind its proposed target area requirement. There were two primary reasons for proposing this requirement. First, a standardized location would facilitate quick identification checks by law enforcement officers. If the investigator knew exactly where a particular part on each line was required to be marked, the investigator would know where to look for the identifying number without having to search the part for that number. The investigator would also be alerted to possible suspicious activity if the identifying symbol were in some location other than the required target area.

Second, the proposed target area for original equipment and the companion proposal for a target area for replacement parts were intended to ensure that there would be a separation between the areas where the identification would be marked on such parts. Criminals plainly will not be able to routinely sell stolen parts which can be identified as such, nor should there be a market among honest repair shops for unmarked parts which were required to be marked by this standard. Accordingly, there will probably be an effort by chop shops and other thieves to try to obliterate the identifying numbers on original equipment parts and affix counterfeit replacement part identifications. If that counterfeit replacement part marking can be located directly over the obliterated original equipment part marking, it would be more difficult for the investigator to see the evidence of the obliteration of the original equipment part marking. With the target areas and the requisite distance between that for original equipment parts and replacement parts, the obliteration of the original equipment part marking would leave that area with evidence of the obliteration or with evidence of sanding and repainting. With either sort of evidence, the investigator would be alerted that the replacement identification should be carefully examined for authenticity.

NHTSA believes that both of these objectives are still reasonable and necessary if the theft prevention standard is to achieve its intended objectives. However, the agency also believes that the manufacturers raised valid points in the comments asserting that these objectives could be achieved in a less restrictive manner. Therefore, this final rule retains the target area requirement for original equipment parts, so as to achieve both the intended objectives, but makes the requirement less restrictive. This theft prevention standard requires the vehicle manufacturers to designate a target area for each covered major part. The covered major parts are set forth later in this preamble.

There is only one limitation on the target area which may be designated by the vehicle manufacturers, subject to the other performance requirements for labels set forth above. That is, the target area for original equipment parts cannot exceed 50 percent of the surface area on the surface of the part where the original equipment part will have the identification affixed or inscribed. This requirement is included in this final rule to ensure that there will be adequate separation between the target areas for original equipment parts and those for replacement parts.

The vehicle manufacturers are required to inform the agency of the target areas selected for each covered major part. This information will be made available to the public in the docket section. NHTSA anticipates that the information will be primarily used by replacement part manufacturers and by law enforcement organizations to learn the location of the target areas on each manufacturer's original equipment parts. Further, the agency anticipates that this will be a minimal burden on the manufacturers, since Ford and GM commented that they have voluntarily provided such information to the National Automobile Theft Bureau (NATB) in connection with their voluntary parts marking programs over the past several years.

The agency has determined that this procedure and the companion procedure requiring vehicle manufacturers to designate target areas for marking replacement parts, discussed in detail below, will serve both the objectives the proposed 5 cm X 5 cm target area was designed to serve, by ensuring that trained investigators know the location of the target areas for both original equipment and replacement parts and ensuring an adequate separation of the target areas for marking original equipment and repalcement parts. It will do so while providing manufacturers with maximum flexibility to avoid unnecessary production burdens and/or costs.

Regarding the issue of whether the target area should be maintained for the production run of the major parts or whether that target area should be allowed to be changed each model year, opinion was very divided between vehicle manufacturers and law enforcement groups. The vehicle manufacturers uniformly indicated that they should be allowed to change the target area after each model year. Their position generally was that unexpected design changes sometimes occur between model years, which could make it impracticable to continue using the previously specified target area. On the other hand, the International Association of Auto Theft Investigators and CHAT urged the agency to standardize the location of the original equipment marking over the entire production run of the parts. CHAT stated that a fender from any model year will not have any model year identification other than the VIN. If the target area varies from model year to model year, an investigator might well have to check four or five different places to see if the fender has the necessary marking.

NHTSA believes that the expansion of the permissible target area in this final rule has largely obviated the manufacturers' concern about being required to use the same target area over the entire production run of the part. The expansion of the target area has also increased the need for theft investigators to have such target areas standardized over the entire production run of the parts. Accordingly, this final rule specifies that the target area must remain constant over the entire production run of the parts. It does, however, allow an exception for a situation where a restyling of the part makes it impracticable to mark the part in the original target area. In such cases, the manufacturer would be required to inform the agency of the redesign and the new target area. It will be an easy matter for a trained investigator to differentiate the restyled part from the old part and look for the markings in the different target area.

d) Removal of the identification number must cause that identification to self destruct and alter the appearance of the vehicle part.

The NPRM proposed these requirements for the following reasons. It is critically important that thieves not be able to remove an identification marking label legitimately affixed to the part by a manufacturer and transfer that label intact and undamaged to a stolen part. CHAT commented that this was one of the most significant proposed requirements in the NPRM, and urged the agency to adopt it as proposed. No other commenter specifically addressed this proposed requirement, and it is adopted in this final rule to ensure that legitimately affixed labels cannot be removed from parts and reapplied to other parts.

As a further precaution, the NPRM proposed that an alteration of a character on the label be required to leave traces of the original character or otherwise visibly alter the appearance of the label. For other means of identification, the NPRM proposed that an alteration of any part of the identification be required to visibly alter the appearance of the vehicle part. Both Toyota and Ford commented that the label should only be required to leave evidence that an attempt was made to alter or obliterate a character of the VIN. These commenters noted that this would not necessarily leave a trace of the original character.

The agency notes that the NPRM did *not* propose to require that an attempt to alter or obliterate a character on the label always leave a trace of the original character. It proposed only that it do that *or* otherwise visibly alter the appearance of the label. Ideally the alteration would leave a trace of the original character so that the legitimate owner of the part could be informed of its recovery. However, the NPRM recognized that this would not always be practicable with current labels. In those cases where it is not practicable, the proposed requirement would be satisfied if the appearance of the label was visibly altered. This requirement is identical to the understanding expressed by both Ford and Toyota, and it is adopted as proposed.

Ford also commented that the proposed requirement that alterations of the identification number visibly alter the appearance of the vehicle part, if the identification number is applied by some means other than labels, should be modified. The reasoning behind this comment was as follows: first, according to Ford, it is the identification number, and not that of the vehicle part, which would be altered in appearance. Second, a skillful alteration, such as over-stamping, might not visibly alter the appearance of the number. The alteration would be latent and would be detectable only with further laboratory or further field investigation. Accordingly, Ford requested that the requirement be modified so that attempts to alter the indentification number "be detectable".

NHSTA has carefully considered this comment. The agency did not intend that the alteration of the identification number on an engine, for instance, must visibily alter the appearance of the entire engine. The proposed requirement was intended to refer to the appearance of the part surface on which the identification number is marked, and not to the appearance of the entire part. It is appropriate to be more specific in this final rule, and limit the requirement so that an attempted alteration must visibily alter the appearance of the part surface on which the identification number is marked, rather than generally requiring it to alter the appearance of the part.

However, this rule does not incorporate Ford's suggested requirement that the attempted alteration only "be detectable". That criterion would require that all investigators have laboratory equipment and possess the highest skills, if they were to be alerted to the attempted alteration. However, this theft prevention standard is designed to facilitate the recognition of any alterations by reasonably skilled trained investigators working under field conditions. To serve that function, it is necessary that the attempted alteration at least give some visual indication to the investigator that the part should be more carefully examined. Such indication would not be required under the requirement suggested by Ford, and so it is not adopted in this rule. Attempted alterations must visibly alter the appearance of the part surface on which the identification number is marked, in the case of means of identification other than labels.

A number of commenters addressed the proposed "footprint" requirement for labels under this section. That proposal would have required that removal of the affixation must create or uncover physical evidence that the affixation was originally present or required to be present. The 3M Corporation, a leading manufacturer of these labels, commented that a footprint would not remain if some extraordinary means of eradication were used on the areas where the labels were affixed. VW and Saab stated that the proposed requirement that removal of the label must "discernibly alter the appearance of the vehicle part" should be narrowed to require only that some residual parts of the label must remain. Saab stated that if the agency intends a broader requirement, it ought to include the compliance test procedures it will follow in this standard. Chrysler stated that the footprint requirement should be deleted because it would create engineering problems and might "violate" their rustproofing procedures. GM stated that the footprint requirement should be deleted because of the many unresolved questions surrounding this area. CHAT, on the other hand, stated only that any compromise of the footprint requirement would undermine the integrity and effectiveness of the theft prevention standard.

In light of these comments, the agency reexamined the proposed requirement in detail. If there were no footprint requirement and the label were removed from the stolen part, there would be no evidence that a label had ever been on the part. NHSTA agrees with CHAT's comment that this would substantially reduce the effectiveness of this theft prevention standard.

On the other hand, NHSTA agrees with the manufacturer's comments stating that the footprint left by current labels would not really alter the appearance of the vehicle part. The labels work by leaving a residue of adhesive which cannot be removed by most solvents, but the residue is not visible under natural light conditions. Adopting the proposed requiremnets would require the manufacturers to certify that removal of the labels would not discernibly alter the appearance of the parts, and it is not clear that current labels would do so, particularly if the parts were painted and rustproofed before the labels were affixed.

The label manufacturers have indicated that the developement of an adhesive that would alter the appearance of the part when removed is feasible, but has not yet been developed. While such a feature would significantly enhance the ability of law enforcement personnel to detect tampering with a label, the agency does not believe it is appro-

priate in this case to impose a requirement beyond the limits of current technology. NHSTA anticipates that, as this enhanced label technology is developed and labels incorporating this feature are offered for sale, the vehicle manufacturers will voluntarily include specifications for such technology into their orders for labels used for marking parts in accordance with this standard.

Accordingly, this standard requires only that removal of the labels must leave residual parts of the label, including the adhesive, on the part, and that these residual parts must be discernible by trained investigators. For purposes of this requirement, "discernible" does not mean that the residual parts must be visible under natural light. This modification of the proposed requirements is intended to allay the concerns of those manufacturers who believed that the NPRM was asking them to certify a performance for current labels which is beyond their capabilities. It does not represent any change from what the agency intended to propose in the NPRM.

e) The affixation must be resistant to counterfeiting.

The NPRM proposed that this requirement be applicable only to labels. Aside from steps taken by the label and vehicle manufacturers to safeguard the labels and the marking system, the NPRM would have required each label to bear a distinctive logo or trademark identifier along with the VIN. By requiring the marking to be incorporated in the material of the label itself instead of simply being stamped on the label, the NPRM intended to increase the difficulty of counterfeiting the labels because standard templates could not be readily located or purchased.

3M commented that all means of identification should be required to be resistant to counterfeiting, not just labels. The agency proposed that only labels be subject to this requirement because stamping, etching, and other means of identification are readily available to the public. A stamped or etched marking will resemble any other stamped or etched markings.

3M also commented that it assumed that its CONFIRM logo could serve as the logo for all manufacturers. That assumption is incorrect. As stated above, NHTSA proposed that each manufacturer's distinctive logo or trademark identifier would be incorporated in the material of the label itself, as a further protection against counterfeiting of the labels. CHAT commented that the requirement for each manufacturer's distinctive logo or trademark identifier should minimize the ability of non-legitimate users to use "off-the-shelf" technology to produce their own labels. NHTSA agrees with CHAT, because the proposed requirement would require counterfeiters to alter the process by which the label is produced instead of just altering the finished product. Morever, if those non-legitimate users were to somehow acquire the labels, such labels could only be applied to one manufacturer's vehicles. Therefore, this requirement is adopted as proposed.

Security Etch commented that the resistance to counterfeiting requirement was not objective and, therefore, was not permissible in this theft prevention standard. NHTSA believes that the general criteria set forth in this requirement are sufficient to alert both manufacturers and vehicle manufacturers to what is required. The House Report accompanying the Theft Act explicitly authorized the agency to promulgate "general criteria which the identification must meet." H. Rept. at 10. It is the agency's belief that Congress authorized the use of general criteria because of its desire that the theft prevention standard be swiftly implemented. *See* H. Rept. at 11.

To further specify what is intended by those general criteria, NHTSA has included a specific requirement in this final rule that each manufacturer's logo or trademark identifier be incorporated in labels, as was proposed. The agency believes that these requirements are more than sufficient to satisfy the mandate of the Theft Act that the theft prevention standard be objective, as that term was explained in the relevant legislative history.

3. Parts to be covered by this standard.

Section 602 of the Cost Savings Act provides that this theft prevention standard applies to only the covered major parts of high theft lines, and limits the number of covered major parts to 14 per vehicle. Section 601(7) of the Cost Savings Act sets forth a candidate list of 15 or 17 major parts (depending on whether the car has two or four doors) from which covered major parts can be selected.

To implement these statutory provisions, the NPRM set forth three alternatives for selecting the covered major parts. Alternative 1 listed the following 12 major parts as those which would be selected as covered major parts on all high theft lines:

1. Engine;
2. Transmission;
3. Right front fender;
4. Left front fender;
5. Hood;
6. Right front door;
7. Left front door;
8. Front bumper;
9. Rear bumper;
10. Right rear quarter panel;
11. Left rear quarter panel;
12. Decklid, tailgate, or hatchback (whichever is present).

These 12 parts were selected from section 601(7)'s list of major parts because they were found to be those most frequently repaired or those most costly to replace. This listing did not include the rear doors on 4-door cars, the grille, the trunk floor pan, or the frame, which are all specifically listed in section 601(7).

The second alternative would have required the marking of the same 12 parts as the first alternative, and an additional two parts. These two parts would not have been specified in this standard. Instead, this alternative would have allowed the individual manufacturer to propose the additional two parts to the agency. NHTSA stated in the NPRM that it would agree to the manufacturer's proposal if the two parts were listed in section 601(7), and would initiate rulemaking if the part was comparable in design or function to any of the listed parts. The reason for proposing this alternative was that law enforcement groups have consistently urged the agency to require the marking of the statutory maximum 14 parts on all vehicles.

The third alternative was also based on the agency's inclination to require the marking of the statutory maximum of 14 parts. It was similar to the second alterantive, except that the two additional parts to be marked would be specified in this final rule. The NPRM stated that the candidates for the additional parts to be selected were the five listed in section 601(7) which had not been included in the 12 parts listed in the first alternative.

The comments on these alternatives again reflected a split of opinion between vehicle manufacturers and organizations involved in reducing auto thefts. Chrysler stated that it was not necessary to mark more than 8 parts. BMW urged the agency not to specify that 14 parts must always be marked. VW and AMC urged the agency to require the marking of as few parts as possible by the manufacturers. Ford and Nissan supported the first alternative listed in the NPRM. Ford stated that the uniform marking of certain parts would make it easier for investigators to know on what parts he or she should look for the identification numbers. GM proposed that 10 parts be marked on all high theft cars, and that two additional parts be marked on those cars. Those two additional parts would be selected by agreement between the agency and the individual manufacturer. Saab supported the third alternative and suggested that the rear doors, if present, be the two additional parts selected for marking.

On the other hand, the groups involved in reducing auto theft unanimously supported the concept of requiring 14 parts to be marked on high theft cars. The Delmarva Investigators, the International Association of Auto Theft Investigators, and the Maryland State Police all commented that the frame should be added to the list of 12 parts set forth in the first alternative of the NPRM, and the 14th part to be marked should be selected by agreement between the agency and the manufacturer. CHAT stated that the rear doors should be added to the 12 parts listed in the NPRM, since all four doors are taken from a vehicle when it is stripped. CHAT urged that if any of the 14 required parts were not present on a high theft vehicle, the manufacturer should be required to propose alternate parts to be identified, because 14 parts should be marked on each high theft vehicle. The NATB agreed with CHAT's comments, and suggested three alternatives to require high theft cars to have 14 parts marked, depending on how such cars are configured.

There were a number of commenters addressing the question of whether certain parts should or should not be included in the list of covered major parts. The frame or, in the case of a unitized body, the supporting structure which serves as the frame was recommended to be included in the designation of covered major parts by both manufacturers and theft investigators. For instance, the FBI stated that marking the frame is the only way to identify a stripped or burned-out vehicle. The Delmarva Investigators stated that the frame is often used to identify illegally altered stolen vehicles. GM stated that many manufacturers have voluntarily marked the frame for many years, and this identification has proven useful to

law enforcement. A failure to select the frame as a covered major part in this final rule would cause GM to reevaluate whether it should continue voluntarily marking the frame. Ford, on the other hand, stated that marking the frame should be given a low priority. This was because passenger car design is moving away from traditional frame construction to unitized body construction, which does not use a frame.

NHTSA has determined that the frame need not be selected as one of the covered major parts for the purposes of this standard. The frame itself is almost never stolen or replaced on a vehicle. The only reason for making such a selection would be to ensure that the remains of a stripped vehicle can be identified. As noted by Ford, there will be few, if any, new passenger cars produced in the future using frame construction. In the case of cars using unitized body construction, the objective of ensuring that an identifiable part of the vehicle remains after the vehicle has been stripped can be achieved by requiring the marking of both rear quarter panels. Those rear quarter panels are an integral part of the supporting structure which serves as the frame for unitized bodies, and generally remain with the frame. Accordingly, the agency does not believe there is any reason to select the frame as one of the covered major parts.

A number of commenters also questioned the agency's selection of rear quarter panels as covered major parts. Mitsubishi, BMW, Nissan, and Mazda stated that the rear quarter panels are not really separate parts in the case of unitized bodies, since they can't be removed as separate parts from the unitized body. However, the Theft Act clearly designates the rear quarter panels as separate parts which can be selected as covered major parts. NHTSA believes there is value in marking both rear quarter panels, because they would be among the costliest major parts to replace. They will also serve as an effective surrogate for marking the frame in unitized body vehicles, as discussed above. For these reasons, NHTSA is not convinced by GM's comment that, because there is no evidence that rear quarter panels are by themselves high theft parts, those panels should not be selected as covered major parts. Given the high cost of the rear quarter panels, such parts could be especially profitable to chop shops. One of the purposes of this theft prevention standard is to increase the risks for those chop shops (H. Rept. at 5), and the agency believes it is especially important to increase the risks associated with the most potentially profitable parts. Moreover, marking of both rear quarter panels would serve the law enforcement objective noted above in the discussion on why the frame was not selected as a covered major part. Accordingly, the theft prevention standard requires the marking of both rear quarter panels.

Mazda stated that the rear quarter panels on their unitized body vehicles consist of an inner structural side panel which is an integral part of the unitized body shell to which is attached an exterior body panel. Mazda asked which of those two panels should be marked, or if both should be marked. In these instances, both the inner side panel and the exterior body panel comprise the rear quarter panel of the car. Marking either panel would comply with the requirement that the rear quarter panel be marked.

The commenters generally questioned the agency's selection of the front and rear bumpers as covered major parts. Chrysler stated that most cars in the future will not have traditional chrome-plated bumpers with a face bar. Instead, those vehicles will use soft front and rear fascia materials which are integrated with the front and rear of the body. Chrysler stated that it knows of no feasible way to permanently attach a label to that soft fascia material.

Earlier in this preamble, NHTSA explained that it is required to promulgate a performance standard. The fact that manufacturers may have to use some means of identification other than labeling is not by itself a valid reason for not selecting a part as a covered major part. If a manufacturer is unable to certify that labels can satisfy the performance standard when attached to a covered major part, the manufacturer will have to use some other means of marking the part, such as stamping or etching.

Additionally, Chrysler argued that these bumper designs are not really separate parts, but are an integral part of either the front or rear end. Accordingly, Chrysler argued that the new bumpers will not be high theft items. The Department of Justice commented that, as far as they know, bumpers are not involved in much chop shop activity. The Justice Department accordingly recommended that the rear doors on four door cars should be required to be marked in lieu of the bumpers.

According to the information currently available to NHTSA, the front and rear bumpers are the most often replaced major parts on vehicles. This, of course, results from the function of these components, which is to protect the front and rear end of the vehicle. Hence, these parts would seem to be natural targets for chop shops, since they are such high demand items by repair shops.

Moreover, the fact that current information indicates that bumpers have not been prime targets for chop shops is not dispositive. None of the front end components are marked on most high theft cars today. In this situation, it stands to reason that the most expensive components of the front end, the hood and the fenders, would be most desirable to chop shops, because of the potential profits. However, if this standard were to require the marking of the hood and fenders, but not the bumpers, chop shops could with relative safety "clip" the bumpers of stolen vehicles and fence those parts. The legislative history of the Theft Act noted that marked components are often junked by criminals, while the unmarked components are fenced to salvage and repair shops. H. Rept. at 4. It would be inconsistent with the purposes of the Theft Act to leave open the possibility that chop shops could with relative safety steal and fence the most often replaced major parts of high theft lines, because NHTSA failed to select the bumpers as covered major parts.

Accordingly, this final rule selects the front and rear bumpers as covered major parts. The agency concurs with the manufacturer's comments that these bumpers frequently consist of many components. For the purposes of this requirement, the marking of the bumper will be satisfied by marking the face bar or the fascia, but would not be satisfied by marking the rub strip, bumper guards, or energy absorber.

After having determined that these specific component parts should or should not be selected as "covered major parts" under section 602(a)(1) of the Cost Savings Act, NHTSA had to determine which of the three proposed alternatives should be incorporated into the theft prevention standard. The first proposed alternative offered the advantage of uniformity of parts marking, so that investigators in the field would know which parts were to be marked on all high theft line vehicles. Adopting the second alternative would mean that two of the fourteen parts to be marked would vary from manufacturer to manufacturer, and this would create needless complexity for the investigators. However, the agency agrees with the comments by the Justice Department, CHAT, and Saab that all current evidence indicates that all four doors are taken when a four door vehicle is stripped by criminals. It would be inconsistent with the purposes of the Theft Act to allow the rear doors to be stolen and fenced with minimal risk. For the reasons stated above, this final theft prevention standard adopts the third proposed alternative, adding the two rear doors to the list of the 12 major parts given in the first alternative. This means that two door vehicles in high theft lines will have 12 covered major parts, and four door vehicles will have 14 covered major parts. Further, it includes the advantage of the first proposed alternative of uniformity of parts marking between the different manufacturers.

4. Cost of Compliance with the Theft Prevention Standard.

Section 604(a) of the Cost Savings Act provides that the theft prevention standard "may not . . . impose costs upon any manufacturer of motor vehicles to comply with such standard in excess of $15 per motor vehicle . . ." To amplify this limitation, the House Report stated, "(t)his is a limitation on DOT. If DOT, when promulgating the standard, determines that this cost will be exceeded, the standard should not be issued until it is adjusted to be within the limitation. In short, there is no authority to issue a standard that exceeds the cost limitation." H. Rept. at 16.

NHTSA stated its interpretation of this language in the NPRM. To repeat, NHTSA believes that it has no authority to issue a standard which cannot reasonably be met by all manufacturers for $15 or less, but this language does *not* require the standard to be capable of being met for $15 or less by every manufacturer using every technology. In other words, this standard meets the cost limitation of section 604(a) if there is at least one reasonable means of compliance available to each manufacturer that would cost not more than $15 per vehicle, based on reasonable and generally accepted management and accounting techniques.

The agency has broad discretion to make adjustments to the standard if it exceeds the $15 limit. These adjustments would then be generally applicable to all manufacturers. NHTSA believes

it is clear that Congress did not contemplate that no standard would be issued merely because one manufacturer claims unverified costs above that limit. Moreover, as explained in the NPRM, Congress did not give the agency authority to exempt any manufacturers entirely from the standard, nor does the agency have the authority to modify the standard for a particular manufacturer to bring that manufacturer's costs below the $15 limit. The same performance requirements must pertain to all manufacturers even if adjustments are needed to the standard so that it is within the $15 limit.

The agency concluded this section of the NPRM by stating its anticipation that no manufacturer would make a claim that it is unable to meet the standard for $15 per vehicle, given the availability of inexpensive labeling and engraving technologies. However, Ferrari did make such a claim, and stated that for a small manufacturer the marking of 14 parts with the VIN "would create enormous problems with the management of the system and would raise costs well in excess of $15 for each vehicle". The only substantiation for this claim was that the marking requirements would force the small manufacturer to determine the U.S. versions of its vehicles as early as the bodywork stage of production.

NHTSA is not persuaded by this comment. There are inexpensive labeling and engraving technologies available for use by Ferrari. Foreign manufacturers must determine whether the vehicle is to be a U.S. or European version before the vehicle has been built, so that it can be certified as complying with the U.S. vehicle safety and emissions standards. At that time, Ferrari can assign a U.S. VIN and use the inexpensive marking technologies to mark the covered major parts of its high theft lines, for those vehicles to be sold in the United States. Accordingly, NHTSA believes Ferrari can comply with this standard at a cost of no more than $15 per vehicle.

VW commented that it might not be able to comply with this standard at a cost of $15 or less per vehicle. As support for this position, VW stated only that its cost of compliance would depend upon which of its lines were selected for coverage under this standard. No other manufacturer stated that it could not comply at a per vehicle cost of $15 or less. NHTSA's estimate of compliance costs is less than $10 per vehicle if the parts are stamped or engraved and $5 per vehicle if the parts are labeled for the larger manufacturers. For low volume manufacturers, NHTSA estimates that it will cost between $7 and $9 per vehicle to sandblast the markings into the parts. Based on this information, NHTSA concludes that this standard satisfies the cost limitation of section 604(a) of the Cost Savings Act.

Ferrari also asked that NHTSA exempt from the requirements of this theft prevention standard high theft car lines which have fewer than 20 thefts per model year. Section 603(a)(1) of the Cost Savings Act treats "passenger motor vehicles of any line" as part of a high theft line, if that line meets certain conditions. Congress granted exemption authority to the agency in section 605 of the Cost Savings Act for vehicles with original equipment anti-theft devices which meet certain conditions. There are no other exemptions provided in Title VI of the Cost Savings Act. An old principle of legal interpretion is expressed in the maxim *"expressio unius est exclusio alterius"*; literally, the expression of one thing is the exclusion of another. *See Earl of Southampton's Case*, 1 Dyer 50a, 73 Eng. Rep. 109 (K.B. 1541); *Marbury v. Madison*, 1 Cranch (5 U.S.) 137, at 174, 175 (1803). When Congress drafted the Theft Act so as to provide one means of exempting vehicles from its requirements, it is presumed that Congress intended to exclude other means of exempting vehicles from those requirements.

The presumption that Congress did not intend low volume manufacturers to be excluded from the theft prevention standard because of the relatively few vehicles they produce is reinforced by comparing Title V and Title VI of the Cost Savings Act. Title V expressly provides NHTSA with the authority to exempt small manufacturers from the generally applicable requirements of the fuel economy standards in section 502(c) of the Cost Savings Act. The absence of any comparable exemption authority in Title VI of the Cost Savings Act shows a Congressional intent that vehicles not be exempted from the requirements of the theft prevention standard just because relatively few of those vehicles are produced or stolen. Accordingly, the Ferrari comment is not adopted in this final rule.

B. Performance Standards for Replacement Parts

Title VI of the Cost Savings Act provides that

the theft prevention standard shall apply to replacement parts as well as to the original equipment parts. Section 602(d)(2) specifies that the standard may not require identification of any replacement part which is not designed as a replacement for a covered major part required to be identified under the standard. It further provides that the standard can not require the inscribing or affixing of any identification other than a symbol identifying the manufacturer and a common symbol identifying the part as a major replacement part. The legislative history notes that the marking for replacement parts "could be a manufacturer's logo with the initial "R" for replacement part affixed or inscribed on the part." H. Rept. at 12. To implement these requirements, the NPRM proposed the following requirements.

1. Number or Symbol to be Used and Location of the Marking.

The agency proposed that the replacement parts be marked with the manufacturer's logo and the "R", precisely as Congress had suggested. These markings were required to be at least one cm in height, as compared with the 4 millimeter height proposed for original equipment parts marking.

In response to the proposed requirements, both Ford and GM asked why the minimum size for the replacement part identification was larger than that proposed for original equipment part identification. The larger markings were proposed for replacement parts than original equipment parts because of the different information being marked on the parts. Original equipment parts will be identified with the VIN. Experience has shown that markings which are 3/32 of an inch have been readily legible for investigators. Replacement parts will only be identified with the letter R and the manufacturer's logo. NHTSA proposed the one cm minimum height for these markings so that the logo would be more clearly identifiable and more difficult to counterfeit. These replacement part markings would have to meet the same performance requirements as original equipment parts.

NHTSA believes the replacement parts marking is especially important. Numerous commenters at the public hearing on December 6 and 7, 1984, noted that the theft prevention standard is only as good as the replacement parts marking standard, because chop shops and other motor vehicle thieves will try to obliterate the VIN markings from original equipment parts and to replace those VIN's with counterfeit logos and "R" designations. It seems far easier to counterfeit a single letter and logo than to counterfeit a new VIN marking for each stolen part. Therefore, this rule adopts the proposed one cm minimum height requirement for replacement part markings.

Both the Auto Internacional Association and the Specialty Equipment Market Association commented that the manufacturer of the replacement part should not be required to mark its logo on the replacement part. Instead, these commenters asserted that the manufacturer's initials should be required, since those would also identify the manufacturer and would be required to be permanent, tamper-resistant, etc.

NHTSA is not persuaded by these comments. The manufacturer's logo is more distinctive and more difficult to counterfeit than simple initials would be. If thieves can successfully obliterate the original VIN markings on stolen parts, it would be a very simple task to affix or inscribe initials on the stolen part. Moreover, it would be difficult for investigators in the field to judge if the initials represented legitimate markings or were counterfeit, if the counterfeiting were done with even minimal skill. Logos, on the other hand, are unique indentifiers of each manufacturer and will be quickly identified by the investigator. Further, a counterfeited logo should be easier for investigators to identify than some counterfeited initials. Accordingly, this final standard retains the requirement that covered major replacement parts be marked with the manufacturer's logo and the letter "R".

CHAT commented that the agency should require the manufacturers of replacement parts to register their names, addresses, and logos with the agency. This, according to CHAT, would help both NHTSA and law enforcement officers to identify the replacement part manufacturer from its logo and to verify that the logo was valid. Regardless of the merits of this suggestion, it is outside the scope of this rulemaking. However, should experience with this standard indicate that trained theft investigators are unable to identify or verify logos without a central registry, the agency would consider whether it ought to initiate rulemaking to require this sort of registration.

The NPRM proposed that the logo marked on

the replacement part be that of the part's manufacturer. VW asked that this be modified to specify that the logo be either that of the part's fabricator or that of the vehicle manufacturer for which the part is made, at the vehicle manufacturer's option. This comment relates to the common practice of vehicle manufacturers of leasing out the molds used to make the major parts of their vehicles to another party. That other party then produces the parts using the manufacturer's mold. The parts are then marketed as replacement parts made by the vehicle manufacturer.

NHTSA did not intend to disturb this practice, nor did it intend to require that parts made for a manufacturer by an agreement with a third party be identified as parts not actually made by the vehicle manufacturer. Accordingly, for the purposes of this theft prevention standard, the manufacturer of a replacement part will be considered to be either the actual fabricator of that part or the party that provides the fabricator with the mold used to make that part and markets the replacement part as its own. The question of which of these two parties is the manufacturer for the purposes of this standard is left to those parties to decide, through contract or other agreement. Whichever party agrees to be the manufacturer of the replacement part will be responsible for ensuring that the markings on the part comply with this performance standard, and must certify that compliance. If neither party elects to be the manufacturer of the replacement part, the party that markets the replacement part as its product will be responsible for certifying that the part complies with this standard.

GM commented that the NPRM should be modified to permit the use of labels for replacement part marking. Both the NPRM and this final rule allow manufacturers to label the markings on replacement parts, provided that the labels satisfy the performance criteria. Honda and Jaguar both stated that they will have to inscribe the markings on their replacement parts, to allow for painting and rustproofing. This may well be true, but the standard does not require it. If these manufacturers can devise a way to protect the labels during painting and rustproofing, and satisfy the other performance requirements, they are free to use labels. However, they may inscribe the parts, if they determine that to be the easiest means of complying with the standard.

Mazda stated that its replacement parts are shipped just primed, and the part must be painted and rustproofed by the dealer before it is installed on a vehicle. Mazda noted that the markings may not be clearly visible after these operations have been performed on the replacement part. Therefore, Mazda suggested that the proposed requirement that replacement part markings be protected from damage during maintenance and repair be modified to require such protection "to the maximum extent possible".

NHTSA has not adopted this comment in this final rule. As noted above, many commenters at the public hearing stated that this theft prevention standard will only be as effective as the replacement parts marking requirement. NHTSA concurs in that judgment. If the theft standard were to allow replacement part markings not to be clearly visible to invesigators, those investigators would have no way of determining if the marking had been obliterated during normal maintenance and repair or if it had been obliterated by thieves. This would offer a loophole in the standard for the unscrupulous. Since NHTSA strongly believes no such loophole should exist, it did not adopt the Mazda comment.

VW commented likewise that replacement parts are shipped either unpainted or just primed, and must be painted and rustproofed by the entity that installs the part. VW stated that in some cases "the agency must recognize that it may not be possible to maintain the label." VW must recognize that it cannot certify compliance with this theft prevention standard for its replacement parts, unless it can certify that the marking of those parts will remain permanently attached to the part and will be clearly visible after normal dealer preparation of the replacement part, which includes painting and rustproofing. If VW cannot devise a method that will enable it to certify such compliance using labels, it will have to use some other means of marking those replacement parts, such as stamping or etching.

Both Saab and Mazda asked the agency to confirm that it was acceptable under the provisions of this theft standard for a manufacturer to mark all of its covered major parts with the replacement part markings. Those parts then used as original equipment parts would also be marked with the VIN for the vehicle on which they were used. It was asserted that these "dual markings" would

greatly simplify the manufacturer's task and reduce its costs for complying with this standard.

NHTSA agrees that such dual markings would be simpler for vehicle manufacturers, but the agency cannot allow such dual markings under the theft prevention standard. Dual markings would give thieves the opportunity to present stolen original equipment parts as properly marked replacement parts. Once the original equipment part identification (the VIN) had been obliterated from those stolen parts, a legitimate replacement part marking would remain. Assuming that the obliteration of the VIN were performed reasonably proficiently, repair shops and investigators would have little reason to suspect that this part was anything other than a properly identified replacement part. This would not serve the purpose of the Theft Act of "decreasing the ease with which certain stolen vehicles and their major parts can be fenced". H. Rept. at 2. To make this absolutely clear, this final rule incorporates a provision prohibiting manufacturers from marking a part both as an original equipment part and as a replacement part.

Saab also commented that replacement parts should only have to be marked while the high theft line the parts are designed to fit is in production. This suggestion has not been adopted. The replacement parts will be designed to fit vehicles which have been selected as high theft lines. All available evidence suggests that cars which are subject to high theft rates remain so for a significant period of time. If markings are not required on replacement parts after the manufacturer has ceased production of the corresponding high theft line, thieves could steal those cars and chop the cars into parts. The chop shops could devote their cunning and energy to obliterating the original equipment marking on those parts, and then sell the parts as replacement parts. Since replacement parts for these cars would no longer have to be marked by the manufacturer, the chop shops would not have to bother counterfeiting the replacement part marking. The absence of this marking would give less notice to both repair shops and investigators that the parts were, in fact, stolen. Allowing this would be inconsistent with the purposes of the Theft Act. Accordingly, it is not permitted under this final theft prevention standard. Once a line is selected as a high theft line, each covered major replacement part designed for use on that line must be identified as a replacement part. That requirement remains in effect as long as those replacement parts are produced.

With respect to the location of the replacement part markings, the NPRM proposed that those markings be placed in the same size target area as was proposed for original equipment parts (5 cm X 5 cm) and that this target area be 15 cm away from the target area for original equipment parts. The reasons for proposing the target area were the same two explained above for original equipment parts. Briefly repeated, a target area would alert an investigator as to precisely where he or she should examine the part for the marking and it would ensure that a thief could not obliterate a legitimate marking and place a counterfeit marking on top of the obliterated area, in an effort to hide the obliterated legitimate marking.

The comments on the proposed 5 cm X 5 cm X 5 cm target area for replacement parts were very similar to those for the same target area for original equipment parts, i.e., the area was too small. NHTSA is adopting a less restrictive target area which will achieve the same goals as the proposed target area, but do so in a less burdensome manner. As explained above, the vehicle manufacturers will now be required to designate a target area not to exceed 50 percent of the surface area on the surface for the original equipment parts to be marked with the VIN. Each of those vehicle manufacturers are also the major producers of replacement parts for their vehicles. Accordingly, in conjunction with the target area designations for original equipment parts, those manufacturers will also designate a target area for replacement parts.

There are two limitations on the designation of the target area for replacement parts, to ensure that there will be an adequate separation between the original equipment part markings and the replacement part markings. First, the target area for replacement parts may not exceed 25 percent of surface area on the surface of the part where the replacement marking will appear. If both the original equipment marking target area and the replacement part marking target area were 50 percent of the surface area of the part, and the target areas were on the same surface of the part, the boundaries of the two target areas would touch each other. This would not result in any significant separation of the target areas. Accordingly, one of

the target areas must be less than 50 percent of the surface area of the part. NHTSA believes it is more appropriate to limit the size of the target area for replacement part marking. This is because replacement part marking will not be done on an assembled vehicle, but will be done on the individual part. This makes it easier to position the marking more precisely.

Second, the target area for replacement parts must be at least 10 cm at all points from the target area for original equipment parts. NHTSA believes it is vitally important that investigators be able to see the area in which a thief may have attempted to obliterate an identification marking. This would not be feasible if those thieves could remove an original equipment part label and then apply a replacement part label over the same area. Therefore, the agency has concluded that there must be an adequate separation of the areas in which original equipment and replacement parts will be marked.

A 15 cm separation was proposed to ensure that, even if a manufacturer slightly missed the 5 cm X 5 cm target area, the investigators in the field would have a chance to examine the target area in which a marking may have been obliterated. In response to that proposed requirement, Chrysler commented that a 15 cm separation might eliminate locations for replacement parts marking which would be optimal for visibility or protection of the marking. Jaguar stated that the proposed 15 cm separation could prove unduly restrictive to manufacturers, without furthering the agency's purpose. Jaguar suggested that a 5 cm separation would serve the same purpose in a less restrictive manner.

NHTSA believes that the greatly enlarged target areas in this final rule respond to both these commenters' concerns. Moreover, the required separation has also been lessened to 10 cm in response to these concerns. A further reduction to Jaguar's suggested 5 cm would make it more difficult for investigators to quickly determine that a part was not marked within a designated target area, and would increase the chances for a thief to successfully hide the removal of a proper identification and the application of a counterfeit one. In NHTSA's judgment, the 10 cm separation reflects the best balance between its need to ensure adequate separation of the markings and its desire to give the manufacturers as much flexibility as possible in complying with this standard.

The Specialty Equipment Market Association and the Auto Internacional Association commented that this final rule ought to include a provision to allow replacement parts manufacturers to object to the target areas designated by the original vehicle manufacturer. No such provision is included in this rule, because NHTSA has concluded that such a provision is unnecessary. The covered major parts specified in this theft prevention standard do not include parts such as oil filters and air filters which are made by many manufacturers for a particular vehicle. The original vehicle manufacturers produce the majority of the covered major replacement parts, and most of those which are not produced by the original vehicle manufacturers are made by parties that have leased the original manufacturer's molds for those parts. Thus, the original vehicle manufacturers have no reason to select target areas for replacement parts marking that will make it difficult for them or their lessors to properly mark the part. In fact, those manufacturers have every incentive to ensure that the target area will meet the performance criteria of this standard and allow easy access to the party applying the marking.

2. Cost Limitations of the Replacement Part Standard.

Section 604(a)(2) of the Cost Savings Act limits the costs which may be imposed on replacement parts manufacturers by the marking requirements of this standard, in that those requirements "may not impose costs upon any manufacturer of major replacement parts to comply with such standard in excess of such reasonable lesser amount per major replacement part as the Secretary specifies in such standard." The NPRM noted the difference between this per part cost limitation and the specific $15 per vehicle cost limitation for marking the original equipment parts. The agency believes these differing statutory requirements reflect the difference in economies of scale for original equipment parts manufacturers and replacement parts manufacturers. The amount specified in this standard for replacement parts would be adjusted for inflation in the same manner as the $15 per car cost limitation.

The NPRM solicited comment on what "reasonable lesser amount" should be specified, and specifically asked for comments on levels of $1 and

$5 per part. The Specialty Equipment Market Association and the Auto Internacional Association suggested a complex formula for determining the reasonable lesser amount. They urged the agency to determine the relationship between $15 and the price of the vehicle for which the parts are made. That percentage of $15 should be adopted as the limit for all 14 replacement parts, and one-fourteenth of that number would be the maximum cost that could be added by the marking requirements for an individual part. For example, if a new vehicle sold for $15,000, the $15 cost limit would represent 0.1 percent of the cost of the vehicle. Under this suggested formula, the total cost for marking all 14 replacement parts would be limited to 1.5 cents. Each part could cost no more 0.1 cent to mark.

The agency has not adopted this formula in this final rule. It would result in no replacement parts being marked, and would directly contradict the explicit requirements of, and intent underlying, the Theft Act. If this suggested formula were not adopted in the theft prevention standard, these commenters asked the agency not to specify any cost limit for marking replacement parts. This course of action is not possible because section 604(a)(2) of the Cost Savings Act explicitly requires the agency to specify a cost limit for the marking of replacement parts in the theft prevention standard.

CHAT commented that the suggested $5 limit for marking replacement parts seemed to be an excessive cost to impose on manufacturers. At the same time, CHAT said that the suggested $1 level might be too restrictive for marking purposes, since these manufacturers would not have the economies of scale the vehicle manufacturers would have. CHAT stated that NHTSA should specify a cost limit of $2 or $3 for marking a replacement part. Ford stated its belief that a $1 limit for marking a replacement part was reasonable. GM commented that manufacturers should not be required to incur costs of more than $1 to mark a replacement part, and that the suggested $5 limit per part was excessive.

The agency has reexamined this question in light of these comments. NHTSA has concluded that setting a cost limit of $1 to mark replacement parts would be unreasonably restrictive. The statutory limit of $15 to mark 14 covered parts on a vehicle in effect allows an average cost of $1.07 per part. Setting a $1 limit for the costs of marking replacement parts would require that it cost less to mark those parts than Congress allowed for original equipment parts. In fact, the cost of marking replacement parts will be greater than the costs of marking original equipment parts, because of the lesser economies of scale the replacement parts manufacturers experience. Further, some parts may cost more than others to mark because of individual characteristics, such as the geometry of the part and its ability to withstand stamping loads. A cost limit of $1 per replacement part would force the agency to revise the standard to allow the manufacturers to mark these more costly parts for less than the cost limit. Accordingly, this limit has been rejected as unreasonably low.

As noted above, the agency believes that replacement parts marking is crucial if this standard is to be effective. The replacement parts markings required in this standard are exactly those suggested in the legislative history. NHTSA has concluded that a lessening of these markings would undermine the purpose of those markings, by making it simpler for thieves to falsely mark stolen parts as legitimate replacement parts. Because this standard is directed at very sophisticated criminal enterprises, it must give investigators every opportunity to detect counterfeit markings. Fewer markings make it easier for a criminal to apply counterfeit markings which appear to be legitimate, and give investigators less of an opportunity to detect the counterfeit nature of those markings. Therefore, NHTSA believes it would be inconsistent with the intent of the Theft Act to specify a cost limit for these markings that could not be met by each replacement parts manufacturer.

As with the $15 cost limit to mark the parts on a new vehicle, NHTSA has no authority to exempt a manufacturer or particular parts from the replacement parts marking requirement because of an inability to comply with these requirements by some reasonable means at a cost of this specified limit or less. If a replacement parts manufacturer can show that it is unable to reasonably comply with these markings requirements within such limit for any covered part, the marking requirements of the standard will have to be amended to permit each replacement parts manufacturer to mark each covered major replacement part for the specified limit.

The information currently available to the agency indicates that it could cost a low volume

manufacturer or importer of replacement parts as much as $3.96 to mark certain replacement parts. Accordingly, if the cost limit for marking replacement parts were set below this level, the requirements for such markings would have to be made less stringent, and NHTSA believes this would be inconsistent with the purposes of the Theft Act. To allow for possible error in this agency estimate, this final rule establishes a cost limit of $5 (in 1984 dollars) for marking replacement parts.

NHTSA believes this amount is a "reasonable lesser amount" than $15. The cost to vehicle manufacturers to mark these parts will be well under $1 for each replacement part, and these manufacturers are the source of the vast majority of replacement parts. All available information to the agency indicates that the vehicle manufacturers will not approach this cost limit. As stated above, the limit is directed at the reasonable costs which will be incurred by the smallest manufacturers and importers. These replacement parts are generally chosen by vehicle owners because they cost significantly less than those same parts produced by the vehicle manufacturers and the large replacement parts manufacturers. A $5 price increase for the replacement parts produced by the smallest manufacturers and importers will not significantly reduce the demand for their products, because the major replacement parts covered by this standard are very expensive parts and usually have large retail price mark-ups. Further, the specialty cars for which most of the smaller entities produce major replacement parts generally cannot get parts from junk yards or other salvage operations. This leaves the parts manufacturers with a virtual monopoly on the replacement parts market.

Appendices Setting Forth Lines Selected as High Theft Lines and the Criteria Considered in Selecting High Theft Lines.

The NPRM explained how the agency would select lines as high theft lines. Since then, NHTSA has published a final rule setting forth the procedures for selecting high theft lines from those lines introduced after January 1, 1983 (50 FR 3483; August 28, 1985) and theft data for lines introduced before January 1, 1983 (50 FR 18708; May 2, 1985, 50 FR 32871; August 15, 1985). The issues associated with those selections have been discussed at length in those notices and need not be repeated herein.

Appendix A in the NPRM was proposed simply to create a place for listing the lines which would be selected as high theft lines. No commenters suggested any reasons for not including such an appendix to this theft prevention standard. Accordingly, it is included in this final standard.

Proposed Appendix B listed the criteria the agency would consider in limiting to 14 the number of lines introduced by an individual manufacturer before the effective date of the theft prevention standard that may be selected as high theft lines because of actual or likely high theft rates. This limitation is set forth in section 603(a)(3) of the Cost Savings Act. As announced in the August 28, 1985 notice establishing the final rule for the selection of high theft lines, one of the proposed criteria for that appendix has not been adopted in this theft prevention standard. It was proposed that a manufacturer's plans for installation of an original equipment anti-theft device in a line would be considered as a factor militating against choosing that line as one of the 14 to be subject to this theft prevention standard. As explained at 50 FR 34834-34835, NHTSA has concluded that it would be inappropriate to consider such plans to lessen the possibility of a line being chosen as one of the 14 subject to the standard. All the other parts of Appendix B have been adopted as proposed in the NPRM.

Proposed Appendix C contained criteria for selecting likely high theft lines from those lines introduced after January 1, 1983. Since no commenters objected to these criteria, they are adopted as proposed.

Certification of Compliance with the Theft Prevention Standard.

Section 606(c)(1) of the Cost Savings Act [15 U.S.C. 2026(c)(1)] provides that "[e]very manufacturer of a motor vehicle subject to the standard ... and every manu facturer of any major replacement part subject to such standard, shall furnish at the time of delivery of such vehicle or part a certification that such vehicle or replacement part conforms to the applicable motor vehicle theft prevention standard." It further provides that NHTSA may issue rules prescribing the manner and form of such certification.

Section 607(a) of the Cost Savings Act prohibits any person from importing into the United States any motor vehicle or part covered by this standard, unless it is in conformity with the standard. The House Committee Report states that "[a]ny motor

vehicle not in compliance will be refused admission into the United States." H. Rept. at 18. On that same page of the report, NHTSA is directed to take "into consideration its present certification practices in the case of safety" in determining the method and form of certification for the theft prevention standard.

A. Who May Certify

As noted above, Title VI of the Cost Savings Act requires every "manufacturer" to certify that its motor vehicles and/or covered major parts comply with the requirements of this standard. The term manufacturer is defined in section 2(7) of the Cost Savings Act [15 U.S.C. 1901(7)] as "any person engaged in the manufacturing or assembling of passenger motor vehicles or passenger motor vehicle equipment including any person importing motor vehicles or motor vehicle equipment for resale." Because of concerns about maintaining the security of marking technologies and about enforcement of this standard, the question which arises is whether each and every "manufacturer", as that term is defined in section 2(7), should be permitted to certify that a motor vehicle or part complies with the requirements of this theft prevention standard.

This question arises primarily in connection with "direct importers". These direct importers are individuals and commercial enterprises which obtain foreign cars not originally manufactured for sale in the United States, bring them into this country, and modify them so that they can be certified as being in compliance with the U.S. vehicle safety, emissions, and bumper standards. Under the Federal statutes mandating the vehicle safety, emissions, and bumper standards (15 U.S.C. 1397(b)(3), 42 U.S.C. 7522(b)(2), and 15 U.S.C. 1916(b)(3)) and the implementing regulations (19 CFR 12.73 and 12.80), vehicles not in compliance with those standards may be brought into this country under bond. The bond is released when a statement is submitted showing that the necessary modifications to achieve compliance with those standards have been made. However, Title VI of the Cost Savings Act does not specifically provide for the importation of noncomplying vehicles under bond. Therefore, all vehicles must be certified as complying with requirements of this theft prevention standard before they are "imported".

The NPRM proposed to limit those persons who would be authorized to certify compliance with the theft prevention standard to a narrower subset of the universe of "manufacturers". Instead of allowing all persons who are "manufacturers" within the meaning of section 2(7) (both direct importers and original manufacturers of the vehicles and parts) to certify compliance with the requirements of the theft prevention standard, the NPRM proposed to limit access to marking techology by providing that only original manufacturers of the vehicles and parts would be allowed to certify such compliance.

The language of Title VI and its legislative history neither expressly endorses nor repudiates the definition of "manufacturer" in section 2(7). On the one hand, certain portions of Title VI seem to indicate that Congress did not contemplate that direct importers would be involved in complying with the theft prevention standard. Section 602(a)(1) provides that the standard applies to "the covered major parts *which are installed by manufacturers* into passenger motor vehicles," and 602(d)(1) refers to "major parts *installed by the motor vehicle manufacturer.*" (Emphasis added to both). Direct importers may alter, but do not install major parts. Hence, Congress did not seem to be specifically referring to direct importers as manufacturers for purposes of the Theft Act. Moreover, Senator Percy, the original sponsor of the Senate version of the anti-theft bill, stated during the floor debate that,"[u]nder the bill, motor vehicle manufacturers would be required to apply these numbers *before each vehicle leaves the factory.*" 130 Cong. Rec. S13585, Oct. 4, 1984. This statement could be viewed as support for the concept of limiting certification to original manufacturers, since direct importers could not apply numbers before the vehicle leaves the factory.

Additionally, Congress did not explicitly provide for importing noncomplying vehicles under bond, as it had done for the safety, emissions, and bumper statutes. Earlier versions of the legislation which became the Theft Act contained bonding provisions which were dropped before the law's enactment. The absence of express authority to "import" noncomplying vehicles, particularly when compared with the presence of such authority under the other statutes requiring Federal vehicle standards, might be said to suggest that Congress intended to absolutely prohibit the im-

portation of noncomplying vehicles.

On the other hand, Congress amended the general definitions in section 2 of the Cost Savings Act(15 U.S.C. 1901) so that those definitions apply for the purpose of the Cost Savings Act *"(except title V and except as provided in section 601 of this Act)"*. (Emphasis added). In section 601, Congress set forth the definitions which applied solely for the purposes of the Theft Act (Title VI of the Cost Savings Act). However, it did not amend the definition of "manufacturer" set forth in section 2 of the Cost Savings Act. Had Congress intended to change the definition of manufacturer to exclude direct importers, it would presumably have done so explicitly. This seems particularly true when Congress did, in section 601, change the definition of "passenger motor vehicle" set forth in section 2 for the purposes of Title VI of the Cost Savings Act.

Further, the legislative history explicitly stated that the requirements of the Theft Act were designed to curb motor vehicle thefts "while trying to minimize regulation of the domestic and foreign motor vehicle manufacturing industry, including the aftermarket motor vehicle industry." H. Rept. at 2. It would appear to be inconsistent with this stated goal for the Theft Act requirements to force a small, but recognized, portion of the industry out of that business.

Since the statutory requirements and legislative history appear to give conflicting signals as to the underlying Congressional position on whether direct importers should be allowed to certify compliance with the requirements of this theft prevention standard, the agency had to determine whether the policy goals underlying Congressional passage of the Theft Act would be better served by allowing or prohibiting certification of compliance by direct importers. In the NPRM, the agency tentatively concluded that such certification would be inconsistent with the law enforcement goals of the Theft Act, and proposed to limit certification of compliance with the requirements of this theft prevention standard to original vehicle manufacturers and major replacement part manufacturers.

This proposal was explained at length at 50 FR 19738-19740, and need not be repeated herein. However, NHTSA was sensitive to the economic consequences for direct importers if the theft prevention standard were to prevent their importation of high theft lines, by barring them from certifying the compliance of those vehicles. Accordingly, the NPRM asked for comments on whether there was some scheme consistent with the Theft Act that would permit direct importers to certify compliance with this theft prevention standard, without impeding the enforcement of this standard.

In response to this proposal and request for comments, NHTSA received numerous and voluminous comments on this proposed limitation. Many form letters were submitted by direct importers, opposing the proposed limitation, and by law enforcement groups supporting the proposed limitation.

Original vehicle manufacturers unanimously supported the proposed limitation, and the strongest supporters of that proposal were the foreign manufacturers. These comments amplified the practical enforcement difficulties and substantially reduced effectiveness of the marking requirements which they believed would ensue if direct importers were allowed to mark vehicles. CHAT commented that the security problems associated with the marking technologies would expand considerably if each direct importer had access to those technologies, and supported the proposed limitation. The National Automobile Dealers Association agreed with the proposed limitation, and emphasized the "serious problems for franchised dealers" which have arisen in connection with vehicles imported by the direct importers.

An association of direct importers, the Automobile Importers Compliance Association, strongly opposed the proposed limitation, arguing that if Congress had intended to limit certification authority to original manufacturers, it would have done so explicitly. That group suggested what it felt were a number of ways in which direct importers could be allowed to certify compliance with the theft prevention standard without sacrificing the law enforcement objectives of that standard. These included controlled labeling, in which only one party would obtain the labels to be affixed to direct imports and would distribute these labels to the direct importers once the direct importer had shown proper credentials for the labels. Alternatively, that group suggested that all direct import vehicles be exempted from the marking requirements of this standard, on condition that the vehicles all be equipped with original equipment anti-theft devices. This suggestion arose from the agency's authority to exempt lines from the marking requirements, under section 605(a)(1) of the Cost Savings Act, if the agency determines that the original equipment anti-theft devices on those

lines are likely to be as effective as parts marking in reducing and deterring vehicle thefts. Finally, this group indicated its belief that "NHTSA has inherent authority to establish limited exemptions from (the theft prevention standard's) requirements to assure reasonableness and practicability." The group urged NHTSA to use this inherent authority to exempt direct importer's vehicles from the requirements of the theft prevention standard.

The Justice Department (DOJ) also objected to the proposal to allow only original manufacturers to certify compliance with the theft prevention standard. DOJ stated its belief that the benefits associated with prohibiting direct importers from marking vehicles would be significantly outweighed by the consumer costs resulting from such a prohibition. Absent a clear Congressional directive to eliminate certification by direct importers, and in consideration of the "significant negative economic impact" which would be associated with NHTSA's proposed limitation of certification authority, DOJ suggested that NHTSA should not adopt its proposed limitation.

DOJ agreed with NHTSA that access to marking technologies should be carefully controlled, in order to serve the law enforcement objectives of the Theft Act. DOJ observed that it may be better from a law enforcement standpoint if the markings by direct importers were done in the U.S., since such marking operations could be better monitored. Accordingly, DOJ stated that NHTSA should use its administrative discretion to admit non- complying vehicles under bond, and allow the theft prevention standard's markings to be done at the same time as the modification of the vehicle so that it satisfies the requirements of the vehicle safety and emissions standards. To ensure the effectiveness of the theft prevention standard, DOJ suggested that four additional limitations be placed on direct importers for purposes of the theft prevention standard. These were:

(1) All direct importers would be required to register with NHTSA;

(2) Direct importers must use a numbering system for parts that will uniquely identify both the vehicle parts and the importer. They suggested the use of the Euro-VIN with a prefix code and logo to identify the direct importer;

(3) Direct importers should not be allowed to use labels, since that might present special security problems; and

(4) Direct importers would be required to maintain the records required of all manufacturers under section 606(a) of the Cost Savings Act.

With these additional requirements, DOJ believed that the theft prevention standard would be effective for law enforcement purposes while not banning direct imports of high theft lines.

In response to these comments, NHTSA has thoroughly reexamined this subject. The agency has concluded that this regulation should not prohibit direct imports of vehicles. Accordingly, this final rule allows all entities which are "manufacturers" within the meaning of the Cost Savings Act to certify compliance with the requirements of this standard. This is consistent with existing practice under the Safety Act, the Clean Air Act, and Title I of the Cost Savings Act.

However, NHTSA also believes that the rulemaking record supports its policy concerns about the security of the marking technologies and the enforcement of this standard. The lengthy discussion in the NPRM shows why the issue of direct imports poses special problems for achieving the law enforcement purposes of the Theft Act. Accordingly, this theft prevention standard sets forth the following special provisions for the purposes of certification of compliance by direct importers.

1. Direct imports must be marked with the Euro-VIN.

As noted above, the NCIC computer system for recording and tracking stolen vehicles is set up so that it requires the entry of a full 17-character U.S. VIN. Thus, at first glance, it would seem to be most useful for law enforcement purposes if these vehicles were assigned a U.S. VIN. However, the NPRM sought comments on the use of Euro-VINs for marking direct imports subject to the requirements of this theft prevention standard, because of the problems which might be associated with direct importers assigning U.S. VINs to these vehicles.

The NATB stated that there are reported instances under the current VIN regulations where a direct importer has assigned and affixed new 17-character U.S. type VINs to vehicles with Euro-VINs. "Homemade" VINs give all appearances of having been actually assigned by the vehicle manufacturer, but were actually assigned by the direct importer, without identifying the direct importer. Such "homemade" VINs assign the proper characters to accurately identify the actual manufacturer

of the vehicle. Most even include an accurate check-digit, so it is not apparent that they are "homemade". However, according to NATB, such "homemade" VINs present law enforcement officers with the situation where a vehicle cannot be traced (or its production verified) either to the original manufacturer or to the direct importer. This substantially negates one of the main purposes of the VIN. NATB concluded its comment on this point by repeating its preference for a full 17-character VIN, but stated that vehicles with accurate Euro-VINs could be traced to the actual manufacturer and have the production verified, albeit with additional effort and time delays. Since this could not be done with "homemade" U.S. VINs, NATB urged this agency to require the use of Euro-VINs by direct importers.

NHTSA is persuaded by this comment. While the NCIC tracking system could more readily handle full 17-character VINs, the usefulness of those VINs would be substantially diminished if they do not allow law enforcement personnel to trace the vehicle to its manufacturer. The Euro-VINs are more difficult for the NCIC to enter, but will serve to trace the vehicle to its manufacturer. Further, if the agency were to permit or require assigning U.S. VINs by direct importers, such "homemade" VINs would not be recorded by the manufacturer as assigned. This could result in a situation where a VIN was assigned to two different vehicles (once by the vehicle manufacturer and once by the direct importer). Duplicative VINs would completely fail to serve the purpose of providing a unique identifier for a vehicle for 30 years. Therefore, NHTSA has determined that vehicles imported by direct importers should be marked with the original Euro-VIN assigned to the vehicle by the original manufacturer.

2. Direct imports must have the markings inscribed on the parts.

The 3M Corporation's representatives have repeatedly expressed their concerns that producers of security labeling technology, such as 3M, are able to guarantee the usefulness of their product *only when the distribution of the product can be tightly controlled.* That corporation has stated that the security labeling system's integrity and uniqueness will be easily compromised if they are required to make their security tape more widely available in the marketplace.

Because of these concerns, DOJ commented that direct importers should not be permitted to use labels to mark the parts of their vehicles. According to those comments, "It is reasonable to impose some additional costs on importers to prevent the security risks perceived in a wide availability of labeling technology."

The Automobile Importers Compliance Association acknowledged in its comments that it was necessary to reduce the number of parties in possession of all or some part of the security marking technologies, and suggested that a procedure be set up whereby one party would secure and distribute labels to direct importers. That group suggested that either it or the Department of Transportation should be the party that secures and distributes those labels.

NHTSA has not adopted the suggested procedure for having one party secure and distribute labels to all direct importers. It would be inappropiate for the Department to perform this function, for the reasons stated in the NPRM. Briefly repeated, such a procedure would differ radically from practices under the Safety Act, and the legislative history of the Theft Act directs NHTSA, when establishing procedures for certification, to "take into consideration its present certification practices in the case of safety." H. Rept. at 18. No resources are available for establishing such a procedure in the agency's budget, and the agency does not believe it should seek an increase in its budget to allow it to become involved in the certification of vehicles.

The agency also believes it would be inappropriate to designate the Automobile Importers Compliance Association, or any other group of direct importers, as the sole source of labels for direct importers' vehicles. By choosing a single group as the source of labels for all direct importers, the agency would give it an unintended "government sanction" as the official representative for all direct importers. Conversely, it would have the effect of denigrating the standing of any other direct importers' groups.

In view of these potential problems with designating some group outside of the Department of Transportation as the sole source for labels for direct importers' vehicles, NHTSA has not adopted this suggested approach.

3M has specifically stated that the usefulness of their labels can be guaranteed only when the

distribution is tightly controlled. If a chop shop or some other criminal enterprise were to make a direct import of only one vehicle and were able to obtain an excess supply of security labels, the integrity of the labels would be seriously compromised. If a number of criminal enterprises were to do this, the value of the labels would be even further diminished. The information currently available to the agency suggests that nearly all original manufacturers intend to comply with the parts marking requirements of this theft prevention standard by using those security labels. If criminal enterprises were able to pose as legitimate direct importers and readily obtain access to these labels, the security and effectiveness of these labels on all imported vehicles subject to this theft prevention standard would be seriously compromised, or perhaps rendered useless. This theft prevention standard cannot permit such a result.

Under general legal principles, the Theft Act must be interpreted so as to give NHTSA implied authority to set marking performance requirements that are essential to achieve the purposes of the Theft Act. NHTSA is well aware of the directive in the legislative history that this is to be a performance standard, and that the agency is to establish the "tests or general criteria which the identification must meet, but not how it is to be inscribed or affixed". H. Rept. at 10. Clearly each "manufacturer" was to be allowed to choose how to comply with the requirements of this theft prevention standard.

However, the agency believes that the requirement for a performance standard, read in the context of the Theft Act, means that NHTSA must draft its requirements as broadly as possible, but may also be relatively specific if necessary to ensure that the Theft Act achieves it purposes. The Vehicle Safety Act, on which much of this Act is modeled, contains a similar requirement for performance requirements. The agency has repeatedly interpreted the Safety Act in the manner set forth above.

Moreover, there is a familiar principle of statutory interpretation called "restrictive interpretation". That principle is explained thusly: "When the natural or literal meaning of statutory language embraces applications which would not serve the policy or purpose for which the statute was enacted or help to remedy the mischief at which it was aimed, the courts may construe it restrictively in order not to give it an effect beyond its equity or spirit. ... A restricted interpretation is usually applied when the effect of a literal interpretation will make for injustice and absurdity..." A. Sutherland, *Statutes and Statutory Construction*, §54.06 (4th ed. C.D. Sands 1973). NHTSA has concluded that the principles of restrictive interpretation must be applied to this performance standard requirement as it applies to direct importers.

According to the legislative history of the Theft Act, it is:

> a comprehensive package of proposals designed to curb the theft of motor vehicles by preventing thefts and decreasing the ease with which certain stolen vehicles and their major parts can be fenced, while trying to minimize regulation of the domestic and foreign motor vehicle manufacturing industry, including the aftermarket motor vehicle industry. It also gives law enforcement officials at all levels of government the much-needed prosecutory tools to crack criminal theft rings and related racketeering activities. H. Rept. at 2.

These are truly the essential purposes of the Theft Act. If criminal elements can readily compromise the security and effectiveness of labels, the essential purposes will not be achieved. There is no reasonable basis for supposing that Congress intended the agency to require the original automobile manufacturers to undertake the permanent identification of the covered major parts on all their high theft lines, but also to permit the security and effectiveness of such markings to be readily compromised.

After considering this analysis, NHTSA believes that it has authority to require direct importers to mark their vehicles subject to this theft prevention standard by inscribing the markings on the covered major parts, and not allowing direct importers to affix the markings on the covered major parts by means of labels. There are no security concerns related to the current stamping or etching technologies, because these are already widely available. Hence, allowing direct importers to use such technologies will not reduce the effectiveness of such markings.

This final rule does not adopt DOJ's suggestion that direct importers be required to mark their vehicles with a prefix code for the part and the importer's logo, along with the Euro-VIN. Section 602(d)(1)(A) provides that the theft prevention standard may not require original equipment parts to have more than a single identification. In the case of covered major parts on vehicles imported by direct importers, NHTSA believes that the most useful single identification will be the Euro-VIN, as explained above, and that is what is required in this standard.

The DOJ further suggested that direct importers be required to stamp those covered major parts with "positive identification" characters. The agency has no basis for mandating the use of one specific means of inscribing the markings made by direct importers. NHTSA has no data which show that stamping with "positive identification" characters will produce markings which are more difficult to alter or more readily legible for investigators than markings produced by laser etching, sandblasting, stamping with different characters, and so forth. If there were such evidence, it would perhaps be more appropriate to amend the performance requirements for the markings on all replacement parts, so that all such parts' markings would offer these benefits. Accordingly, this theft prevention standard allows direct importers to use any means of inscribing markings into the covered major parts, provided that those markings comply with the applicable performance requirements.

3. The required markings must be inscribed before the vehicle or parts are "imported into the United States".

Both DOJ and the Automobile Importers Compliance Association asserted in their comments that NHTSA has authority under the Theft Act to allow non-complying vehicles to be imported under bond and marked so as to comply with the requirements of this theft prevention standard. These comments were made in spite of the broad prohibition of section 607(a)(1) that, "No person shall ... import into the United States any motor vehicle subject to the [theft prevention standard], or any major replacement part subject to such standard, which is manufactured on or after the date the [theft prevention standard] takes effect under this title for such vehicle or major replacement part unless it is in conformity with such standard." The only exception to this broad prohibition expressed in the Theft Act is in section 607(b), which provides that section 607(a)(1) "shall not apply to any person who establishes that he did not have reason to know in the exercise of due care that the vehicle or replacement part is not in conformity with an applicable theft prevention standard."

The agency concludes that it has no authority to adopt a program to admit noncomplying vehicles under bond, for essentially the same reasons as it reached that tentative conclusion in the NPRM. Congress expressly granted the agency such authority in Title I of the Cost Savings Act (15 U.S.C. 1916) and in the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1397), but did not grant such authority in Title VI of the Cost Savings Act, relating to the theft prevention standard. The legislative history of the Theft Act referred to the agency's procedures for certification under the National Traffic and Motor Vehicle Safety Act, which contains an express provision authorizing the agency to admit non-complying vehicles under bond. Moreover, earlier versions of the bill which ultimately became the Theft Act contained bonding provisions, but those provisions were dropped from the final bill. For these reasons, NHTSA concludes that Congress did not intend bonding procedures to be used in connection with this standard.

NHTSA would like to emphasize that it is unaware of any policy reason why a program to admit noncomplying vehicles under bond, which is appropriate in the case of the National Traffic and Motor Vehicle Safety Act, the Clean Air Act, and Title I of the Cost Savings Act, should not be permitted under the Theft Act. The agency cannot dispute DOJ's comment that: "If an unsafe or polluting car can be admitted under bond, it is hard to find a public policy justification for irrevocably banning a car lacking $15 theft prevention markings." It would be simpler and more efficient for the direct importers if they were allowed to have the required theft prevention markings inscribed in the U.S. at the same time as the vehicle was being modified to comply with the Federal bumper, safety, and emissions standards. Prohibiting theft prevention markings from being inscribed in the U.S. could encourage more of the required modifications work, with the associated

jobs, to be shifted overseas. Even without considering the negative effects that this possible shift could have on U.S. employment and balance of trade, there would be a small positive impact on U.S. employment and balance of trade if the necessary markings were inscribed after the vehicle was admitted into the U.S. under bond. Notwithstanding these advantages, the agency is constrained from implementing any bonding program by the Theft Act, as explained above.

The Automobile Importers Compliance Association also raised the issue of when a vehicle is imported into the United States. That group asserted that vehicles admitted under bond are not "imported" until that bond has been released. To resolve this issue, NHTSA obtained a legal opinion from the Chief Counsel of the United States Customs Service as to when a vehicle is considered "imported" into the United States. A copy of this letter is available in the docket.

The Customs Service stated that, as a general rule, a vehicle is imported as soon as it enters the customs territory of the United States with the intent by the importer that it remain within the customs territory. Hence, vehicles imported under bond are imported before that bond is liquidated.

The Automobile Importers Compliance Association further commented that vehicles entering foreign-trade zones in the United States would not be "imported" until the vehicles leave such a zone to enter the customs territory of the United States. Foreign-trade zones may be established in or adjacent to ports of entry under the jurisdiction of the United States, and are not deemed to be within the customs territory of the United States. *See* 19 U.S.C. 81a *et seq.* and 19 CFR Part 146. Under this reasoning, the commenter stated its belief that direct importers could, consistent with the provisions of section 607 of the Cost Savings Act (15 U.S.C. 2027), bring vehicles directly into foreign-trade zones, make the necessary markings while the vehicles were inside the zones, and then formally bring the vehicles into the customs territory of the United States.

In a separate opinion from the Customs Service, also available in the public docket, that agency stated that "this suggestion on the part of the importers is clearly incorrect. Foreign merchandise brought into a foreign-trade zone in the United States is indeed imported for Customs purposes." Accordingly, the required markings must be inscribed onto directly imported vehicles before those vehicles are brought into the customs territory of the United States or a foreign-trade zone.

The U.S. Customs Service will be the agency enforcing the Theft Act's prohibition against importing noncomplying vehicles and parts, just as that agency enforces all other statutory prohibitions against importing noncomplying vehicles and items of motor vehicle equipment. Therefore, any further questions about when a product is "imported" into the United States should be addressed to the U.S. Customs Service. Their address is: Office of the Chief Counsel, United States Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

NHTSA has not adopted the Automobile Importers Compliance Association suggestions that all direct imports be excluded from the requirements of this standard on condition that they install an original equipment anti-theft device or that all direct imports be excluded. The exemption from the marking requirements of this standard for vehicles equipped with original equipment anti-theft devices is contained in section 605 of the Cost Savings Act (15 U.S.C. 2025), and requires the agency to make a determination that such anti-theft device "is likely to be as effective in reducing and deterring motor vehice theft as compliance with the requirements of this standard." NHTSA has no basis for making such a determination for all anti-theft devices on all direct imports. Absent some basis for making the requisite determination, NHTSA has no authority to exempt those vehicles under section 605 of the Cost Savings Act.

With respect to the suggestion that all direct imports be excluded from the theft prevention standard, NHTSA has no authority to exempt vehicles except under section 605 of the Cost Savings Act. Although it was suggested that the agency has "inherent authority to establish limited exemptions from its requirements", no authority was cited for the suggestion. NHTSA believes that when Congress explicitly provides one basis for exempting vehicles from the requirements of this theft prevention standard, as it did in section 605 of the Cost Savings Act, the expression excludes any other bases for exempting vehicles. The application of the legal principle, *"Expressio unius est exclusio alterius"* is as apt here as it was when NHTSA considered Ferrari's request that low volume manufacturer's vehicles be exempted from the requirements of this standard, as set forth

above in this preamble.

B. Manner of Certification

1. Vehicles Subject to the Theft Prevention Standard.

The NPRM proposed a simple amendment to the certification procedures applicable under the Safety Act. At present, the Safety Act requires manufacturers to affix a permanent plate or label to each vehicle providing a number of items of information, including the following statement: "This vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture shown above." For all passenger cars manufactured on or after September 1, 1978, the phrase "and bumper" is required to appear in the above statement immediately following the word "safety".

The NPRM proposed that, in the case of passenger cars manufactured on or after the effective date of the theft prevention standard and subject to the requirements of this standard, the expression "bumper, and theft prevention" be substituted in the statement immediately following the word "safety". Ford commented that the proposal should be revised, because it would require separate certification labels for cars subject to the theft prevention standard and cars not subject to this standard. Ford stated that separate certifications would "cause disruption of the assembly plant process", particularly in a plant which produced some lines subject to the standard and others which were not. Ford concluded this comment by noting that the statement that the vehicle conforms to all "applicable" theft prevention standards would ensure that it was accurate in the case of vehicles not subject to this standard.

NHTSA did not intend to require separate certifications for passenger cars, and has adopted Ford's comment for the reasons stated in that comment.

As a related matter, VW, Mazda, and Saab noted that a few of their vehicles are damaged so badly in shipment that a major part may be among those that need to be replaced before the vehicles are offered for sale to the public. The commenters asked if the manufacturer was required to replace the damaged part with a part marked with the VIN, as is required for original equipment parts, or if the dealer could replace the part with a replacement part. The commenters noted the certification difficulties they would have if a VIN marking were required on the replacement part. Mazda further commented that if those VIN markings were required, it would have to provide each of its dealers with the labeling technology.

Section 606(c)(1) of the Cost Savings Act requires that "every manufacturer of a motor vehicle subject to the [theft prevention standard]...shall furnish at the time of delivery of such vehicle ... a certification that such vehicle conforms to the applicable motor vehicle theft prevention standard. Such certification shall accompany such vehicle...until delivery to the first purchaser."

This latter sentence is consistent with the position NHTSA has taken for purposes of the Safety Act; i.e., it is not sufficient for a vehicle to satisfy the applicable safety standards at the time it leaves the assembly line. Instead, the manufacturer must certify that the vehicle satisfies all applicable safety standards at the time it is delivered to the first purchaser.

However, NHTSA does not understand these commenters to be suggesting that this theft prevention standard should permit new vehicles to be delivered which do not comply with this standard; i.e., with unmarked covered major parts. It is implicit in these comments that all vehicles must comply with this theft prevention standard. The question, however, is whether all parts of new vehicles must comply with the vehicle standard (marked with the VIN) at the time of delivery to the first purchaser, or whether some parts of the new vehicle may comply with the replacement part standard (marked with the letter "R" and the manufacturer's logo) at the time of delivery to the first purchaser.

Section 606(c)(1) specifies that the vehicle manufacturer must certify that the vehicle complies with the vehicle standard (all covered major parts marked with the VIN) "at the time of delivery of such vehicle". This requirement leaves two question concerning the manufacturer's certification to be resolved:

(1) what is the "time of delivery"?; and
(2) the "delivery" to whom?

Neither the language of section 606 nor its legislative history makes clear the answers to these questions. However, the legislative history does specify that: "The method and form of certification

shall be prescribed by the DOT by rule, taking into consideration its present certification practices in the case of safety." H. Rept. at 18. Section 114 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1403) states that: "Every manufacturer or distributor of a motor vehicle or motor vehicle equipment shall furnish to the distributor or dealer at the time of delivery of such vehicle or equipment by such manufacturer or distributor the certification that each such vehicle or item of motor vehicle equipment conforms to all applicable Federal motor vehicle safety standards." This certification practice with respect to the Safety Act suggests that Congress was referring to a delivery to the dealer or distributor as the point when a certification must be made by the vehicle manufacturer.

That conclusion is reinforced by section 606(c)(1)'s reference to "delivery to the first purchaser" in the next sentence. Had Congress intended to refer to delivery to the first purchaser in both instances, it would presumably have used the same phrase. Since it did not refer to "delivery to the first purchaser" as the point when the vehicle manufacturer must certify that the vehicle complies with this theft prevention standard, Congress must have intended that the "delivery" in question be that to a dealer or distributor. This is because there are no other parties to whom the manufacturer could be said to deliver a vehicle. Accordingly, NHTSA has determined that the delivery referred to in the first sentence of section 606(c)(1) is a delivery by a vehicle or replacement parts manufacturer to a dealer or distributor.

This determination means that the vehicle manufacturer satisfies its *certification* responsibilities under the Theft Act when it delivers to a dealer or distributor a vehicle with all covered major parts marked with the VIN and conforming to the performance requirements set forth for those markings. Thus, a manufacturer will not be subject to civil penalties under section 607(a)(4)(B), which prohibits the issuance of false or misleading certifications of compliance, if it delivers such a vehicle to a distributor or dealer. However, as noted above, section 606(c)(1) of the Cost Savings Act makes the vehicle manufacturer responsible for delivering to the first purchaser a vehicle that *complies* with the applicable requirements of this theft prevention standard. Therefore, a manufacturer that delivers a complying vehicle to a dealer or distributor may be subject to civil penalties under section 607(a)(1), which prohibits the manufacture or sale of a noncomplying vehicle, if the vehicle does not comply with the theft standard when it is delivered to the first purchaser. In such an instance, the manufacturer could assert the defense set forth in section 607(b) that it did not have reason to know in the exercise of due care that the vehicle was not in conformity with this standard. If some person actually altered or obliterated the markings, such person would have violated section 201 of the Theft Act (18 U.S.C. 511).

This leaves open the question of what the time of delivery of a vehicle is, for the purposes of the Theft Act. NHTSA has not specifically addressed the "time of delivery" of a vehicle for the purposes of the Safety Act, so there is no general practice for the agency to consider. Absent clear legislative guidance or any clearly established practice under the Safety Act, the agency must examine other sources and consider the purposes of the Theft Act to determine what the "time of delivery" means under the Theft Act.

Delivery is a concept used for commercial transactions, and has been defined in the Uniform Commercial Code (U.C.C.). The U.C.C. has been adopted in whole or in part by all 50 states and the District of Columbia. NHTSA believes that the generally accepted definition of "delivery", as set forth in the U.C.C., is a useful indicator of what Congress intended when it used that term in section 606 of the Theft Act.

The rule under the Uniform Commercial Code is that when a seller ships goods by carrier, the delivery occurs when the goods are delivered by the seller to the carrier, unless the contract requires the seller to deliver the goods to the purchaser at a particular destination. U.C.C. §2-504 and §2-509 (1977). If this rule were applied in the case of a vehicle, the delivery to the dealer or distributor would occur when the manufacturer shipped the vehicle, unless the contract specifies delivery occurs when the vehicle is tendered to the dealer. In the interests of ease of administration, NHTSA believes it is appropriate to define "delivery" so that it occurs at the same point in any given transaction. It would be unwise policy and an onerous burden on the agency and the regulated parties if the agency were forced to examine the contractual terms between every manufacturer and each of its dealers and distributors to determine when

"delivery" occurs in each case. Therefore, NHTSA has concluded that, for the purposes of this theft prevention standard, delivery occurs when the vehicle manufacturer delivers the vehicle to a shipper to be transported to a dealer or distributor. As noted above, this is the general rule under the U.C.C.

In practical terms, this means that, if a vehicle is so badly damaged that a covered major part needs to be replaced before the manufacturer has delivered the vehicle to the shipper, the vehicle manufacturer will have to mark a part with the VIN of that vehicle and install that part before delivering the vehicle to a dealer or distributor. If, on the other hand, a vehicle is so badly damaged after the manufacturer has delivered a properly marked and certified vehicle to the shipper that a covered major part needs to be replaced before the first sale of the vehicle for purposes other than resale, the dealer or distributor may install a replacement part on the vehicle. The replacement part must comply with the applicable requirements for replacement parts, and need not have the VIN marked on it, as would be necessary if it were subject to the original equipment part requirements.

The certification which the first purchaser of the vehicle must receive, pursuant to section 606(c)(1), will indicate that the vehicle conforms to all applicable Federal theft prevention standards. This statement will not be misleading, because the undamaged original equipment parts must comply with the requirements applicable to original equipment parts, while the substituted replacement parts must comply with the requirements applicable to replacement parts.

NHTSA believes that this definition of "delivery" is the only one consistent with the purposes of the Theft Act to require markings of vehicle parts while imposing nominal burdens on the motor vehicle manufacturing industry. The agency recognizes that replacement parts installed on vehicles will be particularly attractive to thieves, since they can remove that part from the vehicle and sell it as a legitimate replacement part. However, vehicles are very infrequently damaged so badly before sale to the public that a major part would need to be replaced. If a major part were replaced with a replacement part, thieves will not be alerted to the fact that the vehicle has only 13 parts marked with the VIN and one marked with an "R" and the manufacturer's logo. Even if a thief were to learn this fact, the 13 marked parts would still show that a vehicle had been stolen by that person.

On the other hand, had the agency concluded that delivery to a dealer or distributor occurs when the dealer or distributor takes physical possession of the vehicle, enormous burdens would result for the dealers and distributors. Section 607(a)(1) of the Cost Savings Act specifies that no person shall sell or offer for sale a vehicle subject to this theft prevention standard that does not conform to this standard. Accordingly, dealers and distributors would have to hold the vehicle until the vehicle manufacturer had marked a part with the vehicle's VIN and shipped the part to the dealer or distributor. This would create a financial burden for the dealer or distributor holding the vehicle, since it would be paying interest on the vehicle from the date it received the vehicle, but could not offer to sell the vehicle until it had received and installed a properly marked part from the manufacturer. It would also create a burden on the manufacturer to produce one part not marked as a replacement part, label that part with the proper VIN, and ship the part to the dealer or distributor.

NHTSA would like to note that Mazda's comment that it would have to provide its dealers with labels and marking technology is incorrect. The Theft Act places the burden of marking the parts exclusively on the manufacturer, not the dealer. Therefore, any necessary marking of parts under this theft prevention standard is the responsibility of the vehicle's manufacturer.

NHTSA also wishes to emphasize that this determination of when delivery occurs is solely applicable for the purposes of determining compliance with the requirements of the theft prevention standard. It does not affect any contractual provisions concerning which party bears the risk of loss for vehicle damaged in shipment, nor is it applicable to the provisions of the Safety Act or any other statutes administered by the agency. Those statutes may have differing underlying policy considerations from those of the Theft Act, and those considerations might mandate a contrary determination of when delivery occurs.

This final rule must also establish rules for certification of direct imports subject to the requirements of this standard. The NPRM noted that

requiring alterations in the certification plate should prove feasible for all affected parties, since that notice proposed to limit certification authority to original manufacturers only.

However, this procedure would not be feasible for direct importers. The safety certification label can not be affixed to the vehicle until the vehicle is certified as complying with the applicable safety standards. In the case of direct imports, that certification is not made until after the vehicle has been imported under bond and the necessary modifications have been made. As noted above, the Theft Act does not permit any vehicles to be imported which do not conform to the requirements of this standard. Therefore, a separate certification label will have to be affixed to these vehicles before they are "imported".

The agency believes that the direct importers' certification should be simple for the benefit of both Customs officials and the direct importers. Accordingly, the theft prevention standard requires that direct imported vehicles have a label permanently attached to each vehicle subject to this theft prevention standard, in the same positions on the vehicle and with the same lettering size and contrast requirements as is required for the safety certification labels by Part 567, with the statement: "This vehicle conforms to the applicable federal theft prevention standard in effect on the date of manufacture." Additionally, the label must identify the model year and line of the vehicle. Finally, the label must display the corporate or individual name of the direct importer that is certifying the vehicle's compliance with the theft prevention standard's requirements, preceded by the words "Imported by". This will be sufficient to inform Customs officials that the vehicle has been properly marked and identify the party which is certifying the conformity of the markings.

NHTSA wishes to emphasize that this separate certification is necessary only for those directly imported vehicles subject to this theft prevention standard. Those vehicles not subject to this standard need not be so certified. The other information required to appear on the Part 567 certification label will be affixed to the vehicle when that certification label is affixed, i.e., after the direct importer certifies that the vehicle complies with the applicable safety and bumper standards.

2. Replacement Parts.

Again relying on the legislative instructions that the agency take into account current certification practices under the Safety Act, NHTSA proposed in the NPRM that certification of compliance with the replacement parts standard be accomplished by marking each replacement part with the symbol "DOT", and that the "DOT" symbol appear immediately adjacent to the "R" and manufacturer's logo required to appear on replacement parts.

Ford supported the proposed certification, noting that the DOT symbol has been effectively used as a certification of compliance with many standards applicable to motor vehicle equipment. Ford listed lighting equipment, brake hoses, brake fluids, automotive glazing, new and retreaded pneumatic tires, and motorcycle helmets as examples of motor vehicle equipment which must display the DOT symbol as the manufacturer's certification of compliance with the applicable safety standard. GM objected to the requirement to mark the DOT symbol on replacement parts as a certification of compliance. GM explained its objection by stating that the addition of the DOT symbol would not "add to the effectiveness of the marking, but it would increase its cost". GM concluded by recommending that should NHTSA decide to require the DOT marking to appear on replacement parts, it should delete the requirement to mark either the logo or the "R" on the parts. No other commenters addressed this proposed certification requirement.

The agency has decided to adopt the certification requirement proposed for replacement parts. Section 606(c)(1) of the Cost Savings Act requires manufacturers of covered major replacement parts to furnish a certification that the part conforms to this standard at the time of delivery. For purposes of the Safety Act, the agency has used the DOT symbol as the certification of compliance for most of its motor vehicle equipment standards. Accordingly, it is appropriate to require this simple but effective certification for purposes of the Theft Act.

GM's comments are not persuasive. The agency intends that this standard impose the lowest costs necessary to comply with the requirements of the Theft Act. However, NHTSA has concluded that the costs of marking the letters "DOT" in addition

to the letter "R" and the manufacturer's logo will be minimal, whether the markings are inscribed or affixed. The agency is unaware of, and GM did not explain, how the addition of these three letters would present any difficulties in either designing the replacement part markings or in ensuring that the markings are within the designated target area.

Further, GM's suggestion that either the letter "R" or the manufacturer's logo could serve as the certification of compliance was unsupported by any reasoning or precedent in the safety standards. The letter "R" and the manufacturer's logo were suggested by Congress and are adopted in this standard as the *means* of complying with the replacement parts marking requirement. It is still necessary to *certify* that those means of compliance have been used, under the requirements of section 606. If the means of compliance were also interpreted as a certification, the agency would be ignoring the Congressional admonition to take into account its certification practices under the Safety Act when establishing the certification practices under this theft prevention standard. Most of the agency's equipment standards require the manufacturer either to affix the letters "DOT" as a certification or to furnish a full statement that the equipment complies with the applicable standard, in the case of child restraint systems or slide-in campers. There are no examples under the Safety Act where the required markings also serve as a certification of compliance. For these reasons, the GM suggestion has not been adopted.

No special provisions have been made for direct imports of covered major parts. Such direct imports must be properly marked and so certified before they are imported into the United States, per section 607(a)(1) of the Cost Savings Act. This means that the markings and the "DOT" symbol must be inscribed on the part outside the customs territory of the United States. The NPRM proposed that the "DOT" symbol be the certification of compliance with this standard. This requirement, adopted in this final rule, poses no special problems for direct importers of covered major replacement parts similar to those which would have been posed for direct importers of vehicles under the proposed vehicle certification requirements.

Effective Date of this Theft Prevention Standard

Section 602(c)(4) of the Cost Savings Act specifies that this theft prevention standard shall take effect not earlier than 6 months after the date this final rule is published, except that an earlier effective date may be specified if the agency finds good cause for an earlier effective date, and publishes the reasons for that finding. In the legislative history, it was emphasized that "the Committee expects the Secretary to promulgate the [theft prevention] standard as expeditiously as possible so that major parts may begin to be numbered by the earliest possible model year." H. Rept. at 11. In consideration of these facts, the NPRM proposed that this standard would become effective 6 months after this final rule was issued, and that it would apply to new passenger cars and their covered major replacement parts beginning in the 1987 model year.

In response to this proposal, Mazda asked that the standard's effective date be set at September 1, 1986. They asserted that an effective date in the spring of 1986 would have severe consequences for manufacturers planning to introduce new 1987 models in the spring of 1986. The available lead time would, according to Mazda, force postponement of the model introduction for no reason other than the requirements of the theft prevention standard and the manufacturer's need for more lead time. Additionally, Mazda hypothesized that the manufacturer could advance the introduction of that new model to the fall of 1985 and designate it as a 1986 model year vehicle. This would result in the vehicle not being subject to the standard until its 1987 model year. Mazda asserted that this earlier introduction would not satisfy the intent of the theft prevention standard, because the manufacturer would not be able to offer the same level of theft deterrence on the vehicle.

NHTSA is not persuaded by this comment. In the legislative history, Congress expressly stated: "The standard cannot apply to a car in the middle of the model year." H. Rept. at 11. It is generally known that the various manufacturers have different model years and that the various lines produced by the same manufacturer have different introduction dates, and, therefore, different model years. Given that this standard cannot apply to a car in the middle of a model year, setting an effective date of September 1, 1986 would allow manu-

facturers to avoid being subject to the standard in the 1987 model year, simply by introducing their high theft lines before September 1, 1986. Such a result would delay the marking of high theft lines until the 1988 model year. This is plainly inconsistent with the Congressional intent that this standard be effective as soon as possible. H. Rept. at 11. Accordingly, this suggestion has not been adopted.

Parenthetically, it is worth noting that Congress provided that manufacturers do not have to begin to comply with the theft prevention standard for a line which is selected for coverage under this standard less than 6 months before the start of the model year; section 603(a)(5) of the Cost Savings Act [15 U.S.C. 2023(a)(5)]. If Mazda is asserting that it needs more than 6 months lead time, its assertion is directed at the language of the Theft Act itself, and not this theft prevention standard.

VW commented that no effective date should be set for this theft prevention standard until the agency had responded to the petitions for reconsideration of this rule, which petitions were "highly likely" in VW's view. NHTSA understands VW's concerns, but does not believe it would be appropriate to adopt this comment. Based on the comments and other information available to NHTSA at this time, the effective date for this standard is reasonable. With this rule, as with any other published by the agency, NHTSA sets an effective date for the requirements and allows the public to file petitions for reconsideration of those requirements. If, in response to such petitions, NHTSA concludes that the requirements should be significantly amended or the effective date no longer appears reasonable, the agency has authority to amend the effective date. 49 CFR §553.35(d). This procedure has worked well for all of NHTSA's rules, and NHTSA sees no reason to alter it for this theft prevention standard.

Honda commented that the effective date for this standard should be set so that dealers can use up their inventory of unmarked replacement parts without violating this standard. The effective date for this standard means that the covered major parts of high theft lines will have to be marked in the 1987 model year and thereafter, while covered major replacement parts *which are manufactured after the effective date of this standard and for use on 1987 or subsequent model year high theft line vehicles* will have to be marked. All major replacement parts in dealers' stock as of the effective date of this standard will have been manufactured before that effective date, and are not subject to the requirements of this standard. Dealers are free to use such parts without violating any of the requirements of this standard.

Regulatory Impacts

A. Costs and Benefits to Manufacturers and Consumers.

NHTSA has analyzed this rule and determined that it is not "major" within the meaning of Executive Order 12291. It is, however, "significant" within the meaning of the Department of Transportation regulatory policies and procedures, because of the high level of public and Congressional interest. A regulatory evaluation, analyzing in detail the impacts of the theft prevention standard has been placed in Docket No. T84-01, Notice 7. A copy of this evaluation may be obtained by any interested person by writing to: NHTSA Docket Section, Room 5109, 400 Seventh Street, S.W., Washington, D.C. 20590, or by calling the Docket Section at (202) 426-2768.

To summarize that evaluation, the agency estimates that about 48 percent of all cars produced will be selected as high theft lines. Assuming 10 million passenger cars are manufactured in a model year, 4.8 million cars will be covered by this standard each model year. Some of these cars may eventually be equipped with original equipment anti-theft devices, instead of being marked. For the large manufacturers, NHTSA estimates that the costs of marking parts as required by this standard will be $9.80 per vehicle, if the parts are stamped, and $5.00 per vehicle, if the parts are labeled. The total annual fleet costs are thus estimated at $47 million for stamped identifiers and $24 million for labeled identifiers. Low volume manufacturers will probably use other technologies, such as hand stamping, hand engraving, or sand blasting. Their total costs will still be well under $15 per vehicle.

The benefits associated with this theft prevention standard depend upon the effectiveness of the marking requirements in reducing thefts. Assuming that these marking requirements will reduce thefts of high theft lines by 10 percent, NHTSA estimates that 25,000 vehicle thefts per year will be averted by this standard. Since the average value of a stolen vehicle is $3,900, the annual value of a 10 percent reduction in thefts of high theft lines is $98 million. However, this estimate should be considered preliminary, be-

cause no data exist to show the effectiveness of a full-scale marking system as mandated by this rule.

Honda commented that the effective date for this standard should be set so that dealers can use up their inventory of unmarked replacement parts without violating this standard. The effective date for this standard means that the covered major parts of high theft lines will have to be marked in the 1987 model year and thereafter, while covered major replacement parts *which are manufactured after the effective date of this standard and for use on 1987 or subsequent model year high theft line vehicles* will have to be marked. All major replacement parts in dealers' stock as of the effective date of this standard will have been manufactured before that effective date, and are not subject to the requirements of this standard. Dealers are free to use such parts without violating any of the requirements of this standard.

Regulatory Impacts

A. Costs and Benefits to Manufacturers and Consumers.

NHTSA has analyzed this rule and determined that it is not "major" within the meaning of Executive Order 12291. It is, however, "significant" within the meaning of the Department of Transportation regulatory policies and procedures, because of the high level of public and Congressional interest. A regulatory evaluation, analyzing in detail the impacts of the theft prevention standard has been placed in Docket No. T84-01, Notice 7. A copy of this evaluation may be obtained by any interested person by writing to: NHTSA Docket Section, Room 5109, 400 Seventh Street, S.W., Washington, D.C. 20590, or by calling the Docket Section at (202) 426-2768.

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The benefits associated with this theft prevention standard depend upon the effectiveness of the marking requirements in reducing thefts. Assuming that these marking requirements will reduce thefts of high theft lines by 10 percent, NHTSA estimates that 25,000 vehicle thefts per year will be averted by this standard. Since the average value of a stolen vehicle is $3,900, the annual value of a 10 percent reduction in thefts of high theft lines is $98 million. However, this estimate should be considered preliminary, because no data exist to show the effectiveness of a full-scale marking system as mandated by this rule.

B. Small Business Impacts

The agency has also considered the impacts of this rulemaking action as required by the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Few of the passenger car or replacement part manufacturers subject to this standard are small entities. This theft prevention standard will not significantly increase the production or certification costs for those manufacturers which do quality as small entities. Small organizations and governmental jurisdictions will be affected as purchasers of new passenger cars. However, the cost impacts of this standard will be minimal. Accordingly, a regulatory flexibility analysis has not been prepared.

C. Environmental Impacts

NHTSA has considered the environmental implications of this rule, in accordance with the National Environmental Policy Act, and determined that it will not significantly affect the human environment. Accordingly, an environmental impact statement has not been prepared.

D. Paperwork Reduction Act

The Office of Management and Budget (OMB) has already approved the NHTSA requirement that VINs appear on all new vehicles (OMB #2127-0051). However, this rule expands the scope and uses for the VIN. It also requires vehicle manufacturers to designate target areas for marking original equipment and replacement parts. Both these

requirements are considered to be information collection requirements, as that term is defined by OMB in 5 CFR Part 1320. Accordingly, these requirements will be submitted to OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). A notice will be published in the Federal Register when OMB makes its decision on this request.

List of Subjects

49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

49 CFR Part 567

Labeling, motor vehicle safety, reporting, and recordkeeping requirements.

In consideration of the foregoing, Chapter V of Title 49 of the Code of Federal Regulations is amended as follows: A new Part 541 is added. . . .

Issued on: October 17, 1985.

Diane K. Steed
Administrator

50 FR 43166
October 24, 1985

PREAMBLE TO AN AMENDMENT TO PART 541

Listing of High Theft Lines; Motor Vehicle Theft Prevention Standard

(Docket No. T84-01; Notice 9)

ACTION: Technical amendment.

SUMMARY: This agency has completed its selection of the carlines that will be subject to the requirements of the motor vehicle theft prevention standard beginning with 1987 model year vehicles. These selections were based on actual theft data, in the case of lines initially introduced into commerce before January 1, 1983, and according to the specified selection procedures, in the case of lines introduced into commerce on or after January 1, 1983. This listing is intended to inform the public, particularly law enforcement groups, of the vehicles that are subject to the marking requirements of the motor vehicle theft prevention standard.

EFFECTIVE DATE: This listing becomes effective May 8, 1986. This means that each of the listed lines and their major replacement parts will be subject to the requirements of the motor vehicle prevention standard beginning in the 1987 model year.

SUPPLEMENTARY INFOMRATION: On October 24, 1985, NHTSA published a new Part 541, *Federal Motor Vehicle Theft Prevention Standard:* 50 FR 43166. Part 541 sets forth performance requirements for inscribing or affixing identification numbers onto original equipment major parts and the replacement parts for those original equipment parts, on all vehicles in lines selected as high theft lines. Section 603(a)(1) of the Motor Vehicle Information and Cost Savings Act (the Cost Savings Act; 15 U.S.C. 2023(a)(1) specifies that three types of carlines are high theft lines for the purposes of the motor vehicle theft prevention standard. These three types of lines are:

(1) existing lines that had a theft rate exceeding the median theft rate in 1983 and 1984;

(2) new lines that are likely to have a theft rate exceeding that median theft rate; and

(3) existing or new lines that have a theft rate below the median theft rate, but which have a majority of major parts interchangeabel with lines whose theft rate exceeded or is likely to exceed the 1983 and 1984 median theft rate.

NHTSA followed different procedures to determine which lines met any of these three statutory criteria. Section 603(b) of the Cost Savings Act sets forth the procedures NHTSA followed to determine whether existing lines, that is, lines initially introduced into commerce before January 1, 1983, had a theft rate that exceeded the median theft rate. That section specifies that the agency "shall obtain from the most reliable source or sources accurate and timely theft and recovery data and publish such data for review and comment." In response to this directive, NHTSA published theft data notices on May 2, 1985 and August 15, 1985; 50 FR 18708 and 50 FR 32871, respectively. After considering the comments received in response to these notices, the agency published its final theft data and calculated the median theft rate based on those data; 50 FR 46666, November 12, 1985. Those lines that exceeded the median theft rate were selected as high theft lines, subject to the limitation in section 603(a)(3) of the Cost Savings Act. That section specifies that not more than a total of 14 of a manufacturer's lines introduced before the effective date of the theft prevention standard can be selected for coverage under the standard, based on data establishing the line was a high theft line. The only manufacturer that would have had more than 14 lines selected was General Motors.

With respect to lines introduced into commerce on or after January 1, 1983, section 603(a)(2) of the Cost

Savings Act specifies that the new lines which are to be subject to the standard "may be selected by agreement between that manufacturer and [NHTSA]." To implement this provision, NHTSA published a new Part 542, *Procedures for Selecting Lines to be Covered by the Theft Prevention Standard;* 50 FR 34831, August 28, 1985. These procedures were followed by the agency in selecting those new lines that are likely to have theft rates exceeding the median theft rate, those lines that have a majority of major parts interchangeable with the major parts of an actual or likely high theft line, and in deciding which of General Motors' lines should be among the 14 selected for coverage by the theft prevention standard.

After following these procedures, the agency has selected the high theft lines that will be subject to the requirements of the theft prevention standard, unless the lines are exempted pursuant to section 605 of the Cost Savings Act. The individual vehicle manufacturers have already been notified which of their own lines have been selected for coverage under the motor vehicle theft prevention standard. This listing of the covered lines for all affected manufacturers is simply a compendium of the selections which have already been sent to the individual manufacturers. It is published so that the public, especially law enforcement groups will know which vehicles will be subject to the requirements of the theft prevention standard.

The agency has been told that the 1987 versions of some of these car lines will be introduced into commerce before April 24, 1986, the effective date for Part 541. For the purposes of Title VI of the Cost Savings Act, NHTSA believes that a line's model year begins on the day on which a vehicle in that line is introduced into commerce in the United States. The legislature history of Title VI states, "The [theft prevention] standard cannot apply to a car in the middle of the model year." H.R. Rep. No. 1087, 98th Cong, 2d Sess., at 11 (1984). Accordingly, NHTSA concludes that a 1987 model year version of a car line introduced into commerce before the effective date of Part 541 is not subject to the requirements of Part 541 during the 1987 model year. Such lines will, of course, be subject to those requirements for the 1988 model year. NHTSA will inform the National Crime Information Center (NCIC) of those lines listed in Appendix A whose 1987 model year versions were introduced into commerce before April 24, 1986, and are not subject to the requirments of Part 541 in the 1987 model year.

NHTSA would like to note that this listing is *not* a final listing of the lines that will be required to be marked in the 1987 model year. As noted above, some manufacturers plan to introduce 1987 lines on this list into commerce before April 24, 1986. If they do so, the lines would not be subject to the marking requirements for the 1987 model year. Further, the agency has received a number of petitions for exemption from the marking requirements of Part 541, because some of the lines in this listing will be equipped with standard equipment anti-theft devices in the 1987 model year. After the agency verifies whether the 1987 lines were actually introduced into commerce before April 24 1986 and reaches decisions on the petitions from exemption, it will promptly publish an update to this listing. That update will show all the lines that must be marked in accordance with Part 541 for the 1987 model year.

NHTSA finds for good cause that notice and opportunity for comment on this listing are unnecessary. As explained above, the agency is statutorily required to make the determination of which existing lines are high theft lines based on actual theft data. In the case of newer lines, the agency is statutorily required to determine which lines are likely high theft lines by agreement with the manufacturer if possible. All selections of newer lines as high theft lines were made pursuant to Part 542. Additionally, the agency has made the statutorily-required determinations of which lines with theft rates below the median theft rate have a majority of major parts interchangeable with those a high theft line. Thus, all of the lines listed herein have already been selected as high theft lines in accordance with the criteria set forth in Title VI of the Cost Savings Act. Public comment on the selections is not contemplated by Title VI, and is unnecessary after the selections have been made in accordance with the statutory criteria.

Regulatory Impacts.

NHTSA has determined that this rule listing the high theft carlines subject to the requirements of the vehicle theft prevention standard is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. As noted above, these selections have all been made in accordance with the provisions of section 603 of the Cost Savings Act. This listing does not actually select the lines to be covered by the theft prevention stand ard; it only informs the general public of those lines

that have been selected as high theft lines. NHTSA does not believe that the selections affect the impacts described in the regulatory evaluation prepared for the vehicle theft prevention standard. Accordingly, a separate regulatory evaluation has not been prepared for this listing. Interested persons may wish to examine the regulatory evaluation prepared for the theft prevention standard in connection with this listing. Copies of the evaluation have been placed in Docket No. T84-01, Notice 7, and may be obtained by writing to: National Highway Traffic Safety Administration, Docket Section, Room 5109, 400 Seventh Street, S.W., Washington, D.C. 20590.

The agency has also considered the effects of this listing under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. First this is merly a listing of selections that have already been made. Second, the total costs for marking any vehicle may not exceed $15, as specified in section 604 of the Cost Savings Act. This represents much less than one half of one percent of the suggested retail price of the lowest priced new car available in the United States. Third, few, if any, of the vehicle manufacturers listed herein would qualify as small entities for the purposes of the Regulatory Flexibility Act. Small organizations and small governmental jurisdictions will be minimally affected as purchasers of new vehicles subject to the theft prevention standard. Accordingly a regulatory flexibility analysis has not been prepared. Those persons interested in seeing the agency's analysis of the effects of the vehicle theft prevention standard on small businesses are referred to the regualtory evaluation available in Docket No. T84-01, Notice 7.

Finally, the agency has considered the environmental impacts of this rule, in accordance with the National Environmental Policy Act, and determined that it will not have any significant impact on the quality of the human environment.

In consideration of the foregoing, 49 CFR Part 541 is amended as follows:

1. The authority citation for Part 541 continues to read as follows:

Authority: 15 U.S.C. 2021–2024, and 2026; delegation of authority at 49 CFR 1.50.

2. A new Appendix A is added to Part 541, reading as follows:

Appendix A

Lines Subject to the Requirements of this Standard

Manufacturer	*Subject Lines*
Alfa Romeo	Milano 161
Austin Rover	Sterling
BMW	3—Carline
	5—Carline
	6—Carline
	7—Carline
Chrysler	Chrysler Executive Sedan/Limousine
	Chrysler Fifth Avenue/Newport
	Chrysler Laser
	Chrysler LeBaron/Town & Country
	Chrysler LeBaron GTS
	Dodge Aries
	Dodge Conquest
	Dodge Daytona
	Dodge Diplomat
	Dodge Lancer
	Dodge 600
	Plymoth Caravelle
	Plymouth Conquest
	Plymouth Gran Fury
	Plymouth Reliant
	"Q" Car
Ferrari	Mondial 8
	308
	328
Ford	Ford Mustang
	Ford Thunderbird
	Mercury Capri
	Mercury Cougar
	Lincoln Continental
	Lincoln Mark
	Lincoln Town Car
	Merkur Scorpio
	Merkur XR4Ti
General Motors	Buick Electra
	Buick LeSabre
	Buick Riviera
	Cadillac Allante
	Cadillac DeVille
	Cadillac Eldorado
	Cadillac Seville
	Chevrolet Camaro
	Chevrolet Corvette
	Chevrolet Nova
	Oldsmobile Delta 88
	Oldsmobile 98
	Oldsmobile Toronado
	Pontiac Bonneville
	Pontiac Fiero Pontiac Firebird
Honda	Acura Legend
Isuzu	Impulse

Manufacturer	*Subject Lines*
Jaguar	XJ XJ-6 XJ-40
Maserati	Biturbo Quattroporte
Mazda	GLC RX-7 626
Mercedes-Benz	190 D/E 300 D/E 300 SDL 380 SEC/500 SEC 380 SEL/500 SEL 380 SL 420 SEL 560 SEL 560 SEC 560 SL
Mitsubishi	Cordia Galant Starion Tredia
Nissan	Maxima 300 ZX
Porsche	911 924S 928
Reliant	SS1
Saab	900 9000
Subaru	XT
Toyota	Camry Celica Celica Supra Corolla/Corolla Sport Cressida MR2 Starlet
Volkswagen	Audi 5000S Audi Quattro Volkswagen Cabriolet Volkswagen Rabbit Volkswagen Scirocco

Issued on April 2, 1986.

Diane K. Steed
Administrator

51 F.R. 11919
April 8, 1986

PREAMBLE TO AN AMENDMENT TO PART 541

Final Listing of High Theft Lines for 1987 Model Year; Motor Vehicle Theft Prevention Standard

(Docket No. T84-01; Notice 11)

ACTION: Final rule; technical amendment.

SUMMARY: This agency has completed all its actions for determining which carlines will be subject to the marking requirements of the motor vehicle theft prevention standard for the 1987 model year. NHTSA has previously published a listing of those carlines which were selected as high theft carlines beginning with the 1987 model year. However, some of the carlines selected as high theft lines are nevertheless *not* subject to the theft prevention standard for the 1987 model year. Three 1987 lines selected as high theft lines are not subject to the theft prevention standard because they were introduced into commerce before the effective date of the theft prevention standard (April 24, 1986). Twelve carlines have received exemptions from complying with the requirements of the theft prevention standard because they have standard equipment anti-theft devices. This final listing is intended to inform the public, particularly law enforcement groups, of the carlines that are subject to marking requirements of the theft prevention standard for the 1987 model year.

EFFECTIVE DATE: This listing becomes effective November 25, 1986.

SUPPLEMENTARY INFORMATION: On October 24, 1985, NHTSA published a new Part 541, *Federal Motor Vehicle Theft Prevention Standard;* 50 FR 43166. Part 541 sets forth performance requirements for inscribing or affixing identification numbers into or onto covered original equipment major parts, and the replacement parts for those original equipment parts, on all vehicles in lines selected as high theft lines.

Section 603(a)(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2023(a)(2) hereinafter "the Cost Savings Act") specifies that NHTSA shall select the high theft lines with the agreement of the manufacturer, if possible. Accordingly, on April 8, 1986, this agency published a listing of those selected as high theft lines beginning with the 1987 model year; 51 FR 11919. However, that notice stated that there were two possible circumstances in which a carline listed in the notice would not be required to be marked in accordance with the theft prevention standard for the 1987 model year.

First, three of the high theft lines had 1987 models introduced into commerce before April 24, 1986, the effective date for Part 541. For the purposes of Title VI of the Cost Savings Act, a line's model year begins on the day on which a vehicle in that line is introduced into commerce in the United States. The legislative history of Title VI states, "The [theft prevention] standard cannot apply to a car in the middle of the model year." H.R. Rep. No. 1087, 98th Cong., 2d Sess., at 11 (1984). Accordingly, this agency has concluded that if a 1987 model year version of a carline selected as a high theft line was introduced into commerce before the effective date of Part 541, it is not subject to the requirements of Part 541 during the 1987 model year. Such lines will, however, be subject to Part 541 beginning in the 1988 model year.

Second, section 605 of the Cost Savings Act (15 U.S.C. 2025) provides that a manufacturer may petition to have a high theft line exempted from the requirements of Part 541, if the line is equipped as standard equipment anti-theft device. The exemption is granted if NHTSA determines that the standard equipment anti-theft device is likely to be as effective as compliance with Part 541 in reducing and deterring motor vehicle thefts. NHTSA has exempted twelve high theft lines under this statutory provision.

This revised listing is intended to inform the public, particularly law enforcement groups, of which carlines are subject to the marking requirements of

the theft prevention standard for the 1987 model year. This listing does not add any more lines to the group listed in the April 8, 1986 notice as subject to Part 541. It does, however, delete some lines from that listing. Since such deletions do not impose any additional obligations on any party, but instead relieve some manufacturers from compliance with Part 541, NHTSA finds for good cause that this notice should be effective as soon as it is published in the *Federal Register*.

NHTSA also finds for good cause that notice and opportunity for comment on this listing are unnecessary. All of the lines listed herein have already been selected as high theft lines in accordance with the criteria set forth in Title VI of the Cost Savings Act. Further, all of the lines exempted from Part 541 were exempted in accordance with Title VI. Public comment on the selections and exemptions is not contemplated by Title VI, and is unnecessary after the selections have been made in accordance with the statutory criteria.

Regulatory Impacts.

NHTSA has determined that this rule deleting some previously listed lines from the listing of those subject to the requirements of the vehicle theft prevention standard is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. As noted above, the deletions have all been made in accordance with the provisions of the Cost Savings Act, and the manufacturers of the deleted lines have already been informed that those lines are not subject to the requirements of Part 541 for the 1987 model year. This listing does not actually exempt lines from the requirements of Part 541; it only informs the general public of such exemptions. Since the only purpose of this final listing is to inform the public of prior final agency action for the 1987 model year, a full regulatory evaluation has not been prepared.

In consideration of the foregoing, 49 CFR Part 541 is amended as follows:

1. The authority citation for Part 541 continues to read as follows:

Authority: 15 U.S.C. 2021–2024, and 2026; delegation of authority at 49 CFR 1.50.

2. Appendix A of Part 541 is revised to read as follows:

Appendix A—Lines Subject to the Requirements of Part 541

Manufacturer	*Subject Lines*
BMW	3—Carline
	5—Carline
	6—Carline
	7—Carline
Chrysler	Chrysler Executive Sedan/ Limousine
	Chrysler Fifth Avenue/ Newport
	Chrysler Laser
	Chrysler LeBaron/Town & Country
	Chrysler LeBaron GTS
	Dodge Aries
	Dodge Daytona
	Dodge Diplomat
	Dodge Lancer
	Dodge 600
	Plymouth Caravelle
	Plymouth Gran Fury
	Plymouth Reliant
	"Q" Car
Ferrari	Mondial 8
	308
	328
Ford	Ford Mustang
	Ford Thunderbird
	Mercury Capri
	Mercury Cougar
	Lincoln Continental
	Lincoln Mark
	Lincoln Town Car
	Merkur Scorpio
	Merk XR4Ti
General Motors	Buick Electra
	Buick LeSabre
	Buick Riviera
	Cadillac DeVille
	Cadillac Eldorado
	Cadillac Seville
	Chevrolet Camaro
	Chevrolet Nova
	Oldsmobile Delta 88
	Oldsmobile 98
	Oldsmobile Toronado
	Pontiac Bonneville
	Pontiac Fiero
	Pontiac Firebird
Honda	Acura Legend
Jaguar	XJ
	XJ-6
	XJ-40

Manufacturer	*Subject Lines*
Maserati	Biturbo Quattroporte
Mazda	GLC 626
Mercedes-Benz	190 D/E [260 E] 300 D/E [300 TD] 300 SDL 380 SEC/500 SEC 380 SEL/500 SEL 380 SL 420 SEL 560 SEL 560 SEC 560 SL
Mitsubishi	Cordia Tredia
Porsche	911 928
Reliant	SS1
Saab	900 9000
Subaru	XT
Toyota	Camry Celica Corolla/Corolla Sport MR2 Starlet
Volkswagen	Audi Quattro Volkswagen Cabriolet Volkswagen Rabbit Volkswagen Scirocco

Appendix A-I—*1987 Lines Introduced Into Commerce Before April 24, 1986, Which Are Not Subject to the Requirements of This Standard Until the 1988 Model Year*

Manufacturer	*Line*
Alfa Romeo	Milano 161
Mazda	RX-7
Porsche	924S

Appendix A-II—*Lines Exempted from the Requirements of this Standard Pursuant to 49 CFR Part 543*

Manufacturer	*Exempted Lines*
Austin Rover	Sterling
Chrysler	Chrysler Conquest
General Motors	Cadillac Allante Chevrolet Corvette
Isuzu	Impulse
Mitsubishi	Galant Starion
Nissan	Maxima 300 ZX
Toyota	Celica Supra Cressida
Volkswagen	Audi 5000S

Issued on November 20, 1986.

Diane K. Steed
Administrator

51 F.R. 42577
November 25, 1986

PREAMBLE TO AN AMENDMENT TO PART 541

Final Listing of High Theft Lines for 1988 Model Year; Motor Vehicle Theft Prevention Standard (Docket No. T84-01; Notice 13)

ACTION: Final rule; technical amendment.

SUMMARY: This agency has completed all of its actions for determining which car lines will be subject to the marking requirements of the motor vehicle theft prevention standard for the 1988 model year. NHTSA has previously published a listing of those car lines that were selected as high theft car lines beginning with the 1987 model year. This listing includes all of those car lines, as well as the new lines introduced in the 1988 model year that have been selected as likely high theft lines. In addition, this listing shows the three lines that have received exemptions from complying with the requirements of the theft prevention standard beginning with the 1988 model year, because they have standard equipment anti-theft devices. This final listing for the 1988 model year is intended to inform the public, particularly law enforcement groups, of the car lines that are subject to the marking requirements of the theft prevention standard for the 1988 model year.

EFFECTIVE DATE: This listing becomes effective December 30, 1987.

SUPPLEMENTARY INFORMATION: On October 24, 1985, NHTSA published a new Part 541, *Federal Motor Vehicle Theft Prevention Standard*; 50 FR 43166. Part 541 sets forth performance requirements for inscribing or affixing identification numbers into or onto covered original equipment major parts, and the replacement parts for those original equipment parts, on all vehicles in lines selected as high theft lines.

Section 603(a)(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2023(a)(2); hereinafter "the Cost Savings Act") specifies that NHTSA shall select the high theft lines with the agreement of the manufacturer, if possible. NHTSA has published the procedures that it follows in selecting lines as high theft lines at 49 CFR Part 542. In accordance with those procedures, NHTSA has selected five new 1988 car lines that are likely to be high theft lines. The newly selected lines are set forth in this listing, along with all those lines that had been previously selected as high theft lines. A listing of the previously selected lines was published at 51 FR 42577; November 25, 1986. Section 603(d) of the Cost Savings Act (15 U.S.C. 2023(d)) provides that the theft prevention standard must continue to apply to all lines that have been selected as high theft lines, unless those previously selected lines receive an exemption under section 605 of the Cost Savings Act (15 U.S.C. 2025).

Section 605 provides that a manufacturer may petition to have a high theft line exempted from the requirements of Part 541, if the line is equipped as standard equipment with an anti-theft device. The exemption is granted if NHTSA determines that the standard equipment anti-theft device is likely to be as effective as compliance with Part 541 in reducing and deterring motor vehicle thefts. Pursuant to this statutory provision, NHTSA has exempted one of the newly selected high theft lines from the requirements of Part 541. Additionally, two car lines that were formerly subject to Part 541 have been exempted for the 1988 model year.

This revised listing is intended to inform the public, particularly law enforcement groups, of which car lines are subject to the marking requirements of the theft prevention standard for the 1988 model year, and of which car lines are exempted from the theft prevention standard for the 1988 model year because of standard equipment anti-theft devices. The agency has already selected those new lines that are likely to be high theft lines, in accordance with Part 542 and section 603 of the Cost Savings Act. NHTSA has already exempted car lines with qualifying standard equipment anti-theft devices, in accordance with Part 543 and section 605 of the Cost Savings Act. Therefore, since this revised listing only informs the public of previous agency actions and agreements, and does not impose any additional obligations on any party, NHTSA finds for good cause that this notice should be effective as soon as it is published in the *Federal Register*.

NHTSA also finds for good cause that notice and opportunity for comment on this listing are unnecessary. All of the lines listed herein have already been selected as high theft lines in accordance with the criteria set forth in Title VI of the Cost Savings Act. Further, all of the lines exempted from Part

541 were exempted in accordance with Title VI. Public comment on the selections and exemptions is not contemplated by Title VI, and is unnecessary after the selections and exemptions have been made in accordance with the statutory criteria.

Regulatory Impacts: NHTSA has determined that this rule listing the high theft car lines subject to the requirements of the vehicle theft prevention standard is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. As noted above, the selections have all been made in accordance with the provisions of the Cost Savings Act, and the manufacturers of the selected lines have already been informed that those lines are subject to the requirements of Part 541 for the 1988 model year. This listing does not actually exempt lines from the requirements of Part 541; it only informs the general public of all such exemptions. Since the only purpose of this final listing is to inform the public of prior final agency action for the 1988 model year, a full regulatory evaluation has not been prepared.

The agency has also considered the effects of this listing under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, the effect of this notice is simply to inform the public of those lines that will be subject to the requirements of Part 541 for the 1988 model year. The agency believes this information will not have any economic impact on small entities.

In consideration of the foregoing, 49 CFR Part 541 is amended as follows:

Appendix A of Part 541 is revised, Appendix A-I is deleted, and Appendix A-II is redesignated as Appendix A-I, to read as follows:

Appendix A —Lines Subject to the Requirements of this Standard

Manufacturer	Subject Lines
Alfa Romeo	Milano 161
BMW	3 - Car line 5 - Car line 6 - Car line
Chrysler	Chrysler Executive Sedan/Limousine Chrysler Fifth Avenue/Newport Chrysler Laser Chrysler LeBaron/Town & Country Chrysler LeBaron GTS Dodge Aries Dodge Daytona Dodge Diplomat Dodge Lancer Dodge 600 Plymouth Caravelle Plymouth Gran Fury Plymouth Reliant "Q" Car
Ferrari	Mondial 8 308 328
Ford	Ford Mustang Ford Thunderbird Mercury Capri Mercury Cougar

	Lincoln Continental Lincoln Mark Lincoln Town Car Merkur Scorpio Merkur XR4Ti
General Motors	Buick Electra Buick LeSabre Buick Regal Buick Riviera Cadillac DeVille Cadillac Eldorado Cadillac Seville Chevrolet Camaro Chevrolet Nova Oldsmobile Cutlass Supreme Oldsmobile Delta 88 Oldsmobile 98 Oldsmobile Toronado Pontiac Bonneville Pontiac Fiero Pontiac Firebird Pontiac Grand Prix
Honda	Acura Legend
Jaguar	XJ XJ-6 XJ-40
Maserati	Biturbo Quattroporte
Mazda	GLC 626 MX-6
Mercedes-Benz	190 D/E 260 E 300 CE 300 D/E 300 SE 300 TD 300 TE 300 SDL 300 SEL 380 SEC/500 SEC 380 SEL/500 SEL 380 SL 420 SEL 560 SEL 560 SEC 560 SL

Mitsubishi	Cordia Tredia
Porsche	911 924S 928
Reliant	SS1
Saab	900 9000
Subaru Toyota	XT Camry Celica Corolla/Corolla Sport MR2 Starlet
Volkswagen	Audi Quattro Volkswagen Cabriolet Volkswagen Rabbit Volkswagen Scirocco

Appendix A-I — Lines Exempted from the Requirements of This Standard Pursuant to 49 CFR Part 543

Manufacturer	Exempted Lines
Austin Rover	Sterling
BMW	7 Car line
Chrysler	Chrysler Conquest
General Motors	Cadillac Allante Chevrolet Corvette
Isuzu	Impulse
Mazda	929 RX-7
Mitsubishi	Galant Starion
Nissan	Maxima 300 ZX

Toyota	Supra Cressida
Volkswagen	Audi 5000S

Issued on December 30, 1987

Diane K. Steed
Administrator

53 F.R. 133
December 30, 1987

PREAMBLE TO AN AMENDMENT TO PART 541

Final Listing of High-Theft Lines for 1988 Model Year; Motor Vehicle Theft Prevention Standard (Docket No. T84-01; Notice 14)

ACTION: Technical Amendment.

SUMMARY: This technical amendment adds a new car line to the January 5, 1988, final listing of high-theft lines for Model Year (MY) 1988 published by the agency in its Final Rule at 53 FR 133. The new MY 1988 car line was determined to be a likely high-theft vehicle but was inadvertently omitted from the agency's MY 1988 listing. The list of high-theft car lines is intended to inform the public, particularly law enforcement groups, of the car lines that are subject to the marking requirements of the theft prevention standard for MY 1988.

EFFECTIVE DATE: April 22, 1988

SUPPLEMENTARY INFORMATION: On October 24, 1985, NHTSA published a new Part 541, Federal Motor Vehicle Theft Prevention Standard; 50 FR 43166. Part 541 sets forth performance requirements for inscribing or affixing identification numbers into or onto covered original equipment major parts, and the replacement parts for those original equipment parts, on all vehicles in lines selected as high-theft lines.

Section 603(a)(2) of the Motor Vehicle Information Cost Savings Act (15 U.S.C. 2023(a)(2) hereinafter "the Cost Savings Act") specifies that NHTSA shall select high-theft lines with the agreement of the manufacturer, if possible. NHTSA has published the procedures that it follows in selecting lines as high-theft lines at 49 CFR Part 542. On January 5, 1988, the agency published its listing of high-theft MY 1988 car lines at 53 FR 133 which included five newly selected lines for MY 1988 and those car lines that were previously selected as high-theft car lines beginning with MY 1987. A sixth MY 1988 car line was inadvertently omitted from the final listing. This amendment corrects that error, by adding the General Motors Buick Reatta car line to the list.

Section 603(d) of the Cost Savings Act (15 U.S.C. 2023 (d)) provides that the theft prevention standard must continue to apply to all lines that have been selected as high-theft lines, unless those previously selected lines receive an exemption under Section 605 of the Cost Savings Act (15 U.S.C. 2025).

Section 605 provides that a manufacturer may petition to have a high-theft line exempted from the requirements of Part 541, if the line is equipped as standard equipment with an anti-theft device. The exemption is granted if NHTSA determines that the standard equipment anti-theft device is likely to be as effective as compliance with Part 541 in reducing and deterring motor vehicle thefts. The omitted car line does not have an anti-theft device installed as standard equipment.

The revised listing is intended to inform the public, particularly law enforcement groups, concerning which car lines are subject to the marking requirements of the theft prevention standard for the 1988 model year, and which car lines are exempted from the theft prevention standard for the 1988 model year because of standard equipment anti-theft devices.

To repeat, the agency and motor vehicle manufacturers have come to an agreement on these selected car lines, including the omitted line, in accordance with 49 CFR Part 542, and Section 603 of the Cost Savings Act. Accordingly, this correction would not impose any additional responsibilities on vehicle manufacturers. It would only inform the public of previous agency action and ensure that all determined likely high-theft car lines are listed. In consideration of the foregoing, Appendix A of Part 541 is revised for General Motors car lines to read as follows:

Appendix A—Lines Subject to the Requirements of This Standard

* * * * * * * *

General Motors	Buick Electra
	Buick LeSabre
	Buick Reatta
	Buick Regal
	Buick Riviera
	Cadillac Deville
	Cadillac Eldorado
	Cadillac Seville
	Chevrolet Camaro
	Chevrolet Nova

General Motors — (Continued)	Oldsmobile Cutlass Supreme Oldsmobile Delta 88 Oldsmobile 98 Oldsmobile Toronado Pontiac Bonneville Pontiac Fiero Pontiac Firebird Pontiac Grand Prix	* * * * * Issued on April 18, 1988

Diane K. Steed
Administrator

53 F.R. 13274
April 22, 1988

PREAMBLE TO AN AMENDMENT TO PART 541

Motor Vehicle Theft Prevention Standard
Final Listing of High Theft Lines for 1989 Model Year

(Docket No. T84-01; Notice 190)

ACTION: Final rule; technical amendment.

SUMMARY: The purpose of this notice is to (1) report the results of this agency's actions for determining which car lines are subject to the marking requirements of the motor vehicle theft prevention standard for the 1989 model year, and (2) publish a list of those car lines. NHTSA has previously published a list of the car lines that were selected as high theft car lines for prior model years, beginning with the 1987 model year. The list in this notice includes all of the car lines in the previous lists, as well as the new lines that were introduced for the 1989 model year and that have been selected as likely high theft lines. In addition, this listing shows the three new lines that have standard equipment anti-theft devices and have been granted exemptions from complying with the requirements of the theft prevention standard beginning with the 1989 model year. One additional line previously listed as having been designated a high theft line has been granted an exemption from the parts marking requirements for Model Year 1989 because it has a standard equipment anti-theft device. This final listing for the 1989 model year is intended to inform the public, particularly law enforcement groups, of the car lines that are subject to the marking requirements of the theft prevention standard for the 1989 model year.

EFFECTIVE DATE: This listing applies to the 1989 model year. The amendment made by this notice is effective March 30, 1989.

SUPPLEMENTARY INFORMATION: *Federal Motor Vehicle Theft Prevention Standard,* 49 CFR Part 541, sets forth performance requirements for inscribing or affixing identification numbers into or onto covered original equipment major parts, and the replacement parts for those original equipment parts, on all vehicles in lines selected as high theft lines.

Section 603(a)(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2023(a)(2); hereinafter "the Cost Savings Act") specifies that NHTSA shall select the high theft lines, with the agreement of the manufacturer, if possible. In accordance with procedures published in 49 CFR Part 542, NHTSA previously selected nine of the new 1989 car lines as likely to be high theft lines. The newly selected lines are set forth in this listing, along with all those lines that had been selected as high theft lines and listed for one or more prior model years. Lists of selected lines were published at 51 FR 42577; November 25, 1986, for Model Year 1987, and at 53 FR 133; January 5, 1988, for Model Year 1988. Section 603(d) of the Cost Savings Act (15 U.S.C. 2023(d)) provides that the theft prevention standard must continue to apply to each line that has been selected as high theft lines, unless that line is exempted under section 605 of the Cost Savings Act (15 U.S.C. 2025).

Section 605 provides that a manufacturer may petition to have a high theft line exempted from the requirements of Part 541, if the line is equipped as standard equipment with an anti-theft device. The exemption is granted if NHTSA determines that the standard equipment anti-theft device is likely to be as effective as compliance with Part 541 in reducing and deterring motor vehicle thefts. Pursuant to this statutory provision, NHTSA has exempted from the requirements of Part 541 three of the new lines that have been selected as high theft. Also pursuant to Section 605, the agency has exempted an existing car line, the Saab 9000, that was formerly subject to Part 541, beginning with the 1989 model year.

This revised listing is intended to inform the public, particularly law enforcement groups, of those car lines that are subject to the marking requirements of the theft prevention standard for the 1989 model year, and of those car lines that are exempted from the theft prevention standard for the 1989 model year because of standard equipment anti-theft devices. The car lines listed as being subject to the standard were previously selected as high theft lines, in accordance with Part 542 and section 603 of the Cost Savings Act. Similarly, the car lines listed as being exempt from the standard were previously exempted in accordance with Part 543 and

section 605 of the Cost Savings Act. Therefore, since this revised listing only informs the public of previous agency actions and agreements, and does not impose any additional obligations on any party, NHTSA finds for good cause that the amendment made by this notice should be effective as soon as it is published in the Federal Register.

For the same reasons, NHTSA also finds for good cause that notice and opportunity for comment on this listing are unnecessary. Further, public comment on the listing of selections and exemptions is not contemplated by Title VI, and is unnecessary after the selections and exemptions have been made in accordance with the statutory criteria.

Regulatory Impacts.

NHTSA has determined that this rule listing the car lines that are high theft and are subject to the requirements of the vehicle theft prevention standard and the car lines that are exempt from the standard is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. As noted above, the selections have all been made in accordance with the provisions of the Cost Savings Act, and the manufacturers of the selected lines have already been informed that those lines are subject to the requirements of Part 541 for the 1989 model year. Further, this listing does not actually exempt lines from the requirements of Part 541; it only informs the general public of all such exemptions. Since the only purpose of this final listing is to inform the public of prior final agency action for the 1989 model year, a full regulatory evaluation has not been prepared.

The agency has also considered the effects of this listing under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, the effect of this notice is simply to inform the public of those lines that are subject to the requirements of Part 541 for the 1989 model year. The agency believes that listing of this information will not have any economic impact on small entities.

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this rule, and determined that it will not have any significant impact on the quality of the human environment.

Finally, this action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

In consideration of the foregoing, 49 CFR Part 541 is amended as follows:

Appendix A of Part 541 is revised, Appendix A-I revised to read as follows:

Appendix A—Lines Subject to the Requirements of this Standard

Manufacturer	*Subject Lines*
Alfa Romeo	Milano 161
BMW	3 – Car line 5 – Car line 6 – Car line
Chrysler	Chrysler Executive Sedan/Limousine Chrysler Fifth Avenue/Newport Chrysler Laser Chrysler LeBaron/Town & Country Chrysler LeBaron GTS Dodge Aries Dodge Daytona Dodge Diplomat Dodge Lancer Dodge 600 Plymouth Caravelle Plymouth Gran Fury Plymouth Reliant Chrysler TC

Manufacturer	*Subject Lines*
Ferrari	Mondial 8 308 328
Ford	Ford Mustand Ford Thunderbird Ford Probe** Mercury Capri Mercury Cougar Lincoln Continental Lincoln Mark Lincoln Town Car Merkur Scorpio Merkur XR4Ti
General Motors	Buick Electra Buick LeSabre Buick Reatta Buick Regal Buick Riviera Cadillac DeVille Cadillac Eldorado Cadillac Seville Chevrolet Camaro Chevrolet Nova Oldsmobile Cutlass Supreme Oldsmobile Delta 88 Oldsmobile 98 Oldsmobile Toronado Pontiac Bonneville Pontiac Fiero Pontiac Firebird Pontiac Grand Prix Geo Prizm**
Honda	Acura Legend
Jaguar	XJ XJ-6 XJ-40
Maserati	Biturbo Quattroporte 228**
Mazda	GLC 626 MX-6

Manufacturer	*Subject Lines*
Mercedes-Benz	190 D/E 260 E 300 CE 300 D/E 300 SE 300 TD 300 TE 300 SDL 300 SEL 380 SEC/500 SEC 380 SEL/500 SEL 380 SL 420 SEL 560 SEL 560 SEC 560 SL
Mitsubishi	Cordia Tredia Eclipse**
Peugeot	405**
Porsche	911 924S 928
Reliant	SS1
Saab	900
Subaru	XT
Toyota	Camry Celica Corolla/Corolla Sport MR2 Starlet
Volkswagen	Audi Quattro Volkswagen Cabriolet Volkswagen Rabbit Volkswagen Scirocco Volkswagen Corrado**

**Nine car lines were added to the MY 1989 listings. Of these, three car lines received exemptions from the requirements of Part 541. Also, one existing car line (Saab 9000) received an exemption from the requirements of Part 541.

Appendix A-I—High-Theft Lines with Antitheft Devices that are Exempted from the Requirements of this Standard Pursuant to 49 CFR Part 543

Manufacturer	*Exempted Lines*
Austin Rover	Sterling
BMW	7 Car line*
Chrysler	Chrysler Conquest
General Motors	Cadillac Allante Chevrolet Corvette
Isuzu	Impulse
Mazda	929 RX 7
Mitsubishi	Galant Starion
Nissan	Maxima 300 ZX
Saab	9000**
Toyota	Supra Cressida
Volkswagen	Audi 5000S Audi 100** Audi 200**
Volvo	480ES**

*Although the BMW 7 car line received an exemption from parts marking, the exemption is not being used. This means the BMW 7 car line must be marked as required under Part 541.

**Nine car lines were added to the MY 1989 listings. Of these, three car lines received exemptions from the requirements of Part 541. Also, one existing car line (Saab 9000) received an exemption from the requirements of Part 541.

Diane K. Steed
Administrator

54 FR 13067
March 30, 1989

PREAMBLE TO AN AMENDMENT TO PART 541

Final Listing of High Theft Lines for 1990 Model Year
Motor Vehicle Theft Prevention Standard
(Docket No.T84-01; Notice 20)
RIN:2127-AC96

ACTION: Final rule; technical amendment.

SUMMARY: The purpose of this notice is to (1) report the results of this agency's actions for determining which car lines are subject to the marking requirements of the motor vehicle theft prevention standard for the 1990 model year, and (2) publish a list of those car lines. NHTSA has previously published a list of the car lines that were selected as high theft car lines for prior model years, beginning with the 1987 model year. The list in this notice includes all of the car lines in the previous lists, as well as thirteen new lines that were introduced for the 1990 model year and that have been selected as likely high theft lines. In addition, this listing shows the seven new lines that have standard equipment anti-theft devices and have been granted exemptions from complying with the requirements of the theft prevention standard beginning with the 1990 model year. Two more car lines have been exempted in part and are required to have only their engines and transmissions marked. This final listing for the 1990 model year is intended to inform the public, particularly law enforcement groups, of the car lines that are subject to the marking requirements of the theft prevention standard for the 1990 model year.

EFFECTIVE DATE: This listing applies to the 1990 model year. The amendment made by this notice is effective September 20, 1989.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Theft Prevention Standard, 49 CFR Part 541, sets forth requirements for inscribing or affixing identification numbers onto covered original equipment major parts, and the replacement parts for those original equipment parts, on all vehicles in lines selected as high theft lines.

Section 603(a)(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2023(a)(2); hereinafter "the Cost Savings Act") specifies that NHTSA shall select the high theft lines, with the agreement of the manufacturer, if possible. In accordance with procedures published in 49 CFR Part 542, NHTSA previously selected twenty-two of the new 1990 car lines as likely to be high theft lines. The newly selected lines are set forth in this listing, along with all those lines that had been selected as high theft lines and listed in prior model years.

Section 603(d) of the Cost Savings Act (15 U.S.C. 2023(d)) provides that the theft prevention standard must continue to apply to each line that has been selected as a high theft line, unless that line is exempted under section 605 of the Cost Savings Act (15 U.S.C.2025). Section 605 provides that a manufacturer may petition to have a high theft line exempted from the requirements of Part 541, if the line is equipped as standard equipment with an anti-theft device. The exemption is granted if NHTSA determines that the anti-theft device is likely to be as effective as compliance with Part 541 in reducing and deterring motor vehicle thefts. Pursuant to this statutory provision, NHTSA has exempted nine of the twenty-two high theft car lines from the parts marking requirements of Part 541. Seven of these nine car lines are exempted in full from Part 541 and two of the nine are exempted in part.

This notice is intended to inform the public, particularly law enforcement groups, of the high-theft car lines for the 1990 model year, and of those car lines that are exempted from the theft prevention standard for the 1990 model year because of standard equipment anti-theft devices.

The car lines listed as being subject to the standard have been selected as high theft lines in accordance with the procedures of 49 CFR Part 542 and section 603 of the Cost Savings Act. Under these procedures, manufacturers evaluate new car lines to conclude whether those new lines are likely to have high theft rates. Manufacturers submit these evaluations and conclusions to the agency, which makes an independent evaluation and, on a preliminary basis, determines whether the new line should be subject to parts marking. NHTSA informs the manufacturer in writing of its evaluations and determinations, together with the factual information considered by the agency in making them. The manufacturer may request the agency to reconsider these preliminary determinations.

Within 60 days of the receipt of the request, NHTSA makes its final determination. NHTSA informs the manufacturer by letter of these determinations and its response to the request for reconsideration. If there is no request for reconsideration, the agency's determination becomes final 45 days after sending the letter with the preliminary determination. Each of the new car lines on the high theft list is the subject of a final determination.

Similarly, the car lines listed as being exempt from the standard have been exempted in accordance with the procedures of 49 CFR Part 543 and section 605 of the Cost Savings Act. Therefore, since this revised listing only informs the public of previous agency actions, and does not impose any additional obligations on any party, NHTSA finds for good cause that the amendment made by this notice should be effective as soon as it is published in the *Federal Register*.

In consideration of the foregoing, 49 CFR Part 541 is amended as follows:

Appendix A of Part 541 is revised, Appendix A-I is revised to read as follows, and Appendix A-II is added as follows:

Appendix A—Lines Subject to the Requirements of this Standard

Manufacturer	Subject Lines
Alfa Romeo	Milano 161 Fiat 164*
BMW	3 — Car line 5 — Car line 6 — Car line
Chrysler	Chrysler Executive Sedan/Limousine Chrysler Fifth Avenue/Newport Chrysler Laser Chrysler LeBaron/Town & Country Chrysler LeBaron GTS Chrysler TC Chrysler Eagle Talon* Chrysler New Yorker Fifth Avenue* Dodge Aries Dodge Daytona Dodge Diplomat Dodge Lancer Dodge 600 Plymouth Caravelle Plymouth Laser* Plymouth Gran Fury Plymouth Reliant
Ferrari	Mondial 8 308 328
Ford	Ford Mustang Ford Thunderbird Ford Probe Mercury Capri Mercury Couger Lincoln Continental Lincoln Mark Lincoln Town Car Merkur Scorpio Merkur XR4Ti
General Motors	Buick Electra Buick LeSabre Buick Reatta Buick Regal Buick Riviera Cadillac DeVille Cadillac Eldorado Cadillac Seville Chevrolet Nova Chevrolet Lumina* Oldsmobile Cutlass Supreme Oldsmobile Delta 88 Oldsmobile 98 Oldsmobile Toronado Pontiac Bonneville Pontiac Fiero Pontiac Grand Prix Geo Prizm Geo Storm*
Honda	Acura Legend Acura NS-X*
Isuzu	90JZ*
Jaguar	XJ XJ-6 XJ-40
Lotus	M100*
Maserate	Biturbo Quattroporte 228
Mazda	GLC 626 MX-6 MX-5 Miata*
Mercedes-Benz	190 D/E 250D-T 260 E 300 CE 300 D/E 300 SE 300 SL* 300 TD 300 TE 300 SDL 300 SEL 380 SEC/500 SEC 380 SEL/500 SEL 380 SL 420 SEL 500 SL* 560 SEL 560 SEC 560 SL

Mitsubishi;	Cordia Tredia Eclipse
Peugeot	405
Porsche	924S
Reliant	SS1
Saab	900
Subaru	XT
Toyota	Camry Celica Corolla/Corolla Sport MR2 Starlet
Volkswagen	Audi Quattro Volkswagen Cabriolet Volkswagen Rabbit Volkswagen Scirocco Volkswagen Corrado

*Lines added in Model Year 1990

Appendix A-I — High-Theft Lines with Antitheft Devices that are Exempted from the Requirements of this Standard Pursuant to 49 CFR Part 543

Manufacturer	Exempted Lines
Austin Rover	Sterling
BMW	7 — Car line
Chrysler	Chrysler Conquest Imperial**
General Motors	Cadillac Allante Chevrolet Corvette
Isuzu	Impulse
Mazda	929 RX7
Mitsubishe	Galant Starion
Nissan	Maxima 300ZX Infiniti M30** InfinitiQ45**
Porsche	911** 928**
Saab	9000
Toyota	Supra Cressida Lexus LS400** Lexus ES250**
Volkswagen	Audi 5000S Audi 100 Audi 200
Volvo	480ES

**Lines exempted from the requirements of Part 541 pursuant to 49 CFR Part 543 in MY 1990.

Appendix A-II — High Theft Lines with Antitheft Devices that are Exempted in Part from the Parts-Marking Requirements of this Standard Pursuant to 49 CFR Part 543

Manufacturer	Exempted Lines	Parts Marked
General Motors	Chevrolet Camaro	Engine, Transmission
	Pontiac Firebird	Engine, Transmission

These two car lines received partial exemptions from the requirements of Part 541 pursuant to 49 CFR Part 543 in MY 1990.

Jeffrey R. Miller
Acting Administrator

54 F.R.38684
September 20, 1989

PREAMBLE TO AN AMENDMENT TO PART 541

Final Listing of High Theft lines for 1991 Model Year; Motor Vehicle Theft Prevention Standard (Docket 90-19; Notice 01) RIN 2127-AD33

ACTION: Final rule; technical amendment.

SUMMARY: The purpose of this notice is to (1) report the results of this agency's actions for determining which car lines are subject to the marking requirements of the motor vehicle theft prevention standard for the 1991 model year, and (2) publish a list of those car lines. NHTSA has previously published lists of the car lines that were selected as high theft car lines for prior model years, beginning with the 1987 model year. The list in this notice includes all of the car lines in the previous lists, as well as five new lines that were introduced for the 1991 model year and that have been selected as likely high theft lines. In addition, this listing shows the two additional lines that have standard equipment anti-theft devices and have been granted exemptions from the requirements of the theft prevention standard beginning with the 1991 model year. Two more car lines have been exempted in part and are required to have only their engines and transmissions marked.

This final listing for the 1991 model year is intended to inform the public, particularly law enforcement groups, of the car lines that are subject to the marking requirements of the theft prevention standard for the 1991 model year.

EFFECTIVE DATE: This listing applies to the 1991 model year. The amendment made by this notice is effective September 11, 1990.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Theft Prevention Standard. 49 CFR Part 541, sets forth requirements for inscribing or affixing identification numbers onto covered original equipment major parts, and the replacement parts for those original equipment parts, on all vehicles in lines selected as high theft lines.

Section 603(a)(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2023(a)(2); hereinafter "the Cost Savings Act") specifies that NHTSA shall select the high theft lines, with the agreement of the manufacturer, if possible. Section 603(d) of the Cost Savings Act (15 U.S.C. 2023(d)) provides that once a line has been designated as a high theft line, it remains subject to the theft prevention standard unless that line is exempted under section 605 of the Cost Savings Act (15 U.S.C. 2025). Section 605 provides that a manufacturer may petition to have a high theft line exempted from the requirements of Part 541, if the line is equipped as standard equipment with an anti-theft device. The exemption is granted if NHTSA determines that the anti-theft device is likely to be as effective as compliance with Part 541 in reducing and deterring motor vehicle thefts.

The agency annually publishes a list of the lines so selected for previous model years. This notice is intended to inform the public, particularly law enforcement groups, of the high-theft car lines for the 1991 model year, and of those car lines that are exempted from the theft prevention standard for the 1991 model year because of standard equipment anti-theft devices

The list includes the five new 1991 car lines selected by the agency in accordance with procedures published in 49 CFR Part 542 as likely to be high theft lines. The list also includes all those lines that were selected as high theft lines and listed for prior model years. For model year 1990, the Alfa Romeo 164 car line was incorrectly identified as the Fiat 164. The Alfa Romeo 164 is correctly identified for the 1991 model year.

This notice also includes four high theft lines exempted by the agency, beginning in MY 1991, from the parts marking requirements of Part 541. Two of these car lines are exempted in full from Part 541 and two are exempted in part.

Notice and comment; effective date. The car lines listed as being subject to the standard have been selected as high theft lines in accordance with the procedures of 49 CFR Part 542 and section 603 of the Cost Savings Act. Under these procedures, manufacturers evaluate new car lines to conclude whether those new lines are likely to have high theft rates. Manufacturers submit these evaluations and conclusions to the agency, which makes an independent evaluation, and, on a preliminary basis, determines whether the new line should be subject to parts marking. NHTSA informs

the manufacturer in writing of its evaluations and determinations, together with the factual information considered by the agency in making them. The manufacturer may request the agency to reconsider these preliminary determinations. Within 60 days of the receipt of the request, NHTSA makes its final determination. NHTSA informs the manufacturer by letter of these determinations and its response to the request for reconsideration. If there is no request for reconsideration, the agency's determination becomes final 45 days after sending the letter with the preliminary determination. Each of the new car lines on the high theft list is the subject of a final determination.

Similarly, the car lines listed as being exempt from the standard have been exempted in accordance with the procedures of 49 CFR Part 543 and section 605 of the Cost Savings Act.

Therefore, NHTSA finds for good cause that notice and opportunity for comment on this listing are unnecessary. Further, public comment on the listing of selections and exemptions is not contemplated by Title VI, and is unnecessary after the selections and exemptions have been made in accordance with the statutory criteria.

For the same reasons, since this revised listing only informs the public of previous agency actions, and does not impose any additional obligations on any party, NHTSA finds for good cause that the amendment made by this notice should be effective as soon as it is published in the *Federal Register*.

In consideration of the foregoing, 49 CFR Part 541 is amended as follows:

Appendix A of Part 541 is revised, Appendix A-I revised to read as follows, and Appendix A-II is revised to read as follows:

PART 541—Appendix A

Lines subject to the requirements of Part 541

Manufacturer	*Subject Lines*
Alfa Romeo	Milano 161 Fiat 164
BMW	3—Carline 5—Carline 6—Carline
Chrysler	Chrysler Executive Sedan/Limousine Chrysler Fifth Avenue/Newport Chrysler Laser Chrysler LeBaron/Town & Country Chrysler LeBaron GTS Chrysler TC Chrysler Eagle Talon Chrysler New Yorker Fifth Avenue Dodge Aries Dodge Daytona Dodge Diplomat Dodge Lancer Dodge 600 [Dodge Stealth*] Plymouth Caravelle Plymouth Laser Plymouth Gran Fury Plymouth Reliant
[Consulier	Consulier GTP*]
Ferrari	Mondial 8 308 328
Ford	Ford Mustang Ford Thunderbird Ford Probe Mercury Capri Mercury Cougar Lincoln Continental Lincoln Mark Lincoln Town Car Merkur Scorpio Merkur XR4Ti
General Motors	Buick Electra Buick LeSabre Buick Reatta Buick Regal Buick Riviera Cadillac DeVille Cadillac Eldorado Cadillac Seville Chevrolet Nova Chevrolet Lumina
	Oldsmobile Cutlass Supreme Oldsmobile Delta 88 Oldsmobile 98 Oldsmobile Toronado Pontiac Bonneville Pontiac Fiero Pontiac Grand Prix Geo Prizm Geo Storm

PART 541—Appendix A—Continued

Lines subject to the requirements of Part 541

Manufacturer	*Subject Lines*
[Isuzu	90JZ* Impulse] [90JX* Impluse]
Jaguar	XJ XJ-6 XJ-40
Lotus	M100 [Lotus Elan*]
Maserati	Biturbo Quattroporte 228
Mazda	GLC 626 MX-6 MX-5 Miata
Mercedes-Benz	190 D/E 250D-T 260 E 300 CE 300 D/E 300 SE 300 SL 300 TD 300 TE 300 SDL 300 SEL 380 SEC/500 SEC 380 SEL/500 SEL 380 SL 420 SEL 500 SL 560 SEL 560 SEC 560 SL
Mitsubishi	Cordia Tredia Eclipse [3000GT*]
Peugeot	405
Porsche	924S
Reliant	SS1
Saab	900
Subaru	XT
Toyota	Camry Celica Corolla/Corolla Sport MR2 Starlet
Volkswagen	Audi Quattro Volkswagen Cabriolet Volkswagen Rabbit Volkswagen Scirocco Volkswagen Corrado

* Lines added in Model Year 1991.

PART 541—Appendix A-I

High-Theft Lines With Antitheft Devices That are Exempted from the Requirements of This Standard Pursuant to 49 CFR Part 543

Manufacturer	*Exempted Lines*
Austin Rover	Sterling
BMW	7 Car line
Chrysler Chrysler	Chrysler Conquest Imperial
General Motors	Cadillac Allante Chevrolet Corvette
[Honda	Acura NS-X** Acura Legend**]
Isuzu	Impulse
Mazda	929 RX 7
Mitsubishi	Galant Starion
Nissan	Maxima 300 ZX Infiniti M30 Infiniti Q45
Porsche	911 928
Saab	9000
Toyota	Supra Cressida Lexus LS400 Lexus ES250
Volkswagen	Audi 500S Audi 100 Audi 200
Volvo	480ES

* Lines exempted from the requirements of Part 541 pursuant to 49 CFR Part 543 in MY 1991.

PART 541—Appendix A-II

High Theft Lines With Antitheft Devices That are Exempted in Part From the Parts-Marking Requirements of This Standard Pursuant to 49 CFR Part 543

Manufacturer	*Exempted Lines*	*Parts Marked*
General Motors	Chevrolet Camaro	Engine, Transmission
	Pontiac Firebird	Engine, Transmission
	[Cadillac Deville-Fleetwood***	Engine, Transmission
	Oldsmobile 98***	Engine, Transmission]

*** Received partial exemptions from the requirements of PART 541 pursuant to 49 CFR Part 543 in MY 1990.

Jeffrey R. Miller
Acting Administrator

55 F.R. 37326
September 11, 1990

PREAMBLE TO AN AMENDMENT TO PART 541

Final Listing of High Theft Lines for 1992 Model Year Motor Vehicle Theft Prevention Standard

(Docket No. T84-01; Notice 260)
RIN: 2127-AD53

ACTION: Final rule, technical amendment.

SUMMARY: The purpose of this notice is to (1) report the results of this agency's actions for determining which car lines are subject to the marking requirements of the motor vehicle theft prevention standard for the 1992 model year and, (2) publish a list of those car lines. NHTSA has previously published lists of the car lines that were selected as high theft car lines for prior model years, beginning with the 1987 model year. The list in this notice includes all of the car lines in the previous lists, as well as four new lines that were introduced for the 1992 model year and that have been selected as likely high theft lines. In addition, this listing shows the five additional lines that have standard equipment anti-theft devices and have been granted exemptions from the requirements of the theft prevention standard beginning with the 1992 model year. Two more car lines have been exempted in part and are required to have only their engines and transmissions marked.

This final listing for the 1992 model year is intended to inform the public, particularly law enforcement groups, of the car lines that are subject to the marking requirements of the theft prevention standard for the 1992 model year.

EFFECTIVE DATE: This listing applies to the model year. The amendment made by this notice is effective September 4, 1991.

SUPPLEMENTARY INFORMATION:

The Federal Motor Vehicle Theft Prevention Standard, 49 CFR Part 541, sets forth requirements for inscribing or affixing identification numbers onto covered original equipment major parts, and the replacement parts for those original equipment parts, on all vehicles in lines selected as high theft lines.

Section 603(a)(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2023(a)(2); hereinafter "the Cost Savings Act") specifies that NHTSA shall select the high theft lines, with the agreement of the manufacturer, if possible. Section 603(d) of the Cost Savings Act (15 U.S.C. 2023(d)) provides that once a line has been designated as a high theft line, it remains subject to the theft prevention standard unless that line is exempted under Section 605 of the Cost Savings Act (15 U.S.C. 2025). Section 605 provides that a manufacturer may petition to have a high theft line exempted from the requirements of Part 541, if the line is equipped as standard equipment with an antitheft device. The exemption is granted if NHTSA determines that the antitheft device is likely to be as effective as compliance with Part 541 in reducing and deterring motor vehicle thefts.

The agency annually publishes the names of the lines which were listed as high theft lines for one or more previous model years and of the lines which are being listed for the first time and will be subject to the theft prevention standard beginning with the next model year. This notice is intended to inform the public, particularly law enforcement groups, of the high theft car lines for the 1992 model year. It also identifies those car lines that are exempted from the theft prevention standard for the 1992 model year because of standard equipment anti-theft devices.

The list includes the four new 1992 car lines selected by the agency in accordance with procedures published in 49 CFR Part 542 as likely to be high theft lines. The list also includes all those lines that were selected as high theft lines and listed for prior model years.

The notice also includes seven high theft lines exempted by the agency, beginning from MY 1992, from the parts marking requirements of Part 541. Five of these car lines are exempted in full from Part 541, and two are exempted in part, with the manufacturer required to mark only the engines and transmissions of these vehicles.

Notice and comment; effective date. The car lines listed as being subject to the standard have been selected as high theft lines in accordance with the procedures of 49 CFR Part 542 and Section 603 of the Cost Savings Act. Under these procedures, manufacturers evaluate new car lines to conclude whether those new lines are likely to have high theft rates. Manufacturers submit

these evaluations and conclusions to the agency, which makes an independent evaluation, and, on a preliminary basis, determines whether the new line should be subject to parts marking. NHTSA informs the manufacturer in writing of its evaluations and determinations, together with the factual information considered by the agency in making them. The manufacturer may request the agency to consider these preliminary determinations. Within 60 days of the receipt of the request, NHTSA makes its final determination. NHTSA informs the manufacturer by letter of these determinations and its response to the request for reconsideration. If there is no request for reconsideration, the agency's determination becomes final 45 days after sending the letter with the preliminary determination. Each of the new car lines on the high theft list is the subject of a final determination.

Similarly, the car lines listed as being exempt from the standard have been exempted in accordance with the procedures of 49 CFR Part 543 and Section 605 of the Cost Savings Act.

Therefore, NHTSA finds for good cause that notice and opportunity for comment on this listing are unnecessary. Further, public comment on the listing of selections and exemptions is not contemplated by Title VI, and is unnecessary after the selections and exemptions have been made in accordance with the statutory criteria.

For the same reasons, since this revised listing only informs the public of previous agency actions, and does not impose any additional obligations on any party, NHTSA finds for good cause that the amendment made by this notice should be effective as soon as it is published in the *Federal Register*.

In consideration of the foregoing, 49 CFR Part 541 is amended as follows:

Appendix A of Part 541 is revised to read as follows, Appendix A-I is revised to read as follows, and Appendix A-II is revised to read as follows:

Appendix A—

Chrysler	Eagle Talon
General Motors	Saturn Sports Coupe
Mazda	MX-3*
Subru	SVX*

Appendix A-I—

BMW	8 Car line**
Honda	Acura Vigor**
Porsche	968**
Toyota	Lexus SC300**
	Lexus SC400**
Volkswagen	Audi 200/S4

Appendix A-II—

General Motors	
Buick Park Avenue***	Engine, Transmission
Pontiac Bonneville***	Engine, Transmission

* Car lines added in Model Year 1992.

** Lines exempted in full from the requirements of Part 541 pursuant to 49 CFR Part 543, beginning from MY 1992.

*** Lines exempted in part from the requirements of Part 541 pursuant to 49 CFR 543, beginning in MY 1992.

Issued on August 28, 1991.

56 F.R. 43711
September 4, 1991

PART 541—FEDERAL MOTOR VEHICLE THEFT PREVENTION STANDARD

(Docket No. T84-01; Notice 7)

§ 541.1. Scope.

This standard specifies performance requirements for identifying numbers or symbols to be placed on major parts of certain passenger motor vehicles.

§ 541.2 Purpose.

The purpose of this standard is to reduce the incidence of motor vehicle thefts by facilitating the tracing and recovery of parts from stolen vehicles.

§ 541.3 Application.

This standard applies to those passenger car parts identified in § 541.5 (a) that are present in the car lines listed in Appendix A of this Part. It also applies to the replacement parts for those cars, if the part is identified in § 541.5 (a).

§ 541.4 Definitions.

(a) *Statutory terms.* All terms defined in sections 2 and 601 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 and 2021) are used in accordance with their statutory meanings unless otherwise defined in paragraph (b) below.

(b) *Other definitions.*

(1) "Interior surface" means, with respect to a vehicle part, a surface that is not directly exposed to sun and precipitation.

(2) "Line" or "car line" means a name which a manufacturer applies to a group of motor vehicles of the same make which have the same body or chassis, or otherwise are similar in construction or design. A "line" may, for example, include 2-door, 4-door, station wagon, and hatchback vehicles of the same make.

(3) "Passenger car" is used as defined in § 571.3 of this chapter.

(4) "VIN" means the vehicle identification number required by Part 565 and § 571.115 of this chapter.

§ 541.5 Requirements for passenger cars.

(a) Each passenger car subject to this standard must have an identifying number affixed or inscribed on each of the parts specified in paragraphs (a) (1) through (a) (14) inclusive, if the part is present on the passenger car. In the case of passenger cars not originally manufactured to comply with U.S. vehicle safety and bumper standards, each such car subject to this standard must have an identifying number inscribed in a manner which conforms to paragraph (d) (2) of this section, on each of the parts specified in paragraphs (a) (1) through (a) (14) inclusive, if the part is present on the passenger car.

(1) Engine.
(2) Transmission.
(3) Right front fender.
(4) Left front fender.
(5) Hood.
(6) Right front door.
(7) Left front door.
(8) Right rear door.
(9) Left rear door.
(10) Front bumper.
(11) Rear bumper.
(12) Right rear quarter panel.
(13) Left rear quarter panel.
(14) Decklid, tailgate, or hatchback (whichever is present).

(b) (1) Except as provided in paragraphs (b) (2) and (b) (3) of this section, the number required to be inscribed or affixed by paragraph (a) shall be the VIN of the passenger car.

(2) In place of the VIN, manufacturers who were marking engines and/or transmissions with a VIN derivative consisting of at least the last eight characters of the VIN on October 24, 1984, may continue to mark engines and/or transmissions with such VIN derivative.

(3) In the case of passenger cars not originally manufactured to comply with U.S. vehicle safety and bumper standards, the number required to be inscribed by paragraph (a) shall be the original vehicle identification number assigned to the car by its original manufacturer in the country where the car was originally produced or assembled.

(c) The characteristics of the number required to be affixed or inscribed by paragraph (a) shall satisfy the size and style requirements set forth for vehicle certification labels in § 567.4 (g) of this chapter.

(d) The number required by paragaph (a) of this section must be affixed by means that comply with paragraph (d) (1) of this section or inscribed by means that comply with paragraph (d) (2) of this section.

(1) *Labels.*

(i) The number must be printed indelibly on a label, and the label must be permanently affixed to the car's part.

(ii) The number must be placed on each part specified in paragraph (a) of this section in a location such that the number is, if practicable, on an interior surface of the part as installed on the vehicle and in a location where it:

(A) will not be damaged by the use of any tools necessary to install, adjust, or remove the part and any adjoining parts, or any portions thereof;

(B) is on a portion of the part not likely to be damaged in a collision; and

(C) will not be damaged or obscured during normal dealer preparation operations (including rustproofing and undercoating).

(iii) The number must be placed on each part specified in paragraph (a) of this section in a location that is visible without further disassembly once the part has been removed from the vehicle.

(iv) The number must be placed entirely within the target area specified by the original manufacturer for the part, pursuant to paragraph (e) of this section, on each part specified in paragraph (a) of this section.

(v) Removal of the label must—

(A) Cause the label to self-destruct by tearing or rendering the number on the label illegible, and

(B) Discernibly alter the appearance of that area of the part where the label was affixed by leaving residual parts of the label or adhesive in that area, so that investigators will have evidence that a label was originally present.

(vi) Alteration of the number on the label must leave traces of the original number or otherwise visibly alter the appearance of the label material.

(vii) The label and the number shall be resistant to counterfeiting.

(viii) The logo or some other unique identifier of the vehicle manufacturer must be placed in the material of the label in a manner such that alteration or removal of the logo visibly alters the appearance of the label.

(2) *Other means of identification.*

(i) Removal or alteration of any portion of the number must visibly alter the appearance of the section of the vehicle part on which the identification is marked.

(ii) The number must be placed on each part specified in paragraph (a) of this section in a location that is visible without further disassembly once the part has been removed from the vehicle.

(iii) The number must be placed entirely within the target area specified by the original manufacturer for the part, pursuant to paragraph (e) of this section, on each part specified in paragraph (a) of this section.

(e) *Target areas.*

(1) Each manufacturer that is the original producer who installs or assembles the covered major parts on a line shall designate a target area for the identifying numbers to be marked on each part specified in paragraph (a) of this section for each of its lines subject to this standard. The target area shall not exceed 50 percent of the surface area on the surface of the part on which the target area is located.

(2) Each manufacturer subject to paragraph (e) (1) of this section shall, not later than 30 days before the line is introduced into commerce, inform NHTSA in writing of the target areas designated for each line listed in Appendix A. The information should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

(3) The target areas designated by the original vehicle manufacturer for a part on a line shall be maintained for the duration of the production of such line, unless a restyling of the part makes it no longer practicable to mark the part within the original target area. If there is such a restlying, the original vehicle manufacturer shall inform NHTSA of that fact and the new target area, in accordance with the requirements of paragraph (e) (2) of this section.

§ 541.6 Requirements for replacement parts.

(a) Each replacement part for a part specified in § 541.5 (a) must have the registered trademark of the manufacturer of the replacement part, or some other unique identifier if the manufacturer does not have a registered trademark, and the letter"R" affixed or inscribed on such replacement part by means that comply with § 541.5 (d), except as provided in paragraph (d) of this section. In the case of replacement parts subject to the marking requirements of this section, which were not originally manufactured for sale in the United States, the importer of the part shall inscribe its registered trademark, or some other unique identifier if the importer does not have a registered trademark, and the letter "R" on the part by means that comply with § 541.5 (d) (2), except as provided in paragraph (d) of this section.

(b) A replacement part subject to paragraph (a) of this section shall not be marked pursuant to § 541.5.

(c) The trademark and the letter "R" required by paragraph (a) of this section must be at least one centimeter high.

(d) The trademark and the letter "R" required by paragraph (a) of this section must be placed entirely within the target area specified by the vehicle manufacturer, pursuant to paragraph (e) of this section.

(e) *Target areas.*

(1) Each manufacturer that is the original producer or assembler of the vehicle for which the replacement part is designed shall designate a target area for the identifying symbols to be marked on each replacement part subject to the requirements of paragraph (a) of this section. Such target areas shall not exceed 25 percent of the surface area of the surface on which the replacement part marking will appear.

(2) The boundaries of the target area designated under paragraph (e) (1) of this section shall be at least 10 centimeters at all points from the nearest boundaries of the target area designated for that part under § 541.5 (e) of this part.

(3) Each manufacturer subject to paragraph (e) (1) of this section shall inform NHTSA in writing of the target areas designated for each replacement part subject to paragraph (a) of this section, at the same time as it informs the agency of the target areas designated for the original equipment parts of the line, pursuant to § 541.5 (e) (2) of this part. The information should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

(4) The target areas designated by the original vehicle manufacturer for the parts subject to the requirements of paragraph (a) of this section shall be maintained for the duration of the production of such replacement part, unless a restyling of the part makes it no longer practicable to mark the part within the original target area. If there is such a restyling, the original vehicle manufacturer shall inform NHTSA of that fact and the new target area, in accordance with the requirements of paragraph (e) (3) of this section.

(f) Each replacement part must bear the symbol "DOT" in letters at least one centimeter high within 5 centimeters of the trademark and of the letter "R", and entirely within the target area specified under paragraph (d) of this section. The symbol "DOT" constitutes the manufacturer's certification that the replacement part conforms to the applicable theft prevention standard, and shall be inscribed or affixed by means that comply with paragraph (a) of this section. In the case of replacement parts subject to the requirements of paragraph (a) of this section, which were not originally manufactured for sale in the United States, the importer shall inscribe the "DOT' symbol before the part is imported into the United States.

APPENDIX A

Lines subject to the requirements of this standard.

[Reserved]

APPENDIX B

Criteria for limiting the selection of prestandard lines having or likely to have high theft rates to 14.

Scope.

These criteria specify the factors the Administrator will take into account in determining which high theft lines initially introduced by a manufacturer into commerce before April 24, 1986, will be selected for coverage under this theft prevention standard.

Purpose.

The purpose of these criteria is to enable the Administrator to select, with the agreement of the manufacturer, if possible, those high theft lines for which the greatest benefits in reducing motor vehicle theft are likely to be achieved by requiring those lines to be subject to this theft prevention standard.

Application.

These criteria apply to those high theft lines produced by a manufacturer of passenger motor vehicles having more than 14 actual or likely high theft lines introduced into commerce before April 24, 1986.

Methodology.

For each manufacturer producing more than 14 high theft lines that were introduced into commerce before April 24, 1986 these criteria will be applied to rank such lines in comparison to one another. Each manufacturer's lines will be considered only in relationship to other lines produced by the same manufacturer. Once the manufacturer's lines have been ranked according to which lines appear likely to show the greatest benefits in reducing vehicle thefts if covered by this theft prevention standard, the Administrator will select, by agreement with the manufacturer, if possible, and in accordance with the procedures set forth in § 542.2 of this chapter, 14 lines for coverage under this theft prevention standard.

Criteria.

1. Proximity of the line's theft rate, calculated in accordance with the statutory formula, to the median theft rate. Higher theft rates will receive higher priority.

2. Approximate number of vehicles within such line scheduled to be produced in the upcoming model year. Larger projected productions receive higher priority. However, if the line is scheduled to be discontinued in the near future, it will be given lower priority than one which will continue to be produced.

3. Likelihood of significant design changes in the design of the line (such as downsizing or restyling) that would reduce the number of interchangeable parts within such line as between the new model year and previous model years. Lines with significant style changes will receive higher priority.

4. Whole vehicle recovery rate for such line in the most recent calendar year for which such data are available. Lines with higher recovery rates will receive lower priority.

5. Number of lines, and actual number of vehicles produced, having interchangeable parts with such line. Lines with which numerous low theft vehicles or lines have interchangeable parts will receive lower priority.

APPENDIX C

Criteria for selecting lines likely to have high theft rates.

Scope.

These criteria specify the factors the Administrator will take into account in determining whether a new line is likely to have a high theft rate, and, therefore, whether such line will be subject to the requirements of this theft prevention standard.

Purpose.

The purpose of these criteria is to enable the Administrator to select, by agreement with the manufacturer, if possible, those new lines which are likely to have high theft rates.

Application.

These criteria apply to lines of passenger motor vehicles initially introduced into commerce on or after January 1, 1983.

Methodology.

These criteria will be applied to each line initially introduced into commerce on or after January 1, 1983. The likely theft rate for such lines will be determined in relation to the national median theft rate for 1983 and 1984. If the line is determined to be likely to have a theft rate above the national median, the Administrator will select such line for coverage under this theft prevention standard.

Criteria.

1. Retail price of the vehicle line.
2. Vehicle image or marketing strategy.
3. Vehicle lines with which the new line is intended to compete, and the theft rates of such lines.
4. Vehicle line(s), if any, which the new line is intended to replace, and the theft rate(s) of such line(s).

.5 Presence or absence of any new theft prevention devices or systems.

6. Preliminary theft rate for the line, if it can be determined on the basis of currently available date.

50 F.R. 43166
October 24, 1985

PART 541—Appendix A

Lines subject to the requirements of Part 541

Manufacturer	*Subject Lines*
Alfa Romeo	Milano 161 Fiat 164
BMW	3—Carline[*] 5—Carline 6—Carline
Chrysler	Chrysler Executive Sedan/Limousine Chrysler Fifth Avenue/Newport Chrysler Laser Chrysler LeBaron/Town & Country Chrysler LeBaron GTS Chrysler TC Chrysler Eagle Talon Chrysler New Yorker Fifth Avenue Dodge Aries Dodge Daytona Dodge Diplomat Dodge Lancer Dodge 600 Dodge Stealth [Eagle Talon] Plymouth Caravelle Plymouth Laser Plymouth Gran Fury Plymouth Reliant
Consulier	Consulier GTP
Ferrari	Mondial 8 308 328
Ford	Ford Mustang Ford Thunderbird Ford Probe Mercury Capri Mercury Cougar Lincoln Continental Lincoln Mark Lincoln Town Car Merkur Scorpio Merkur XR4Ti
General Motors	Buick Electra Buick LeSabre Buick Reatta Buick Regal Buick Riviera Cadillac DeVille Cadillac Eldorado Cadillac Seville Chevrolet Nova Chevrolet Lumina Oldsmobile Cutlass Supreme Oldsmobile Delta 88[*] Oldsmobile Toronado Pontiac Fiero Pontiac Grand Prix Geo Prizm Geo Storm [Saturn Sports Coupe]
Isuzu	Impulse Stylus
Jaguar	XJ XJ-6 XJ-40
Lotus	Lotus Elan
Maserati	Biturbo Quattroporte 228
Mazda	GLC 626 MX-6 MX-5 Miata [MX-3*]
Mercedes-Benz	190 D/E 250D-T 260 E 300 CE 300 D/E 300 SE 300 SL 300 TD 300 TE 300 SDL 300 SEL 380 SEC/500 SEC 380 SEL/500 SEL 380 SL 420 SEL 500 SL 560 SEL 560 SEC 560 SL
Mitsubishi	Cordia Tredia Eclipse 3000GT

PART 541—Appendix A—Continued

Lines subject to the requirements of Part 541

Manufacturer	*Subject Lines*
Peugeot	405
Porsche	924S
Reliant	SS1
Saab	900
Subaru	XT [SVX*]
Toyota	Camry Celica Corolla/Corolla Sport MR2 Starlet
Volkswagen	Audi Quattro Volkswagen Cabriolet Volkswagen Rabbit Volkswagen Scirocco Volkswagen Corrado

* Lines added in Model Year 1992.

(56 F.R. 43711—September 4, 1991. Effective: September 4, 1991)

PART 541—Appendix A-I

High-Theft Lines With Antitheft Devices That are Exempted from the Requirements of This Standard Pursuant to 49 CFR Part 543

Manufacturer	*Exempted Lines*
Austin Rover	Sterling
BMW	7 Car line [8 Car line**]
Chrysler Chrysler	Chrysler Conquest Imperial
General Motors	Cadillac Allante Chevrolet Corvette
Honda	Acura NS-X Acura Legend [Acura Vigor**]
Isuzu	Impulse
Mazda	929 RX 7
Mitsubishi	Galant Starion
Nissan	Maxima 300 ZX Infiniti M30 Infiniti Q45
Porsche	911 928 [968**]
Saab	9000
Toyota	Supra Cressida Lexus LS400 Lexus ES250 [Lexus SC300**] [Lexus SC400**]
Volkswagen	Audi 500S Audi 100 [Audi 200/S4]
Volvo	480ES

** Lines exempted from the requirements of Part 541 pursuant to 49 CFR Part 543 in MY 1992.

(56 F.R. 43711—September 4, 1991—Effective: September 4, 1991)

PART 541—Appendix A-II

High Theft Lines With Antitheft Devices That are Exempted in Part From the Parts-Marking Requirements of This Standard Pursuant to 49 CFR Part 543

Manufacturer	*Exempted Lines*	*Parts Marked*
General Motors	Chevrolet Camaro	Engine, Transmission
	Pontiac Firebird	Engine, Transmission
	Cadillac Deville-Fleetwood	Engine, Transmission
	Oldsmobile 98	Engine, Transmission
	[Buick Park Avenue***	Engine, Transmission]
	[Pontiac Bonneville***	Engine, Transmission]

*** Received partial exemptions from the requirements of PART 541 pursuant to 49 CFR Part 543 in MY 1992.

(56 F.R. 43711—September 4, 1991—Effective: September 4, 1991)

PREAMBLE TO PART 542

Procedures for Selection of Covered Vehicles— Motor Vehicle Theft Law Enforcement Act of 1984 [Docket No. T85-01; Notice 2]

ACTION: Final rule.

SUMMARY: This rule is issued under Title VI of the Motor Vehicle Information and Cost Savings Act. It sets forth the procedures to be followed when determining which passenger motor vehicle lines introduced on or after January 1, 1983, are to be covered under the proposed vehicle theft prevention standard. That standard would require the marking of major component parts on all cars in lines subject to its requirements. Under these procedures, the manufacturer will apply the relevant criteria in preparing its views as to which of its lines should be selected as high theft lines for purposes of the theft prevention standard. The manufacturer would submit its views to the agency, together with the facts it considered and the supporting rationales for those views. NHTSA will consider these submissions and inform the manufacturer of its agreement with the manufacturer's views or of its preliminary determination that different lines should be selected. If the manufacturer does not request reconsideration of the preliminary determination, it automatically becomes the final determination. If the manufacturer does request reconsideration, it must provide the facts and arguments underlying its objections. NHTSA considers the request for reconsideration and promptly issues its final determination.

EFFECTIVE DATE: November 1, 1985.

SUPPLEMENTARY INFORMATION:

The Motor Vehicle Theft Law Enforcement Act of 1984

The Motor Vehicle Theft Law Enforcement Act of 1984 (Theft Act) added Title VI to the Motor Vehicle Information and Cost Savings Act (Cost Savings Act). Title VI requires NHTSA, by delegation from the Secretary of Transportation, to promulgate a vehicle theft prevention standard mandating a marking system for the major component parts of high theft lines. To implement the mandate of the Theft Act, NHTSA must divide each manufacturer's fleet of passenger motor vehicles into different "lines." A "line" is a group of vehicles sold with the same nameplate, such as Mustang, Camaro, or Aries. The agency must then select those lines which are "high theft lines" and, therefore, subject to the marking requirements of the theft prevention standard.

Section 603(a)(1) of the Cost Savings Act (15 U.S.C. 2023(a)(1)) specifies three different groups of lines that are designated as high theft lines for purposes of the theft prevention standard. The groupings are as follows:

(1) Existing lines that are determined on the basis of actual theft data to have a theft rate exceeding the median theft rate for all new passenger motor vehicles in 1983 and 1984 are high theft lines under the provisions of section 603(a)(1)(A). "Existing lines" are those lines introduced before January 1, 1983. (This date is predicated on promulgation of the final rule establishing the theft prevention standard in 1985.)

(2) Lines introduced on or after January 1, 1983, that are likely to have a theft rate exceeding the median theft rate are high theft lines under the provisions of section 603(a)(1)(B).

(3) Lines whose theft rate is or is likely to be below the median theft rate, but whose major component parts are interchangeable with a majority of the major component parts of a line that is subject to the theft prevention standard under section 603(a)(1)(A) or (B), are high theft lines under

the provisions of section 603(a)(1)(C). However, car lines whose theft rate is or is likely to be below the median theft rate will not be treated as high theft lines pursuant to this third grouping if such low theft or likely low theft lines account for greater than 90 percent of total production of all lines containing such interchangeable parts, section 603 (a)(1)(C)(i) and (ii).

Section 603(a)(3) of the Cost Savings Act specifies that not more than a total of 14 of a manufacturer's lines introduced before the effective date of the standard can be selected under the first two groups listed above. The 14 line total does not include any of those lines selected as high theft lines under the third group listed above; i.e., car lines which have interchangeable parts with high theft lines.

Section 603(a)(2) of the Cost Savings Act states that the selection of lines as high theft lines subject to the requirements of the theft prevention standard should be accomplished by agreement between the manufacturer and NHTSA, if possible. However, that section also states that the agency must unilaterally select the subject lines if no agreement is reached. In the event that no agreement is reached between the agency and the manufacturer, this section requires NHTSA to make the selections on a preliminary basis and give the manufacturer an opportunity to comment on those selections.

The Notice of Proposed Rulemaking

To carry out these statutory mandates, NHTSA published a notice of proposed rulemaking (NPRM) at 50 FR 25603, June 20, 1985. That notice proposed the procedures which the manufacturers and this agency would follow in attempting to agree on the lines to be selected for coverage by the theft prevention standard for all lines introduced after January 1, 1983. The NPRM stated that the selection of lines introduced before January 1, 1983, that have a theft rate exceeding the median theft rate for all new passenger motor vehicles in 1983 and 1984 was being handled in a separate action. A notice setting forth data on passenger motor vehicle thefts in 1983 and 1984 for review and comment was published at 50 FR 18708, May 2, 1985. The agency will soon publish a notice setting forth its final version of the 1983 and 1984 theft data. That notice will provide the basis for selecting high theft lines from lines introduced before January 1, 1983. However, the procedures set forth in this rule will be followed by NHTSA and the manufacturers in making all other selections of high theft lines under the provisions of the Theft Act.

The NPRM also proposed the procedures that would be followed in applying the 14 line limitation set forth in section 603(a)(3) of the Cost Savings Act. Finally, the NPRM set forth the rights manufacturers would have if they disagreed with the agency's preliminary determination that a specific line should be selected as a high theft line.

It was emphasized that this rulemaking action was simply a procedural adjunct to the theft prevention standard. This rule does not set forth any substantive requirements or restrictions, nor does it actually select any car lines as high theft lines. It merely sets forth the procedures to be followed in determining which of a vehicle manufacturer's lines will be subject to the marking requirements of the theft prevention standard.

The NPRM proposed two sets of procedures for the selection of high theft lines. The first set, contained in sections 542.1, 542.2, and 542.3, would be used to select the high theft lines from existing lines and new lines introduced on or after January 1, 1983, but before the effective date of the theft prevention standard. The second set, contained in sections 542.4 and 542.5, would be used to select the high theft lines from all new lines introduced after the effective date of the standard.

Under each of the proposed procedures, the manufacturer would apply the relevant criteria to its currently produced or planned vehicle lines, and submit its views and supporting analysis to NHTSA as to which of its lines should be selected as high theft lines, together with the factual information considered by the manufacturer in reaching its conclusions. The agency would then promptly review the manufacturer's submissions, determine whether it agreed or disagreed with the manufacturer's proposed classification of its lines, and notify the manufacturer in writing of the agency's preliminary determination as to which of its vehicle lines should be selected as high theft lines. The manufacturer would have the right to request agency reconsideration of any preliminary determination to which the manufacturer objected. If the manufacturer did not request reconsideration of a preliminary determination, it would automatically become the agency's final determination. If the manufacturer did request a reconsideration of a preliminary determination, it would have to include all the facts and and arguments underlying its objection to the agency's pre-

liminary determination. NHTSA would promptly consider the facts and arguments and notify the manufacturer of its final determination. Should the manufacturer disagree with the final agency determination, regardless of whether the manufacturer has sought reconsideration, it has the right to seek judicial review of the agency determination, as specified in section 610 of the Cost Savings Act (15 U.S.C. 2030).

NHTSA believes that the proposed procedures were simple, straightforward, and compatible with both the timing allowed by the Theft Act for completing the selection of high theft lines and the Theft Act's directive that this selection should be accomplished by agreement between the manufacturer and NHTSA if possible. The NPRM was consciously structured so that the manufacturers and agency would have every opportunity to understand the other's position and agree on the proper selections.

The NPRM noted that section 603(c) of the Cost Savings Act (15 U.S.C. 2023(c)) directs NHTSA to, by rule, require each manufacturer to provide information necessary to select the high theft lines and major parts to be covered by the theft prevention standard. This rule does not *require* the manufacturers to provide any information; it merely sets forth the procedures to be followed by those manufacturers which choose to provide the information and to participate in the selection process. There are no penalties imposed for the failure of a manufacturer to provide the information. This approach was chosen because NHTSA then and now anticipates that the manufacturers will be forthcoming and cooperative in providing the agency with the views and supporting analyses specified in this rule. If, of course, the agency does not receive or otherwise obtain the necessary information on which to base its selections, the agency will propose changes to this rule to specifically require such information.

The Comments Changes to the Proposed Procedures

Five comments on the NPRM had been received by the agency as of the comment closing date and were considered in developing this final rule. The commenters were all automobile manufacturers, and were generally supportive of the proposed procedures. However, the comments did raise some further issues and request some changes to the proposed procedures. The most significant issues raised in the comments are discussed below.

A. General Comments.

1. **Timing.** All of the commenters noted the tight time frames in the proposed schedules for both the manufacturers and the agency to complete necessary steps in the selection process. The commenters acknowledged, however, that the tight time frames were imposed by the Theft Act and that they would probably be able to comply with the various dates, assuming that NHTSA is able to meet the statutory deadline for publishing the final rule establishing the theft prevention standard and that there are no serious disagreements as to the lines selected for coverage under that standard.

The agency agrees that the time frames are very tight, but it cannot expand them. The agency intends to meet all the statutory deadlines imposed by the Theft Act and believes that the procedures set forth in this rule will enable the agency, and those manufacturers which submit the necessary information, to agree in most cases on those lines which should be selected for coverage under the theft prevention standard.

Volkswagen (VW) stated that the vehicle manufacturers could not make their submissions under these procedures until the final theft data notice had been published. VW stated that the agency had not yet indicated which source of theft data was going to be used, and repeated its comment to the theft data notice that there were errors in some of the figures and that corrections of those errors would result in a reshuffling of the order of the vehicle theft rates. In conclusion, VW stated that its views as to whether a line introduced after January 1, 1983, should be selected as a high theft line "would likely be influenced by the placement of its predecessor in the earlier list."

NHTSA agrees that the classification of the predecessor line as either a high or low theft line is an important criterion in determining whether a new line should be selected as a likely high theft line. That is why this fact was one of the six criteria proposed in Appendix C of Part 541 for determining whether a new line should be selected as a high theft line. However, it is only one of the six criteria. VW can prepare its views applying the other five criteria, and prepare alternative views on this criterion. This will ensure that NHTSA has received VW's views and that those views reflect VW's belief as to whether the new line should be selected as a likely high theft line, regardless of

how the predecessor line is classified in the final theft data notice.

VW further stated that it could not make its submission under this procedural rule until it could obtain vehicle recovery information. The vehicle recovery rate was only proposed as a criterion for determining whether new lines should be selected as high theft lines in § 542.2. That section will be used to limit, to a total of 14, the number of lines introduced by an individual manufacturer before the effective date of the theft prevention standard that will be selected for coverage by the theft prevention standard. VW does not have more than 14 lines, so this section does not apply to it. All of the other sections of this proposed rule will apply to VW, but none of those sections proposed using vehicle recovery rate as a criterion for the selection of a new line as a high theft line. Accordingly, the agency does not believe that VW needs vehicle recovery data to prepared its submission under this procedural rule.

2. Definition of "Line." Several of the commenters disagreed with the agency's proposal to use the same definition of line which was set forth in the proposed vehicle theft standard. General Motors (GM), Chrysler, and BMW all urged the agency to define "line" identically to the way in which that term is defined in 49 CFR Part 565, for the purposes of the vehicle identification number (VIN). The proposed definition of "line" set forth for these procedures and the theft prevention standard incorporates the definition of that term in the Theft Act, supplemented by interpretive examples so that the application of the term "line" under the Theft Act will be as close as possible to the application of the term "line" set forth by the Environmental Protection Agency (EPA) under Title V of the Cost Savings Act. This approach was taken because section 603(b)(1) requires that the theft rate for various lines be calculated using "the production volume of all passenger motor vehicles of that line *(as reported to the EPA under Title V of this Act)* . . ." (emphasis added). In order to use the EPA production data, NHTSA must apply the term "line" in a manner as similar as is possible to that used by the EPA under Title V. Hence, the agency is constrained by Title VI of the Cost Savings Act from simply applying the term "line" in precisely the same way as it has for the purposes of the National Traffic and Motor Vehicle Safety Act (the Safety Act), under 49 CFR 565.

However, NHTSA would like to note that the slightly differing language in the definitions of "line" for purposes of the Theft Act and the Safety Act has not resulted in any manufacturer's fleet of vehicles being grouped into different sets of "lines" for purposes of the different Acts. That is, the agency's grouping of a manufacturer's vehicles into lines thus far for the purposes of the Theft Act has been identical to what that grouping would have been if it were made for purposes of the Safety Act. None of the commenters that urged the agency to adopt identical definitions explained any practical difference which has resulted from the slightly differing wording in the two definitions. Further, the agency does not believe that a situation will arise where a manufacturer's vehicles would be grouped into two different sets of lines for purposes of the Theft Act and the Safety Act.

3. **Definition of "Interchangeable Part."** The NPRM proposed that these procedures would use the same definition for "interchangeable part" as was proposed for the theft prevention standard. To wit, an interchangeable part is "a passenger motor vehicle major part that is sufficiently similar in size and shape to a major part of another car line so that it could be used to replace the major part on a vehicle in that other car line, with no modification to the vehicle other than to the interior or exterior trim."

GM argued that the proposed definition was overly inclusive, and stated that there is no evidence to suggest that thieves would spend the time and money to replace all of the interior trim on a door, for instance, so that it could be used as a replacement part for a different car line. Based on this assertion, GM suggested that the definition of interchangeable part be modified to include only those parts that could be used to replace a major part in another car line with no modifications other than to medallions, molding, or paint.

This final rule does not adopt GM's suggested change. While conceding that there is no evidence to establish conclusively that thieves will make these modifications, the agency concludes that the available evidence strongly suggests that chop shops would make the modifications. The agency must, of course, exercise its judgment based on the available evidence. Police agency comments have consistently referred to the growing sophistication and skill of chop shop operators, which would certainly indicate that the ability exists to change the interior trim of a major part. A chop shop which spent the time and money to change the interior trim of a Chevrolet door, for example, so that it would appear to be an Oldsmobile door could still

make a substantial profit on that stolen door, particularly considering the relative price of a new door compared with the interior trim for that door. This would give chop shop operators a motive for changing the interior trim package.

Congress stated that the Theft Act was intended to "decrease the ease with which certain stolen vehicles and their major parts can be fenced," H. Rept. 98-1087, 98th Cong., 2d Sess., at 2 (1984; hereinafter "H. Rept.") and "to make theft more risky" especially for chop shops, H. Rept. at 5. NHTSA must determine which approach better effectuates that intent. The approach suggested by GM simply assumes that thieves would not make this effort, and does nothing to make it more risky or decrease the ease with which that part could be fenced. The proposed definition would require the marking of parts which, with relatively simple and inexpensive modifications, can be fitted onto vehicles in high theft lines. Marking such parts would decrease the ease with which they could be fenced and make thefts of those parts more risky. Given the proliferation of chop shop operations and the large profits which can be made in such illegal operations, both of which were noted in the legislative history of the Theft Act, the agency has determined that it would be inappropriate to adopt the more restrictive definition of "interchangeable part" suggested by GM.

4. **Annually Updates of the Listing of Selected Lines.** The NPRM indicated that the list of those lines which have been selected as high theft lines would be updated annually. The listing of those lines will appear in Appendix A of Part 541, the vehicle theft prevention standard. Chrysler supported the proposal, but Ford suggested that the updating be done every six months, so that law enforcement agencies would be up to date on those vehicles which should be marked. Under the proposed procedures for selecting high theft lines, the final selection for new lines introduced in the 1988 and subsequent model years will be completed no later than 13 months before the new lines are introduced. Thus, no matter when a new line will be introduced, there will be at least one annual update published between the final selection of a new line as a likely high theft line, and its introduction. The only time when there could be a gap would be in the 1987 model year, the first model year in which vehicles in high theft lines would be required to be marked. If there is a time when a line selected as a high theft line would not be listed as such, the agency can, of course, publish a special update to the list. Hence, it does not appear necessary to make a regular updating of this list more frequently than annually.

Both Ford and GM asked that new lines not be listed in Appendix A immediately upon their selection as high theft lines. Ford asked that the listing be postponed until the manufacturer has actually started production of vehicles in that new line, while GM asked that the listing be postponed until the manufacturer has made the vehicle's nameplate public. NHTSA agrees with the implicit point made by GM that there is no reason for the agency to announce a new line's nameplate before the manufacturer does so. However, the Ford suggestion would in almost every instance mean that NHTSA would be withholding information long after the manufacturer itself had made the information public, and there would no longer be a reason for withholding such information. Therefore, the agency will not publicly disclose the name of new lines before the manufacturer itself announces that name. If the manufacturer chooses to delay that announcement until the actual start of production, the agency will not disclose the nameplate prior to that announcement. If that line is selected as a likely high theft line and if vehicles in that line will be introduced before the next regularly scheduled annual update of the listing of new lines selected as high theft lines will be published, NHTSA will make a special update to the listing after the manufacturer's announcement of the nameplate for the line.

5. **Adequacy of Confidentiality Procedures.** The NPRM specifically sought comments on the sufficiency of NHTSA's current procedures for handling confidential information (49 CFR Part 512) to protect the confidential information it may receive from the manufacturers in connection with the selection process. Chrysler specifically stated that the procedures in Part 512 are adequate, and GM did likewise, but with the caveat that no outside contractors employed by NHTSA should be given access to information provided to the agency by manufacturers during the selection process. The agency will not use outside contractors for the selection process, nor does it anticipate that it will make available to outside contractors any information obtained during the selection process. However, NHTSA cannot state that it will never make any information obtained during the selection process available to outside contractors. If such a

disclosure must be made, NHTSA will follow appropriate procedures to ensure that the contractor does not disclose the information to other parties.

B. **Comments on Specific Sections of the Proposed Rule.**

1. § **542.1: Procedures for selecting pre-standard new lines that are likely to have high theft rates.**

The NPRM proposed that the manufacturers would apply the criteria set forth in Appendix C of Part 541 (the proposed vehicle theft prevention standard) to each line introduced between January 1, 1983, and the effective date. Briefly, the criteria of Appendix C are:

a) price;
b) vehicle image;
c) lines with which the line in question is intended to be competitive;
d) line or lines that the new line replaces;
e) presence or absence of any new theft prevention devices;
f) any available theft data for lines already introduced.

GM commented that the agency should adopt some weighting of each of these criteria, so that the process of selecting a line as a high theft line would be more objectively defined. GM did not suggest how this might be done with the currently available data. NHTSA agrees that ideally there would be sufficient data available so that each of these criteria could be assigned a certain number of points and specify that any line which earned x or more points would be selected as a high theft line. Unfortunately, such a system is simply not possible with the current data.

As noted in the NPRM, these judgments of likely high theft lines are partially subjective judgments. NHTSA concurs with GM's statement that neither price nor vehicle image alone can be strictly correlated to vehicle theft rates. However, NHTSA believes that the six criteria set forth in Appendix C considered together do form a subjective basis for predicting if a new line is likely to be a high theft line. If manufacturers in their submissions explain their positions in detail and provide data for each of these criteria, NHTSA anticipates that the question of whether a vehicle should or should not be selected as a high theft line will be fairly simple to answer in most cases. The agency intends to give a full explanation of the bases for its conclusions to the manufacturer in the preliminary and final determinations. If a manufacturer believes that the agency has acted arbitrarily or purely subjectively, the manufacturer has a right to seek judicial review of the selection.

2. § **542.2: Procedures for limiting the selection of pre-standard lines having or likely to have high theft rates to 14 lines.**

Section 603(a)(3) of the Cost Savings Act establishes a limit of 14 on the combined total of lines introduced before the effective date of the theft prevention standard that may be selected for coverage under that standard because of actual or likely high theft rates. This proposed section provided procedures for implementing that limit.

Under the proposed procedures, each manufacturer producing a total of more than 14 lines that either exceed the median theft rate or are likely to be high theft lines would evaluate and rank those lines in accordance with the extent to which they satisfy the criteria set forth in Appendix B of Part 541, the proposed vehicle theft prevention standard. Those criteria are:

(a) The closeness of the line's theft rate to the median theft rate;
(b) The approximate production volume of vehicles in the line during the next model year;
(c) The likelihood of significant design changes to the line;
(d) The rate at which stolen vehicles in the line are recovered with all parts intact;
(e) The plans for installation of an original equipment anti-theft device in the line, which satisfies the requirements of section 605 of the Cost Savings Act; and
(f) The number of other lines having parts interchangeable with those of that line and the production volumes of those lines.

The manufacturer would then submit its ranking and evaluations to NHTSA, together with the factual information it considered in reaching its rankings.

Again in commenting on this proposed procedure, GM stated that the criteria should be weighted, and again did not suggest how this might be done. The agency's response is the same as that made when GM raised this point in commenting on § 542.1.

GM went on to object strongly to the agency's proposed inclusion of a manufacturer's plans for installing a satisfactory original equipment anti-theft device as one of the criteria for determining which of its lines should be marked.

GM stated that this objection would particularly apply if such plans would reduce the chances that that line would be among those selected as one of the 14 to be marked. To explain this objection, GM stated that it believed that "the statutory option of using an approved theft deterrent system was intended to exempt lines which were otherwise identified as having to meet the standard."

The agency proposed this criterion in Appendix B of Part 541 because of its belief that Congress intended lines with actual or likely high theft rates to either be marked, in accordance with the requirements of the theft prevention standard, or to be equipped with anti-theft devices. However, further examination of this issue has convinced the agency that its proposed course of action should not be adopted in a final rule.

Under the proposed criterion, a manufacturer's plans to install an original equipment anti-theft device in a line could have resulted in that line being excluded from the list of 14 lines to be marked. Thus, the manufacturer would have lost the opportunity under the exemption provision to be permitted to install such devices instead of marking the parts of that line. Congress clearly indicated that it was willing to give these devices the opportunity to be proven as effective as parts marking in deterring vehicle thefts (H. Rept. at 17). The agency has re-examined the proposed criterion and determined that it would have the inadvertent effect of denying manufacturers the opportunity Congress intended. We believe that GM's reading of the statute better effectuates congressional intent and is therefore adopted. Thus, in order to provide this opportunity, NHTSA must permit manufacturers to install such devices on vehicles in lines which would otherwise be required to have their major parts marked.

Accordingly, NHTSA will not consider plans to install an original equipment anti-theft device as a factor militating against the inclusion of that line in the 14 lines chosen for coverage by the theft prevention standard. Further, the final rule setting forth the theft prevention standard will not list this criterion in Appendix B.

3. **§ 542.3: Procedures for selection of prestandard low theft lines with a majority of major parts interchangeable with those of a high theft line.**

The NPRM proposed that manufacturers would submit their views on whether their lines with theft rates likely to be below the median theft rate had a majority of major parts interchangeable with those of any of the manufacturer's high theft lines, together with the supporting rationales for those views. NHTSA stated in the NPRM that it anticipated that the statement of views and supporting rationales would take the following form. The manufacturers would submit a listing of the number and identity of the major parts which are incorporated in each line believed by the manufacturer to have an actual or likely low theft rate, and which are interchangeable with the major parts of those of its lines believed by the manufacturer to have an actual or likely high theft rate. The manufacturer would then calculate whether low theft lines with a majority of major parts interchangeable with those of a high theft line accounted for more than 90 percent of the total production of the lines with interchangeable parts.

Ford commented that manufacturers should not be expected to list each of its car lines with actual or likely low theft rates and show how many and which of its major parts are interchangeable with those on its likely or actual high theft lines. Instead Ford suggested that the manufacturers should simply be expected to list each of the low theft lines with fewer than eight interchangeable major parts, identify those low theft lines with eight or more interchangeable major parts, and state whether those latter low theft lines constituted more or less than 90 percent of the total production of all lines containing such interchangeable parts.

NHTSA gave serious thought to proposing a procedure similar to that suggested by Ford in its comments. However, the agency ultimately decided to propose the more detailed procedures set forth in the NPRM. The reasoning was as follows: the manufacturers would have to make the detailed analysis set forth in the proposed procedures to be able to make the simple statements suggested by Ford. Hence, the only additional task associated with the more detailed procedures would be that of transcribing the analysis onto paper. This is a minimal task compared with generating the analysis. Further, the detailed listing proposed in

the NPRM would help to facilitate agreements between the agency and individual manufacturer. Both parties would have a clearer understanding of the identify of the major parts which the other party believed should or should not be treated as interchangeable. The manufacturer would provide its version of this listing in its submission and the agency would provide its version in its preliminary determination. Any disagreement would therefore be clearly and quickly focused on particular parts, thereby facilitating reaching agreement as to whether the parts really were interchangeable. Since these more detailed explanations would facilitate an expeditious reaching of agreements while imposing only a very minor burden on the manufacturer, the agency decided that the more detailed explanations should be specified in these procedures.

Ford went on to comment that, if the agency decided to adopt the proposed procedures, it should limit the issue of interchangeability to "covered major parts," which term is defined in section 601(6) of the Cost Savings Act as "any major part selected . . . for coverage by the vehicle theft prevention standard issued under section 602." Ford noted that the term "major part" as defined in section 601(7) of the Cost Savings Act includes both covered major parts (those which are required to be marked on high theft lines by the theft prevention standard) and other major parts, which will not be required to be marked by the theft prevention standard.

NHTSA agrees with Ford's comment, and did not intend to suggest that manufacturers should provide interchangeability information on major parts which are not covered major parts. To clarify this intent, this final rule has been changed from the proposed language to refer to covered major parts in both this section and section 542.5.

VW stated that it was not clear if only the interchangeable parts on low theft lines had to be marked or all covered parts, including those which were not interchangeable with any on the high theft line, had to be marked. VW further asked if, assuming that all covered parts had to be marked on certain low theft lines, the replacement parts for the non-interchangeable parts had to be marked.

To answer VW's questions, both the original equipment and replacement covered major parts must be marked on those low theft lines that have a majority of covered major parts interchangeable with those of a high theft line, without regard to whether the particular covered major part is itself interchangeable. Congress determined that, although certain vehicles are not themselves from a high theft line, the high degree of interchangeability of their parts with those of a high theft line would make these otherwise low theft vehicles likely targets for car thieves. As likely targets for car thieves, Congress determined that *all* covered major parts on these vehicles should be marked, not just those which were interchangeable with the covered major parts of the high theft line. This will serve as an additional deterrent to the theft of these vehicles. To express these determinations, Congress specified that vehicles in low theft rate lines with a majority of covered major parts interchangeable with those of an actual or likely high theft line are considered high theft lines; section 603(a)(1)(C) of the Cost Savings Act. Section 602(a) specifies that the theft prevention standard shall require marking of covered major parts that are installed by manufacturers in high theft lines and marking of the major replacement parts for the covered major parts. These provisions make clear that *all* covered major parts on lines selected as high theft lines under section 603 must be marked. Similarly, *all* major replacement parts for the covered major parts of high theft lines selected under section 603 must be marked.

VW also commented on the agency's example showing that a manufacturer's "b" line, a low theft line, had a majority of covered major parts interchangeable with both the "x" and "y" lines, which are both high theft lines. NHTSA stated in the NPRM preamble that the manufacturer would have to determine if total production of the b line accounted for more that 90 percent of the b, x, and y lines combined. VW stated its understanding that the manufacturer would have to make two determinations. First, the manufacturer would determine if b line production accounted for more than 90 percent of the total production of the b and x lines, and then it would determine if b line production accounted for more than 90 percent of the total production of the b and y lines. VW's understanding is correct. The use of the singular "line" in section 603(a)(1)(C)(ii), when referring to high theft lines with covered major parts interchangeable with low theft lines, is in contrast to the use of the plural "lines" when referring to low theft lines with those interchangeable parts throughout the rest of

section 603(a)(1)(C). This shows an intent to make the determinations in the manner stated by VW.

Chrysler responded to the agency's proposed means of determining if engines and transmissions should be considered interchangeable between lines. The NPRM proposed that, if an engine or transmission is offered as standard or optional equipment on two or more lines, the engine or transmission should be considered interchangeable among those lines. Chrysler argued that this position was "an arbitrary declaration of complete interchangeability [which] overlooks the above described relatively complex modifications and/or related component installations that would be required to make these assemblies operable." NHTSA agrees that modifications to such parts as fuel lines, wiring harnesses, throttle linkages, electronic engine controls, and emissions controls might well be necessary to substitute a different engine or transmission, and that these modifications are relatively complex. However, all available evidence (specifically the transcript of the public meeting on December 6 and 7, 1984, and agency meetings with police and insurance organizations) indicates that chop shops are relatively sophisticated operations capable of making these modifications. In this case, a few hundred dollars worth of work would allow these shops to install a stolen component worth several thousand dollars. Given this potentially large profit after performing this work and the expressed intent of the Theft Act to impede the operations of chop shops, NHTSA is adopting its proposed interchangeability criteria for engines and transmissions as best effectuating the purposes of the Theft Act.

GM questioned the agency's stated intent to consult current auto parts data publications as an aid in determining interchangeability of parts. Examples of such publications are "The Hollander," Auto-Truck Interchange Edition, Hollander Publishing Co., Inc., Minnetonka, Minnesota, and "Mitchell's Manual," Cordura Publications, San Diego, California. GM stated that it knew of no basis on which to conclude that these publications would be an effective reference for use in determining interchangeability for purposes of the theft prevention standard. Further, GM stated that, since neither the government nor manufacturers control the content of these publication, GM was concerned that they might not be appropriate for use in connection with the theft prevention standard.

NHTSA did not state that these publications would be used as the final arbiter of whether or not parts are interchangeable; it stated only that it would consult these publications. These publications are used daily by repair shops to decide which parts can be used to replace damaged parts. The credibility of these publications depends on their designations of interchangeability being accurate. NHTSA believes that consulting these publications as the best available independent source of interchangeability is proper for the purposes of the theft prevention standard, and hereby announces its intention to do so.

4. § **542.4: Procedures for the selection of new lines introduced on or after the effective date of the standard that are likely to have high theft rates.**

The NPRM proposed that these procedures would be very similar to those proposed under section 542.1, except that the agency would have 90 days to issue its preliminary determination after the manufacturer submitted its views and that the manufacturer would have the right to request a meeting with the agency to further amplify its views during this 90 day period. A special schedule was set out for new lines to be introduced in the 1987 model year because of the time constraints. That special schedule would ensure that final determinations for all new lines to be introduced in the 1987 model year would be made by March 1, 1986.

Both VW and GM stated in their comments that this section would not give them enough lead time although it would satisfy the statutorily mandated six months of lead time. VW stated that the agency should allow itself only 30 days to consider the manufacturer's submission before issuing its preliminary determination. VW's argument was that if a 30 day period was sufficient for the purposes of sections 542.1, 542.2, and 542.3, it should also be sufficient for this section and 542.5. GM stated that it was going to make its submission for its new lines to be introduced in the 1987 model year concurrently with its submissions under section 542.1, 542.2, and 542.3 by July 24. GM expressed its hope that this would allow the agency to issue its preliminary determinations under this section concurrently with those under the previous sections, that is, by August 24, 1985.

The agency has carefully considered these comments in the context of both this section and sec-

tion 542.5. The NPRM explained the agency's belief that the 90 day period between its receipt of the manufacturer's submission and its issuance of a preliminary determination would facilitate agreements on the appropriate selections. The increased opportunity for meetings and detailed analysis of the manufacturer's submission by the agency should ensure that both parties fully understand the other's position. That understanding should, in turn, lead to more agreements during the selection process.

However, for the 1987 model year, the agency believes that the need to ensure adequate lead time to the manufacturers outweighs the interest in facilitating agreements. Therefore, NHTSA is amending the proposed procedures to specify that the agency will issue its preliminary determination to the manufacturer no later than 30 days after receiving the manufacturer's submission under this section and section 542.5. This change will ensure that manufacturers will have the same lead time for their new 1987 lines as they will have for their pre-1987 lines. NHTSA would like to note that it is not changing the date by which it will provide those manufacturers who do not make submissions under this section with the agency's unilateral preliminary determinations. The proposed December 31, 1985, date is adopted in this final rule for such manufacturers.

In the case of the 1988 and subsequent model years, NHTSA is adopting the proposed 90 day period for considering manufacturer's submissions before issuing its preliminary determinations, for the reasons set forth in the NPRM. There will be no lead, time concern in these model years because, even allowing the 90 day period, a final determination for each new line must be made 13 months before the new line is introduced. No manufacturer or any other commenter to Theft Act rulemakings has suggested that a 13 month lead time is inadequate.

5. § **542.5: Procedures for selecting post-standard low theft new lines with a majority of major parts interchangeable with those of a high theft line.**

These proposed procedures were very similar to those set forth in section 542.3, but with a 90 day period for the agency to consider the manufacturer's submission before issuing a preliminary determination and with the manufacturers having the right to request a meeting during this 90 day period. The proposed 90 day period has been shortened to 30 days for the 1987 model year in this final rule for the reasons set forth above in the discussion of § 542.4, and appropriate references to "covered major parts" have been added, per the explanation in the discussion of § 542.3 above. In all other respects, this rule is adopted as proposed.

GM commented that this section should be deleted from the procedures, because this section is "inappropriate at this time." GM argued that such provisions should only be added if and when a relationship is established between thefts or theft rates and interchangeability. This comment ignores the express language of the Theft Act. Section 603(a)(1)(C) explicitly designates as high theft lines subject to the theft prevention standard those lines introduced after the effective date of the theft prevention standard with likely low theft rates, but which have a majority of covered major parts interchangeable with those of a line with actual or likely high theft rates. Section 603(a)(2) specifies that the specific lines which are to be subject to the standard may be selected by agreement between the manufacturer and the agency. These provisions expressly require this agency to have section 542.5 in these procedures.

C. **Effective Date for These Procedures.**

The Administrative Procedure Act (5 U.S.C. 553 (d)) specifies that a substantive rule shall be published not less than 30 days before its effective date, with a few exceptions. This rule is effective as of its publication in the Federal Register. NHTSA does not believe that the 30 day requirement is applicable to this rule, because it is not a substantive rule. These procedures impose no substantive requirements or restrictions. They do not *require* manufacturers to submit any information to NHTSA; they merely set forth the information which should be submitted by those manufacturers that choose to participate in the selection process. Because of this, NHTSA has concluded that this rule is procedural, not substantive.

If the 30 day requirement were applicable to this action, NHTSA would have found good cause for specifying an earlier effective date. The Theft Act requires the selection process to be completed by October 24, 1985, for all lines introduced before the effective date of the theft prevention standard. To allow time for each of the steps involved in the selection process, manufacturers must submit their views and data to NHTSA no later than [insert date five days after publication in the

FEDERAL REGISTER]. The manufacturers which commented on the proposed procedures indicated that they would prepare their submissions on the basis of the NPRM. This rule only clarifies a few aspects of that proposal and gives the agency less time to consider submissions for new lines to be introduced in the 1987 model year. The statutory deadline and the similarity of the final procedures to those which were proposed would have constituted good cause for making these procedures effective upon publication.

In consideration of the foregoing, Title 49 of the Code of Federal Regulations is amended by adding a new Part 542—Procedures for Selecting Lines to Be Covered by the Theft Prevention Standard.

Issued on August 21, 1985

Diane K. Steed
Administrator

50 FR 34831
August 28, 1985

PART 542—PROCEDURES FOR SELECTING LINES TO BE COVERED BY THE THEFT PREVENTION STANDARD

(Docket No. T85-01; Notice 2)

Sec.

AUTHORITY: 15 U.S.C. 2021, 2022, and 2023; delegation of authority at 49 CFR 1.50.

Note: *This Part refers to the appendices to and effective date of Part 541, which is the proposed vehicle theft prevention standard. Part 541 has not yet been issued as a final rule. Until such time as the final rule establishing Part 541 is issued, this Part references the proposed appendices and effective date for Part 541 published at 50 FR 19728, May 10, 1985. Upon such issuance, the references in this Part will be updated.*

§ 542.1 Procedures for selecting pre-standard new lines that are likely to have high theft rates.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and NHTSA to follow in the determination of whether any pre-standard new lines are lines likely to have high theft rates.

(b) *Application.* These procedures apply to each manufacturer that has introduced or will introduce a new line into commerce in the United States after January 1, 1983, and before November 1, 1985, and to each of those lines.

(c) *Procedures.*

(1) Each manufacturer uses the criteria in Appendix C of Part 541 of this chapter to evaluate each new line and to identify those lines the manufacturer believes are likely to have a theft rate exceeding the median theft rate.

(2) The manufacturer submits its evaluations and identifications made under paragraph (c)(1) of this section, together with the factual information underlying those evaluations and identifications, to NHTSA by September 2, 1985.

(3) Within 30 days after its receipt of the manufacturer's submission under paragraph (c)(2) of this section, or by August 24, 1985, whichever is sooner, the agency considers that submission, if any, independently evaluates each new line using the criteria in Appendix C of Part 541 of this chapter, and, on a preliminary basis, determines whether those new lines should or should not be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of the agency's evaluations and determinations, together with the factual information considered by the agency in making them.

(4) The manufacturer may request the agency to reconsider any of its preliminary determination made under (c)(3) of this section. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(3) of this section informing it of the agency's evaluations and preliminary determinations. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30 day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(5) Each of the agency's preliminary determinations under paragraph (c)(3) of this section becomes final on October 15, 1985, unless a request

for reconsideration of it has been received in accordance with paragraph (c)(4) of this section. If such a request has been received, the agency makes its final determinations by October 24, 1985, and informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

§ 542.2 Procedures for limiting the selection of pre-standard lines having or likely to have high theft rates to 14 lines.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and the NHTSA to follow in implementing the 14 line limit applicable to certain groups of high theft lines in the initial year of the theft prevention standard.

(b) *Application.* These procedures apply to each manufacturer that produces more than 14 lines that have been or will be introduced into commerce in the United States before November 1, 1985 and that have been listed in Appendix A of Part 541 of this chapter or have been identified by the manufacturer or preliminarily determined by the agency to be high theft lines under § 542.1, and to each of those lines.

(c) *Procedures.*

(1) Each manufacturer evaluates each of its lines in accordance with the criteria in Appendix B of Part 541 of this chapter and ranks the lines based on the extent to which they satisfy those criteria.

(2) Each manufacturer submits its evaluations and rankings made under paragraph (c)(1) of this section, together with the factual information underlying those evaluations and rankings, to NHTSA by September 2, 1985.

(3) Within 30 days after its receipt of the manufacturer's submission under paragraph (c)(2) of this section, or by August 24, 1985, whichever is sooner, the agency considers that submission, if any, independently evaluates each of the manufacturer's lines using the criteria in Appendix B of Part 541 and, on a preliminary basis, determines which 14 lines should be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of the agency's evaluations and rankings, together with the factual information considered by the agency in making them.

(4) The manufacturer may request the agency to reconsider its preliminary ranking under paragraph (c)(3) of this section of any of the highest 14 ranked lines. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(3) of this section informing it of the agency's evaluations and preliminary rankings. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary rankings. During this 30 day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(5) Each of the agency's preliminary rankings of the 14 highest ranked lines under paragraph (c)(3) becomes final on October 15, 1985, unless a request for reconsideration of it has been received in accordance with paragraph (c)(4) of this section. If such a request has been received, the agency makes its final rankings by October 24, 1985, and informs the manufacturer by letter of those rankings and its response to the request for reconsideration.

§ 542.3 Procedures for selecting pre-standard low theft lines with a majority of major parts that are interchangeable with those of a high theft line.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and the NHTSA to follow in the determination of whether any pre-standard lines with low theft rates have major parts interchangeable with a majority of the covered major parts of a line with an actual or likely high theft rate.

(b) *Application.* These procedures apply to:

(1) Each manufacturer that produces—

(i) At least one passenger motor vehicle line that has been or will be introduced into commerce in the United States before November 1, 1985, and that has been listed in Appendix A of Part 541 of this chapter or identified by the manufacturer or preliminarily determined by the agency to be a high theft line under § 542.1, and

(ii) At least one line that has been or will be introduced into commerce in the United States before that date and that is below the median theft rate; and

(2) Each of those sub-median rate lines.

(c) *Procedures.*

(1) For each of its lines with a theft rate below the median rate, each manufacturer identifies how many and which of the major parts of that line are interchangeable with the covered major parts of any other of its lines that has been listed in Appendix A of Part 541 of this chapter or identified by the manufacturer or preliminarily determined by the agency to be a high theft line under § 542.1.

(2) If the manufacturer concludes that one or more lines with a sub-median theft rate has major parts that are interchangeable with a majority of the covered major parts of a high theft line, the manufacturer decides whether all the vehicles of those lines with sub-median theft rates and interchangeable parts account for more than 90 percent of the total annual production of all of the manufacturer's lines with those interchangeable parts.

(3) The manufacturer submits its identifications and conclusions made under paragraphs (c)(1) and (2) of this section, together with the facts and data underlying those identifications and conclusions, to NHTSA by September 2, 1985.

(4) Within 30 days after its receipt of the manufacturer's submission under paragraph (c)(3) of this section, or by August 24, 1985, whichever is sooner, the agency considers that submission, if any, and independently makes, on a preliminary basis, the determinations of those lines with sub-median theft rates which should or should not be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of those determinations, together with the bases for the determinations, including the factual information considered by the agency.

(5) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(4) of this section. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(4) informing it of the agency's preliminary determinations. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30 day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(6) Each of the agency's preliminary determinations under paragraph (c)(4) becomes final on October 15, 1985, unless a request for reconsideration of it has been received in accordance with paragraph (c)(5) of this section. If such a request has been received, the agency makes its final determinations by October 24, 1985, and informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

§ 542.4 Procedures for selecting post-standard new lines that are likely to have high theft rates.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and NHTSA to follow in the determination of whether any post-standard line is likely to have a theft rate above the median rate.

(b) *Application.* These procedures apply to each manufacturer which plans to introduce a new line into commerce in the United States on or after November 1, 1985, and to each of those lines.

(c) *Procedures.*

(1) Each manufacturer uses the criteria in Appendix C of Part 541 of this chapter to evaluate each new line and to conclude whether the manufacturer believes that new line is likely to have a theft rate exceeding the median theft rate.

(2) The manufacturer submits its evaluations and conclusions made under paragraph (c)(1) of this section, together with the factual information underlying those evaluations and conclusions, to the NHTSA not more than 24 months before the introduction of each new line and not less than 18 months before that date for new lines to be introduced in the 1988 or subsequent model years. For new lines to be introduced in the 1987 model year, the manufacturer makes this submission not later than October 1, 1985. The manufacturer may request a meeting with the agency during this period to further explain the bases for its evaluations and conclusions.

(3) Within 30 days after its receipt of the manufacturer's submission under paragraph (c)(2) of this section, or not later than December 31, 1985, in the case of new lines introduced in the 1987 model year, and within 90 days after its receipt of the manufacturer's submission under paragraph (a)(2) of this section, or not later than 15

months before the introduction of each new line, in the case of new lines to be introduced in the 1988 or subsequent model years, whichever is sooner, the agency considers that submission, if any, independently evaluates each new line using the criteria in Appendix C of Part 541 of this chapter and, on a preliminary basis, determines whether the new line should or should not be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of the agency's evaluations and determinations, together with the factual information considered by the agency in making them.

(4) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(3) of this section. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(3) informing it of the agency's evaluations and preliminary determinations. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30 day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(5) Each of the agency's preliminary determinations under paragraph (c)(3) becomes final 45 days after the agency sends the letter specified in paragraph (c)(3) unless a request for reconsideration of it has been received in accordance with paragraph (c)(4) of this section. If such a request has been received, the agency makes its final determinations within 30 days of its receipt of the request for the 1987 model year and within 60 days of its receipt of the request for the 1988 and subsequent model years. NHTSA informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

§ 542.5 Procedures for selecting post-standard, low theft, new lines with a majority of major parts interchangeable with those of a high theft line.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and the NHTSA to follow in the determinations of whether any post-standard lines that will be likely to have a low theft rate have major parts interchangeable with a majority of the covered major parts of a line having or likely to have a high theft rate.

(b) *Application.* These procedures apply to:

(1) Each manufacturer that produces—

(i) At least one passenger motor vehicle line that has been or will be introduced into commerce in the United States and that has been listed in Appendix A of Part 541 of this chapter or has been identified by the manufacturer or preliminarily or finally determined by NHTSA to be a high theft line under § 542.1 or § 542.4, and

(ii) At least one line that will be introduced into commerce in the United States on or after November 1, 1985, and that the manufacturer identifies as likely to have a theft rate below the median theft rate; and

(2) Each of those likely sub-median rate lines.

(c) *Procedures.*

(1) For each new line that a manufacturer identifies under Appendix G as likely to have a theft rate below the median rate, the manufacturer identifies how many and which of the major parts of that line will be interchangeable with the covered major parts of any other of its lines that has been listed in Appendix A of Part 541 of this chapter or identified by the manufacturer or preliminarily or finally determined by the agency to be a high theft line under § 542.1 or § 542.4,

(2) If the manufacturer concludes that a new line with a likely sub-median theft rate will have major parts that are interchangeable with a majority of the covered major parts of a high theft line, the manufacturer determines whether all the vehicles of those lines with likely sub-median theft rates and interchangeable parts will account for more than 90% of the total annual production of all of the manufacturer's lines with those interchangeable parts.

(3) The manufacturer submits its evaluations and identifications made under paragraphs (c)(1) and (2) of this section, together with the factual information underlying those evaluations and identifications, to NHTSA not more than 24 months before introduction of the new line and not less than 18 months before that date for new lines to be introduced in the 1988 or subsequent model years. For new lines to be introduced in the 1987 model year, the manufacturer makes this submission not later than October 1, 1985. During this period, the manufacturer may request a meeting with the

agency to further explain the bases for its evaluations and conclusions.

(4) Within 30 days after its receipt of the manufacturer's submission under paragraph (c)(3) of this section, or not later than December 31, 1985, in the case of new lines to be introduced in the 1987 model year, and within 90 days after its receipt of the manufacturer's submission under paragraph (c)(2) of this section, or not later than 15 months before the introduction of each new line, in the case of new lines to be introduced in the 1988 or subsequent model years, whichever is sooner, the agency considers that submission, if any, and independently makes, on a preliminary basis, the determinations of those lines with likely submedian theft rates which should or should not be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of the agency's preliminary determinations, together with the factual information considered by the agency in making them.

(5) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(4) of this section. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(4) informing it of the agency's preliminary determinations. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30 day period the manufacturer may also request a meeting with the agency to discuss those objections.

(6) Each of the agency's preliminary determinations made under paragraph (c)(4) becomes final 45 days after the agency sends the letter specified in that paragraph unless a request for reconsideration of it has been received in accordance with paragraph (c)(5) of this section. If such a request has been received, the agency makes its final determinations within 30 days of its receipt of the request for the 1987 model year and within 60 days of its receipt of the request for the 1988 and subsequent model years. NHTSA informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

50 FR 34831
August 28, 1985

PREAMBLE TO AN AMENDMENT TO PART 543

Petitions for Exemption from the Vehicle Theft Prevention Standard

(Docket No. T85-02; Notice 21)

ACTION: Final rule

SUMMARY: This final rule is issued under Title VI of the Motor Vehicle Information and Cost Savings Act. Title VI provides that passenger motor vehicle manufacturers may petition the Agency for an exemption from the parts-marking requirements of the vehicle theft prevention standard for passenger motor vehicle lines whose standard equipment includes an antitheft device. In order for this Agency to exempt a line, it must determine that the line's antitheft device is likely to be as effective as parts-marking in reducing and deterring motor vehicle theft.

Part 543 currently sets out procedures for manufacturers to follow in preparing and submitting petitions for exemption for model year 1987 carlines from the parts-marking requirements. It also sets forth procedures which the Agency will follow in processing those petitions and determining whether they should be granted. This final rule extends the Part to subsequent model years, while making minor changes to its provisions.

EFFECTIVE DATE: This final rule is effective on October 8, 1987.

SUPPLEMENTARY INFORMATION:

Statutory Background

The Motor Vehicle Theft Law Enforcement Act of 1984, Pub. L. 98-547 (Theft Act), added Title VI to the Motor Vehicle Information and Cost Savings Act (Cost Savings Act). Under Title VI, by delegation from the Secretary of Transportation, NHTSA promulgated a vehicle theft prevention standard for high-theft lines of passenger motor vehicles. On October 24, 1985, the Agency published a final rule (49 CFR Part 541) that, among other things, set out performance requirements for marking certain major original equipment and replacement parts on high-theft passenger vehicles with permanent identification numbers, 50 F.R. 43166.

Section 605 of Title VI permits a manufacturer of a high-theft line to petition NHTSA to exempt it from the parts-marking requirements. NHTSA may grant such a petition if the petitioner installs an antitheft device (also called a "device" or "antitheft system") as standard equipment on the entire line for which it seeks an exemption, and if NHTSA determines that the antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as complying with the parts-marking requirements.

Section 605 allows the Agency to grant an exemption for not more than two lines of any manufacturer for the initial model year to which the vehicle theft prevention standard applies. (Under the October 1985 final rule, the standard first applies to model year 1987.) For each subsequent model year, the agency may exempt not more than two additional lines of any manufacturer. Thus, it is possible for a manufacturer to receive two exemptions for model year 1987, two more for model year 1988 for a total of four, and so forth.

Section 605 contains these further provisions. First, a manufacturer must file an exemption petition with NHTSA not later than eight months before beginning production of the line for the first model year covered by the petition. Second, NHTSA may grant a petition in whole or in part. Third, the Agency must grant or deny a petition within 120 days after the date the petition is filed. If the Agency fails to make a determination within the specified time, section 605 states that the petition shall be considered approved, and the manufacturer shall be exempt from the standard's requirements for the subsequent model year. Fourth, section 605 allows the Agency to terminate a manufacturer's exemption if NHTSA determines that the manufacturer's antitheft device has not been as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking standard.

On January 7, 1986 (51 F.R. 706), NHTSA published an interim final rule setting forth the

procedures for obtaining an exemption from the theft prevention standard for model year 1987. NHTSA also published a notice of proposed rulemaking (NPRM) on January 7, 1986 (51 F.R. 715) that principally did two things. First, the Notice set out procedures for manufacturers to follow in preparing and submitting antitheft exemption petitions for model years after 1987. Second, it set out procedures the Agency would follow in processing those petitions and determining whether to grant an exemption request. These procedures essentially were the same as those NHTSA established for the 1987 model year.

The procedures proposed in the January 1986 NPRM specified the basic information and data which manufacturers must set out in their petitions. The required information included the identity of the line or lines for which exemption is sought, a detailed description of the standard equipment antitheft device, the means and processes by which the device is activated and functions, the reasons for the manufacturer's belief that the antitheft device would reduce and deter motor vehicle theft, and the manufacturer's reasons for believing that the Agency should determine that the device would be as effective as compliance with Part 541 in reducing and deterring motor vehicle theft. The Notice also proposed the Agency's procedures for processing exemption petitions, and for modifying or terminating an existing exemption.

Nine vehicle manufacturers, one law enforcement group, an automobile dealers association, and an aftermarket antitheft device manufacturers' association commented on these notices.

Continued Use of Model Year 1987 Procedures

In the 1986 NPRM, the Agency requested public comment on using the model year 1987 procedures for subsequent model years. AMC/Renault objected primarily because the company was concerned that NHTSA's decisions on specific exemptions for model year 1987 would prejudice decisions for future years. AMC/Renault believed that the decision to grant or deny a petition would be based on the relative merits of the antitheft device described in one petition, compared with devices described in other petitions.

Carrying over the 1987 procedures to subsequent years will not prejudice any petitions made in those later years. Under section 605, the Agency's decision whether to grant an exemption petition rests on NHTSA's determining that an antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as complying with the parts-marking requirements. To determine whether an antitheft device meets the statutory test, the Agency believes that the principal considerations are the petitioner's description of its device, any other data submitted in support of the petition, and the Agency's engineering assessment of the device and supporting data. However, in making an exemption decision, the Agency believes that it may also be helpful to consider the relative merits of various devices.

If one manufacturer petitions for an exemption asserting that its device is the same as a device for which the Agency already has granted an exemption, it is evident that NHTSA must assess the information in the new petition in conjunction with information respecting the device to which the petitioner claims sameness. The Agency already has granted an exemption for one manufacturer based on just such an assertion.

In other instances, a petitioner may note the similarity between its system and one for which the Agency already has granted an exemption request. Such a circumstance not only invites comparison among systems, but necessitates it. At least one manufacturer has made such a comparison in giving its reasons why NHTSA should grant its exemption request.

Finally, if the Agency is to apply the exemption provisions consistently, it must be conscious of what design and performance features previously led it to conclude that any given device would likely be as effective in reducing and deterring theft as the parts-marking requirements. NHTSA hopes to allay fears that a decision respecting the efficacy of one system will rest entirely on the merits of that system relative to another. On the other hand, the Agency believes that factors such as those just described may make it necessary to compare devices, or may recommend that practice. In either event, the Agency has the engineering expertise to use comparison appropriately, always giving primary consideration to the merits of the device under its scrutiny.

Public Comment on Petitions

In the 1986 NPRM, the Agency sought comment on the desirability of changing the exemption process after model year 1987 to include publishing notice of receipt of petitions and providing a brief period for public comment on them. NHTSA contemplated the possibility of providing a similar opportunity for petitions to modify or terminate exemptions. At the same time, the Agency noted its

concern that making a petition's details publicly available in turn might make it easier for vehicle thieves to get information that would aid in disarming an antitheft system.

The Agency received comments on this issue from AMC/Renault, Chrysler, the National Automobile Dealers Association (NADA), Ford, General Motors (GM), and Volkswagen of America (VWoA). The commenters expressed a belief that if seeking public comment resulted in even limited data disclosure, the disclosure could harm owners and manufacturers of high-theft cars because even carefully edited data might inadvertently contain clues for disarming and defeating an antitheft device. Such a result would undermine the basic purpose of the Theft Act: to reduce and deter motor vehicle theft. Further, they noted that Congress did not require that NHTSA publish a notice and request public comment on each exemption petition it receives.

VWoA stated that if the Agency granted manufacturer requests for confidential treatment of antitheft data, there would be little information on which the public could comment because the information NHTSA could make public would be severely limited. One company said that releasing detailed information would shorten the life of any device, because the manufacturer would be obliged to alter the device after release, in order to ensure effectiveness in reducing and deterring motor vehicle theft.

The Agency finds merit in these comments and notes that it never intended to release detailed information concerning antitheft systems. Indeed, in *Federal Register* notices granting model year 1987 exemption petitions, the Agency endeavored to disclose as little as possible about the design specifications for a given antitheft device so that a potential thief would learn nothing of value about the device. The Agency has decided against inviting public comment on exemption petitions because soliciting comments based on the general type of information released in the past would yield little of value, and soliciting comments based on more detailed information potentially could jeopardize the statutory purpose of reducing and deterring vehicle theft.

Exemption Status Statement on Certification Labels

Another issue on which NHTSA asked for comment in the NPRM was the value of requiring manufacturers to include on the vehicle certification label a statement of the vehicle's status relative to the parts-marking requirements. If the Agency adopted such a requirement, a manufacturer would be required to print up different certifications for its various car lines to reflect the vehicle's status as subject to the antitheft standard, exempt from the standard, or not subject to the standard.

The Agency received eight comments on certification label statements reflecting the exempt status of high-theft vehicles. The respondents were AMC/Renault, Austin Rover, Chrysler, Ford, GM, VWoA, NADA, and the National Automobile Theft Bureau (NATB). Seven commenters opposed requiring such a statement, making three principal arguments. The first argument was that including this information on the certification label would be of little value to the primary audience for certification labels, i.e., the ultimate consumer. The second was that these labels might encourage schemes in which an unscrupulous person would remove a label indicating compliance, and replace it with a label indicating exemption. The commenters noted that this practice would hamper law enforcement authorities in policing vehicle and equipment theft.

The third argument against requiring an exemption statement on the vehicle certification label was the one that these commenters generally found most compelling. That was that requiring a manufacturer to produce different labels for its product lines adds a cost to the manufacture of a vehicle by creating an obligation for which there is no apparent need. These commenters argued that the principal reason for the entire antitheft plan is to assist law enforcement organizations in vehicle theft investigations. They concluded, therefore, that NHTSA's Appendix A (to 49 CFR Part 541), published annually in the *Federal Register*, will supply law enforcement officials with a current list of high-theft lines. NATB added further that they, along with the International Association of Automobile Theft Investigators (IAATI), also circulate information to help vehicle theft investigators identify antitheft lines.

Of the eight commenters, only NADA endorsed requiring "a label noticing that a vehicle is exempt from the parts-marking standard." NADA asserted that the Agency's Appendix A may be inaccurate, less timely, and more burdensome to use than "properly marked certification labels." The Association further stated that an "exempt status certification label" would help people who repair cars to determine quickly whether the vehicle has an antitheft device installed.

After having considered these comments, NHTSA concludes that it is unnecessary to require a statement on the certification label respecting the

exemption status of high-theft vehicles. First, the Agency recognizes that there are a number of sources from which law enforcement groups can obtain data to update lists of exempt high-theft lines. The commenters mention two such sources: NATB and IAATI. The Agency believes that, taken together with those other sources of information, Appendix A serves the purpose of disseminating information to aid theft investigations with reasonable efficiency. Second, with respect to NADA's comment concerning facilitating repair, the Agency assumes that exempt vehicle manufacturers will notify their dealers which lines are exempt; the dealer then will know that an antitheft system is among the car's standard features.

Direct Importers

In its interim final rule, NHTSA determined that a direct importer cannot apply for an exemption from the parts-marking requirements, and gave its reasons in support of this position. However, the Agency made a further determination that there are some circumstances where a direct importer may have some parts-marking responsibilities. The Agency considered the following scenario.

A manufacturer has an exemption for a given line of cars classified as high-theft vehicles, and makes some of these cars for sale in the United States, and some for sale outside this country. A direct importer wants to import a number of the cars that were manufactured for sale outside the United States, and that consequently do not have an antitheft device.

The Agency stated that the direct importer would have to mark these vehicles according to antitheft parts-marking standard. NHTSA noted that there would exist a line of cars available for sale in the United States, some of which were marked under parts-marking standard, and some of which were equipped with antitheft devices. NHTSA sought comments on the effects of this practice.

In response to the Agency's discussion, BMW of North America and NADA stated that NHTSA should include language in the theft exemption rule explicitly stating that direct importers cannot apply for an antitheft exemption. These commenters asserted that without this language, Part 543 might permit a direct importer to petition for an exemption.

NHTSA restates its position that in order for a manufacturer to be exempted under Part 543, the manufacturer must be capable of installing an antitheft system as standard equipment on an entire vehicle line. (*See* 51 F.R. 706, 707.) A direct importer cannot install an item as standard equipment on a line because he does not control an entire line. Therefore, NHTSA concludes that it is unnecessary to amend Part 543 to state a prohibition against direct importers applying for an exemption. However, the Agency has included language in sections 543.6 and 543.7 that should alleviate the concerns of these commenters.

NADA made additional comments respecting direct importers. First, it stated that NHTSA should prohibit direct importers from installing "'standard equipment antitheft devices' on exempt line automobiles which are not originally intended for sale in America." The Agency believes that it lacks the authority to prohibit the installation of antitheft devices on such vehicles, including devices identical to those installed as standard equipment on other vehicles. There is nothing in Title VI that restricts a direct importer, or any other retail business, from retrofitting cars with antitheft systems. However, as implied above, a direct importer's installation of an antitheft device on a car not originally intended for sale in this country will not relieve that importer of the obligation of marking the parts of that car.

NADA also believed that if direct importers could install "standard equipment antitheft devices in exempted lines," this fact somehow would make design data more available to potential car thieves. NHTSA does not understand this comment. The Agency discusses confidentiality at length in another part of this document. Suffice it to say here that if a manufacturer submits design data in support of a request for exemption, he may request confidential treatment for the data under 49 CFR Part 512. If the Agency determines to grant such a request, the Agency will treat the manufacturer's data consistent with the determination, and will restrict data access and dissemination. In any event, prohibiting or circumscribing a direct importer's ability to install an antitheft system is a matter outside the scope of Agency authority.

Finally, with respect to direct importers, BMW stated that it should be impermissible for these importers to market more than two lines of exempt vehicles. The company stated that if NHTSA viewed a direct importer as a manufacturer, the Agency should apply the same restrictions to a direct importer as it applied to an original manufacturer. BMW alluded to section 605 of Title VI in support of its position.

The Agency disagrees. First, NHTSA recognizes in the preamble to the interim final rule and in this document that an exemption may only be sought by a manufacturer capable of installing an antitheft device on all cars in the exempted line. Direct

importers cannot install standard equipment and are not likely to be able to persuade an original manufacturer to install such equipment on vehicles which the direct importer seeks to sell in this country. Second, section 605 does not prohibit any seller, including any direct importer, from marketing vehicles from more than two exempt lines at a time. The restriction is that not more than two model lines per manufacturer may be exempted for a given model year.

Confidential Information

NHTSA requested comment on whether, under 49 CFR Part 512, the Agency properly may afford confidential treatment to all data a manufacturer might submit in connection with an exemption petition. More specifically, NHTSA asked whether there may be a class of "drawings and other information" that a manufacturer would have to submit in support of its antitheft petition, and that may be sensitive information without being protectable under Appendix B. Comments were received from five manufacturers, i.e., Austin Rover, Chrysler, Ford, GM, and Toyota. Three of these, i.e., Austin Rover, Chrysler, and Toyota, suggested that until the manufacturer introduces the exempt car line to the public, NHTSA should treat as confidential all data submitted in support of an antitheft exemption request.

Ford suggested that if the Agency is concerned whether it might be compelled to disclose some exemption data to potential vehicle thieves, NHTSA could expand section 512.5, *Substantive Standards for Affording Confidential Treatment*, "to embrace the broader definition of confidentiality set forth in recent judicial opinions." Specifically, the company suggested amending section 512.5 by stating that NHTSA would withhold information as confidential if disclosing the information might harm a specific governmental or private interest Congress sought to protect under the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4), and if the information met other criteria set out in section 512.4.

GM expressed concern that neither NHTSA's confidentiality rules, nor the FOIA provision cited above, would justify the Agency's withholding the kind of information most valuable to an auto thief.

The Agency has considered these comments with substantial care because theft deterrence and reduction is at the heart of the antitheft standard, and because NHTSA wishes to avoid any practice that will encourage or assist a potential thief. With respect to Ford's suggested amendment to section 512.5, the Agency notes that Part 512 is primarily a procedural mechanism for protecting information under 552(b)(4) of the FOIA. The Agency is aware of the breadth of judicial opinions articulating what kinds of material a Federal Agency may withhold under Exemption (b)(4). In particular, the Agency is aware of the case law stating that Federal agencies may withhold information under Exemption (b)(4) in order to protect a governmental interest. NHTSA plans to examine section 512.5 and consider the need to make appropriate changes in a separate rulemaking.

Regarding GM's concern, the Agency observes that many manufacturers who submitted information in connection with model year 1987 petitions for exemption requested confidential treatment for that information. The Agency is withholding much of this information, having determined that disclosing it would result in commercial harm to the manufacturer. Further, before product introduction, the Agency may withhold all exemption data from disclosure as "future model specific product plans" under 49 CFR 512, Appendix B.

When a manufacturer introduces a product subject to an antitheft exemption, NHTSA anticipates that the manufacturer itself will eventually disclose general information about the system in brochures and in the owner's manual. Other information concerning the device may become available through reverse engineering or studying a standard equipment antitheft device. The Agency believes that it cannot withhold any information that becomes publicly available by any legitimate method when the manufacturer introduces its product.

If NHTSA has more detailed information such as wiring diagrams or blueprints, the Agency can withhold these data under Appendix B, provided that the manufacturer properly asserts a claim for confidential treatment. On the other hand, even data like a detailed diagram cannot be withheld once the diagram becomes publicly available because the manufacturer includes it in a service manual, or because the diagram otherwise is legitimately disclosed.

In letters to the Agency concerning their petitions for exemption for model year 1988, several manufacturers raised concerns about the Agency's timing in releasing the nameplate of a car line to be introduced in that model year. The manufacturers urged that NHTSA release the nameplates when the manufacturer introduced the exempt model rather than at the time the Agency granted an exemption petition. The Agency believes that these concerns have merit, but believes further that they must be balanced

against the need of law enforcement agencies to know which car lines will be required to be marked under the theft prevention standard. If a manufacturer can show that it has not released a new model's nameplate either to dealers or to any other portion of the public, NHTSA will treat the nameplate as confidential until the June 1 immediately preceding the model year in which the model will be introduced. Then, NHTSA will release the nameplate to inform law enforcement agencies of those models that must be marked under the theft prevention standard.

Standardized Tests

In the preamble to the interim final rule, NHTSA discussed a proposal to require that a manufacturer give his reasons for believing in the theft reduction and deterrence capabilities of his system. The manufacturer must support his petition by discussing any information which underlies his belief that the antitheft device will be effective in reducing and deterring vehicle theft. That information may include theft data, demonstrations, and test results.

After stating that test information would be useful in helping the Agency to make an exemption decision, the Agency asked for comment on the feasibility of developing a standardized test or test subject to evaluate the efficacy of antitheft systems, and whether information based on nonstandardized tests would be of value in exemption deliberations.

The five manufacturers who responded, i.e., AMC/Renault, Chrysler, Ford, Toyota, and VWoA, all essentially argued that developing and applying a standardized test for the efficacy of antitheft devices is not feasible. Each of these manufacturers argued that there are a number of variables involved in car theft, e.g., the theft's skill and the sophistication of tools. Consequently, a test evaluating a given device probably will be reliable only for the device tested, and under the specific test circumstances. Chrysler commented further that standardizing tests might inhibit a manufacturer's developing independent antitheft systems and tests to evaluate those systems. That kind of a result, Chrysler stated, is inconsistent with NHTSA's assertion in the preamble to the interim final rule that the Agency does not intend to specify a particular design.

With respect to the question of whether nonstandardized test data would be valuable in helping the Agency reach an exemption decision, none of the commenters specifically addressed the point. Ford stated that the Agency might find evaluating components more useful than a standardized test in determining the reduction and deterrence properties of an antitheft device. VWoA believed that comparing data for exempt devices with data for devices subject to a new petition "should be sufficient to determine effectiveness." VWoA also suggested that "the requirement to submit data from a test subject should be made optional and not mandatory as the preamble suggests."

On the matter of developing a standardized test or test subject for evaluating antitheft devices, NHTSA concludes that developing a test or test subject is not now feasible because, as the commenters assert, it may not be possible now to develop a test protocol that will produce valid and reliable results. However, this conclusion does not relieve the petitioner of its responsibility to demonstrate the relevant properties of his system under Parts 541 and 543.

NHTSA notes that it did not intend to require a petitioner to submit raw test data on the efficacy of a device in connection with an exemption petition. Rather, what NHTSA contemplated was that a manufacturer would submit a discussion showing how that test data objectively supported his belief in the deterrence and reduction properties of his system.

Diagrams

Ford and GM questioned NHTSA's use of the term "diagram" in section 543.6(a)(1) of the interim final rule. Ford inquired about the level of detail that would be required in a diagram. GM expressed particular concern about "the level of detail" that a manufacturer must submit when it seeks an exemption "for a new theft deterrent system(s)." The company stated that service manuals and other general information may not be available for a new system when a manufacturer petitions for an exemption. What GM fears apparently is the following situation: In lieu of such general information, a manufacturer submits sensitive information on its system, a thief requests that information under FOIA, and because of the limitations seen by GM in 49 CFR Part 512, NHTSA releases the sensitive information. (As discussed in the section of this preamble on "Confidentiality," the Agency's opinion is that under Appendix B, it can withhold data submitted in connection with an exemption petition.)

NHTSA's experience with exemption petitions for model year 1987 leads the Agency to conclude that it does not need detailed component design specifications to make a finding on the capabilities of an antitheft system. On the other hand, the Agency

needs a diagram showing where the system components are, as well as information on what the manufacturer expects these components to do. The Agency underscores its intent in proposed section 543.6 to require a petitioner to submit material naming each system component, and diagraming the location of those components within the vehicle. Therefore, to clarify its intent, the Agency has revised section 543.6 to require petitioners to name each antitheft system component, and submit a diagram showing the location of those components within the vehicle. The Agency retains the requirement that a petitioner submit a narrative describing its antitheft system relative to types of functions mentioned in section 543.6.

Antitheft Device Attributes

GM and the National Automobile Theft Bureau (NATB) commented on NHTSA's discussion of certain antitheft device attributes that Agency experience shows notably contribute to an antitheft system's effectiveness. These attributes are automatic activation of the antitheft device; an audible or visual signal that is tied to the hood, door, and trunk and draws attention to vehicle tampering; and a disabling mechanism designed to prevent a thief from moving a vehicle under its own power without a key.

GM stated that two attributes, i.e., automatic system activation and disabling mechanisms, "are truly important attributes." On the other hand, the manufacturer believed that NHTSA placed "undue emphasis on . . . the need for an alarm system and control of underhood access." GM stated that it was unaware of evidence demonstrating whether an alarm and hood access control made an antitheft system more effective.

In the preamble to the interim final rule, NHTSA discussed design features mentioned in GM's comment, and explained that most manufacturers incorporate such features in an antitheft device. However, section 543.6(a) does not require a specific design for any antitheft device. Instead, the section lists five functions that most system designs address, and requires petitioners to discuss any design feature that would facilitate those functions. A petitioner should discuss any feature of its system that forms the basis for his belief in the theft reduction and deterrent properties of the system.

NATB noted that among the attributes the Agency should consider in evaluating how well a system will perform its function is whether the system inhibits moving the vehicle by towing or pushing. The Bureau asserted that these methods are among those commonly used to steal automobiles, and suggested that NHTSA add language to proposed section 543.6(a)(2) ([a][3] in the final rule) specifically requiring a petitioner to describe system attributes that would deter these methods of vehicle theft.

The Agency's consideration of an antitheft system is not limited to those elements expressly set out in paragraph (a)(3), and NHTSA does not believe the industry perceives the language so narrowly. Evidence of this is provided by the fact that the Agency already has granted a BMW exemption petition for an antitheft system that included a description of motion sensors to inhibit theft by towing or pushing (51 F.R. 36333). The Agency declines to incorporate NATB's suggestion because the language in 543.6(a)(3) does not restrict NHTSA in its consideration of antitheft system design elements, and already requires the manufacturer to describe all of the means and processes by which a theft device is activated and functions. If new information and technology indicate that it is appropriate to expand this list to expressly require discussion of specific design elements, the Agency will consider revising this list as NATB suggests.

Device Effectiveness

Section 605 of Title VI requires that apetition include "the reasons for the manufacturer's conclusion that such device will be effective in reducing and deterring theft of motor vehicles." In the first clause of proposed section 543.6(c), the Agency proposed that a petition include the "reasons for the manufacturer's belief that the antitheft device will reduce and deter theft of passenger motor vehicles." Ford commented that NHTSA should make the language in the regulation conform to that in the statute. The company believed that the statutory language "suggests an element of cooperation between the antitheft device and other vehicle systems to reduce and deter theft," while parallel language in the regulation does not. Ford did not say specifically how its language showed a greater "element of cooperation" than the language NHTSA proposed.

NATB also suggested that the Agency rephrase language in the first clause of proposed section 543.6(b) to avoid "confus(ing) the criterion with the class of motor vehicles which may be exempted (from the antitheft standard)." Therefore, the Bureau suggested, the Agency should change the words "theft of passenger motor vehicles" to "motor vehicle theft." (For this same reason, the

Bureau also suggested we add the words "motor vehicle theft" to the second sentence in proposed section 543.7(b), and to change the term "passenger motor vehicle theft" to "motor vehicle theft" in proposed section 543.9(f)(1) and (2).

NHTSA never intended section 543.6(b) or any Part 543 provision to impose any requirement inconsistent with the Cost Savings Act, nor does the Agency believe that the language in the interim final rule had that effect. However, the Agency has no objection to bridging the language in the regulation closer to that in the statute, and has amended section 543.6(b), and the other provisions referenced above, to conform more nearly to the statutory language.

Ford also suggested that the Agency modify the second clause of proposed section 543.6(b). In the interim final rule, that clause read: "including any data, including theft data and results of demonstrations and tests, which show that the antitheft device will be effective in reducing and deterring motor vehicle theft." Ford suggested that it is confusing to use the word "including" twice in such close proximity, and asked that the Agency delete the second "including," and substitute "such as." The company further suggested that the Agency insert "which are reasonably available to the manufacturer and," after "demonstrations and tests." This change would eliminate any suggestion that NHTSA arbitrarily would "require manufacturers to produce data which are not reasonably available to them." Finally, Ford suggested NHTSA insert the words "tend to" between "which show," because adding those words would show that a manufacturer may produce evidence beyond that described in proposed section 543.6(b) in demonstrating the deterrence and reduction properties of an antitheft system.

The Agency has a number of responses. First, NHTSA substantially redrafted proposed section 543.6(b) to state simply what data the Agency expects a petitioner to discuss in supporting the reduction and deterrence properties of its system. In the redraft, the second clause reads "including any theft data and other data that are available to the petitioner and form a basis for that belief." This redrafted clause reflects each of Ford's concerns. The word "including" appears once.

On the matter of requiring a manufacturer to submit only "reasonably available" data, the Agency repeats its statement in the preamble to the interim final rule of NHTSA's awareness that there may be no "empirical data bearing directly on the effectiveness of the antitheft devices" that are the subjects of these early petitions. On the other hand, to the extent that such data are available, the Agency wants to encourage full use of this material to support a manufacturer's assertion that his device deters and reduces theft. However, the Agency would not require a manufacturer to produce unavailable data, or to assume an undue burden in getting data. For that reason, the Agency includes the word "available" in its redraft of proposed section 543.6(b).

In the redrafted section 543.6(b), NHTSA permits a petitioner to include a discussion of any data that form the basis of petitioner's belief in the deterrence and reduction properties of an antitheft system. While NHTSA chose against using the words "tend to" as Ford suggested, the Agency finds the new language responsive to Ford's concern that a petitioner have the freedom to include data beyond that set out in proposed section 543.6(b) to support petitioner's belief in the properties of its system.

Toyota commented that NHTSA should not require the submission of statistical data because motor vehicle manufacturers do not have access to such data on their own. The company asserts that manufacturers must get theft data either from the insurance industry, from groups like the Highway Loss Data Institute, and from the Federal Bureau of Investigation (FBI). Toyota concludes that NHTSA will obtain statistical information from the FBI when the Agency reviews an exemption petition, and therefore that requiring a manufacturer to submit this data is redundant.

The Agency has used the FBI's National Crime Information Center (NCIC) data base to make some high-theft designations, and probably will continue to use that data in assessing whether the entire antitheft program reduces and deters motor vehicle theft. However, NHTSA is uncertain why the manufacturer believes the Agency will consult the FBI in the regular course of reviewing an exemption petition. In any event, the Agency emphasizes that it is the manufacturer's burden to persuade NHTSA of the efficacy of an antitheft device relative to the criteria set out in the Cost Savings Act. This is a burden a petitioning manufacturer voluntarily assumes. NHTSA questions how a manufacturer can make any creditable showing of the deterrent properties of its device if the manufacturer fails to collect any available data comparing the theft rate for its line with the same or similar lines not equipped with an antitheft system.

Again, NHTSA appreciates that initially, there will not be a great deal of data given the newness

of both the parts-marking and exemption programs. However, the Agency finds it a reasonable requirement that a petitioner for an exemption discuss any such available data as a manufacturer may acquire.

With respect to proposed section 543.6(c), Ford suggested that the Agency change language in the first clause from "will be as effective" to "is likely to be as effective." The Agency agrees that this change will reflect the determination the statute requires NHTSA to make in comparing the efficacy of parts-marking and antitheft devices, and so changes the language in the final rule. At Ford's suggestion, and for the same reason, the Agency also amends the phrase "which are not equipped with the device" to read "which have parts marked in compliance with (49 CFR) Part 541." Because section 605 requires only that vehicles equipped with an antitheft device be likely to be as effective as vehicles marked in compliance with Part 541, the Agency is revising section 543.6(c) to provide for the submission of data showing the device-equipped vehicles to have a theft rate less than or equal to that of marked vehicles.

Filing and Processing Petitions

Section 605 of Title VI has two statutory deadlines. The first requires a manufacturer to file an exemption petition not later than eight months before commencing production for the first model year covered by the petition. The second statutory deadline gives NHTSA 120 days after the date on which the petition is filed to determine whether to grant it. As the Agency explained in the interim final rule for model year 1987 (51 F.R. at 709), NHTSA's administrative practice is to consider the date on which it receives a manufacturer's complete petition as the filing date. Section 543.7(a) of the interim final rule reflects this position.

Ford commented that the Agency should amend proposed section 543.7 to state that irrespective of whether it is complete, a petition is filed on the date NHTSA receives it, and therefore that the 120-day statutory limit for deciding the petition starts on the date of receipt. The company argued that to follow the practice NHTSA set out in proposed section 543.7(a) is to deny the manufacturer's submission "the status of a 'petition'." This result, Ford asserted, would be "unduly harsh," because if the Agency were to declare a submission incomplete within the eight months before a car line's scheduled production, the manufacturer would lose the possibility of exemption for an entire model year.

The company argued further that filing a petition for exemption is analogous to a situation the United States Court of Appeals for the Third Circuit faced in *Dunn* v. *United States*, 775 F.2d 99 (1985). In *Dunn*, the Third Circuit reversed a District Court ruling dismissing a petition for award of counsel fees in a class action for lack of subject matter jurisdiction. The statute under which the class petitioned for attorney's fees required, among other things, that the party apply for fees "within thirty days of final judgment in an action," and submit its attorney's itemized fee statement. The parties filed the petition before the 30-day deadline, but supplied the itemized fee statement after that deadline.

The court of appeals first stated that it must read the time bar in context with other language in the provision to determine what Congress intended to accomplish. The court found that requiring a party to file within a certain time serves to inform parties whether they can rely on the finality of an action. Once a claim is timely filed, the pleading requirements serve to "(flesh) out the details." As the adverse party, the government experiences no prejudice if these details come after the claim is filed, and the court has no interest in promptly receiving details because it will refrain from acting until the government responds. On the other hand, there is a strong interest in permitting "some degree of flexibility" in pleading because preparing these documents requires great care, and because the issue of fee awards frequently is hotly contested. The court concluded that a failure to file a complete pleading within 30 days could not be a jurisdictional bar.

NHTSA takes issue with Ford's assertion that the facts in *Dunn* are analogous to the facts the Agency and a manufacturer face in an administrative proceeding to grant an exemption. An exemption petition is more than a document that serves to give the Agency notice of a manufacturer's resolve to request an exemption. The petition is itself supposed to contain the detailed matter that should objectively support the manufacturer's technical conclusions about the theft reduction and deterrence capabilities of its device. Much of the information that may provide substantial evidence for granting a petition is uniquely within the manufacturer's competence to supply, and without that information, the Agency cannot exercise its responsibility. Further, unlike an adjudicatory proceeding resolving claims among competing parties, the time within which the Agency must act is not open-ended.

If the Agency were to accept Ford's argument, conceivably a manufacturer could give the barest notice that it was requesting an exemption, and

then late in the 120-day period give NHTSA the necessary technical documentation to support the efficacy of the device. The Agency then would have insufficient time to act. The Agency does not interpret section 605 of the Cost Savings Act as contemplating this result.

On the other hand, the Agency believes that having two statutory deadlines impacts upon processing exemption petitions in ways that neither the Agency nor most of the commenters gave particular attention in the January 1986 rulemaking proceedings. Having a clearer standard of whether an incomplete submission is a "petition," or whether an incomplete petition is a "filed" petition would facilitate processing exemption requests. Therefore, the Agency will propose amendments to Part 543 that will focus specifically on what it means to "file" a "petition." In the meantime, the procedures set out in the final rule published today are in effect.

On the subject of the 120-day period for NHTSA to make its determination, VWoA commented that the Agency should respond within 60 days of the filing date. The company remarked that while its petition is pending, a manufacturer will not know whether he can install an exempt device, or must comply with the parts-marking standard. If the manufacturer had to do the latter, he would need at least three months before production to process and set up assembly line stations.

NHTSA notes that after full consideration of the subject matter, Congress selected 120 days as the period for Agency response. Although the Agency does not expect to use the full amount of time allowed to process each petition, it has been necessary to use most of it in the early phase of implementing the exemption provisions. The Agency anticipates that the processing time will decrease as the experience of the manufacturers and the Agency increases. Further, manufacturers can ensure that final action is taken on their petitions three or more months in advance of a model year by submitting the petitions early enough so that the 120-day period is completed by that time.

One commenter objected to a manufacturer's having to file a petition eight months before beginning production. Because the 8-month requirement is statutory, the Agency cannot consider changing it.

Finally, Ford commented that the Agency should amend proposed section 543.7(d) (paragraph 543.7(e) in the final rule) to state that an exemption becomes effective on the date of issuance instead of the date on which the Agency publishes notice of the exemption in the *Federal Register*. Ford argued that occasionally, there may be a substantial delay between issuing and publishing a document, and that the date of issuance would be the better reference date. The company stated that keying the reference date to issuance (which is earlier than publication) helps a manufacturer with product planning, and does not prejudice the Agency or the public because NHTSA's deliberations are complete when it issues an exemption, and because the statute requires exemption decisions to be made not later than four months before the production run of an exempt car line.

The Agency notes that the usual delay between issuing a document and publishing it in the *Federal Register* is three working days. However, having considered Ford's comment and the language set out in the proposed rule keying the effective date of an exemption to *Federal Register* publication, the Agency agrees that publication is not the appropriate reference for an exemption's effective date. The Agency has addressed this concern by amending the final rule to key the effective date either to issuance or to the date stated in the notice of exemption.

Terminating or Modifying an Exemption

Once NHTSA grants an exemption for a vehicle line, that exemption remains in effect unless the Agency either grants a petition to modify or terminates the exemption, or until the manufacturer stops manufacturing the exempted vehicle line. Under section 543.9, NHTSA may initiate a proceeding to terminate or modify an exemption granted under Part 543 either on the Agency's motion, or in response to the petition of an interested person. The rules provide a manufacturer with an opportunity to present his views once a proceeding concerning him has been commenced. Ford commented that the Agency should expand a manufacturer's procedural rights under proposed section 543.9. The company suggested that NHTSA provide a manufacturer with a copy of any petition to terminate or modify his exemption, a written statement of the Agency's reasons for initiating a proceeding, and an opportunity to present orally its position during a meeting with the Agency.

With respect to Ford's first two suggestions, the Agency notes that its intention was to provide these procedural opportunities, even though it did not explicitly state them. The Agency has addressed these matters expressly in the final rule. On the other hand, a decision whether to terminate or modify an exemption will depend on data showing the theft rate for the vehicle line in question before and after

installing an antitheft device, and on other technical data regarding effectiveness. The Agency thinks that data will be persuasive in these proceedings, and that, because of its technical nature, the data will be most effectively discussed in written submissions. Therefore, NHTSA declines to provide in section 543.9 for an opportunity to make an oral submission to the Agency.

Proposed section 543.9(f) states that NHTSA will publish a notice in the *Federal Register* if the Agency terminates or modifies an exemption. If NHTSA terminates an exemption, section 605 of the Cost Savings Act states that the termination is not effective until six months after the manufacturer receives a written termination notice. Ford suggests the Agency include an express statement that it will notify a manufacturer in writing of any decision either to modify or terminate an exemption. The Agency believes that this suggestion has merit. Therefore, the introductory language of section 543.9(f) has been amended to incorporate it. Similarly, NHTSA amends section 543.9(g)(1)(ii) to state expressly that a decision to terminate an exemption is effective no earlier than six months after the manufacturer receives written notice. This is a statutory condition, but the Agency has no objection to incorporating it into the regulations.

AMC/Renault objected to the provision under which NHTSA could terminate an exemption. The Agency declines to change this provision. Section 605 provides for termination, reflecting a legislative determination not to continue sanction of an antitheft device that proves to be less effective than parts-marking in reducing and deterring vehicle theft for a high-theft line.

The company further commented that when NHTSA wholly grants an exemption and later terminates it, there will exist a supply of unmarked replacement parts that but for the exemption, would have been subject to the parts-marking standard. These unmarked parts will remain in commerce, and later manufactured replacement parts will be marked. AMC/Renault asserts that such a circumstance will compromise "the enforceability of the system." The company asks the Agency to limit termination to instances where an exemption rests on incorrect or misrepresented data. NADA also expressed a concern about parts-marking in the wake of terminating an exemption, and suggested that NHTSA require parts-marking for all high-theft vehicle replacement parts.

The Agency is sympathetic to the commenters' concerns that if NHTSA were to terminate an exemption, there would be a residual supply of unmarked parts. That supply could enable a suspected thief to argue that the part in question came either from a pre-termination vehicle or replacement parts inventory.

Nevertheless, NHTSA cannot accommodate these concerns. First, section 602(d)(2)(A) of Title VI states that the vehicle theft prevention standard cannot require "identification of any part which is not designed as a replacement for a major part *required to be identified* under such standard." (Emphasis added.) As long as a manufacturer is producing a car line under an exemption granted *in whole*, there is no requirement to identify major parts otherwise subject to the theft standard; therefore, NHTSA cannot require marking replacement parts.

Second, the Agency does not believe it would be appropriate to decide never to use its authority to terminate an exemption upon a negative finding on the theft deterrence and reduction properties of the system.

Granting Exemptions in Part

NATB noted that under section 605, the Agency may grant an exemption petition "in whole or in part," and that no antitheft device will be "100% effective." The Bureau proposed that when NHTSA determines to grant an antitheft exemption, the Agency should grant *all* such exemptions in part, and continue to require parts-marking for engines and transmissions. NATB reasoned that because parts for these systems are interchangeable among car lines, "the prospect of non-identifiable engines and transmissions in exempt lines would actually serve as an incentive for the theft of these vehicles."

While NHTSA appreciates the commenter's concern, the Agency is aware of its authority to grant a partial exemption, and will do so where the evidence in support of an exemption petition so indicates. Further, neither the Cost Savings Act nor the regulations issued under it contemplate that any theft deterrent practice will be 100 percent effective. The criterion that must be satisfied is not the absolute efficacy of a device, but rather a likelihood that the petitioner's device will be as effective as parts-marking in reducing and deterring theft.

NATB also commented that some vehicles exempt from the parts-marking standard may have parts interchangeable with high-theft lines that are subject to parts-marking. The organization asserts that granting a partial exemption is a way to address this circumstance. NATB suggests that when a petitioner seeks an exemption under Part 543 for a line

that has two (or more, presumably) parts interchangeable with a line subject to the parts-marking standard, NHTSA should require the petitioner to mark the interchangeable parts. The Agency restates its position that it will grant partial exemptions where appropriate under the standards of the Cost Savings Act.

One commenter suggested that NHTSA require statements of intention from manufacturers regarding their plans to continue any voluntary parts identification techniques. The Agency has no authority to require such statements.

Maintaining, Modifying, and Replacing Antitheft Devices

In connection with a comment on whether direct importers can petition for antitheft exemptions (discussed earlier in this preamble), NADA urged the Agency to focus on proper installation, maintenance, and repair of antitheft devices. The Association stated that an improperly installed, maintained, or repaired device will be ineffective. It concluded that "each NHTSA petition review will be inadequate to the extent that someone other than the petitioner is allowed to attempt jerry-rigged retrofits of these devices."

The Agency observes that exemptions are granted under section 605 only for installing antitheft devices as original standard equipment, and not for retrofitting such devices. Further, the continued application of exemptions would be premised upon the antitheft devices being so installed on the exempted cars. However, the Agency has no authority to prohibit the retrofitting of a vehicle with an antitheft device. As to maintaining and repairing original standard equipment or retrofitted antitheft devices, such actions are outside the scope of this rulemaking, and beyond the Agency's authority.

The Vehicle Security Association (VSA) commented that if an aftermarket antitheft system performs as well as or better than an original manufacturer-installed antitheft device, a retailer of a high-theft vehicle line should be able to install or modify the original equipment system. Installing an antitheft device on an unexempted vehicle would contribute to the purposes of Title VI. However, with respect to an exempted car line, substituting a different or modified device for the standard equipment antitheft device on that line would eviscerate the legislative requirement that the entire line have the standard equipment device. The continued application of exemptions rests on the premise that antitheft devices will be standard on the exempted cars. Further, the substituted or modified device might or might not perform as well as the standard equipment device. Therefore, NHTSA cannot endorse such a practice.

Reliance on an Exemption for a Portion of a Model Year

In connection with several exemption petitions, an issue has arisen concerning the permissibility of a manufacturer marking an exempted line for a portion of a model year, and then ceasing marking and instead installing an antitheft device on the line for the balance of the year. Such practice is not permissible since if an antitheft device is to be installed in lieu of marking for any given model year, the device must be installed as standard equipment for the entire model year.

Other Comments

One manufacturer suggested that the Agency amend proposed section 543.5(a) to state that a manufacturer could petition NHTSA for exemptions from parts-marking requirements for not more than two *additional* lines after model year 1987. The Agency declines to make this change because the request assumes that any manufacturer seeking an exemption for a car line for model year 1988 and thereafter will first have sought an exemption for another car line for model year 1987. However, some manufacturers may first submit an exemption petition for a later model year.

Fiat suggested that "Part 543 be re-examined to exempt from counting, those lines presenting a theft rate under 10 or 20 cars per annum." This manufacturer produces some specialty car lines with low production levels where a small absolute number of thefts may determine whether the line becomes high-theft. Fiat reasoned that with so small a number of thefts, any vehicle theft data would be statistically unreliable. The Agency understands this comment as suggesting that where the theft rate for a car line is 10 or 20 cars per year, NHTSA grant the car line exempt status without the manufacturer's having to petition under Part 543. The Agency notes that it may grant exemptions only under the exemption process in section 605. The Agency cannot excuse a manufacturer from this process if he seeks an exemption from parts-marking requirements.

In consideration of the preceding, Part 543 is added to Title 49 of the Code of Federal Regulations.

Issued on: September 1, 1987

Diane K. Steed
Administrator

52 F.R. 33821
September 8, 1987

PART 543—EXEMPTION FROM VEHICLE THEFT PREVENTION STANDARD

Authority: 15 U.S.C. 2025, delegation of authority at 49 CFR 1.50.

§ 543.1 Scope.

This part establishes procedures under section 605 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2025) for filing and processing petitions to exempt lines of passenger motor vehicles from Part 541 of this chapter, and procedures for terminating or modifying an exemption.

§ 543.2 Purpose.

The purpose of this Part is to specify the content and format of petitions which may be filed by manufacturers of passenger motor vehicles to obtain an exemption from the parts-marking requirements of the vehicle theft prevention standard for passenger motor vehicle lines which include, as standard equipment, an antitheft device if the agency concludes that the device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements. This Part also provides the procedures that the Agency will follow in processing those petitions and in terminating or modifying exemptions.

§ 543.3 Application.

This Part applies to manufacturers of high-theft passenger motor vehicles; and to any interested person who seeks to have NHTSA terminate an exemption.

§ 543.4 Definitions.

(a) *Statutory terms.* All terms defined in sections 2, 601, and 605 of the Motor Vehicle Information and Cost Savings Act are used in accordance with their statutory meaning unless otherwise defined in paragraph (b) below.

(b) *Other definitions.*

"Line" or "car line" means a name which a manufacturer applies to a group of motor vehicles of the same make which have the same body or chassis, or otherwise are similar in construction or design. A "line" may, for example, include 2-door, 4-door, station wagon, and hatchback vehicles of the same make.

"NHTSA" means the National Highway Traffic Safety Administration.

§ 543.5 Petition: general requirements.

(a) For each model year, a manufacturer may petition NHTSA to grant exemptions for up to two lines of its passenger motor vehicles from the requirements of Part 541.

(b) Each petition filed under this Part for an exemption must—

(1) Be written in the English language;

(2) Be submitted in three copies to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590;

(3) State the full name and address of the petitioner, the nature of its orgnization (individual, partnership, corporation, etc.), and the name of the State or country under the laws of which it is organized;

(4) Be submitted at least 8 months before the commencement of production of the lines specified under paragraph (5) of section 543.5(b) for the first model year in which the petitioner wishes those lines to be exempted, and identify that model year;

(5) Identify the passenger motor vehicle line or lines for which exemption is sought;

(6) Set forth in full the data, views, and arguments of the petitioner supporting the exemption, including the information specified in section 543.6; and

(7) Specify and segregate any part of the information and data submitted which the petitioner requests be withheld from public disclosure in accordance with Part 512, *Confidential Business Information*, of this chapter.

§ 543.6 Petition: specific content requirements.

(a) Each petition for exemption filed under this Part must include:

(1) A statement that an antitheft device will be installed as standard equipment on all cars in the line for which an exemption is sought;

(2) A list naming each component in the antitheft system, and a diagram showing the location of each of those components within the vehicle;

(3) A discussion that explains the means and process by which the device is activated and functions, including any aspect of the device designed to—

(i) Facilitate or encourage its activation by motorists,

(ii) Attract attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key,

(iii) Prevent defeating or circumventing the device by an unauthorized person attempting to enter a vehicle by means other than a key,

(iv) Prevent the operation of a vehicle which an unauthorized person has entered using means other than a key, and

(4) The reasons for the petitioner's belief that the antitheft device will be effective in reducing the deterring motor vehicle theft, including any theft data and other data that are available to the petitioner and form a basis for that belief;

(5) The reasons for the petitioner's belief that the agency should determine that the antitheft device is likely to be as effective as compliance with the parts-marking requirements of Part 541 in reducing and deterring motor vehicle theft, including any statistical data that are available to the petitioner and form a basis for petitioner's belief that a line of passenger motor vehicles equipped with the antitheft device is likely to have a theft rate equal to or less than that of passenger motor vehicles of the same, or a similar, line which have parts marked in compliance with Part 541.

(b) Any petitioner submitting data under subparagraph (4) or (5) of this section shall submit an explanation of its belief that the data are sufficiently representative and reliable to warrant NHTSA's reliance upon them.

§ 543.7 Processing an exemption petition.

(a) NHTSA processes any complete petition. If a manufacturer submits a petition that does not contain all the information required by this part, NHTSA informs the manufacturer of the areas of insufficiency and advises the manufacturer that the Agency does not process the petition until it receives the required information.

(b) The Agency grants a petition for an exemption from the parts-marking requirements of Part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541.

(c) The agency issues its decision either to grant or deny an exemption not later than 120 days after the date on which a complete petition is filed.

(d) Any exemption granted under this Part applies only to the vehicle line or lines that are the subject of the grant, and are equipped with the antitheft device on which the line's exemption was based.

(e) An exemption granted under this Part is effective for the model year beginning after the model year in which NHTSA issues the notice of exemption, unless the notice of exemption specifies a later model year.

(f) NHTSA publishes a notice of its decision to grant or deny an exemption petition in the *Federal Register*, and notifies the petitioner in writing of the agency's decision.

§ 543.8 Duration of exemption.

Each exemption under this Part continues in effect unless its is modified or terminated under section 543.9, or the manufacturer ceases production of the exempted line.

§ 543.9 Terminating or modifying an exemption.

(a) On its own initiative or in response to a petition, NHTSA may commence a proceeding to terminate or modify any exemption granted under this Part.

(b) Any interested person may petition the Agency to commence a proceeding to terminate or modify an exemption.

(c)(1) In a petition to terminate an exemption, the petitioner must:

(i) Identify the vehicle line or lines that are the subject of the exemption;

(ii) State the reasons for petitioner's belief that the standard equipment antitheft device installed under the exemption is not as effective as compliance with the parts-marking requirements of Part 541 in reducing and deterring motor vehicle theft;

(iii) Comply with section 543.5, paragraphs (b)(1)-(3) and (7).

(2) In a petition to modify an exemption, the petitioner must:

(i) Identify the vehicle line or lines that are the subject of the exemption;

(ii) Request permission to use an antitheft device similar to, but different from, the standard equipment antitheft device which is installed under the exemption;

(iii) Comply with section 543.5, paragraphs (b)(1)-(3) and (7); and

(iv) Provide the same information for the modified device that is required under section 543.6 for a new device, except that the information specified by section 543.6(a)(3) need be provided only to the extent that the modified device differs from the standard equipment antitheft device installed under the exemption.

(d) NHTSA processes any complete petition. If a person submits a petition under this section that does not contain all the information required by it, NHTSA informs the manufacturer of the areas of insufficiency and advises the manufacturer that the Agency does not process the petition until it receives the required information.

(e) If NHTSA denies a petition requesting a proceeding to terminate or modify an exemption, the Agency notifies the petitioner by letter.

(f) If NHTSA commences a termination proceeding on its own initiative or in response to a petition, the Agency provides the manufacturer of the exempted line with a copy of the petition, if any, a written statement of NHTSA's reasons for commencing the proceeding, and an opportunity to present its written views.

(g)(1) The Agency terminates an exemption if it determines that the antitheft device installed under the exemption has not been as effective as parts-marking in reducing and deterring motor vehicle theft.

(2) Except as provided in paragraph (g)(3) of this section, a decision to terminate an exemption under this section takes effect on the later of the following dates:

(i) The last day of the model year in which NHTSA issues the termination decision, or

(ii) Six months after the manufacturer receives written notice of the termination.

(3) If a manufacturer shows good cause why terminating its exemption effective on a date later than the one specified in paragraph (g)(2) of this section is consistent with the public interest and the purposes of the Act, the agency may set such later date.

(h)(1) The agency modifies an exemption if it determines, based on substantial evidence, that the modified antitheft device described in the petition is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541.

(2)(i) Except as provided in paragraph (h)(2)(ii) of this section, a decision to modify an exemption under this section takes effect on the first day of the model year following the model year in which NHTSA issued the modification decision.

(ii) If a manufacturer shows good cause why modifying its exemption effective on a date earlier than the one specified in paragraph (h)(2)(i) of this section is consistent with the public interest an the purposes of the Act, the Agency may set such earlier date.

(i) (Reserved.)

(j) NHTSA publishes notice in the *Federal Register* of any agency decision terminating or modifying an exemption, and notifies are affected manufacturer in writing.

52 F.R. 33821
September 8, 1987

PREAMBLE TO PART 544—MOTOR VEHICLE THIEF PREVENTION: INSURER REPORTING REQUIREMENTS

(Docket No. T86-01; Notice 2)

ACTION: Final rule.

SUMMARY: This rule is issued pursuant to section 612 of the Motor Vehicle Information and Cost Savings Act, which requires each subject insurer to furnish an annual report, regarding comprehensive insurance for motor vehicles and thefts and recoveries of motor vehicles, to NHTSA beginning October 25, 1986. The reports are intended to aid the agency in implementing the motor vehicle antitheft provisions of the Cost Savings Act, including the requirement in section 612 that the agency periodically compile and publish the insurance information in a form that will be helpful to the public, the law enforcement community, and Congress. The information will also aid the agency in implementing section 614, which requires the agency to submit one report to Congress not later than October 1987 and another not later than October 1990. The October 1990 report is required to include an evaluation of the effectiveness of the Federal Motor Vehicle Theft Prevention Standard (49 CFR Part 541) and both the 1987 and 1990 reports are required to include an assessment of whether that standard should be extended to other classes of motor vehicles, such as trucks, vans, and motorcycles.

This rule requires certain insurers to report annually on the thefts and recoveries of motor vehicles that they insure, their rating rules and plans, and supporting data for establishing the premiums they charge for comprehensive insurance coverage and for the premium penalties for vehicles considered more likely to be stolen, their actions to reduce the premiums they charge for comprehensive insurance coverage because of a reduction in motor vehicle thefts, and their actions to assist in deterring and reducing motor vehicle thefts. Information in each of these areas is expressly required to be included in the insurer reports by section 612. Additionally, this rule requires insurers to report information about vehicles equipped with antitheft devices, to aid the agency in carrying out its responsibilities under the Cost Savings Act.

NHTSA has minimized the number of insurance companies subject to this reporting requirement, by exempting every insurer that qualified for an exemption under section 612. As a result, only the 31 insurance companies listed in this rule are subject to this reporting requirement. The agency tried to obtain the information needed to allow it to create a similar exemption for small rental and leasing companies. However, those companies did not provide the agency with that information. Accordingly, all companies with fleets of 20 or more vehicles that are used primarily for rental or lease (other than a governmental entity) and which are not covered by theft insurance issued by insurers of passenger motor vehicles remain subject to a statutory duty to file annual reports.

NHTSA remains concerned that a requirement that annual reports be filed by the smaller rental and leasing companies will impose an unnecessary burden on those companies. The agency believes that the information in the reports of the larger rental and leasing companies would be sufficient to provide a representative sample of the theft experience of all rental and leasing companies, just as the information from the larger insurance companies will give NHTSA a representative sample of the experience of insurance companies. Therefore, NHTSA believes that reports from the smaller rental and leasing companies are not necessary to allow the agency to fulfill its statutory duties and would impose an unnecessary burden on these smaller companies. Notwithstanding this belief, section 612 requires all rental and leasing companies to file these reports unless NHTSA can make two determinations. The rental and leasing companies have not provided NHTSA with the information it needs to determine whether exemptions for smaller rental and leasing companies can be justified under section 612. Accordingly, all rental and leasing companies will be subject to these reporting requirements, unless NHTSA obtains information before January 31, 1987, that would allow the agency to determine whether exemptions for smaller rental and leasing companies can be justified.

DATES: This rule is effective on January 2, 1987.

SUPPLEMENTARY INFORMATION:

The Motor Vehicle Theft Law Enforcement Act of 1984

The Motor Vehicle Theft Law Enforcement Act of 1984 (the Theft Act) added Title VI to the Motor Vehicle Information and Cost Savings Act (the Cost Savings Act). Pursuant to Title VI, NHTSA promulgated a vehicle theft prevention standard mandating the marking of the major parts of frequently stolen vehicles (50 FR 43166; October 24, 1985).

Section 612 of the Cost Savings Act requires the submission of annual reports by insurers to this agency, beginning in 1986, and specifies minimum content requirements for those reports. Section 612(b) requires NHTSA to periodically compile and publish the information set forth in the insurer reports, in a form that will be helpful to the public, including Federal, State, and local police and the Congress. These insurer reports are also intended to aid the agency in implementing Title VI, including the requirements in section 614 that the agency submit a report to Congress not later than October 1987 and another report not later than October 1990. Section 614 specifies that the October 1990 report must include a detailed evaluation of the effectiveness of the Federal Motor Vehicle Theft Prevention Standard (49 CFR Part 541) and an assessment of whether that standard should be extended to other classes of motor vehicles, such as trucks, vans, and motorcycles.

The required contents of the insurer reports are set forth in section 612(a)(2) of the Cost Savings Act. That section provides that insurer reports must include the following information:

1. the thefts and recoveries (in whole or in part) of motor vehicles;

2. the number of vehicles which have been recovered intact;

3. the rating rules and plans, such as loss data and rating characteristics, used by such insurers to establish premiums for comprehensive insurance coverage for motor vehicles, including the basis for such premiums, and premium penalties for motor vehicles considered by such insurers as more likely to be stolen;

4. the actions taken by insurers to reduce such premiums, including changes in rate levels for automobile comprehensive coverages, due to a reduction in thefts of motor vehicles;

5. the actions taken by insurers to assist in deterring or reducing thefts of motor vehicles; and

6. such other information as the [NHTSA] may require to administer Title VI and to make the reports and findings required by Title VI.

The Notice of Proposed Rulemaking

In response to this statutory mandate, NHTSA published a notice of proposed rulemaking (NPRM) at 51 FR 23095; June 25, 1986. The NPRM proposed to exempt all but 31 insurance companies from the reporting requirements, because NHTSA tentatively concluded that all other insurance companies met the statutory requirements for being exempted as small insurers. This determination did not apply to rental and leasing companies, because there are different statutory requirements for exempting such companies from these reporting requirements. However, the NPRM sought information that would allow the agency to include a general exemption for small rental and leasing companies in this final rule.

The NPRM proposed to require insurers to subdivide their insured motor vehicle population into passenger cars, light and heavy trucks, multipurpose passenger vehicles, and motorcycles, and provide separate information for each of these types of vehicles. It also proposed that insurers report information separately for each State in which they do business, so that the agency would be able to perform a State-by-State analysis of the information in these reports. Both these elements are required by section 612 of the Cost Savings Act (15 U.S.C. 2032). The insurers would provide the following information:

1. Total thefts and recoveries of insured vehicles during the reporting period, broken down into make, model, and line for each vehicle type and the use made by the insurer of this information;

2. The rating rules and plans used by the insurer to establish comprehensive insurance premiums and premium penalties for motor vehicles considered by the insurer as more likely to be stolen, broken down into the risk groupings the insurer uses for its own purposes;

3. The actions taken by the insurer to reduce comprehensive insurance premiums because of a reduction in vehicle thefts;

4. Information about any discounts the insurer offers for vehicles equipped with antitheft devices, including the number of such discounts and thefts and recoveries of vehicles that received such discounts; and

5. The insurer's actions to assist in deterring and reducing vehicle thefts.

The NPRM explained that this information was the minimum that could be required in the insurer reports, consistent with the provisions of the Cost Savings Act. Items 1, 2, 3, and 5 listed above are expressly required to be included in the insurer reports by section 612(a). Only item 4 listed above was not expressly required by section 612(a). It was proposed to assist the agency in

satisfying its statutory mandate under section 605 to make determinations of whether antitheft devices are as effective as parts marking in deterring and reducing vehicle thefts. The information in the insurer reports would be both more current and more reliable than the information currently available to the agency for making such determinations. This requirement was proposed to be included in the insurer reports under the authority of section 612(a)(2)(F), which grants NHTSA authority to require insurers to report "such other information as the [NHTSA] may require to administer this title and to make the reports and findings required by this title."

The agency received 25 comments on the NPRM, representing the opinions of insurance companies and trade associations of insurance companies, car rental companies, motor vehicle manufacturers, car dealers, and the National Automobile Theft Bureau. Each of these comments has been considered and the most significant points are addressed below.

The NPRM contained a detailed background discussion of the provisions of section 612 and explained in detail the agency's rationale for proposing each of the requirements. This preamble follows the same organizational format used in the NPRM, so that readers can easily compare the two documents.

The Legislative Intent Underlying Section 612

The agency proposed to consciously tailor the insurer reporting requirements so that they:

1. require insurers to report only information that is essential to the purposes of Title VI and do not require information that is not related to the agency's tasks under the title;

2. impose the smallest burdens both in terms of time and money on the reporting insurers that is consistent with the agency's informational needs under Title VI; and

3. require insurers to report only data already gathered for their own purposes to the maximum extent possible, and only require generation of new data when these new data must be reported to satisfy the explicit requirements of section 612.

This approach was proposed after carefully considering the language of section 612 and the following passage from the House Report:

> The Committee anticipates that much of the information required by this provision is already provided by the insurance industry to States and that *generation of new data in new formats will not be necessary where this is the case.* Of course, DOT will have to examine the matter to ensure that these requirements are fully met. The Committee urges the [NHTSA] to devise a reporting system for insurance information with an eye toward imposing requirements which will be low cost and of minimal burden to the industry, but which provide *all* of the data required by this section (emphasis added). H.R. Rep. No. 1087, 98th Cong., 2d Sess., at 21 (1984).

NHTSA observed that the corollary to the first quoted sentence is the possibility that some of the information required by section 612 is not already provided by insurers to the States. In those cases, Congress anticipated that generation of new data or providing existing data in new formats would be necessary to satisfy the requirements of section 612. The last quoted sentence makes clear that NHTSA has no discretion regarding the collection of all of the information specified in section 612.

In response to these statements in the NPRM, the Alliance of American Insurers (the Alliance), the American Insurance Association (AIA), and the National Association of Independent Insurers (NAII) all questioned NHTSA's authority to require any alteration in existing statistical practices. These comments were based on the following statement by Senator Danforth during the final Senate consideration of the Theft Act: "Specifically, no alteration in existing statistical or data collection practices is being sought by this reporting provision." 130 Cong. Rec. S13585 (daily ed. Oct. 4, 1984). These commenters stated that the information proposed to be required by the NPRM would require alterations in both existing statistical and data collection practices, and was, therefore, inconsistent with the provisions of the Theft Act.

NHTSA considered this statement when drafting the NPRM. It was a basis for the agency's decision to avoid requiring insurers to alter existing statistical and data collection practices except when necessary to satisfy an explicit requirement of section 612 of the Cost Savings Act. However, to the extent that this statement conflicts with the express requirements of section 612, the agency does not believe that floor statements can be given effect to override the clear and unambiguous requirements set forth in the statute. *Railroad Commission of Wisconsin v. Chicago B & O Railroad Co.,* 257 U.S. 563, 589 (1922); *American Smelting & Refining Co. v. Occupational Safety & Health Review Commission,* 501 F.2d 504 (8th Cir. 1974). Further, to the extent that this statement conflicts with the statements in the House Commerce Committee Report quoted above, NHTSA notes that statements in committee reports have been held to carry greater weight than statements of legislators in the course of debates. *Crown Central Petroleum Corp. v. Federal Energy Administration,* 542 F.2d 69 (Temporary Emergency Court of Appeals 1976). Accordingly, NHTSA concludes that it is statutorily compelled to require altera-

tions in existing practices when such alterations are necessary to satisfy the express provisions of Title VI of the Cost Savings Act.

Who Must Report; Who May be Exempted

Section 612 defines the term "insurer" very broadly, and requires all insurers to file annual reports with the agency unless NHTSA exempts them from the reporting requirements. There are two broad groups of entities that fall within the meaning of an insurer for the purposes of section 612. First, every person engaged in the business of issuing passenger motor vehicle insurance policies is an insurer under section 2(12) of the Cost Savings Act (15 U.S.C. 1901(12)), regardless of the size of the business. Second, section 612(a)(3) specifies that for the purposes of section 612, the term "insurer" includes any person, other than a governmental entity, who has a fleet of 20 or more motor vehicles used primarily for rental or lease and not covered by theft insurance policies issued by an insurer.

a. *Issuers of Motor Vehicle Insurance Policies*

Small companies in the first group of insurers, i.e., issuers of motor vehicle insurance policies, must be exempted from section 612 of the Cost Savings Act, if the agency finds that such exemption will not significantly affect the validity or usefulness of the information collected in the insurer reports. Section 612(a)(5) defines a "small insurer" as one whose premiums account for less than one percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States.

The agency can exempt small insurers only if it "finds that such exemption will not significantly affect the validity or usefulness of the information collected and compiled under [section 612], nationally or State-by-State." Further, some insurers that satisfy the definition of a small insurer are nevertheless ineligible for any exemption under section 612(a)(5) and others are eligible for only a partial exemption. Section 612(a)(5)(B) provides that NHTSA *cannot* exempt as a small insurer any person considered an insurer solely because it has a fleet of 20 or more vehicles used primarily for rental or lease and not covered by theft insurance. In other words, rental and leasing companies do not qualify for a small insurer exemption regardless of their size—the small insurer exemption is available only for insurance companies. Additionally, section 612 provides that if an insurance company satisfies the section's definition of small insurer, but accounts for 10 percent or more of the total premiums for all forms of motor vehicle insurance issued by insurers within a particular State, such insurer must report the required information about its operations in that State.

To implement these statutory criteria for exempting small insurers, NHTSA proposed to use data voluntarily supplied by insurance companies to A.M. Best to determine insurers' market shares nationally and in each State. The commenters supported this proposal. The agency has concluded that the A.M. Best data are both accurate and timely, and that the use of A.M. Best data does not impose any burdens on any party. Accordingly, this final rule adopts the proposed approach.

Using the A.M. Best data, NHTSA identified 20 insurance groups that did not qualify as small insurers because their premiums accounted for one percent or more of the total motor vehicle insurance premiums paid nationally. Again using the A.M. Best data, NHTSA identified 11 other insurance groups whose premiums accounted for 10 percent or more of the total motor vehicle insurance premiums within any one State. These 31 insurance groups received more than 57 percent of the total premiums paid for all forms of motor vehicle insurance issued by insurers within the United States in 1984, the most recent year for which the A.M. Best data are available. Additionally, these 31 companies received at least 30 percent of the total premiums paid for motor vehicle insurance in each of the 50 States, ranging from a low of 30 percent in North Dakota to a high of 73 percent in Hawaii.

Because these reports would represent such a significant percentage of the national and individual State premiums paid for motor vehicle insurance, the NPRM tentatively concluded that the filing of reports by these 31 insurance companies would provide the agency with representative data, both nationally and on a State-by-State basis, and that these data would be sufficient for the agency to carry out its activities and responsibilities under Title VI. Accordingly, the NPRM concluded that exemptions for all insurance companies that qualify as small insurers would not affect the validity or usefulness of the information collected in these reports either nationally or on a State-by-State basis, and proposed to exempt all insurance companies that qualify as small insurers from these reporting requirements.

The commenters all supported the proposed exemptions, although the Hartford commented that NHTSA may be missing productive sources of information by not getting reports from small specialty carriers that deal in high-risk cars and the assigned risk carriers in the individual States. NHTSA agrees that it is not getting information from all insurance companies. However, the agency concludes that exempting all insurance companies except the 31 insurers that do not qualify as small insurers will not significantly affect the validity or usefulness of the information collected and compiled under section 612, either nationally or State-by-State. For this reason, and since the agency is attempting to impose the smallest burden on insurers

consistent with the language of section 612, this comment was not adopted. This final rule exempts all insurance companies that qualify as small insurers under section 612(a)(5)(C) from the reporting requirements.

To implement this determination, Part 544 includes Appendices A and B listing all insurance companies subject to these requirements. Appendix A lists those companies whose premiums for motor vehicle insurance accounted for one percent or more of all premiums paid for motor vehicle insurance issued by insurers within the United States. The companies listed in Appendix A are subject to the reporting requirements for each State in which they do business. Appendix B lists those companies whose premiums accounted for 10 percent or more of the premiums paid for all forms of motor vehicle insurance issued by insurers in any one of the 50 States. The companies listed in Appendix B are subject to the reporting requirements only for the State or States listed in parentheses after the company's name.

Proposed Appendix B listed a Southern F & B Group as subject to the reporting requirements in Arkansas. Southern Farm Bureau commented that it believed the reference was to it, since it was unaware of any group named Southern F & B. Southern Farm Bureau was correct and its proper name appears in final Appendix B. Additionally, the National Automobile Theft Bureau (NATB) commented that the 1984 A.M. Best data on which the agency was relying showed Southern Farm Bureau with 10 percent or more of the premiums in both Arkansas and Mississippi. NATB is correct, and Appendix B is corrected to show that Southern Farm Bureau is subject to the reporting requirements in both these States.

The agency will update these appendices annually, shortly after A.M. Best publishes its revised listings, to reflect changes in premium shares for the insurance companies. An insurer not formerly subject to these reporting requirements whose name is added to one of these appendices will have to file a report in the year following the year in which its name is added to the appendices. For example, if an insurer's name is added to the appendices in November 1986, it would be required to file a report under this part in October 1987. AIA commented that NHTSA should notify by mail those insurers that become subject to these reporting requirements, because smaller insurers may not be aware of notices published in the *Federal Register*. No such provision is incorporated in this final rule. The government traditionally communicates its regulatory decisions by publishing those decisions in the *Federal Register*. Further, publication in the *Federal Register* is sufficient legal notice to all affected parties, pursuant to the Federal Register Act (44 U.S.C. 1507). NHTSA encourages AIA and other insurance trade associations to help publicize these requirements, so that subject insurers will know of their legal obligations.

b. *Rental and Leasing Companies*

Small companies in the second group of insurers, i.e., rental and leasing companies, may be exempted from these reporting requirements under section 612(a)(4) of the Cost Savings Act. That section provides that NHTSA shall exempt from these reporting requirements any insurer, if the agency determines that:

(1) the cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer, *and*

(2) the insurer's report will not significantly contribute to carrying out the purposes of Title VI.

Although exemptions under this section are statutorily available to all insurers, NHTSA stated that it was unlikely that it could use this authority to exempt an insurance company listed in Appendix A or B. This is because the agency's determination to exempt all small insurers from this rule was predicated on the conclusion that reports by *all* of the insurers listed in Appendix A or B would provide the agency with data that are representative both nationally and State-by-State. Accordingly, NHTSA believes that exemptions under section 612(a)(4) will be granted primarily to rental and leasing companies.

The NPRM sought information that would allow the agency to make *both* of the statutory determinations it must make if it is to structure a blanket exemption for small rental and leasing companies, similar to the blanket exemption provided for small insurance companies.

In response to this request, Chrysler commented that it had fewer than 50 vehicles out of 15,000 in its leased fleet stolen over the past year. Further, it stated that its fleet is atypical and information on the fleet could bias the agency study. Therefore, Chrysler recommended that it should not be subject to the insurer reports.

General Motors (GM) stated that the sample of the 31 large insurers is representative in itself, and there is no need to get reports from any rental and leasing companies. If rental and leasing companies are to be subject to the reporting requirements, GM commented that the agency should structure exemptions according to the 1 percent national or 10 percent of any State criteria used for small insurers, and that the 1 percent or 10 percent should be with reference to the total number of registered vehicles. GM also stated that if they were subject to these reporting requirements for their 5,000 vehicle leased fleet, they would have to implement a new recordkeeping system.

The National Automobile Dealers Association (NADA) stated that most dealers engage in rental or leasing operations and that 44 percent have 20 or more vehicles in their rental or leasing fleets. NADA further stated that it was not aware of any fleet of 20 or more vehicles that is not covered by theft insurance. If there are some fleets of 20 or more vehicles not covered by theft insurance, they would not differ significantly from those fleets covered by theft insurance. Accordingly, NADA urged NHTSA to conclude that all car dealers should be exempted from these reporting requirements, because the information in their reports would not significantly contribute to carrying out the purposes of the Theft Act. NADA acknowledged that this argument might not respond to the first statutory criteria (costs of reporting excessive in relation to the size of the business), but stated that if NHTSA needed cost information, it should conduct its own survey.

The American Car Rental Association (ACRA) commented that rental cars are "prime targets" for thieves. They suggested that NHTSA require reports under Part 544 only from rental car companies that operate a fleet in excess of 20,000 vehicles. If adopted, this suggestion would require reports by the 12 largest car rental companies. ACRA stated that this approach would:

a. give a statistically valid sample;

b. ensure that fleets covered by theft insurance were excluded from the requirements, since most fleets with fewer than 20,000 vehicles are franchise operations; and

c. avoid the practical problems of collecting data from several thousand car rental operations.

None of these commenters responded to the NPRM's request for information on the probable costs of preparing reports under Part 544. Without this information, the agency is unable to structure a blanket exemption for small rental and leasing companies. This is because NHTSA has no basis for making the first required determination under section 612(a)(4); i.e., that the cost of preparing and furnishing these reports is excessive in relation to the size of the insurer's business. Accordingly, *all* rental and leasing companies with fleets of 20 or more vehicles that are not covered by theft insurance policies issued by insurers of motor vehicles are required to file reports under Part 544.

However, NHTSA has no desire to impose an unnecessary burden on the smaller rental and leasing companies. Just as the agency believes that it will obtain a representative sample of insurance companies by requiring reports only from large insurance companies, the agency believes that it would obtain a representative sample of rental and leasing companies by requiring reports only from the large rental and leasing companies. The agency has tried to obtain the necessary information to allow it to exempt these companies twice, before publishing the NPRM and in the NPRM itself. In neither instance has the agency been successful.

Absent this information, this final rule must apply to all rental and leasing companies with 20 or more vehicles in their fleet. However, the agency will again try to obtain from the rental and leasing companies and their trade associations the information needed to exempt the smaller rental and leasing companies from this regulation before January 31, 1987. If NHTSA is successful in this effort and the information allows NHTSA to make the determinations required under section 612 to exempt rental and leasing companies, the agency will publish a rule exempting the small rental and leasing companies from this reporting requirement before January 31, 1987. Otherwise, all rental and leasing companies with fleets of 20 or more vehicles will be required to file their reports by January 31, 1987.

Even if NHTSA does not get the information needed to allow it to structure a blanket exemption from these reporting requirements for the smaller rental and leasing companies, NHTSA will entertain individual requests for exemption from those companies as long as the requests include all necessary information. To qualify for an exemption from the reporting requirements, rental or leasing companies that self-insure their fleets must provide the following information, as specified in the NPRM:

1. Estimates of the probable cost of preparing and filing the reports required by this rule, and the methodology used for estimating those probable costs;

2. Information about the size of the company's business. For the purposes of these insurer reports, NHTSA concludes that the most important and most easily provided information in response to this statutory requirement is the size of the rental or leasing fleet. This is because larger fleets would be expected to have more thefts and recoveries of vehicles; and

3. The reasons that the rental or leasing company believes its report will not significantly contribute to carrying out the purposes of Title VI.

NHTSA would then evaluate the information submitted by the rental or leasing company to see whether the information was sufficient to allow the agency to make the determinations required by section 612(a)(2)(4). If NHTSA makes those determinations, it would initiate rulemaking to exempt the rental or leasing company.

Any rental or leasing company that believes it satisfies the criteria for an exemption from these reporting requirements should send a letter to the

NHTSA Administrator at the address shown in S544.5(8) for submitting insurer reports. This letter should include the information on the three points outlined above. NHTSA wishes to emphasize that it can exercise its authority to grant such exemptions *only* if it makes both determinations required by section 612(a)(4). Thus far, neither the comments on the NPRM nor letters requesting exemptions submitted by California taxicab fleets have provided information that would allow NHTSA to make the first required determination, i.e., that the cost of preparing and submitting the reports is excessive in relation to the size of the rental or leasing company's business. Absent information on this point, NHTSA cannot exempt any rental or leasing companies from these reporting requirements. The agency would also like to emphasize that rental or leasing companies submitting letters requesting exemptions remain subject to these reporting requirements until such time as the NHTSA Administrator sends a letter authorizing such exemption. In other words, simply submitting a letter asking for an exemption does not relieve a rental or leasing company of its statutory obligation to file these reports.

The agency noted in the NPRM that rental and leasing fleets that have a contractual requirement for the renter or lessee to obtain comprehensive insurance coverage for some or all of the vehicles in the fleet need not count those vehicles in determining how many vehicles in their fleet are not covered by theft insurance. There were two reasons supporting this position. First, requiring both the rental or leasing company and the insurance company to report the theft and any recovery of the vehicle would result in double counting. Second, the intent of section 612(a)(3) was to get information on self-insured vehicles, not vehicles covered by theft insurance.

The NATB commented that the double counting problem noted by the agency in the preamble would arise *only* if the insurer providing theft insurance for the vehicle in the rental or leasing fleet was one of the 31 companies listed in the appendices. If any other insurance company provided theft insurance for the vehicle, it would only be counted once.

The commenter is correct, but NHTSA concludes that it would still be inconsistent with the intent underlying section 612 to gather information on such vehicles. Section 612 is structured to ensure that NHTSA will get information on a representative sampling of the fleet population covered by insurance policies written by an insurance company. However, a sizeable number of large rental and leasing fleets self-insure their vehicles. No information on these vehicles would be included in the reports filed by insurance companies. Moreover, as noted in ACRA's comment, rental car fleets may experience much higher theft rates than the general fleet population. To ensure that the agency would receive information about these self-insured fleets, section 612 includes in the definition of the term "insurer" those self-insured rental and leasing fleets of 20 or more vehicles. In keeping with this purpose, the section does *not* require rental and leasing companies to report separately their theft experience if their fleets are covered by theft insurance policies written by an insurance company. Even though the rental or leasing companies covered by theft insurance may experience a higher than average theft rate, a representative sampling of that experience will be included in the reports filed by the large insurance companies. To adhere to this statutory scheme, NHTSA will not count rental or lease vehicles subject to a contractual requirement for the renter or lessee to obtain comprehensive insurance coverage for the subject vehicle when determining whether a rental or leasing company has a fleet of 20 or more vehicles not covered by theft insurance policies.

Time Period to be Covered in Annual Reports

The NPRM proposed that the reports due annually in October provide the information for the preceding calendar year. For example, the reports due in October 1987 would include the information for calendar year 1986. This time period was proposed for two reasons. First, it would allow insurers 10 months to gather the needed data, arrange it into the appropriate format, and report it to the agency. This is the longest period that could be allowed under the statute and would be consistent with the legislative intent that these reports impose the least possible burden on the insurers consistent with the statutory requirements. Second, Title VI of the Cost Savings Act requires theft data to be computed on a calendar year basis and calculations of median theft rates to be based on the calendar year data. If the insurer reports were based on an annual period other than the calendar year, the agency could not make comparative evaluations of the information in the insurer reports with the calendar year theft data provided to the agency by the National Crime Information Center (NCIC).

In response to this proposal, State Farm commented that the calendar year was acceptable for itself, but might present a problem for other insurers. State Farm suggested that Part 544 should allow the use of an "accident year" (data on all thefts that occurred during the calendar year), "policy year" (data on all thefts that occurred on policies issued or renewed during the calendar year), "report year" (data on all thefts reported to the insurer during the calendar year), or "fiscal year" (which could be any of the above 3 "years," but for a 12-month period other than the calendar year).

If this comment were adopted, NHTSA could not make comparative evaluations and aggregations of the reported data, which would significantly lessen the value of the data. State Farm conceded this point in its comment, but stated that imposing a uniform calendar year requirement would force "many reporting companies to undertake costly and time-consuming system and program changes." Although State Farm identified this potential burden in its comments, those comments also stated that a calendar year basis would be acceptable for State Farm. AIA supported the calendar year proposal stating that they "agree with NHTSA's assessment that this type of uniformity would assist the agency in making evaluations of the data *while at the same time imposing little burden upon insurers*" (emphasis added). Since no commenter, including State Farm, asserted that it would be burdened by the calendar year requirement, the agency sees no reason to sacrifice uniformity of the data. Accordingly, the calendar year basis for reporting is adopted in this final rule.

The NATB commented that thefts and recoveries should be reported on a fiscal year basis, using July 1 to June 30. NATB explained that this would give the agency more recent theft and recovery information, and would give the agency additional information for its October 1987 report to Congress. NHTSA agrees that this would result in the agency having more information for the 1987 report to Congress, but has not adopted this comment. The agency has thus far been reluctant to use partial year theft and recovery data for any purposes under the Theft Act, because partial year data are not always indicative of full-year trends. NHTSA does not want to now offer partial year data for the first time in a report to Congress.

Additionally, it would be unnecessarily complex and potentially burdensome to require that theft and recovery data be reported on a fiscal year basis, while all other information required under Part 544 be reported on a calendar year basis. NHTSA notes that not all the insurance companies listed in Appendices A or B are members of the NATB, and none of the rental or leasing companies are members. A requirement for fiscal year reporting of thefts and recoveries might well impose a significant burden on those insurers that are not members of the NATB, because of the relatively short time period for submitting the data and the different format. Finally, NHTSA does not believe there will be instances other than the 1987 report where the 10-month delay in reporting will present potential timing problems for the agency. Therefore, this rule does not adopt the NATB suggestion. However, NHTSA would certainly consider such data if it were voluntarily submitted by NATB on behalf of those reporting insurers that are members of that organization.

Southern Farm Bureau asked in its comments how the calendar year reporting should be implemented. Specifically, that insurer asked how they should report a vehicle stolen in 1985 and recovered with the claim settled in 1986. Under calendar year reporting, all events that occur in the calendar year should be reported. In Southern Farm Bureau's example, a theft would be reported in 1985 and a recovery would be reported in 1986.

General Requirements for Reports

The NPRM proposed basic format requirements for each report filed under Part 544. The NATB commented that these requirements should specify the exact statutory deadline of October 25 for filing these reports, instead of the proposed requirement that the reports be filed in October of each year. The proposed requirement was intended to offer the insurers slightly more flexibility in satisfying their statutory responsibilities. However, NHTSA has no objection to specifying that the reports are due not later than October 25 of each year, and the final rule has been changed to reflect this.

State Farm commented that the proposed general requirements should be changed to include specific language authorizing the use of a designated agent for these reports, as permitted by section 612(a)(1) of the Cost Savings Act. Many other commenting insurers stated that NATB was their designated agent for reporting thefts and recoveries. The agency agrees with State Farm's comment, and has added language to the final rule to make clear that insurers may use designated agents in connection with filing these reports. In all other respects, the proposed general requirements for these reports have been incorporated in this final rule.

Contents of Reports

A. Types of Vehicles on Which Information Must Be Reported

Section 614 of the Cost Savings Act requires NHTSA's 1987 and 1990 reports to Congress to include the agency's recommendation as to whether the requirements of the theft prevention standard should be extended to trucks, multipurpose passenger vehicles, and motorcycles. To ensure that the insurer reports provide information that aids the agency in making that assessment, section 612(f) specifies that, for purposes of the insurer reports, the term "motor vehicle" includes trucks, multipurpose passenger vehicles, and motorcycles. The NPRM proposed that insurers provide the required information separately for the following vehicle types: passenger cars, light trucks, heavy trucks, multipurpose passenger vehicles, and motorcycles.

Thus, the broad category of "trucks" would be subdivided into light trucks and heavy trucks. As explained in the NPRM, the reason for proposing this subdivision was the agency's belief, based on informal statements by law enforcement groups, that there are significant differences in the characteristics of light and heavy trucks, which differences result in light trucks being stolen more frequently. If this should prove to be true, the agency would like to have separate data, instead of making a recommendation on the entire category of "trucks."

In response to this proposal, American Automobile Association (AAA) Michigan questioned the need to divide trucks into light and heavy trucks. This commenter stated that the subdivision would not present a burden for them, but would result in more work for the agency. NHTSA believes the preamble to the NPRM explained why it was proposing this subdivision, and the agency is willing to undertake any additional work that results from receiving information broken down into light and heavy trucks.

AIA, the Alliance, and NAII all objected to the separate reporting provisions for light and heavy trucks. According to these comments, a truck is more likely to be stolen for the cargo it carries, instead of for the vehicle itself. These commenters stated that the purpose of the reporting requirements is to "assist the agency in evaluating the impact of the component marking requirement on motor vehicle thefts." Since trucks are not subject to the marking requirements, these commenters urged the agency not to require information to be reported on any type of truck.

These comments reflect a fundamental misreading of sections 612 and 614 of the Cost Savings Act. As noted above, NHTSA is specifically required by section 614(a)(2)(E) to include in its 1987 report to Congress an assessment of whether requiring marking of parts on trucks, multipurpose passenger vehicles, and motorcycles would be likely to reduce thefts of those types of vehicles. Section 614(b)(2)(I) requires NHTSA to include the same assessment in its 1990 report to Congress. To ensure that the insurer reports provide information to assist the agency in making these assessments, section 612(f) specifies that the term "motor vehicle" includes trucks, multipurpose passenger vehicles, and motorcycles. Thus, it is statutorily required that the agency be provided with information on trucks in these insurer reports. Since none of these commenters indicated that it would be more burdensome for insurers to separate information on light and heavy trucks in their reports, the proposed subdivision of trucks into light trucks and heavy trucks is adopted in this final rule.

B. Format for Reports

1. *Subdivisions of Vehicle Types.*

The NPRM proposed to require theft and recovery data in these insurer reports to be broken down by model, make, and line. This proposal was based on the explicit language of sections 614(a)(2)(A) and 614(b)(2)(B), which both require NHTSA to provide Congress with data on the number of motor vehicles stolen and recovered annually subdivided according to the "model, make, and line" of the vehicle.

In response to this proposal, Southern Farm Bureau asked exactly what the agency meant by "model, make, and line." As noted above, these are the terms used in Title VI of the Cost Savings Act. "Make" refers to the general name used by the vehicle manufacturer. For example, Dodge, Ford, and Pontiac are makes of vehicles. "Line" refers to the nameplate assigned by the manufacturer to a group of vehicle models of the same make. For example, Dodge Charger, Ford Thunderbird, and Pontiac 6000 are lines of vehicles. "Model" refers to a specific grouping of similar vehicles within a line. For example, the Dodge Charger 2.2 2-door, Ford Thunderbird Turbo Coupe, and Pontiac 6000 LE 4-door are models.

AIA, the Alliance, NAII, and the Insurance Services Office (ISO) all commented that, if the reports were to require information on trucks, that information should not be broken down into model, make, and line. Instead, these commenters urged that truck theft and recovery data be broken down by truck size, use, and the radius of the truck's operation. According to these commenters, such a requirement would conform to the data collection breakouts currently used by insurers. The ISO also commented that passenger cars used commercially are not currently broken down into make, model, and line by the insurers. The Hartford agreed with ISO's comment. NHTSA believes it would be simpler for insurers if they could just provide the thefts and recoveries according to the breakdown they currently use for their own purposes. However, section 614 of the Cost Savings Act explicitly requires NHTSA to provide Congress with theft and recovery data broken down into model, make, and line. If the agency is to provide the data to Congress in this format, it must be provided in this format in these insurer reports. Additionally, the use of a consistent format by all reporting insurers makes the data more readily comparable and more useful to this agency. Accordingly, this final rule adopts the proposed requirement for insurers to report thefts and recoveries of vehicles broken down into model, make, and line for each of the five vehicle types on which information is to be reported.

The agency proposed to also require the theft and recovery data to be broken down according to the model year of the stolen or recovered vehicle. This breakdown was proposed so that the agency could evaluate the effectiveness of the theft prevention standard for passenger cars and assess the desirability of extending that standard to trucks, multipurpose passenger vehicles, and motorcycles. The example given in the NPRM was a situation where passenger car thefts remain constant in 1988, but thefts of new cars marked in accordance with the theft prevention standard decrease. Such data would be very significant, but the agency would not learn of it unless these insurer reports break out the model year of stolen and recovered vehicles. Similarly, if most thefts of other types of vehicles are of newer models, this would be very significant data for the agency's assessment of whether to extend the theft prevention standard to those vehicle types. The NPRM stated NHTSA's belief that this proposed requirement would not impose a significant burden, because the data gathered by NATB already show the model year of a stolen or recovered vehicle.

Hence, Southern Farm Bureau's question of whether they should "lump together" all thefts and recoveries was addressed at some length in this portion of the preamble. The answer is no; the proposed rule required thefts and recoveries to be broken out according to the vehicle's model year, as explained above.

Nationwide suggested limiting the model year breakout to the model year that coincided with the calendar year covered in the report and the four model years preceding that model year. However, Nationwide offered no explanation of why the model year breakout should be so limited or why the agency would receive enough information with this limitation to conduct the statutorily required evaluations.

GM commented that the base line for determining the median theft rate for passenger cars was the 1983 and 1984 model years' combined theft data. GM also stated that the agency will be trying to determine the effectiveness of the theft prevention standard by comparing the theft rates of unmarked passenger cars with those of passenger cars marked according to the theft prevention standard. Accordingly, GM recommended that insurers be required to report only on 1983 and subsequent model year thefts and recoveries.

NATB asked that theft and recovery data be limited to 1981 and subsequent model year vehicles. NATB stated that before the 1981 model year, the vehicle identification numbers (VIN's) were not standardized for foreign-made passenger cars or for any trucks, multipurpose passenger vehicles, or motorcycles. The theft and recovery data collected by NATB is computerized, but the computer cannot accurately identify these non-standardized VIN's. Accordingly, the only way for the NATB to accurately identify the model year of the vehicle would be to have people manually compare the recorded VIN's of stolen vehicles against listings of the assigned VIN's for each model year. According to NATB, this would be very burdensome for it, while giving NHTSA data with a significant number of errors in identifying the stolen or recovered vehicles.

The NATB statements about non-standardized VIN's before the 1981 model year are correct. Similarly, GM's comment that Congress itself chose to limit the baseline for measuring passenger car thefts to 1983 and subsequent model years is correct. Since Congress chose the 1983 model year as the baseline for measuring the theft experience of passenger cars, the agency does not believe that it needs vehicles older than those manufactured in the 1983 model years to evaluate the theft experience of motor vehicles other than passenger cars. Although sections 612 and 614 do not expressly limit the model years of vehicles on which theft and recovery information is to be reported, neither do they expressly require information on all model years thefts and recoveries to be included in these reports, regardless of the burden imposed. Given the statement in the House Committee Report that NHTSA should "devise a reporting system for insurance information with an eye toward imposing requirements which will be of low cost and of minimal burden to the industry, but which will provide all of the data required by this section," the agency concludes that the question of whether the model years on which thefts and recoveries must be reported should be limited depends on two points.

First, will limiting the data to 1983 and subsequent model years still provide all of the data required by section 612 and needed by the agency to carry out its responsibilities under Title VI of the Cost Savings Act? NHTSA concludes that the answer to this question is yes. Theft and recovery data for older vehicles might be useful for a long-term evaluation of trends in vehicle theft. However, such data may not be essential for the agency to evaluate the effectiveness of parts marking for passenger cars, for the reasons set forth in GM's comment. Similarly, such data are not essential for assessing whether the theft prevention standard should be extended to other vehicle types. NHTSA believes that the theft and recovery experience of 1983 and later model year vehicles will give the agency a comprehensive basis for making all statutorily required reports and assessments.

Second, will limiting the data to 1983 and subsequent model years avoid imposing a substantial burden on reporting insurers? NHTSA believes the answer to this

question is also yes. Since insurers would not be able to rely on their computer files to break out thefts and recoveries of pre-1981 model year vehicles, they would have to hand sort this information and compare it to VIN lists assigned by each manufacturer. This process would have to be repeated for every year an insurer reported a theft or recovery of a pre-1981 model year vehicle. Information on thefts and recoveries of 1981 and 1982 model year vehicles could be retrieved by computer, but it would require an expenditure of time and money to provide this information.

Since NHTSA believes that limiting the theft and recovery data to 1983 and subsequent model year vehicles will avoid imposing a substantial burden on insurers while still offering NHTSA all the information it needs to carry out its responsibilities under Title VI of the Cost Savings Act, the agency concludes that this limitation is consistent with the language and intent of section 612. Therefore, this final rule requires a listing of all thefts and recoveries of 1983 and subsequent model year vehicles, broken down into model, make, and line. Thefts and recoveries of vehicles manufactured in model years before the 1983 model year are *not* required to be included in these insurer reports.

NHTSA emphasized in the NPRM that section 612 does *not* require the data in the insurer reports other than theft and recovery data to be broken down according to model, make, and line. Similarly, NHTSA does not need the other data broken down by model year in order to perform a meaningful evaluation of the data. Thus, the NPRM noted that all required data other than theft and recovery data can be subdivided into whatever risk categories the reporting insurer uses for its own purposes. Judging by some of the comments, this provision was not clearly understood. For example, State Farm said that this rule should require the loss data only to be separated into the five vehicle types, because of different capabilities and data availability among the different insurers. However, the proposed rule acknowledged the different data availability and capabilities of the insurers by simply proposing that insurers provide the agency with the information, subdivided into the categories the insurer uses for its own purposes. This approach imposes the least burden on the insurers, because they do not have to arrange their data into a new format. Similarly, the Hartford commented that passenger cars used commercially are not subdivided into make and model for rating purposes. Again, Part 544 does not require a breakdown by make and model for the rating information. If an insurer uses a blanket category for all passenger cars used commercially, it should report information for that broad category in responding to the required rating information. This proposed approach is adopted in this final rule.

2. *Geographic Subdivisions.*

The NPRM proposed that insurers report the information divided by States. An insurer listed in Appendix A or a rental or leasing company that did business in all 50 States would be required to provide information separately for each State in which it did business. This proposed requirement was based on the statutory language in section 612(a)(5)(A). That section specifies that the agency shall exempt small insurers from these reporting requirements if it finds that "such exemption will not significantly affect the validity or usefulness of the information collected and compiled under this section, *nationally or State-by-State*" (emphasis added). NHTSA concluded that this language was an indication that Congress expects the agency to compile and analyze the data set forth in the insurer reports on both a national and a State-by-State basis. This conclusion is reinforced by the requirement in section 612(a)(5)(C)(ii) that an insurer that otherwise qualifies as a small insurer must nevertheless report information for any State in which its total premiums are 10 percent or more of the total premiums paid for motor vehicle insurance within the State. There would be no reason for Congress to require that such insurers report on their activities within States in which their market share is 10 percent or more, if the agency were not going to compile and evaluate information on a State-by-State basis. Finally, the requirement in section 612(b) that NHTSA periodically compile and publish the information in the insurer reports *in a form that will be helpful to the public* virtually requires the information to be reported on a State-by-State basis. The information in these reports, especially the theft and recovery information, would not be in a form that is helpful to the public if it were not broken down on a State-by-State basis.

Further, the law enforcement practices and prosecutorial efforts directed towards professional vehicle thieves differ in the different States. The vehicle theft problem itself is concentrated more in some States than others. One would anticipate that the costs of vehicle theft and the benefits associated with any reduction in such thefts would be concentrated in those States. NHTSA is required to include a detailed evaluation of these benefits in its 1990 report to Congress by section 614(b)(2)(E) of the Cost Savings Act. Having the information in these reports broken down on a State-by-State basis will enable NHTSA to comply with this statutory mandate and give Congress a complete assessment of the impacts of the theft prevention standard.

Moreover, NHTSA's understanding is that State insurance regulations already require insurers to keep separate records for each State. These records are

examined in connection with proposed rate increases and like actions. Accordingly, the proposed requirement for State-by-State reporting would not appear to impose any additional burden on the insurers.

AAA Michigan commented that it did not believe State-by-State reporting should be required if an insurer had aggregate data. However, this commenter did not explain why it believed this. Nationwide commented that a breakdown by States would be "somewhat burdensome," without explaining why they believed this was so. AIA commented that it had no objection to the proposed State-by-State reporting, but believed it should be limited to only those States with higher-than-average theft rates. AIA did not assert that it would be difficult to provide the information for all States. Moreover, if the agency adopted AIA's comment, it could not perform a State-by-State analysis. Finally, some insurers are required by section 612(a)(5)(C)(ii) to provide information on States where the insurer has a 10 percent or greater market share, even in low theft States. There was no reason for Congress to include such a requirement if the agency would not have any other data for that State.

NATB suggested that NHTSA require State-by-State reporting for all information except thefts and recoveries, and permit thefts and recoveries to be reported nationally. The theft and recovery information is some of the most significant data to be included in these reports, and is required to be included in both the 1987 and 1990 reports to Congress. All indications in sections 612 or 614 and the relevant legislative history are that Congress intended for the agency to compile and evaluate all of the information in these insurer reports both nationally and State-by-State. NATB did not claim that this requirement would impose a serious burden on it. Accordingly, the final rule requires State-by-State reporting of all information in these insurer reports.

The NATB asked how the agency wanted the following information reported under the State-by-State reporting requirement: a vehicle is stolen in State A, recovered in State B, and the claim is filed in State C. This should be reported as a theft in State A and a recovery in State B.

Finally, the NATB asked if NHTSA wanted theft and recovery information for the District of Columbia. Similarly, ISO asked if information from the District of Columbia and Puerto Rico should be included in the insurer reports. Section 2 of the Cost Savings Act (15 U.S.C. 1901) sets forth definitions that apply to all titles of the Cost Savings Act, including Title VI, unless otherwise provided. Section 2(16) reads as follows: "The term 'State' includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa." Based on this statutory definition of "State,?? the insurers are required to provide information on both the District of Columbia and Puerto Rico in their reports.

3. *Identical Responses.*

The NPRM proposed that insurers could avoid repetitive answers by simply indicating that an answer applied to several or all divisions of vehicle types, for several or all vehicle types, and to several or all States in which the insurer did business. No comments were received on this proposal and it is adopted in this final rule.

The NPRM also proposed that insurers be allowed to incorporate by reference responses given in documents previously filed with the agency or any State agency within the last 4 calendar years, provided that the insurer clearly indicates on the first page of the document in response to which regulatory requirement the document is being submitted. Several insurers asked that this language be amended to allow them to incorporate by reference previous and future documents filed with the agency or any State agency. Incorporation by reference as a concept generally refers to a complete report referencing previously filed materials for a portion of the report. In the case of documents to be filed after the report, the report would *not* be complete until those documents were filed. NHTSA believes that these commenters were referring to documents to be filed by a designated agent to complete the report. As explained above, such filings are permitted under this rule, but they would not be incorporated by reference. Accordingly, the proposed provisions for incorporating previously filed documents by reference are adopted in this rule.

C. Theft and Recovery Data

Section 612(a)(2)(A) requires these insurer reports to include the number of vehicle thefts. In response to this statutory requirement, the agency proposed to define a vehicle theft as an actual physical removal of a motor vehicle without the permission of its owner, but would not include the removal of component parts, accessories, or personal belongings from a vehicle which is not moved.

ISO stated that this proposed definition of theft was not the same as that used in insurance contracts. According to this commenter, theft for the purposes of insurance contracts includes the removal of bumpers, radios, wheels, and so forth from a stationary vehicle. ISO suggested that the proposed definition of a vehicle theft be expanded to include the removal of major parts from a stationary vehicle. This comment has not been adopted in this final rule. The proposed definition of a vehicle theft is the definition that has been used

by the FBI for many years, and has been used by this agency in all of its previous rulemaking actions under Title VI of the Cost Savings Act. Furthermore, this definition of a vehicle theft has been endorsed by the joint insurance industry-auto industry task force. NHTSA does not believe it would be consistent with the purposes of Title VI to adopt a different definition of a vehicle theft just for these insurer reports.

ACRA commented that conversion is a form of vehicle theft unique to rental car companies. A conversion occurs when a person renting a car does not return the car to the rental car company on the date specified in the rental contract. ACRA stated that rental car companies would count these as thefts in their reports filed under Part 544. NHTSA considers a conversion to be a physical removal of a vehicle *without the permission of its owner*. However, the agency does not believe that Congress intended that each and every late return of a rental car be reported as a vehicle theft for the purposes of these reports. For instance, a family using a rental car for their vacation that returns the car one day later than specified in the contract has not stolen that car. Indeed, counting these late returns as thefts could significantly overstate the number of thefts in any year.

To address this problem, State police have implemented a waiting period after the contract due date before the police will accept a stolen vehicle report from a rental car company. This waiting period is generally either 48 or 72 hours after the due date specified in the rental contract. Such a waiting period enables the State police to differentiate between late returns of rental vehicles and actual thefts of those vehicles. This final rule incorporates the waiting period specified by the State police in which the vehicle was to be returned for rental car companies reporting vehicle thefts. That is, any rental vehicle that was or could have been reported as stolen to the State police in the State where the vehicle was to have been returned should be counted as a theft and reported under these requirements. Any late return of a rental vehicle that could not have been reported to the State police as a vehicle theft is not a theft for the purposes of these reports, and should not be included therein. NHTSA believes that this limitation ensures that it will get accurate theft and recovery information from rental car companies in these reports without imposing any additional burden on the reporting rental car companies.

After proposing to require the listing of the total number of vehicle thefts experienced by the insurer during the reporting period, the NPRM proposed that the insurer list the total number of recoveries. Recoveries are expressly required to be included in these reports by section 612(a)(2)(A). The proposed definition of a recovery was regaining physical possession of a motor vehicle or a major portion of the superstructure of a motor vehicle with one or more major parts still attached to the superstructure, *after that vehicle has been reported to the insurer as stolen* (emphasis added).

Allstate, NATB, and Aetna all commented that this last condition would result in many actual recoveries not being reported to NHTSA. These recoveries are generally called "simultaneous recoveries," and occur when a vehicle is recovered by the police after it has been stolen, but *before* the theft has been reported to the insurer. Such recoveries would not be covered by the proposed definition of recovery, since they would not occur *after* the theft has been reported to the insurer. NATB stated that, "There does not appear to be any practical reason to specify the reporting of *all* thefts without, at the same time, specifying the reporting of all recoveries" (emphasis in original). NHTSA is persuaded by these comments, because information on all recoveries is as important as information on all thefts. Accordingly, the definition of recovery in this final rule has been changed to refer to regaining physical possession after a vehicle has been stolen.

Sections 612(a)(2)(A) and (B) of the Cost Savings Act require the total number of recoveries to be subdivided into recoveries intact, recoveries-in-whole, and recoveries-in-part. No comments were received concerning the proposed definitions for these subdivisions of "recovery" and they are adopted as proposed. Each of these subdivisions of recovery, and the definition of recovery itself, depend on the listing of major parts, to allow the reporting insurers to determine whether a vehicle really is "recovered" and, if so, what type of recovery it is. The theft prevention standard at S541.5(a) already defines the major parts for passenger automobiles. However, the theft prevention standard does not define the major parts of motor vehicles other than passenger cars. Therefore, proposed S544.4(b)(5) set forth a listing of the major parts for such vehicles.

In response to this proposed listing, NATB commented that the following parts should be added as major parts: the transfer case, for light trucks, the cargo bed, for heavy trucks and multipurpose passenger vehicles, and the crankcase, for motorcycles. NHTSA contacted the FBI to learn their opinion of these suggested additions to the list of major parts for these vehicles. The FBI stated that they concurred with NATB's comment. The agency believes it is appropriate to recognize the expertise of the FBI and NATB in dealing with vehicle thefts, and has amended the final rule to include these parts as major parts for the other types of motor vehicles.

This section of the NPRM further proposed that insurers be required to explain how the theft and re-

covery data were obtained by the insurer, the steps taken by the insurer to ensure that these data are accurate and timely, and the use the insurer made of the theft and recovery information, including the extent to which such information is reported to national, public, and private entities. Such information is expressly required to be included in the insurer reports by section 612(a)(2). No comments were received on these proposed requirements, and they are adopted as proposed.

D. Rating Rules and Plans Used By Insurers to Establish Comprehensive Insurance Premiums and Premium Penalties for Motor Vehicles Considered by the Insurer as More Likely to be Stolen

Section 612(a)(2)(C) of the Cost Savings Act expressly requires that insurer reports include "the rating rules and plans, such as loss data and rating characteristics, used by such insurers to establish comprehensive insurance premiums for comprehensive insurance coverage for motor vehicles, including the basis for such premiums, and premium penalties for motor vehicles considered by such insurers as more likely to be stolen." This statutory language means that these reports must include complete information about the following subjects:

1. The loss data used by the insurer to establish its comprehensive insurance premiums and premium penalties for motor vehicles it considers more likely to be stolen;

2. The rating characteristics used by the insurer to establish its comprehensive insurance premiums and premium penalties for motor vehicles it considers more likely to be stolen;

3. Any other rating rules and plans used by the insurer to establish its comprehensive insurance premiums and premium penalties for motor vehicles it considers more likely to be stolen; and

4. The basis for the insurer's comprehensive insurance premiums and premium penalties for motor vehicles it considers more likely to be stolen.

AIA and State Farm commented that section 612 of the Cost Savings Act requires the reports to include information *used* by insurers in establishing their comprehensive insurance rates. To the extent that the proposed requirements obligated insurers to provide information not *used* by insurers in establishing their rates, these commenters contended that the NPRM was inconsistent with section 612. As explained above, the NPRM proposed only that insurers satisfy the explicit requirements of section 612(a)(2)(C) and provide the information required by that section.

The agency believes that the point these commenters were making is that an insurer's vehicle theft loss data is not currently broken out from other types of comprehensive loss data when establishing the comprehensive insurance premiums. The commenters were not claiming that theft loss data are not used by insurers in conjunction with other loss data when establishing comprehensive insurance premiums, because such a statement would be palpably incorrect. Rather, the point was that the theft loss data are not used *separately* from other types of loss data. Accordingly, these commenters were contending that since these loss data are not separated for purposes of establishing comprehensive insurance premiums, they need not be separated for purposes of the insurer reports.

NHTSA does not believe that the requirements imposed on the agency for its reports to Congress will permit the agency to find these comments persuasive. Section 614(b)(2)(G) requires the agency to include in its report information on the extent to which insurers have foregone premium increases or reduced premiums as a result of Title VI, as well as providing information on increased premiums for vehicles that the insurer considers more likely to be stolen. This provision reflects the Congressional expectation that Title VI would have a benficial impact on auto insurance premiums. *See. e.g.,* S. Rep. No. 478, 98th Cong., 2d Sess., at 4 (1984) ("Experts project that a program which effectively reduces auto theft will result in substantial consumer savings. For example, the National Association of Independent Insurers estimated in 1980 a $200 million premium savings to the American consumer resulting from parts numbering, assuming a 10-percent drop in auto theft. The American Insurance Association estimated in 1983 that insurance premium reductions eventually would more than compensate for the amount the parts marking would add to the cost of a car.") This expectation was based on testimony offered by representatives of the insurance industry during Congressional hearings on the bill which ultimately became Title VI of the Cost Savings Act. *See, e.g., Motor Vehicle Theft Law Enforcement Act of 1983: Hearing on S. 1400 Before the Subcomm. on Surface Transportation of the Senate Comm. on Commerce, Science, and Transportation,* 98th Cong., 1st Sess., at 84-96 (1983) (statements of Thomas G. Bowman, Insurance Director, Automobile Club of Michigan; Penelope Farthing, Senior Counsel, American Insurance Association; and Donald D. Messmer, on behalf of the National Association of Independent Insurers). The only potential source for this information will be these insurer reports.

Additionally, section 614(b)(2)(E) requires the agency to identify the benefits of the theft prevention standard, and quantify the monetary value of those benefits. Obviously, potential reductions in theft losses paid by insurers and potential insurance savings for consumers

would be noteworthy benefits of the theft prevention standard. The only way for NHTSA to get the necessary information to evaluate these subjects is in these insurer reports. To make both these determinations, NHTSA must know what percentage of overall comprehensive insurance losses are theft related. Only those theft related losses are relevant when addressing the above topics in the reports to Congress. Accordingly, NHTSA concludes that Title VI directs the agency to require insurers to break out theft losses from other losses in the insurer reports, and concludes that such a break out is compelled by the statute.

Allstate commented that Congress intended NHTSA to get insurers' rating rules as needed to administer Title VI and to make the necessary reports to Congress. The agency agrees with this assertion. Allstate then asserted that the proposed requirements went far beyond these purposes, without explaining how or why it believed this was true. As explained above, NHTSA has carefully tailored these requirements so that insurers must only report the minimum necessary to satisfy the requirements of Title VI.

NAII and the Alliance stated that section 612(a)(2)(C) of the Cost Savings Act requires insurers to report information including the rating rules and plans, such as loss data and rating characteristics, used to establish comprehensive insurance premiums. The commenters then said, "If insurers did fully comply with this requirement, NHTSA would be receiving a tremendous volume of information, such as relativity factors, codes, tables, etc." The commenters stated their belief that NHTSA did not wish to obtain and analyze this massive amount of information.

The agency has no discretion regarding this requirement. Insurers *must* fully comply with the requirement and NHTSA *must* obtain and analyze this massive amount of information, because Federal law *requires* such actions. Congress has weighed the burdens and benefits of requiring insurers to provide the agency with this large amount of information, and determined that the benefits outweigh the burden. This statutory determination forecloses the agency from reexamining the question and reaching a contrary conclusion.

However, this agency is not interested in imposing requirements for insurers to report information that the agency cannot use or does not need. Therefore, NHTSA will carefully examine to what extent and how it uses all of the information furnished in these insurer reports. If the commenters are correct and the agency cannot use all of the information in these reports, because of limited resources or for some other reasons, NHTSA will consider whether legislative changes to Title VI should be suggested, so that insurers are not required to report information that is not used by the agency in its evaluations and reports. At this time, however, this final rule represents the least burden that can be imposed consistent with the requirements of Title VI.

NHTSA would also consider amending the rule to reduce the amount of information required to be included in these reports if some defined subset of the broad term "rating rules and plans" would be sufficient to satisfy the Congressional intent underlying section 612. However, none of the commenters suggested such a subset. NHTSA itself is unable to define such a subset at this time.

NAII and the Alliance, together with many other insurers, commented that NHTSA should simply adopt the form proposed to the agency by NAII. This form was not adopted because it fails to satisfy the statutory requirements. The NAII form consisted of six questions, one of which was the insurer's name and address. It sought information only from the insurer's State of domicile. Thus, it would not allow NHTSA to perform a State-by-State evaluation of these reports, as required by section 612. The insurers would be asked to "describe the nature" of rating plans used by insurers to vary the physical damage premiums by make or model of the vehicle based on the loss characteristics. Then the insurers would indicate the basis for premium adjustments. The examples given in the proposed form for indicating the basis for premium adjustments were "own experience, HLDI data, ISO data, etc." The insurers were then asked "Are adjustments made for the theft experience separately from that for the other physical damage perils?" Based on the comments received on the NPRM, the response to this question would be "No." The insurers would then indicate the maximum premium adjustments made (in percentages) under this plan, and to give the average nationwide comprehensive rate increase during the past year.

NHTSA agrees that such a requirement would be simpler for the reporting insurers, but it would not comply with the requirements of section 612(a)(2)(C) of the Cost Savings Act. It would not *provide* the loss data used by the insurers to establish comprehensive insurance premiums, as expressly required by that section. It would not provide any information on premium penalties charged for motor vehicles considered more likely to be stolen, as expressly required by that section. It provides rating information for "physical damage premiums" which, according to many commenters, would include both comprehensive and collision premiums. To the extent that this information would be intermingled, the proposed NAII form would not satisfy the express statutory requirement that insurers provide the rating characteristics used to establish *comprehensive* insurance premiums. NHTSA neither needs nor sought information on collision

insurance premiums either individually or combined with comprehensive insurance premiums. Moreover, the statutory requirement that insurers provide the basis for comprehensive insurance premiums and premium penalties charged for vehicles considered more likely to be stolen would not be satisfied by two word responses, such as "ISO data" or "own experience." For all these reasons, the proposed NAII form cannot be adopted in this rule, because it would fail to satisfy the explicit requirements of section 612(a)(2)(C).

The Hartford and AAA Michigan both stated that comprehensive insurance includes many hazards in addition to theft, and that it is difficult to isolate the effects of theft alone. The Alliance, ISO, and NAII all commented that, because of the many factors that go into determining comprehensive insurance premiums, it would be "very difficult" to determine the impact a decrease in vehicle thefts would have on comprehensive insurance premiums. Difficult though the task may be, that is exactly the information section 614(b)(2)(G) requires NHTSA to include in its 1990 report to Congress and exactly why such information is required to be included in these insurer reports.

To turn to the specific requirements of the proposal, the NPRM set forth what the agency believes is the least burdensome way for insurers to meet their statutory obligations to provide information on the four areas required to be addressed in these reports.

1. The rating characteristics used by the insurer to establish its comprehensive insurance premiums and premium penalties for motor vehicles it considers more likely to be stolen.

The NPRM proposed that insurers could provide the rating characteristics used to establish the premiums for comprehensive insurance coverage and the premium penalties for motor vehicles considered more likely to be stolen simply by furnishing pertinent sections of the insurer's rate manual(s). NHTSA believed that this requirement would offer by far the least burdensome means of satisfying this statutory requirement. No commenter addressed this proposed requirement, and it is adopted as proposed.

2. The loss data used by the insurer to establish its comprehensive insurance premiums and premium penalties for motor vehicles it considers more likely to be stolen.

To satisfy this statutory requirement, NHTSA proposed that insurers submit the following:

a. The total number of comprehensive claims paid by the insurer during the reporting period;

b. The total number of those comprehensive claims paid during the reporting period because of vehicle theft;

c. The total amount (in dollars) paid out by the insurer during the reporting period in response to all comprehensive claims filed by its policyholders;

d. The total amount (in dollars) paid out by the insurer in comprehensive claims during the reporting period because of vehicle theft;

e. The total amount (in dollars) of salvage value realized from the sale of recovered vehicles and recovered major parts not attached to a vehicle, after payment has been made to the insured for a vehicle theft claim;

f. An identification of the motor vehicles for which the insurer charges comprehensive insurance premium penalties, because it considers those vehicles as more likely to be stolen;

g. The relevant loss data for each vehicle risk grouping identified under paragraph f; and

h. The maximum premium adjustments (as a percentage of the basic premium) made for comprehensive insurance premiums for each vehicle risk grouping identified in pargraph f, as a result of the insurer's belief that vehicles in this risk grouping are more likely to be stolen.

AIA commented that the information specified in paragraphs a and c would be readily available, but that the information specified in paragraphs b and d would not be. The reason that the information required by paragraphs b and d would not be available was, according to the AIA, that claims data do not generally distinguish between vehicle theft and component theft, such as stolen radios, tires, bumpers, etc. The NATB also commented that comprehensive claims data would lump together claims involving vehicle thefts and thefts of parts from vehicles that were not stolen.

NHTSA has reconsidered its proposed requirement in response to these comments. As noted at the outset of this preamble, NHTSA intended to structure this rule to require insurers to report only data that they already gather for their own purposes to the maximum extent that such pre-existing data can be used to satisfy the explicit requirements of Title VI. According to AIA's comment, NHTSA could require insurers to report only pre-existing data in these reports if the proposed requirements were changed to require insurers to report their comprehensive insurance losses from theft, consisting of both vehicle and component theft. The agency would prefer this result, so the only question is whether the reporting of such data is consistent with Title VI.

The purpose of requiring loss data specifically for vehicle thefts was to allow the agency to accurately calculate the benefits that are associated with a reduction in vehicle thefts. However, the agency has concluded that it can prepare a reasonably accurate calculation

of those benefits without requiring insurers to generate new data for the purposes of these reports. This final rule requires subject insurers to report their theft losses, consisting of both vehicle theft and component theft, paid out under comprehensive insurance. The insurers would then be required to provide their best estimate of the percentage of total theft losses attributable to vehicle theft, and explain the basis for that estimate. These estimates might be based on past experience, samples of some theft claims, etc. Such a procedure would give the agency the same information available to the insurers, without requiring the insurers to generate new data for these reports. Accordingly, this final rule requires insurers to report theft losses paid under comprehensive insurance, which theft losses include both vehicle thefts, and component thefts from vehicles that are not stolen.

Several commenters addressed the proposed requirement to provide the amount recovered from salvage sales. NHTSA proposed to require this information so that the agency could accurately calculate the societal costs of vehicle theft and measure changes in these costs as the theft prevention standard becomes effective. Without information on the salvage value of recovered vehicles and parts, the loss data provided in response to paragraphs a-d would be incomplete and potentially misleading.

Farmers Insurance stated that amounts recovered in salvage sales do not separate recoveries on vehicle thefts from recoveries on component thefts. Because of this, Farmers Insurance urged the agency to delete the proposed requirement for salvage information from this final rule. NHTSA believes the information on salvage sales is very important, as explained above. However, the agency also believes that it would satisfy the requirements of Title VI if insurers report the total amount recovered in salvage sales for paid theft claims, for the reasons explained above in the discussion of total theft losses. Again in this action, the rule requires the insurers to provide their best estimate of the percentage of those salvage recoveries attributable to paid vehicle theft claims, and provide the basis for that estimate. This change should alleviate the concern expressed by Farmers Insurance in its comment.

NATB commented that salvage sales could be handled on a regional basis for several States or salvage sales could always be conducted in the State where the vehicle or part was recovered. In these instances, NATB stated that amounts recovered in salvage might not be related to coverage issued in a single State or to thefts occurring in that State. Any insurer that follows the policies described by NATB should simply note that in its report. The agency will take account of these policies when using the salvage data in its reports and evaluations.

Allstate commented that it could provide the *net*, but not the *gross* amount recovered in salvage sales. According to Allstate, it does not maintain its systems reports and files to isolate salvage and subrogation dollars apart from paid comprehensive insurance claims. It concluded by stating that its salvage data are buried deep in its claim detail files, and any effort to systematically compile the information in a reportable way would not be cost efficient. As explained above, section 612(a)(2)(C) requires insurers to report their loss data for comprehensive insurance and NHTSA has concluded that loss data alone without salvage recovery information would be very misleading. Accordingly, this salvage recovery information must be reported on a gross, not net, basis to satisfy the applicable statutory requirements. NHTSA has made every effort to minimize the burden imposed on insurers by the statute, but it cannot alter or ignore those requirements. Thus, Allstate will have to devise the most efficient method it can to allow it to report the required salvage information.

The information proposed in paragraphs f through h were included in the NPRM to satisfy the statutory requirement that insurers provide "the rating rules and plans, such as loss data and rating characteristics, used by such insurers to establish . . . premium penalties for motor vehicles considered by such insurers as more likely to be stolen." Additionally, NHTSA is required to provide information on these premium penalties to Congress in both its 1987 report [section 614(a)(2)(D)] and its 1990 report [section 614(b)(2)(G)].

To satisfy these statutory requirements, the agency proposed certain basic requirements. First, the insurers would be required to identify the motor vehicles for which it charges comprehensive insurance premium penalties, because the insurer considers such vehicles as more likely to be stolen, broken down into the risk groupings the insurer uses for its own purposes. Thus, if the insurer charges a comprehensive premium penalty for all Pontiacs, the insurer would not have to break that information down further for the purposes of these reports. On the other hand, if the insurer calculates its premium penalties broken down by make, model, and line, it should provide that information in these insurer reports. Second, the proposal would require insurers to provide the relevant loss data for each risk grouping identified above. This was limited to the number of comprehensive claims filed for this risk grouping and the dollars paid out in response to these comprehensive claims. Third, the proposal required insurers to state the maximum premium adjustments (as a percentage of the basic premium) made for comprehensive insurance premiums for vehicles in this risk grouping as a result of the insurer's belief that vehicles in this risk grouping are more likely to be stolen. This

third proposed requirement was derived from a question in NAII's proposed form. NHTSA concluded that this was the absolute minimum amount of information that could be included in the insurer reports in compliance with Title VI.

In response to this proposal, Allstate commented that it does not set its comprehensive rates based on the likelihood of a vehicle's theft *potential*. Instead, its comprehensive premiums are based on a review of the actual loss experience for the vehicle. Accordingly, Allstate suggested that some of section 612(a)(2)(C) does not apply to it, because it does not charge premium penalties for motor vehicles it *considers* more likely to be stolen. NHTSA believes this comment tries to read too much into the statutory language. Allstate and every other insurance company review past losses for groups of vehicles, use these past losses as a predictor of future losses, and set their rates accordingly. If Allstate meant to assert that it charges premium penalties only for vehicles it *knows* are more likely to be stolen, NHTSA disagrees with its assertion. No matter how much data one has about past losses, one can only use that data as an indication of *likely* future losses. The most one could say is that the vehicles it *considers* as more likely to be stolen are strongly supported by data. However strongly supported, section 612(a)(2)(C) explicitly requires the insurers to report information about those premium penalties.

The agency notes that it would appear not very burdensome for Allstate to comply with the reporting requirements. Allstate can simply list the vehicle risk groupings for which it charges premium penalties because it has identified such vehicles as more likely to be stolen, submit the loss experience that it states are analyzed for these risk groupings, and indicate the maximum premium adjustment it made for vehicles in the risk grouping.

State Farm commented that it does not develop comprehensive insurance premiums by make and model. The NPRM did not propose to require the submission of this information broken down by make and model. Instead, it proposed to require insurers to provide the information broken down by whatever risk groupings they use for their own purposes. State Farm explained that new vehicles are assigned to a physical damage "symbol group" based on the manufacturer's suggested retail price for the vehicle. Loss experience is then compiled for each symbol group and analyzed to determine the relationships between the symbol groups and age groupings. With respect to passenger cars and light trucks, State Farm reviews the *combined* comprehensive and collision loss experience by make and model. Adjustments are made in the originally assigned symbol group, depending on whether the aggregate loss data are better or worse than average for the group.

NHTSA does not believe that State Farm will face a burdensome task in responding to this section of the reporting rule. It can identify those make/models whose premiums are adjusted up, provide the loss data that formed the basis for the adjustment, and indicate what difference this adjustment made in the comprehensive premiums charged (as a percentage of what the comprehensive premium would have been absent such adjustment). It will have to separate the combined comprehensive and collision loss data, and provide the loss data for comprehensive insurance separately. This will impose more of a burden than State Farm would face absent these reporting requirements. However, reporting of the comprehensive insurance loss data that forms the basis for the comprehensive insurance premium penalties is expressly required by section 612(a)(2)(C), so State Farm must assume this burden.

The Hartford commented that many factors besides theft are considered in assessing premium penalties for comprehensive insurance. According to this commenter, it would not be possible to break out theft-related data without totally revamping its internal processing and rating of comprehensive insurance. The agency does not believe that the Hartford meant that it cannot identify the vehicles for which it charges premium penalties or the amount of premium penalty charged because it considers a vehicle as more likely to be stolen. Thus, NHTSA assumes this comment was directed toward the proposed requirement for insurers to provide the relevant loss data for each vehicle risk grouping for which comprehensive insurance premium penalties are charged. However, this proposed requirement did *not* specify that the insurer had to provide just theft-related data for these vehicles. Rather, it proposed that insurers state the total number of comprehensive insurance claims paid for vehicles in this risk grouping and the total amount in dollars represented by those claims. NHTSA must then evaluate these loss data and provide the information to Congress in both the 1987 and 1990 reports. Since the NPRM did not seek to have reporting insurers provide only theft-related data for these vehicles, NHTSA concludes that the problem alleged by the Hartford in its comment was based on a misreading of the proposal.

The AIA commented that the proposed information to be reported on vehicles that are charged comprehensive insurance premium penalties is not currently recorded in insurers' files. This seems to conflict with the comments filed by State Farm, whose comments reflected that all the proposed data was already used in assessing premium penalties, unless AIA was also referring to the mixed comprehensive and collision loss data. If that is what AIA meant, NHTSA's response is the same as was made for State Farm. Even if State Farm's records are atypical of those for most insurers,

NHTSA cannot alter the statutory requirement that this information be provided. Because the agency believes the information about comprehensive premium penalties is the least that could be adopted in response to section 612(a)(2)(C) and because the agency believes these requirements do not impose an excessive burden on the reporting insurers, such reporting requirements are adopted as proposed.

3. Any other rating rules and plans used by the insurer to establish its comprehensive insurance premiums and premium penalties for vehicles it considers more likely to be stolen.

The proposed requirements were to list any other rating rules and plans used by the insurer, and explain how such rating rules and plans are used to establish the premiums and premium penalties. This information, to the extent it has not already been provided, is statutorily required. No comments addressed this proposed requirement, and it is adopted as proposed.

4. The basis for the insurer's comprehensive insurance premiums and premium penalties it charges for vehicles it considers as more likely to be stolen.

The NPRM proposed that insurers satisfy this statutory requirement by providing the pertinent sections of materials filed with State insurance regulatory officials and clearly indicating which information in those materials is submitted in response to this requirement. NHTSA tentatively concluded that these materials would adequately explain the basis for these premiums and the premium penalties.

ISO commented that it is a rating service, which prepares model year/vehicle series ratings for comprehensive and collision insurance in 45 jurisdictions. It further stated that it furnishes an antitheft device rating for providing discounts to comprehensive insurance premiums in 48 jurisdictions. ISO stated that it would like to file these ratings as a reference document for its members, and asked if the proposed S544.7 would allow all insurers that are members of ISO to incorporate by reference these ratings. Such information can most certainly be filed and incorporated by reference, and is, in fact, the precise sort of information NHTSA is required to obtain.

ISO went on to state that a literal interpretation of the proposal would require insurers to submit to NHTSA the same information that is filed with State insurance departments in the form of rate filings or loss cost information to support changes in the rates, rules, and policy forms for comprehensive insurance premiums. Since such rate filings are made separately in each State, this filing of loss cost information would have to be provided to NHTSA annually, according to ISO. Further, those member insurers that deviate from ISO ratings would have to submit their deviations, and those insurers that are not members of ISO would have to submit their complete filings.

NHTSA acknowledges that this will be a large volume of information for it to analyze and evaluate. However, the proposed language for this section was extracted verbatim from section 612(a)(2)(C). Thus, the law requires NHTSA to gather and analyze this voluminous information. The agency emphasizes that section 612 does not require the agency to receive any information on collision insurance premiums. If ISO culls out those sections of its ratings that pertain to comprehensive insurance rates and files those sections, such filing may then be incorporated by reference by the member insurers that used that rating. Assuming this procedure is followed, NHTSA will not receive any extraneous materials.

ISO concluded by stating its opinion that its rating information and any deviations by member companies will not aid the agency in evaluating the effectiveness of the theft prevention standard. This commenter explained that its filings do not contain specific detail related to auto theft, but deal with comprehensive premiums in aggregate. However, the basis for the insurers' comprehensive premiums, together with other information about comprehensive premiums, must be included in those reports pursuant to sections 614(a)(2)(D) and 614(b)(2)(G). Thus, such information is mandated by Congress to be included in these reports, even if it cannot be used directly to measure the effectiveness of the theft prevention standard applicable to certain passenger cars.

E. Actions Taken by Insurers to Reduce Comprehensive Insurance Premiums Because of a Reduction in Motor Vehicle Thefts.

Section 612(a)(2)(D) explicitly requires these insurer reports to include a listing of the actions insurers have taken to reduce comprehensive insurance premiums because of a reduction in motor vehicle thefts. The NPRM proposed that insurers simply list the reductions they have made in comprehensive premiums because of a reduction in vehicle thefts. For each listed reduction, the insurer would:

1. State the conditions, if any, that must be met to receive the reduction;

2. State the number of policyholders that received the reduction; and

3. State the difference in average comprehensive insurance premiums for those policyholders that received this reduction versus those policyholders that did not receive the reduction.

NHTSA stated that it believed this was the least burdensome way for insurers to satisfy this statutory requirement. If there had been no reduction in motor

vehicle thefts or if the insurer had not made any reductions in its comprehensive premiums in response to such a decrease in theft, the insurer could simply note these facts in its report. Only Liberty Mutual commented on this proposed requirement, stating that it does not have this information in its claims files.

All insurers are statutorily required to provide this information in each of their reports filed under section 612. If insurers do not currently track this information in their data files, they will have to institute some method for tracking this information. The agency proposed what it believes is the least burdensome way for insurers to comply with this requirement. Since no commenter suggested a less burdensome way for insurers to comply, NHTSA has adopted this requirement as proposed.

F. Discounts for Antitheft Devices.

As noted in the preamble to the NPRM, this was the only information proposed to be required in these insurer reports not expressly required by section 612. However, NHTSA believes these data are implicitly required by section 605. That section requires the agency to consider the effectiveness of antitheft devices when evaluating petitions by automobile manufacturers for exemption from the parts-marking requirements of Part 541. Section 602(e) explicitly limits the agency's authority to impose reporting or recordkeeping requirements to four specific sections of Title VI. Thus, if the information on antitheft devices is not included in these insurer reports, NHTSA will *not* be able to get industry-wide information on the effectiveness of these devices.

NHTSA proposed that insurers provide this information *only* if the insurer offers a reduction in comprehensive insurance premiums for vehicles equipped with these devices. The insurer would be required to list the specific criteria it used to determine whether a vehicle is eligible for a reduction in comprehensive premiums because of an antitheft device, and list the total number of vehicle thefts and recoveries for vehicles that received reductions under each criteria. As explained in detail in the NPRM, this information in the insurer reports would provide the *only* industry-wide data available to the agency when considering the effectiveness of standard equipment antitheft devices in connection with petitions filed under section 605 of the Cost Savings Act (15 U.S.C. 2025).

In its comments, the Hartford asked the agency to define the term "antitheft device." The Hartford noted that there are a wide variety of these devices available in the marketplace with wide-ranging degrees of effectiveness. NHTSA is seeking information about *any* antitheft device for which the insurer offers a reduction in comprehensive premiums. Thus, the reporting insurer itself defines the term for the purposes of these reports. If the insurer offers a reduction in comprehensive insurance premiums for vehicles equipped with any particular device, such device is an antitheft device for the purposes of these reports. Conversely, if the insurer does not offer a reduction in comprehensive insurance premiums for vehicles equipped with a particular device, no information about vehicles equipped with the device is required to be included in these reports. Therefore, no further definition would be useful or necessary.

State Farm commented that the proposed regulation was unclear if it was intended to apply only to insurers that *voluntarily* offer discounts for vehicles equipped with antitheft devices. State Farm stated that it does not voluntarily offer discounts for vehicles equipped with antitheft devices, but does so in the three States that currently mandate reductions in comprehensive premiums for vehicles equipped with certain devices. Allstate indicated that it does not offer discounts except in the five States that mandate a discount. This rule requires the information if the insurer offered discounts to comprehensive premiums, regardless of whether the insurer chose to offer this discount or did so in response to a legal requirement. The information about vehicles that received reductions because of an antitheft device is extremely significant for the agency in meeting its responsibilities under Title VI of the Theft Act, regardless of the insurer's desire to offer such reductions.

A number of commenters objected to the proposal to give the total number of thefts and recoveries for vehicles that received a comprehensive premium reduction because of specific antitheft devices. State Farm and NAII commented that the loss data collected by insurers are tailored to meeting obligations to the States that mandate reductions. Accordingly, these commenters stated that insurers do not currently collect recovery information for such vehicles. Allstate commented that "it is neither feasible, nor practical, nor of any substantial value to maintain detailed statistics on thefts and recoveries for vehicles equipped with antitheft devices." Liberty Mutual stated that this information is not currently collected in its claims files. Farmers Insurance stated that thefts and recoveries of these vehicles are not currently captured in its loss records and that to do so would impose significant costs. Therefore, it urged that this information not be required. NATB commented that instead of mandating "universal reporting" of data that is difficult and sometimes impossible to develop, NHTSA should require a sample approach. Under this proposal, NATB would require insurers to submit a representative sample of the VIN's of vehicles equipped with antitheft devices. NATB stated that this would allow

NHTSA to check those VIN's against the theft and recovery statistics it has.

NHTSA repeats that it is not mandating "universal reporting" of these data. It is only requiring the information for States where the insurer offers a reduction in comprehensive premiums for vehicles equipped with antitheft devices. Contrary to these comments, NHTSA does not believe that the information sought in the proposal would be overly burdensome for the insurers to provide. It is a relatively simple task for insurers to compile the VIN's of the vehicles given a reduction in comprehensive premiums because of an antitheft device. The insurers are required to report theft and recovery data for all vehicles they insure under S544.6(c) of this rule. The reporting insurer can then use a computer to compare the VIN's of vehicles receiving antitheft device comprehensive premium reductions with the VIN's of stolen and recovered vehicles, and report the matches under this section. This may involve some additional burden beyond what is done at present, but it does not appear to be a significant or undue burden. To ensure that reporting insurers' can perform this task on a computer, the proposed requirement has been changed to specify that the thefts and recoveries are only required for 1983 and later model year vehicles. This change parallels the change made for thefts and recoveries in response to the AIA and NATB comments in the section of this preamble addressing theft and recovery data, and is made for the same reasons explained therein for all theft and recovery data.

Under section 605 of the Cost Savings Act (15 U.S.C. 2025), NHTSA is required to determine whether standard equipment antitheft devices are likely to be as effective in reducing and deterring motor vehicle thefts as compliance with the theft prevention standard (49 CFR Part 541). Thus far, the agency has had to rely on relatively old or limited data for determining the effectiveness of antitheft devices. The data available to NHTSA for making these determinations will be significantly enhanced by the data in these insurer reports. The insurer's data will, for the first time, show NHTSA how effective the various antitheft devices have been while actually used by the public.

The language of this rule has been slightly changed to make clear NHTSA's intention that reporting insurers separately list each category of antitheft device for which the insurer offers a discount to the comprehensive premium, and then separately list the total thefts and recoveries for vehicles in each category. For example, the State of New York requires insurers to offer discounts for three categories of antitheft devices. These are an alarm that can be heard from 300 feet for 3 or more minutes, an active disabling device requiring a separate manual step to arm the device when the driver leaves the car, and a passive disabling device requiring no additional action by the driver. If a vehicle antitheft device falls into more than one of these categories, only the single highest discount is required to be given by the insurer. In response to this rule, reporting insurers would identify these three categories for the State of New York and then list the total theft and recoveries for vehicles in each of these three categories.

This clarification has been made because it would not serve any useful purpose for the theft and recovery data for *all* antitheft devices to be reported as a whole. NHTSA believes that some antitheft devices will be much more effective than others in reducing thefts. If the information about these antitheft devices were lumped together with information on the less effective devices, the agency would only get an indication of the effectiveness of all antitheft devices for which the insurer offers a reduction in comprehensive insurance premiums. This composite information would have little value for the agency in making the required determination under section 605.

If, on the other hand, insurers provide theft and recovery information for each type of antitheft device for which they offer comprehensive premium reductions, NHTSA will have accurate effectiveness information for several types of antitheft devices. When an automobile manufacturer submits a petition under section 605 of the Cost Savings Act, the agency can determine what type of antitheft device listed in the insurer reports the antitheft device in the manufacturer's petition most closely resembles. The measured effectiveness of that sort of antitheft device will significantly enhance the agency's basis for determining if a device that is the subject of a petition under section 605 is likely to be as effective as parts marking in deterring and reducing vehicle theft. This rule requires the information to be broken out in this manner to ensure that it will be useful to the agency.

NATB's suggestion to require representative samples of VIN's is not adopted for several reasons. First, with the newly added provision in this rule that limits the theft and recovery information to 1983 and later model year vehicles, NHTSA does not believe that this information will be "difficult or impossible" to develop, as explained above. Second, the agency does not know how it could define what constituted a "representative sample" for the purposes of these reports. Third, information on all vehicles that received a reduction because of an antitheft device will be more comprehensive and more useful for the agency than would information on a representative sample.

G. Insurers' Actions to Assist in Deterring and Reducing Vehicle Thefts.

Information about these actions are expressly required to be included in these insurer reports by section 612(a)(2)(E) of the Cost Savings Act. The NPRM proposed that insurers identify each action they took to assist in deterring and reducing vehicle thefts. For each action so identified, the insurer would describe it and explain why the insurer believed it would be effective in deterring and reducing vehicle thefts. Additionally, since the demand for used parts is a part of the reason why illegal chop shop operations have been so profitable, the NPRM would require the insurer to state its policy regarding the use of used parts to effect repairs on vehicles it insures, and indicate the precautions taken by or on behalf of the insurer to identify the origin of those used parts.

In response to this proposal, Allstate described its policy regarding used parts in its comments. This is the sort of information NHTSA proposed to require in the insurer reports. Since Allstate has already described its policy in its comments, NHTSA assumes this proposal presents no burden to Allstate. No other insurer commented on any burden it believed would be associated with this proposed section of the reports. Accordingly, this section is adopted as proposed.

Southern Farm Bureau asked whether insurers would be "penalized" by this agency if they reported that they had not reduced comprehensive premiums because of a reduction in vehicle thefts or that they required used parts to be used in repairs of their insured vehicles without taking any precautions to identify the origin of those used parts. Title VI of the Cost Savings Act does not give NHTSA any authority to penalize an insurance company for failing to provide certain discounts or failing to take precautions to determine the origin of used parts. Hence, an insurer that files its required report has fully satisfied its statutory obligations under Title VI of the Cost Savings Act. The information set forth in the reports will be analyzed and evaluated by the agency, and will be used as a primary source in preparing the reports to Congress.

Special Provisions for Reports To Be Filed in 1986

The NPRM sought comments on the availability of recovery data, divided into the three statutorily specified subcategories of recovery, for the 1986 insurer reports 51 FR 23099. Although section 612 requires recoveries to be grouped into these three subcategories, the agency noted that insurers had no means of knowing exactly what definitions would be proposed for these subcategories before the NPRM was issued on June 20, 1986. The insurers could not collect such data for the 1985 calendar year, which is the time period about which information is to be provided in the 1986 reports. All commenters stated that these data would not be available for the 1986 reports.

NHTSA concurs with the commenters that, absent definitions for the three subcategories of recovery, it was impossible for them to collect recovery data divided into the three subcategories during the 1985 calendar year. There is also no means by which the insurer could now after-the-fact accurately divide recoveries into those subcategories. In accordance with this conclusion, this final rule specifies that insurer reports are required to divide recoveries into the three subcategories beginning with the report due by October 25, 1987. The reports due in 1986 are only required to list the total number of recoveries, without subdividing the recoveries. This change has been made in the section requiring insurers to report recovery data for all vehicles and in the section requiring insurers to report recovery information for vehicles equipped with an antitheft device that received a reduction in comprehensive insurance premiums.

Many commenters stated that it would be very burdensome or difficult to provide much of the other data required in the insurer reports in their 1986 reports. The agency appreciates that some of these reporting requirements impose a burden on the reporting insurers. However, Congress has determined that these reporting requirements should be implemented, and evidently considered the difficulty or burden of compliance with these requirements. To repeat, the agency has consciously structured this reporting requirement to satisfy all statutory obligations while imposing the least burden on reporting insurers. This final rule has also been changed from what was proposed to permit insurers to use their existing computer data base to provide all theft and recovery data. With one exception, the remaining burdens imposed on insurers are those that are explicitly required by section 612 of the Cost Savings Act.

Farmers Insurance commented that it could provide the rating rules and plans information specified in S544.6(d)(2), but could not do so by October 25. This commenter asked the agency to allow it an additional 6 months to provide this information. NHTSA is expressly required to include information on rating rules and plans for motor vehicles other than passenger cars in its October 1987 report to Congress by section 614(a)(2)(D) of the Cost Savings Act. Thus, NHTSA needs this information from the reporting insurers early enough to allow the agency to analyze and evaluate such information. Nevertheless, NHTSA recognizes that these reporting requirements are imposing a burden on insurers to which they were not previously subject. The agency also believes the commenters' assertions that it will be getting significant amounts of information on this subject. In its assess-

ment of the cost impacts of this rule, NHTSA has concluded that the first reports will be the most burdensome for the insurers, because they will have to implement some new formats and procedures for data they currently collect.

After considering these burdens, the short time remaining before the first insurer reports are due, and a good faith effort by Farmers Insurance to gather and report the statutorily required data, NHTSA hereby announces that it will not take any enforcement actions against insurers that provide the reports required by section 612 of the Cost Savings Act after October 25, 1986, but not later than January 31, 1987. Because of the express statutory requirement, NHTSA cannnot grant the 6-month extension of time requested by the commenter. NHTSA recognizes that this 3-month extension may force insurers to make intensive efforts if they are to gather and report the necessary data by January 31, 1987. However, allowing even this 3-month extension will force the agency to make intensive efforts of its own to analyze and evaluate this information quickly, so that the conclusions will be available in time for the 1987 report to Congress.

NHTSA would like to make clear that this extension of time applies only for the reports due in 1986. NHTSA would also like to make clear that it will not consider any further requests for extensions of the period in which to file the insurer reports for the 1986 or any later reports. This decision to allow the reports to be filed after the statutory due date is a recognition of the particular circumstances associated with these first reports. NHTSA cannot foresee any other circumstances in which it would allow insurers to file all or parts of these reports after October 25.

Both ACRA and Southern Farm Bureau asked in their comments if the agency was going to provide forms for these reports. NHTSA has no plans to do so, because it concludes there is no need for any forms. Part 544 clearly explains what information must be included in these reports and the format and order in which the information should be reported. The insurers should simply present the information in that format and order.

Sections of Report Not Applicable to Rental and Leasing Companies

ACRA noted in its comments that section 612 requires all insurers to provide information in their reports concerning rating rules and plans for comprehensive insurance premiums, information on premium reductions, and the like. Section 612 also specifies that rental and leasing companies are insurers for the purposes of these reports. However, rental and leasing companies do not have comprehensive insurance premiums for the vehicles in their fleets, because they insure those vehicles themselves. Accordingly, ACRA stated that its members did not plan to respond to those sections relating to premiums.

NHTSA is persuaded by this observation. No purpose is served by requiring rental and leasing companies to indicate "not applicable" to much of the information required to be included in these reports. Therefore, NHTSA has drafted this final rule to provide that persons who are insurers by virtue of having a fleet of 20 or more self-insured vehicles used primarily for rental or lease need only provide the following information in their reports:

1. The total thefts and recoveries of vehicles in their fleet, and how the theft and recovery data were obtained, the steps taken to ensure these data are accurate and timely, and the use made of such theft and recovery information [S544.6(c)];

2. The net total amount (in dollars) of losses to the rental or leasing company as a result of vehicle theft [S544.6(d)(2)(iv)]; and

3. The actions taken by the rental or leasing company to assist in deterring or reducing thefts of motor vehicles [S544.6(g)].

EFFECTIVE DATE:

NHTSA finds for good cause that this rule should be effective immediately upon publication in the *Federal Register,* instead of 30 days thereafter. As noted throughout this preamble, section 612 of the Cost Savings Act (15 U.S.C. 2032) imposes a statutory duty on insurers to provide specified information in annual reports to NHTSA, and requires the first report to be submitted not later than October 25, 1986. This statutory deadline makes it imperative that this regulation, specifying the information that must be included in these reports, become effective as far as possible in advance of that deadline. The early effective date will ensure that all reporting insurers know precisely what information must be included in these reports.

Issued on December 29, 1986.

Diane K. Steed
Administrator
52 F.R. 59
January 2, 1987

PREAMBLE TO AN AMENDMENT TO PART 544

Insurer Reporting Requirements: List of Insurers Required to File Reports in October 1987

[Docket No. T86-01; Notice 4]

ACTION: Final rule.

Summary: Title VI of the Motor Vehicle Information and Cost Savings Act requires each passenger motor vehicle insurer to file annual reports with this agency, unless the insurer is exempted by this agency from filing such reports. This law specifies that NHTSA can exempt those insurance companies whose market share is below certain percentages for the nation as a whole and in each individual State. To carry out these statutory provisions, NHTSA has exempted all those insurance companies that are statutorily eligible to be exempted and published a listing of the unexempted companies, i.e., those insurance companies that are required to file annual reports.

The list of unexempted companies is subject to slight changes from time to time since a company's eligibility for exemption from the reporting requirements may vary annually, as its national and State-by-State market shares change. To address this situation, NHTSA publishes annual updates of the list of insurance companies that are required to file annual reports. The listings in these updates are based on the most current market share information available to the agency. Any insurance company omitted from this list is *not* required to file a report for the 1986 calendar year. Those insurance companies included on the list at the end of this rule were statutorily required to file reports for the 1986 calendar year not later than October 25, 1987. However, NHTSA recognizes that the statutory date for filing those reports has passed. Because this final listing is published after the statutory date has passed, the agency will accept as timely insurer reports for the 1986 calendar year that are filed within 30 days after this listing is published.

EFFECTIVE DATE: This rule is effective January 21, 1988.

SUPPLEMENTARY INFORMATION:

Background: Section 612 of the Motor Vehicle Information and Cost Savings Act (the Act; 15 U.S.C. 2032) requires each insurer to file an annual report with NHTSA unless the agency exempts the insurer from filing such reports. The term "insurer" is defined very broadly for the purposes of section 612, consisting of two broad groups of entities. One of these broad groups is included in the definition of "insurer" by virtue of section 612(a)(3). That section specifies that for the purposes of section 612, the term "insurer" includes any person, other than a governmental entity, who has a fleet of 20 or more motor vehicles used primarily for rental or lease and not covered by theft insurance policies issued by insurers of passenger motor vehicles. The requirements for this group of insurers are not addressed in or affected by this rule.

The other broad group is included within the term "insurer" by virtue of section 2(12) of the Act (15 U.S.C. 1901(12)). That section provides that every person engaged in the business of issuing passenger motor vehicle insurance policies is an insurer, regardless of the size of the business. Section 612(a)(5) provides that the agency shall exempt small insurers included in this second broad group from the reporting requirements if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information collected and compiled in the reports, either nationally or on a State-by-State basis. The term "small insurer" is defined in section 612(a)(5)(C) as an insurer whose premiums account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also provides that if an insurance company satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all forms of motor vehicle insurance issued by insurers within a particular State, such insurer must report the required information about its operations in that State.

To implement these statutory criteria for exempting small insurers, NHTSA has used the data voluntarily supplied by insurance companies to A.M. Best to determine the insurers' market shares nationally and in each State. The A.M. Best data were chosen because they are both accurate and timely, and because its use imposes no additional burdens on any party.

After examing the A.M. Best data, NHTSA determined that it should exempt all those insurance companies that were statutorily eligible for exemption from these reporting requirements. This determination was based on two separate considerations. First, NHTSA determined that the reports from only those insurance companies that were statutorily required to file reports would provide the agency with representative data, both nationally and on a State-by-State basis. Second, NHTSA determined that the data in the insurer reports provided by the insurance companies that were ineligible for an exemption would be sufficient for NHTSA to carry out its activities and responsibilities under Title VI of the Act.

Accordingly, the agency included an Appendix A and Appendix B in the final rule for insurer reports published January 2, 1987 (52 FR 59). The 20 insurance companies listed in Appendix A had premiums that accounted for 1 percent or more of all motor vehicle insurance premiums paid nationally. Hence, those companies were required to report on their operations for every State in which they did business. The 11 insurance companies listed in Appendix B had premiums that accounted for 10 percent or more of the total motor vehicle insurance premiums within a particular State or States. Such companies were required to report on their operations only for those States in which their premiums accounted for 10 percent or more of the total premiums.

The Proposal: The market shares for each of the insurance companies listed in the January 2, 1987, final rule were derived from the A.M. Best data for 1984, the most recent year for which the A.M. Best data were available as of the date the final rule was published. However, the A.M. Best data for 1985 became available after January 2. In the January final rule, NHTSA stated, "The agency will update these appendices annually, shortly after A.M. Best publishes its revised listings, to reflect changes in premium shares for the insurance companies." 52 FR 62.

In accordance with that pledge, the agency published a proposed updated listing of subject insurance companies on May 28, 1987 (52 FR 19898). This proposal used the more current A.M. Best data to determine which insurance companies are statutorily required to file reports by October 25, 1987. This notice proposed that all insurance companies that were statutorily eligible for an exemption from these reporting requirements should be exempted.

The Comment and the Agency's Decision: Only one comment was filed in response to the proposed rule. The Sentry Insurance Group (Sentry) was listed in proposed Appendix A as an insurance company that was required to file an annual report this year for each State in which it did business. This proposal was based on A.M. Best data showing that Sentry had a 1.0 percent market share nationally, and was therefore statutorily ineligible for an exemption. Sentry commented that its review of the A.M. Best data showed that Sentry had only 0.984 percent of the national market. Sentry stated that if this number were to be rounded, it should be rounded to 0.98 percent. If it were so rounded, Sentry asserted that it would not be required to file a report in October 1987, because it would have a national market share of less than 1 percent.

A.M. Best reported to NHTSA that Sentry had a 1.0 percent market share nationally. In response to Sentry's allegations, NHTSA contacted A.M. Best officials and asked them whether Sentry's comment was accurate. After further examining their raw data, those officials stated that Sentry's assertion that its market share was actually 0.984 percent was mathematically correct, but statistically invalid. Those officials stated that A.M. Best has always rounded market share percentages to the nearest one tenth of a percentage point. According to those officials, A.M. Best has always followed this practice in order to account for the uncertainties and previous rounding of numbers used in these statistical calculations. In accordance with this longstanding practice, which A.M. Best applies to all insurance companies, Sentry's market share of 0.984 percent was rounded to 1.0 percent by A.M. Best and reported as such to the agency.

The A.M. Best practice is consistent with the general principle of statistics that an impression of numerical accuracy should be avoided, if such accuracy does not actually exist. This subject is discussed in John Griffin's *Statistics, Methods and Applications*, Holt, Rinehart and Winston, Appendix B (1962). Such spurious accuracy would be illustrated by an attempt to express the estimated population of a city in 1987 to a precise number in the final digit. It is not possible for such an estimate to be that accurate. Accordingly, persons making estimates must round off the estimate to the degree of accuracy of the least precise figure used in computing the estimate.

To illustrate this, let us suppose that a business were attempting to estimate its sales in four dif-

ferent States, and then determine what percentage of that four State area was represented by the sales in State B. Assume that the sales figures for the States were:

State A	25,000
State B	1,400,000
State C	12,000
State D	3,450,000

The total for these numbers is 4,887,000. However, this total is an improper expression of accuracy. Since the least precise sales figure is expressed to the nearest hundred thousand in State B, the four State estimated total would also be expressed to the nearest hundred thousand, as 4.9 million.

If one then divides the sales figure in State B (1,400,000) by estimated total sales in the four States (4,900,000), the result is 28.57142857142 percent. This expression of the result is a very clear illustration of spurious accuracy. Applying proper statistical principles, the percentage calculated here cannot have more significant digits that are found in any one of the numbers that are divided. In this example, both the divisor and the dividend have only two significant digits. Therefore, the quotient could not have more than two significant digits and the result should be shown as 29 percent.

A.M. Best follows similar rounding procedures when it calculates the market shares for insurance companies. To avoid spurious accuracy in its reported percentages, A.M. Best has determined that its market share percentages should be expressed only to the nearest one tenth of a percentage point. This determination by A.M. Best appears consistent with sound statistical practices.

Therefore, the agency is not persuaded that there is a need for it to recalculate the market share information reported to it by A.M. Best, by asking A.M. Best to furnish its raw data for all insurance companies with a 1.0 percent share of the national market. When NHTSA announced its intention to base its market share determinations on the A.M. Best data, the A.M. Best practice of rounding off market shares to the nearest one tenth of a percentage point was known by all insurance companies. The agency will recalculate the A.M. Best estimates .fbonly.fa if there is some reason to believe that the estimates are based on a mathematical error, unreasonable statistical practices or assumptions, or are arbitrarily applied to only some insurance companies. In this case, none of these factors is present. Therefore, NHTSA does not believe it is necessary or appropriate for it to recalculate A.M. Best's reported market share information. Accordingly, Sentry Insurance Group appears in this final version of Appendix A, based on the A.M. Best report.

No other comments were received on the proposed listings. For the reasons set forth above and in the preamble to the proposed listing, this final rule adopts the proposed listings for both Appendix A and Appendix B.

NHTSA finds for good cause that this rule should be effective immediately upon publication in the *Federal Register*, instead of 30 days thereafter. As noted earlier in this preamble, section 612 of the Cost Savings Act (15 U.S.C. 2032) imposes a statutory duty on insurers that were not exempted from these reporting requirements to file a report for the 1986 calendar year no later than October 25, 1987. This statutory obligation makes it imperative that this listing of the insurance companies that are *not* exempted from filing those reports become effective as soon as possible. As also noted above, NHTSA will consider reports by the listed insurance companies to be timely filed, if such reports are received by the agency not later than 30 days after the publication of this rule.

In consideration of the foregoing, 49 CFR Part 544 is amended as follows:

Appendix A to Part 544 is revised to read as follows:

Appendix A — *Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business*

State Farm Group
Allstate Insurance Group
Farmers Insurance Group
Nationwide Group
Aetna Life & Casualty Group
Liberty Mutual Group
Travelers Insurance Group
USAA Group
Hartford Insurance Group
CIGNA Group
Geico Corporation Group
Continental Group
United States F & G Group
Fireman's Fund Group
California State Auto Association
Interinsurance Exchange Auto Club of Southern California
Sentry Insurance Group
Lincoln National Group

Appendix B to Part 544 is revised to read as follows:

Appendix B — *Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States*

Alabama Farm Bureau Group (Alabama)
Island Insurance Group (Hawaii)
Kentucky Farm Bureau Group (Kentucky)
American General Group (Maine)
Commercial Union Assurance Group (Maine)
American Family Group (North Dakota, South Dakota, and Wisconsin)
Auto Club of Michigan Group (Michigan)
Southern Farm Bureau Group (Mississippi)
Amica Mutual Insurance Company (Rhode Island)
American International Group (Vermont)

Issued on January 15, 1988

Diane K. Steed
Administrator

53 F.R. 1635
January 21, 1988

PREAMBLE TO AN AMENDMENT TO PART 544—INSURERS REPORTING REQUIREMENTS

List of Insurers Required to File Reports in October 1988

(Docket No. T86-01; Notice 6)

ACTION: Final Rule.

SUMMARY: Title VI of the Motor Vehicle Information and Cost Savings Act requires each passenger motor vehicle insurer to file annual reports with this agency, unless the insurer is exempted by this agency from filing such reports. This law stipulates that NHTSA can exempt those insurance companies whose market share is below certain percentages in each individual State and for the Nation as a whole. To carry out these statutory provisions, the agency has exempted those insurance companies that are lawfully eligible to be exempted and has also published a listing of those insurance companies subject to the reporting requirements of Title VI of the Motor Vehicle Information and Cost Savings Act.

The list of insurance companies required to file reports may differ annually since a company's eligibility for exemption from the reporting requirements may change, as its national and State-by-State market shares change. To properly address this situation, NHTSA publishes annual updates listing the insurance companies that are required to file these reports each year. The updated list is based on the most current market share information available to the agency. Those insurance companies included on the list at the end of this rule are required to file reports for the 1987 calendar year not later than October 25, 1988. Any insurance company omitted from this list is *not* required to file a report for the 1987 calendar year.

EFFECTIVE DATE: October 11, 1988.

SUPPLEMENTARY INFORMATION:

Background: Section 612 of the Motor Vehicle Information and Cost Savings Act (the Act; 15 U.S.C. 2032) requires each insurer to file an annual report with NHTSA unless the agency exempts the insurer from filing such reports. The term "insurer" is defined very broadly for the purposes of Section 612, which consists of two broad groups of entities. One of these groups is included in the definition of "insurer" by virtue of Section 612(a)(3). That section specifies that, for the purposes of Section 612, the term "insurer" includes any person, other than a governmental entity, who has a fleet of 20 or more motor vehicles used primarily for rental or lease and not covered by theft insurance policies issued by insurers of passenger motor vehicles. The requirements for this group of insurers are not addressed in or affected by this rule.

The other broad group is included within the term "insurer" by virtue of Section 2(12) of the Act (15 U.S.C. 1901(12)). That section provides that every person engaged in the business of issuing passenger motor vehicle insurance policies is an insurer, regardless of the size of the business. Section 612(a)(5) provides that the agency shall exempt small insurers included in this second broad group from the reporting requirements if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information collected and compiled in the reports, either nationally or on a State-by-State basis. The term "small insurer" is defined in Section 612(a)(5)(C) as an insurer whose premiums account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all forms of motor vehicle insurance issued by insurers within a particular State, such an insurer must report the required information about its operations in that State.

To implement these statutory criteria for exempting small insurers, NHTSA has used the data voluntarily supplied by insurance companies to A.M. Best to determine the insurer's market shares nationally and in each State. The A.M. Best data base was chosen because it is both accurate and timely, and because its use imposes no additional burdens on any party.

After examining the A.M. Best data, NHTSA determined that it should exempt all those insurance companies that were statutorily eligible for exemption from these reporting requirements. This determination was based on two separate considerations. First, NHTSA determined that the reports from only those insurance companies that were statutorily required to file reports would provide the agency with representative data, both nationally and on a State-by-State basis. Second, NHTSA determined that the report data to be provided by insurance companies who were ineligible for an exemption would be sufficient for NHTSA to carry out its activities and responsibilities under Title VI of the Act.

Accordingly, the agency included an Appendix A and an Appendix B in the final rule for insurer reports published January 2, 1987, (52 FR 59) and updated these appendices annually. The 20 insurance companies listed in the January 2, 1987, Appendix A had premiums that accounted for 1 percent or more of all motor vehicle insurance premiums paid nationally. Therefore, those companies were required to report on their operations for every State in which they did business. The eleven insurance companies listed in the January 2, 1987, Appendix B had premiums that accounted for 10 percent or more of the total motor vehicle insurance premiums within a particular State or States. Such companies were required to report on their operations only for those States in which their premiums accounted for 10 percent or more of the total premiums.

The market shares for each of the insurance companies listed in the January 2, 1987, final rule were derived from the A.M. Best data for 1984, the most recent year for which the A.M. Best data were available as of the date the final rule was published. Since that time, A.M. Best data for more recent calendar years have become available. In its January 2, 1987, final rule, NHTSA stated that "The agency will update these appendices annually, shortly after A.M. Best publishes its revised listings, to reflect changes in premium shares for the insurance companies" (52 FR 62).

Accordingly, the agency published a Notice of Proposed Rulemaking (NPRM) on January 21, 1988, (53 FR 1641), proposing an updated listing of subject insurance companies that must provide annual insurer reports to the agency for the 1987 calendar year. That NPRM used the most current A.M. Best data to determine which insurance companies are statutorily required to file reports by October 25, 1988. That notice proposed that all insurance companies that were statutorily eligible for an exemption from these reporting requirements should be exempted.

No comments were received on the proposed rule. For the reasons set forth above and in the NPRM, this final rule adopts the proposed listings for both Appendix A and Appendix B.

This rule is effective 30 days after publication in the *Federal Register*. As noted earlier in this preamble, Section 612 of the Cost Savings Act (15 U.S.C. 2032) imposes a statutory duty on insurers that were not exempted from these reporting requirements to file a report for the 1987 calendar year no later than October 25, 1988.

In consideration of the foregoing, 49 CFR Part 544 is amended as follows:

APPENDIX A—*Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business*

State Farm Group

Allstate Insurance Group

Farmers Insurance Group

Nationwide Group

Aetna Life & Casualty Group

Liberty Mutual Group

Travelers Insurance Group

Hartford Insurance Group

USAA Group

United States F & G Group

Geico Corporation Group

American International Group

CIGNA Group

Continental Group

Fireman's Fund Group

CNA Insurance Group

California State Auto Association

American Family Group

Progressive Group

Crum & Forster Companies

APPENDIX B—*Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States*

Alabama Farm Bureau Group (Alabama)

Island Insurance Group (Hawaii)

Kentucky Farm Bureau Group (Kentucky)

Commercial Union Assurance Group (Maine)

Auto Club of Michigan Group (Michigan)

Southern Farm Bureau Group (Mississippi)

Amica Mutual Insurance Company (Rhode Island)

Issued on Sept. 6, 1988

Diane K. Steed
Administrator

53 F.R. 35073
September 9, 1988

PREAMBLE TO AN AMENDMENT TO PART 544

Insurer Reporting Requirements; List of Insurers Required to File Reports in 1989 (Docket No. T86-01; Notice 9) RIN: 2127-AC32

ACTION: Final rule.

SUMMARY: Title VI of the Motor Vehicle Information and Cost Savings Act requires each passenger motor vehicle insurer to file annual reports with NHTSA, unless the agency exempts the insurer from filing such reports. The law stipulates that NHTSA can exempt those insurance companies whose market share is below certain percentages in each individual State and for the nation as a whole. To carry out these statutory provisions, the agency has exempted those insurance companies that are lawfully eligible to be exempted and is hereby publishing an updated listing of those insurance companies subject to the reporting requirements. Those insurance companies included on the list are required to file reports for the 1988 calendar year not later than October 25, 1989. Any insurance company omitted from this list is *not* required to file a report for the 1988 calendar year.

EFFECTIVE DATE: The final rule on this subject will be effective December 4, 1989.

SUPPLEMENTARY INFORMATION: Section 612 of the Motor Vehicle Information and Cost Savings Act (the Act)(15 U.S.C.2032) requires each insurer to file an annual report with NHTSA unless the agency exempts the insurer from filing such reports. The reports include information about thefts and recoveries or motor vehicles, the rating rules used by the insurers to establish premiums for comprehensive coverage, the actions taken by insurers to reduce such premiums, and the actions taken by insurers to reduce or deter theft.

Section 612(a)(5) provides that the agency shall exempt small insurers from the reporting requirements if NHTSA find that such exemptions will not significantly affect the validity or usefulness of the information collected and compiled in the reports, either nationally or on a State-by-State basis. The term "small insurer" is defined in Section 612(a)(5)(C) as an insurer whose premiums account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all forms of motor vehicle insurance issued by insurers within a particular State, such as insurer must report the required information about its operations in that State.

To implement these statutory criteria for exempting small insurers, NHTSA has used the data voluntarily supplied by insurance companies to A.M.Best to determine the insurer's market shares nationally and in each State. The A.M.Best data base was chosen because it is both accurate and timely, and because its use imposes no additional burdens on any party.

After examining the A.M.Best data, NHTSA has determined, first, that the report data to be provided by the large insurance companies will be sufficient for NHTSA to carry out its activities and responsibilities under Title VI of the Act, and second, that exempting all those insurance companies that qualify as small insurers will not affect the validity and usefulness of the information collected and compiled under this section, either nationally or on a State-by-State basis.

In the final rule for insurer reports published January 2, 1987, (52 FR 59), the agency listed, as Appendix A, the 20 insurance companies that had premiums that accounted for 1 percent or more of all motor vehicle insurance premiums paid nationally. Those companies were required to report on their operations for every State in which they did business. In Appendix B, the agency listed the eleven insurance companies with premiums that accounted for 10 percent or more of the total motor vehicle insurance premiums within a particular State or States. Such companies were required to report on their operations only for those States in which their premiums accounted for 10 percent or more of the total premiums.

The market shares for each of the insurance companies listed in the January 2, 1987, final rule were derived from the A.M.Best data for 1984, the most recent year for which the A.M.Best were available as of the date the final rule was published. In issuing the

rule, NHTSA stated that it would update the appendices as revised listings become available. Since that time, A.M.Best data for more recent calendar years have become available.

Accordingly, the agency published a Notice of Proposed Rulemaking (NPRM) on May 30, 1989 (54 FR 22921), proposing an updated listing of insurance companies that must provide annual insurer reports to the agency for the 1988 calendar year. That NPRM used the A.M.Best data for 1987 to determine which insurance companies are statutorily required to file reports by October 25, 1989. The notice proposed that all insurance companies that were statutorily eligible for an exemption from these reporting requirements should be exempted.

No comments were received on the proposed rule. For the reasons set forth above and in the NPRM, this final rule adopts the proposed listings for both Appendix A and Appendix B.

This rule is effective 30 days after publication in the *Federal Register*. As noted earlier in this preamble, Section 612 of the Cost Savings Act (15 U.S.C. 2032) imposes a statutory duty on insurers that were not exempted from these reporting requirements to file a report for the 1988 calendar year no later than October 25, 1989.

Appendix A to Part 544 is revised to read as follows:

Appendix A — Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

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State Farm Group
Allstate Insurance Group
Farmers Insurance Group
Nationwide Group
Aetna Life & Casualty Group
Liberty Mutual Group
Travelers Insurance Group
Hartford Insurance Group
USAA Group
United States F&G Group
Geico Corporation Group
American International Group
CIGNA Group
Continental Group
Fireman's Fund Group
CNA Insurance Companies
California State Auto Association
American Family Group
Progressive Group
Crum & Forster Companies

Appendix B to Part 544 is revised to read as follows:

Appendix B - Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

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Alfa Insurance Group (Alabama)
Island Insurance Group (Hawaii)
Kentucky Farm Bureau Group (Kentucky)
Commercial Union Assurance Group (Maine)
Auto Club of Michigan Group (Michigan)
Southern Farm Bureau Group (Mississippi)
Amica Mutual Insurance Company (Rhode Island)
Concord Group Insurance Company (Vermont)

Issue Date: October 27, 1989

Jeffrey R. Miller
Acting Administrator

54 F.R. 46252
November 2, 1989

PREAMBLE TO AN AMENDMENT TO PART 544
Motor Vehicle Theft Prevention; Reporting Requirements
(Docket No. T86–01; Notice 10)
RIN 2127–AC32

ACTION: Final rule.

SUMMARY: This final rule marks the culmination of a four-year effort by this agency to obtain the information necessary to implement authority for exempting a substantial number of self-insured motor vehicle rental and leasing companies from a statutory requirement to file annual theft data reports. To date, all self-insured rental and leasing companies with fleets of 20 or more motor vehicles have been required to file reports. Henceforth, theft reports will be required from only those rental and leasing companies (including franchisees and licensees) which have combined fleets of 50,000 or more vehicles. This change reduces the number of covered companies to fewer than two dozen.

The agency has taken this action after making two statutorily-specified determinations. First, NHTSA has determined that for those companies with combined fleets of fewer than 50,000 vehicles, the cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer. Second, NHTSA has determined that reports from the largest rental and leasing companies would provide the agency with a representative sampling of the theft experience of rental and leasing companies.

DATE: *Effective Date*: This final rule is effective on July 23, 1990.

SUPPLEMENTARY INFORMATION:

Background: The Motor Vehicle Theft Law Enforcement Act of 1984 (Pub.L. 98–547; Theft Act) added Title VI to the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2021 *et seq.*; Cost Savings Act). Section 612 of the Cost Savings Act requires insurers to submit annual reports to NHTSA regarding a number of theft-related matters. As set forth in section 612(a)(2) of the Cost Savings Act, the reports are to include theft and recovery data, the rating rules and plans used by insurers to establish premiums for comprehensive insurance coverage for motor vehicles, and actions taken to reduce premiums, among other information.

In addition to including companies that issue insurance policies, the term "insurers" is defined in section 612 to include certain self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passenger motor vehicles. (Section 612(a)(3)). The agency estimates that about 4,000 rental and leasing companies are "insurers" under this definition and are therefore required to file annual reports.

Section 612(a)(4) authorizes the agency to exempt certain insurers from submitting the reports, if the agency determines that:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer, *and*

(2) The insurer's report will not significantly contribute to carrying out the purposes of Title VI.

The purpose of this notice is in effect to grant a class exemption to all companies that rent or lease fewer than 50,000 vehicles. This notice concludes a rulemaking proceeding begun with the issuance of a notice of proposed rulemaking on February 3, 1989 (54 *FR* 5519). NHTSA believes that reports from a representative sample of rental and leasing companies will provide the agency with the necessary information to allow it to fulfill all its obligations under Title VI of the Cost Savings Act. NHTSA concludes that reports by the many smaller rental and leasing companies do not significantly contribute to carrying out Title VI, and that exempting such companies will relieve an unnecessary burden on the vast majority of the companies presently subject to the reporting requirements.

When it issued the initial regulations under Title VI, NHTSA did not have sufficient information to allow it to make the first determination in section 612(a)(4), i.e., a determination that the cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer. Absent such information, NHTSA was unable to exempt rental and leasing companies from the reporting requirements. Therefore, in a final rule published on January 2, 1987 (52 FR 59), NHTSA required each rental and leasing company which fell

within the definition of "insurer" to file an annual report with the agency. In the preamble to the final rule, the agency stated that it would consider individual requests for exemption from smaller rental and leasing companies, as long as they provided information that would enable the agency to make a determination under section 612(a)(4) that the cost of preparing and furnishing the reports is excessive in relation to the size of the insurer's business.

The agency received approximately 150 petitions for exemption for the October 25, 1987 reporting period. Many of the petitioners requested that their petitions be made applicable to subsequent years. Those petitions from smaller, independent rental and leasing companies were granted, but petitions from large, nationwide rental and leasing companies and their franchisees or licensees were denied.

Subsequent to the issuance of the January 1987 rule, the agency obtained information on the size of the fleets of rental and leasing companies and the market share for these companies. This information was obtained from the *Automotive Fleet Magazine* (for both rental and leasing companies) and *Travel Trade Business Travel News* (for rental companies only). These publications publish annual tabulations of the data which the motor vehicle rental and leasing companies voluntarily supply to them. Within the rental and leasing community, both publications are regarded as the most accurate data sources available for those businesses. NHTSA tentatively concluded that these sources are sufficiently accurate to determine which rental and leasing companies should be exempted from the theft reporting requirements.

Notice of Proposed Rulemaking

Using these data from the trade publications, the agency published a notice of proposed rulemaking (NPRM) (54 FR 5519, February 3, 1989) that explained how the agency proposed to make the statutory determinations that would exempt most self-insured rental and leasing companies from reporting. In the NPRM, the public was invited to comment on the several tentative conclusions reached by the agency in formulating the proposed rule. First, the agency had tentatively concluded that *Automotive Fleet* and *Travel Trade Business Travel News* were sufficiently accurate to be used in determining which rental and leasing companies should be exempted from the theft reporting requirements. Second, the agency tentatively concluded that franchisors and their franchisees or licensors and their licensees should be treated as single entities for purposes of reporting, with franchisors and licensors responsible for gathering the required data. The agency's rationale for this tentative decision was that since franchisees generally submit periodic reports to the franchisor in any case, it would be relatively simple to include information about theft experience. Further, NHTSA has no data on the size of all franchisees and licensees. Without this information, the agency had no basis to propose exemptions for rental and leasing companies if it were to treat each franchisee or licensee separately. Commenters who disagreed with this approach were asked to discuss how NHTSA could obtain franchisee number and fleet size information and to discuss whether the agency could structure an exemption from the reporting requirements for small rental and leasing companies while requiring reports from all franchisees of large franchisors. NHTSA also sought additional information on the structure and procedures used by franchise operations in the car rental business.

Third, using the trade publication information, the agency tentatively determined that a representative sample of the theft experience of vehicles other than passenger cars would be obtained if it received reports only from rental and leasing companies (including franchisees and licensees) with fleets of 50,000 or more vehicles.

Fourth, the agency tentatively determined that the costs of requiring rental and leasing companies with fewer than 50,000 vehicles in their fleet to prepare and furnish reports were excessive in relation to the size of the company's business and would not in any way contribute to the agency's carrying out its responsibilities under Title VI of the Cost Savings Act. NHTSA asked commenters who disagreed with this determination to explain why they believed that the purposes of Title VI would be furthered by reports from smaller companies.

Public Comments

The agency received a total of seven comments. All commenters supported the 50,000 vehicle threshold, and the general intent to exempt as many companies as possible from reporting requirements. One commenter argued that the costs of franchisors' providing theft data for franchisees is excessive in relation to the size of the business of the insurer, regardless of the company's size.

Chrysler Motors Corporation (Chrysler) and Volkswagen of America, Inc. (Volkswagen), two motor vehicle manufacturers not subject to the reporting requirements, wrote in support of the proposal, especially the 50,000 vehicle threshold. Chrysler offered a comment about the proposed change to wording in Section 544.3, the "Application" section that describes companies subject to the reporting requirements of Part 544. The NPRM had proposed that self-insured motor vehicle rental and leasing

companies subject to reporting requirements be described as:

> . . . persons (including licensees and franchisees) who have a fleet of 20 or more motor vehicles used primarily for rental or lease and not covered by theft insurance policies issued by an insurer of motor vehicles listed in Appendix C.

Chrysler stated that it believed that the agency had erred in developing the wording for the exemption in Section 544.3 since it did not correspond with the agency's intent to exclude from reporting requirements those self-insured rental and leasing companies with fleets of fewer than 50,000 vehicles. The agency notes that the description proposed is the statutory definition of "insurer" in Section 612(a)(3) of the Theft Act. However, the agency agrees that there may be less confusion if the description of the self-insured rental and leasing companies were more simply worded. Therefore, the regulatory text adopted in this notice simply describes these companies as "the motor vehicle rental and leasing companies listed in Appendix C."

Chrysler also stated the agency's proposal to update Appendix C annually in November to identify the companies which must report the following October did not provide sufficient lead time in preparing the required report for a calendar year. It suggested that the requirements be amended to give a company listed in Appendix C a full year to collect theft and recovery data for reporting to the agency the following year. Under the procedure recommended by Chrysler, a company added to Appendix C in November 1990, would begin collecting data for calendar year 1991 on January 1, 1991, and would file its first report in October 1992.

The agency is not adopting this recommendation, for the following reasons. Although there may be merit in this comment, NHTSA could not adopt the recommended change in this rulemaking because it is not within the scope of the notice. This agency will consider the comment further after the completion of this rulemaking. In doing so, the agency will examine the following factors which are relevant to making a decision about the appropriate interval between the agency's final determination regarding which companies must report and the time that the reports must be submitted. First, the time period proposed in the NPRM would allow a company about 10 months after final notification to gather the needed data for the preceding calendar year, arrange it into the appropriate format, and report it to the agency. Second, the insurers listed in Appendices A and B are required to report under an identical schedule. In order to avoid confusion, the reporting timeframe should be consistent for all reporting companies. The agency's experience with insurers subject to Appendices A and B has been that the time between the finalization of the list of insurers required to report and the due date of the annual theft report has not been a problem.

The National Automobile Dealers Association supported the agency's proposal to exempt all self-insured rental and leasing companies with under 50,000 motor vehicles. The association resubmitted data, originally provided with a petition for reconsideration of the final rule issued by the agency on January 2, 1987 (52 FR 59), on the fleet size of members of the dealers' association. The agency was asked to consider the data to be representative of all franchised car and truck dealer leasing and rental fleets.

U-Haul International, another motor vehicle rental and leasing company, supported the proposed rule, but requested that the company be removed from Appendix C, stating that because of the unique nature of its business, any data it provided could not be extrapolated to the whole industry. The agency is unable to accommodate this request. U-Haul provided no contradictory data regarding the agency's determinations that, for those companies with combined fleets of more than 50,000 vehicles, the cost of preparing and furnishing such reports is not excessive in relation to the size of the business of the insurer, and that a report from U-Haul would not provide the agency with a representative sampling of the theft experience of rental and leasing companies. Since U-Haul is one of the largest rental and leasing companies of trucks, any information U-Haul provides to the agency is necessary to fulfill the requirements of the Theft Act. The agency further notes that despite this comment, U-Haul submitted timely comments on its theft experience for calendar years 1987 and 1988.

The American Automotive Leasing Association, a trade association representing members that lease motor vehicles on a long-term basis to commercial businesses, supported the thrust of the proposed amendments.

The law firm of Collier, Shannon, Rill & Scott, commenting on behalf of the American Car Rental Association, asserted that: "The cost of car rental franchisors providing theft data on franchisees is excessive in relation to the size of the insurer's business because that information will not significantly contribute to providing the agency with better insight into car theft problems." It was further stated that obtaining this information from franchisees would impose "significant" costs on franchisors. The commenter also disagreed with NHTSA's statement that it would be simple to expand existing franchisee reporting information to franchisors, to include theft information, asserting that:

Franchisors have no contractual right under the

franchise agreement to such information because it is not material to the operation and fulfillment of the agreement. Franchisors do not report information about the franchisee's vehicles because franchisees own their own vehicles.

In view of these concerns, the commenter suggested that the reporting obligations of franchisors be limited to reporting the theft experience of company-operated facilities.

The agency is unable to assess this commenter's cost arguments since it did not submit any supporting cost data. Further, even though the commenter suggested that the costs would be significant, there was no suggestion that they would be excessive. As to the suggestion of difficulty under current contractual arrangements in obtaining theft information, the commenter did not argue that the task would be an impossible one. Further, no other commenter indicated any problem in obtaining such information from franchisees.

Accordingly, after taking into consideration the public comments, the agency adopts as final the tentative conclusions formulated in the NPRM, and makes final the language for Part 544 set forth in the NPRM, including Appendix C, which lists the motor vehicle rental and leasing companies (including licensees and franchisees) which are not exempted with respect to calendar year 1988. In the next several months, the agency will issue a proposal setting forth its tentative determination regarding exemptions and listing the companies that would be required to file a report in October 1990 for the 1989 calendar year.

In consideration of the foregoing, 49 CFR Part 544 is amended as follows:

Section 544.3 is revised to read as follows:

§ *544.3 Application.*

This part applies to the motor vehicle insurance policy issuers listed in Appendices A or B, and to the motor vehicle rental and leasing companies listed in Appendix C.

Section 544.6 is amended by revising subparagraph (a)(2):

§ 544.6 *Contents of insurer reports*

(a)(1) * * *

(2) In the case of a motor vehicle rental or leasing company listed in Appendix C, provide the information specified in paragraphs (c), (d)(2)(iv), and (g) of this section for each vehicle type listed in paragraph (b) of this section, for each State in which the company, including any licensee, franchisee, or subsidiary, did business during the reporting period. The information for each listed company shall include all relevant information from any licensee, franchisee, or subsidiary.

A new Appendix C is added to Part 544, to read as follows:

Appendix C—*Motor Vehicle Rental and Leasing Companies Subject to the Reporting Requirements of Part 544*

Alamo Rent-A-Car, Inc.
Automotive Rentals, Inc.
Avis Car Leasing-USA
(Subsidiary of Avis, Inc.)
Avis Rent a Car System, Inc.
(Subsidiary of Avis, Inc.)
Budget Rent A Car Corporation
Dollar Rent-A-Car
(Subsidiary of Systems Inc.)
Enterprise Fleets, Inc.
(Subsidiary of Enterprise Leasing Company)
GE Capital Fleet Services
Hertz Penske Truck Leasing, Inc.
(Subsidiary of Hertz Corporation)
Hertz Rent-A-Car
(Subsidiary of Hertz Corporation)
Lease Plan, USA
Lend Lease
McCullagh Leasing, Inc.
National Car Rental System, Inc.
Peterson, Howell & Heather, Inc.
Rent A Car Company
(Subsidiary of Enterprise Leasing Company)
Rent A Car Corporation
(Subsidiary of American International)
Ryder Truck Rental
(Both rental and leasing operations)
Security Pacific Credit Corporation
U-Haul International, Inc.
(Subsidiary of AMERCO)
United States Fleet Leasing Inc.
(Subsidiary of Hertz Corporation, Leasing)
Wheels, Inc.

Issued on: June 18, 1990

Jeffrey R. Miller
Deputy Administrator
55 F.R. 25606

June 22, 1990

PREAMBLE TO AN AMENDMENT TO PART 544
Insurer Reporting Requirements; List of Insurers Required to File Reports

(Docket No. 91–53; Notice 2)
RIN: 2127–AE23

ACTION: Final rule.

SUMMARY: Title VI of the Motor Vehicle Information and Cost Savings Act require certain passenger motor vehicle insurers to file reports with NHTSA, unless the agency exempts the insurer from filing such reports. The law stipulates that NHTSA can only exempt those insurance companies whose market share is below certain percentages for the nation as a whole and in each individual State, or for which NHTSA determines that: (1) the cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and (2) the insurers report will not significantly contribute to carrying out the purposes of Title VI.

To carry out these statutory provisions, the agency has exempted those companies that are lawfully eligible to be exempted and is hereby publishing an updated listing of those companies subject to the reporting requirements. Using a new procedure, this notice updates the list of companies subject to the reporting requirements, to reflect changing market conditions. This final rule was preceded by a notice of proposed rulemaking published on October 16, 1991 (56 FR 51871) that requested public comment on the proposal.

EFFECTIVE DATE: The final rule on this subject is effective July 6, 1992. Companies listed on the appendices are required to submit reports beginning with the one due October 25, 1992.

SUPPLEMENTARY INFORMATION:

Background

Section 612 of the Motor Vehicle Information and Cost Savings Act (the Act) (15 U.S.C. 2032) requires certain passenger motor vehicle insurers to file an annual report with NHTSA unless the agency exempts the insurer from filing such reports. The reports include information about thefts and recoveries of motor vehicles, the rating rules used by the insurers to establish premiums for comprehensive coverage, the actions taken by insurers to reduce such premiums, and the actions taken by insurers to reduce or deter theft. Under the Act, the following insurers are subject to the reporting requirements: (1) those issuers of motor vehicle insurance policies whose total premiums account for one percent or more of the total premiums of motor vehicle insurance issued within the United States; (2) those issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one State; (3) rental or leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity. As discussed in the following sections, the agency may, by regulation, exempt certain insurers from the reporting requirements.

A. Insurers of Passenger Motor Vehicles

Although issuers of motor vehicle insurance policies are subject to reporting requirements, section 612(a)(5) provides that the agency shall exempt small insurers from the reporting requirements if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information collected and compiled in the reports, either nationally or on a State-by-State basis. The term ''small insurer'' is defined in section 612(a)(5)(C) as an insurer whose premiums account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a ''small insurer,'' but accounts for 10 percent or more of the total premiums for all forms of motor vehicle insurance issued by insurers within a particular

State, such an insurer must report the required information about its operations in that State.

As described in the final rule establishing the requirement for insurer reports (52 FR 59, January 2, 1987), Appendix A lists companies which must report based on the fact that each insurer had at least one percent of the national market for motor vehicle insurance premiums, and Appendix B lists those insurers that are required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. In the January 2, 1987 notice, the agency stated that these appendices will be updated annually. It has been NHTSA's practice to update the appendices based on data voluntarily provided by insurance companies to A.M. Best, and made available to the agency each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-Insured Rental and Leasing Companies

In addition to companies that issue insurance policies, the term "insurers" is defined in section 612 of the Act to include certain self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passenger motor vehicles. (Section 612(a)(3)). Section 612(a)(4) of the Act authorizes the agency to exempt an insurer from submitting the reports, if the agency determines that:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer, and

(2) The insurer's report will not significantly contribute to carrying out the purposes of title IV.

In a final rule dated June 22, 1990 (55 FR 25606), the agency in effect granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles. The agency issued this exemption because it believed that reports from the largest rental and leasing companies would provide the agency with a representative sampling of the theft experience of rental and leasing companies. NHTSA concluded that reports by the many smaller rental and leasing companies do not significantly contribute to carrying out title VI, and that exempting such companies will relieve an unnecessary burden on the vast majority of the companies presently subject to the reporting requirements. As a result of the June 1990 final rule, a new Appendix C, which consists of an annually updated listing of the rental and leasing companies that are subject to the reporting requirements in part 544, was added. It has been NHTSA's practice to update Appendix C based primarily on information contained in the publications *Automotive Fleet Magazine* and *Travel Business Travel News*.

October 1991 Notice of Proposed Rulemaking

On October 16, 1991, NHTSA published a notice of proposed rulemaking (NPRM) to update the list of insurers required to file reports, based on the most recent information. (See 56 *FR* 51871.) In that notice, the agency also proposed a new procedure that the agency believed would let insurers know well in advance of the annual October 25 filing date whether they need to file a report for the previous calendar year.

In the past, it was the agency's practice to attempt to update Appendices A, B and C each year prior to the October 25 filing date, using A.M. Best and other data obtained in the spring of that same calendar year. However, the agency was generally unable to complete the updating before the October 25 filing date, resulting in confusion concerning which companies needed to file reports.

In the October 1991 NPRM, NHTSA stated that it believed that this problem would be resolved by increasing the interval between the receipt of data and the reporting date. Under the new approach, the updating of the appendices would focus on the report due the year after receipt of the A.M. Best and other data, both for companies which are added to the lists and companies which are removed from the lists. The agency stated that, under this approach, all companies added to the lists as of the last update (March 1991 final rule) should file the required report by October 25, 1991, and all companies added to the lists by the final rule based on the October 1991 NPRM would be provided ample notice concerning whether they need to file a report by October 25, 1992.

The agency further noted that Part 544 would not need to be changed to implement this approach. Part 544 generally does not limit its requirements to particular years. Under that part, any company not listed has an indefinite exemp-

tion from the reporting requirements, and as long as any company is listed, it must file reports each October 25. Thus, any company listed in the appendices as of the date of the notice of proposed rulemaking (October 16, 1991) must file a report on October 25, 1991, and each succeeding October 25, absent a further amendment.

NHTSA requested comments on this approach, and in particular, on whether there are any other ways to eliminate the problem discussed above.

NHTSA also proposed that, based on 1989 calendar year A.M. Best data, two companies, CIGNA Group and Crum and Forster Companies, included in Appendix A, be removed, and one company, Prudential of America Group, be added. Also based on the 1989 Best data, the agency proposed that one company, Island Insurance Group (reporting on its activities in Hawaii) be removed from Appendix B and that one company, Tennessee Farmers (reporting on its activities in Tennessee) be added. The agency further proposed that Southern Farm Bureau Casualty Group, already included in Appendix B and required to report on its activities in Mississippi, also be required to report on its activities in Arkansas.

Based on information in *Automotive Fleet Magazine* and *Travel Trade Business Travel News* for 1989, NHTSA proposed that the following six rental and leasing companies be removed from Appendix C; Automotive Rentals, Inc. (subsidiary of ARI, Inc.), Enterprise Rent-A-Car, GE Capital Auto Lease, Inc., Lend Lease Cars, Security Pacific Auto Finance, and United States Fleet Leasing, Inc. Based on additional information provided by each respective company that it self-insures fewer than 50,000 vehicles per year, the agency proposed to remove from Appendix C two additional companies, Automotive Rentals, Inc. and United States Fleet Leasing, Inc. The agency also proposed that one company, Associates Leasing, Inc. be added to Appendix C.

Public Comment and Final Determination

In response to the NPRM, the agency received one public comment, from Lease Plan U.S.A., Inc. Lease Plan stated that it should be removed from Appendix C because it has on lease in the United States 12,000 vehicles and does not self-insure any of the vehicles. Because Lease Plan U.S.A. has fewer than 50,000 vehicles in its fleet and does not self-insure any of its vehicles, it does not meet the criteria the agency uses to determine that an insurer is included in Appendix C. Therefore, the agency agrees that Lease Plan U.S.A. should be removed from Appendix C.

Since the agency received no comment on the proposed change in the procedure updating Appendices A, B and C, the agency adopts as final the procedure proposed in the NPRM. Henceforth, any company listed in the appendices must file a report in the forthcoming October 25 and each succeeding October 25, absent a further amendment. Therefore, each company listed in Appendix A, B, or C of this notice must file a report no later than October 25, 1992, and, on each succeeding October 25, absent a further amendment.

This final rule does not have any retroactive effect, and it does not preempt any State law. Section 610 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2030, provides that judicial review of this role may be obtained pursuant to Section 504 of the Cost Savings Act, 15 U.S.C. 2004. The Cost Savings Act does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

In consideration of the foregoing, 49 CFR part 544 is amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 continues to read as follows:

Authority: 15 U.S.C. 2032; delegation of authority at 49 CFR 1.50.

2. Appendix A to part 544 is revised to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Aetna Life & Casualty Group
Allstate Insurance Group
American Family Group
American International Group
California State Auto Association
CNA Insurance Companies
Farmers Insurance Group
GEICO Corporation Group
[Hanover Insurance Companies]
Hartford Insurance Group
Liberty Mutual Group
Nationwide Group
Progressive Group

[Prudential of America Group]
State Farm Group
Travelers Insurance Group
United States F&G Group
USAA Group

3. Appendix B to part 544 is revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Amica Mutual Insurance Company (Rhode Island)
Auto Club of Michigan Group (Michigan)
Commercial Union Insurance Companies (Maine)
Concord Group Insurance Companies (Vermont)
[Erie Insurance Group (Pennsylvania)]
[Indiana Farm Bureau Group (Indiana)]
Kentucky Farm Bureau Group (Kentucky)
Southern Farm Bureau Casualty Group (Arkansas, Mississippi)
[Tennessee Farmers (Tennessee)]

4. Appendix C to part 544 is revised to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
[American International Rent-A-Car Corp./ANSA]
[Associates Leasing, Inc.]
[Avis, Inc.]
Budget Rent-A-Car Corporation
Dollar Rent-A-Car Systems, Inc.
GE Capital Fleet Services
Hertz Rent-A-Car Division (subsidiary of Hertz Corporation)
McCullagh Leasing, Inc.
National Car Rental System, Inc.
[Penske Truck Leasing Company]
[PHH Fleet America]
[Rental Concepts, Inc.]
Ryder Truck Rental (both rental and leasing operations)
U-Haul International, Inc. (subsidiary of AMERCO)
Wheels, Inc.

Issued on: May 29, 1992.

Jerry Ralph Curry,
Administrator.

57 F.R. 23535
June 4, 1992.

PART 544—INSURER REPORTING REQUIREMENTS

(Docket No. T86–01; Notice 2)

S544.1 Scope. This part sets forth requirements for insurers to report to the National Highway Traffic Safety Administration information about motor vehicle thefts and recoveries, the effects of the Federal motor vehicle theft prevention standard on those thefts and recoveries, and related insurance practices.

S544.2 Purpose. The purpose of these reporting requirements is to aid in implementing and evaluating the provisions of the Motor Vehicle Theft Law Enforcement Act to prevent or discourage the theft of motor vehicles, to prevent or discourage the sale or distribution in interstate commerce of used parts removed from stolen motor vehicles, and to help reduce the cost to consumers of comprehensive insurance coverage for motor vehicles.

S544.3 Application. [This part applies to the motor vehicle insurance policy issuers listed in Appendices A or B, and to the motor vehicle rental and leasing companies listed in Appendix C. **(55 F.R. 25606—June 22, 1990. Effective: July 23, 1990)**]

S544.4 Definitions. (a) *Statutory terms.* All terms defined in sections 2 and 601 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 and 2021) are used in accordance with their statutory meanings unless otherwise defined in paragraph (b) of this section.

(b) *Other definitions.* (1) *Comprehensive insurance coverage* means the indemnification of motor vehicle owners by an insurer against losses due to fire, theft, robbery, pilferage, malicious mischief and vandalism, and damage resulting from floods, water, tornadoes, cyclones, or windstorms.

(2) *Gross vehicle weight rating* is used as defined at S571.3 of this chapter.

(3) *Heavy truck* means a truck with a gross vehicle weight rating of more than 10,000 pounds.

(4) *Light truck* means a truck with a gross vehicle weight rating of 10,000 pounds or less.

(5) *Major part* means—

(i) in the case of passenger motor vehicles, any part listed in § S541.5(a)(1) through (14) of this chapter;

(ii) in the case of light trucks, any part listed in § S541.5(a)(1) through (14) of this chapter, or the cargo bed or transfer case;

(iii) in the case of heavy trucks, any part listed in § S541.5(a)(1) through (14) of this chapter, or the cargo bed, drive axle assembly, fifth wheel, sleeper, or the transfer case;

(iv) in the case of multipurpose passenger vehicles, any part listed in § S541.5(a)(1) through (14) of this chapter, or the cargo bed or transfer case; and

(v) in the case of motorcycles, the crankcase, engine, frame, front fork, or transmission.

(6) *Motorcycle* is used as defined at S571.3 of this chapter.

(7) *Motor vehicle* means a passenger motor vehicle, multipurpose passenger vehicle, truck, or motorcycle.

(8) *Multipurpose passenger vehicle* is used as defined at S571.3 of this chapter.

(9) *Recovery* means regaining physical possession of a motor vehicle or a major portion of the superstructure of a motor vehicle with one or more major parts still attached to the superstructure, after that vehicle has been stolen.

(10) *Recovery-in-part* means a recovery in which one or more of the recovered vehicle's major parts is missing at the time of recovery.

(11) *Recovery intact* means a recovery with none of the recovered vehicle's major parts missing at the time of recovery, and with no apparent damage to any part of the motor vehicle other than those parts damaged in order to enter, start, and operate the vehicle, but with additional mileage and ordinary wear and tear.

(12) *Recovery-in-whole* means a recovery with none of the recovered vehicle's major parts missing at the time of recovery, but with apparent

damage to some part or parts of the vehicle in addition to those parts damaged in order to enter, start, and operate the vehicle.

(13) *Reporting period* means the calendar year covered by a report submitted under this part.

(14) *Truck* is used as defined at S571.3 of this chapter.

(15)(i) In the case of insurers that issue motor vehicle insurance policies, ''vehicle theft'' means an actual physical removal of a motor vehicle without the permission of its owner, but does not include the removal of component parts, accessories, or personal belongings from a motor vehicle which is not moved.

(ii) In the case of an insurer which has a fleet of 20 or more vehicles (other than a governmental entity) used primarily for rental or lease and not covered by theft insurance policies issued by insurers of motor vehicles, ''vehicle theft'' means an actual physical removal of a motor vehicle without the permission of its owner, or keeping possession of the motor vehicle without the permission of its owner for a sufficient period of time so that the vehicle could have been reported as stolen to the State police in the State in which the vehicle was to have been returned. However, vehicle theft does not include the removal of component parts, accessories, or personal belongings from a motor vehicle which is not moved.

S544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually not later than October 25, beginning on October 25, 1986. The report shall contain the information required by S544.6 of this part for the calendar year preceding the year in which the report is filed (e.g., the report due by October 25, 1988, shall contain the required information for the 1987 calendar year).

(b) Each report required by this part must:

(1) Have a heading preceding its text that includes the words ''Insurer Report'';

(2) Identify the insurer, including all subsidiary companies, on whose behalf the report is submitted, and the designated agent, if any, submitting the report or that will submit further documents to complete the report;

(3) Identify the State or States in which the insurer did business during the reporting period;

(4) State the full name and title of the official responsible for preparing the report, and the address of the insurer;

(5) Identify the reporting period covered by the report;

(6) Be written in the English language;

(7) Include a glossary defining all acronyms and terms of art used in the report, unless those acronyms and terms of art are defined immediately after they first appear in the report;

(8) Be submitted in three copies to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590; and

(9) If the insurer wishes to submit certain information under a claim of confidentiality, be submitted in accordance with Part 512 of this chapter.

S544.6 Contents of insurer reports.

(a)(1) In the case of insurers that issue motor vehicle insurance policies, provide the information specified in paragraphs (b) through (g) of this section for each State in which the insurer, including any subsidiary, did business during the reporting period if the insurer is listed in Appendix A, or for each State listed after the insurer's name if the insurer is listed in Appendix B.

[(2) In the case of a motor vehicle rental or leasing company listed in Appendix C, provide the information specified in paragraphs (c), (d)(2)(iv), and (g) of this section for each vehicle type listed in paragraph (b) of this section, for each State in which the company, including any licensee, franchisee, or subsidiary, did business during the reporting period. The information for each listed company shall include all relevant information from any licensee, franchisee, or subsidiary. **(55 F.R. 25606—June 22, 1990. Effective: July 23, 1990)]**

(b) For each of the following vehicle types, provide the information specified in paragraphs (c) through (g) of this section for all vehicles of that type insured by the insurer during the reporting period—

(1) Passenger cars.

(2) Multipurpose passenger vehicles.

(3) Light trucks.

(4) Heavy trucks.

(5) Motorcycles.

(c)(1) List the total number of vehicle thefts for vehicles manufactured in the 1983 or subsequent model years, subdivided into model year, model, make, and line, for this type of motor vehicle.

(2) List the total number of recoveries for vehicles manufactured in the 1983 or subsequent model years, subdivided into model year, model, make, and line, for this type of motor vehicle. Beginning with the report due not later than October 25, 1987, for each of these subdivided number of recoveries, indicate how many were:

(i) Recoveries intact;

(ii) Recoveries-in-whole; and

(iii) Recoveries-in-part.

(3) Explain how the theft and recovery data set forth in response to paragraphs (c)(1) and (2) of this section were obtained by the insurer, and the steps taken by the insurer to ensure that these data are accurate and timely.

(4) Explain the use made by the insurer of the information set forth in response to paragraphs (c)(1) and (2) of this section, including the extent to which such information is reported to national, public, and private entities (e.g., the Federal Bureau of Investigation and State and local police). If such reports are made, state the frequency and timing of the reporting.

(d)(1) Provide the rating characteristics used by the insurer to establish the premiums it charges for comprehensive insurance coverage for this type of motor vehicle and the premium penalties for vehicles of this type considered by the insurer as more likely to be stolen. This requirement may be satisfied by furnishing the pertinent sections of the insurer's rate manual(s).

(2) Provide the loss data used by the insurer to establish the premiums it charges for comprehensive insurance coverage for this type of motor vehicle and the premium penalties it charges for vehicles of this type it considers as more likely to be stolen. This requirement may be satisfied by providing the following:

(i) The total number of comprehensive insurance claims paid by the insurer during the reporting period;

(ii)(A) The total number of claims listed in (d)(2)(i) of this section that arose from a theft;

(B) The insurer's best estimate of the percentage of the number listed in paragraph (d)(2)(ii)(A) of this section that arose from vehicle thefts, and an explanation of the basis for the estimate;

(iii) The total amount (in dollars) paid out by the insurer during the reporting period in response to all the comprehensive claims filed by its policyholders;

(iv)(A) In the case of insurers listed in Appendix A or B, provide—

(1) The total amount (in dollars) listed under paragraph (d)(2)(iii) of this section paid out by the insurer as a resuit of theft; and

(2) The insurer's best estimate of the percentage of the dollar total listed in paragraph (d)(2)(iv)(A)(1) of this section that arose from vehicle thefts, and an explanation of the basis for the estimate;

(B) In the case of other insurers subject to this part, the net losses suffered by the insurer (in dollars) as a resuit of vehicle theft;

(v)(A) The total amount (in dollars) recovered by the insurer from the sale of recovered vehicles, major parts recovered not attached to the vehicle superstructure, or other recovered parts, after the insurer had made a payment listed under paragraph (d)(2)(iv) of this section;

(B) The insurer's best estimate of the percentage of the dollar total listed in paragraph (d)(2)(v)(A) of this section that arose from vehicle thefts, and an explanation of the basis for the estimate;

(vi) An identification of the vehicles for which the insurer charges comprehensive insurance premium penalties, because the insurer considers such vehicles as more likely to be stolen;

(vii) The total number of comprehensive insurance claims paid by the insurer for each vehicle risk grouping identified in paragraph (d)(2)(vi) of this section during the reporting period, and the total amount (in dollars) pald out by the insurer in response to each of the listed claims totals; and

(viii) The maximum premium adjustments (as a percentage of the basic comprehensive insurance premium) made for each vehicle risk grouping identified in paragraph (d)(2)(vi) of this section during the reporting period, as a result of the insurer's determination that such vehicles are more likely to be stolen.

(3) Identify any other rating ruies and plans used by the insurer to establish its comprehensive insurance premiums and premium penalties for

motor vehicles it considers as more likely to be stolen, and explain how such rating rules and plans are used to establish the premiums and premium penalties.

(4) Explain the basis for the insurer's comprehensive insurance premiums and the premium penalties charged for motor vehicles it considers as more likely to be stolen. This requirement may be satisfied by providing the pertinent sections of materials filed with State insurance regulatory officials and clearly indicating which information in those sections is being submitted in compliance with this paragraph.

(e) List each action taken by the insurer to reduce the premiums it charges for comprehensive insurance coverage because of a reduction in thefts of this type of motor vehicle. For each action:

(1) State the conditions that must be satisfied to receive such a reduction (e.g., installation of antitheft device, marking of vehicle in accordance with theft prevention standard, etc.);

(2) State the number of the insurer's policyholders and the total number of vehicles insured by the insurer that received this reduction; and

(3) State the difference in average comprehensive insurance premiums for those policyholders that received this reduction versus those policyholders that did not receive the reduction.

(f) In the case of an insurer that offered a reduction in its comprehensive insurance premiums for vehicles equipped with antitheft devices, provide:

(1) The specific criteria used by the insurer to determine whether a vehicle is eligible for the reduction (original equipment antitheft device, passive antitheft device, etc.);

(2) The total number of vehicle thefts for vehicles manufactured in the 1983 or subsequent model years that received a reduction under each listed criterion; and

(3) The total number of recoveries of vehicles manufactured in the 1983 or subsequent model years that received a reduction under each listed criterion. Beginning with the report due not later than October 25, 1987, indicate how many of the total number of recoveries were—

(i) Recoveries intact

(ii) Recoveries-in-whole, and

(iii) Recoveries-in-part.

(g)(1) List each action taken by the insurer to assist in deterring or reducing thefts of motor vehicles. For each action, describe the action and explain why the insurer believed it would be effective in deterring or reducing motor vehicle thefts.

(2)(i) State the insurer's policy regarding the use of used parts to effect repairs paid for by the insurer on vehicles it insures. Indicate whether the insurer required, promoted, allowed, or forbade the use of used parts in those repairs.

(ii) In the case of insurers requiring, promoting, or allowing the use of used parts to make repairs paid for by the insurer on vehicles it insures indicate the precautions taken by or on behalf of the insurer to identify the origin of those used parts.

S544.7 Incorporation by reference.

(a) In any report required by this part, an insurer may incorporate by reference any document or portion thereof previously filed with any Federal or State agency or department within the past 4 years.

(b) An insurer that incorporates by reference a document not previously submitted to the National Highway Traffic Safety Administration shall append that document or the pertinent sections of that document to its report, and clearly indicate on the cover or first page of the document or pertinent section the regulatory requirement in response to which the document is being submitted.

(c) An insurer that incorporates by reference a document shall clearly identify the document and the specific portions thereof sought to be incorporated, and, in the case of a document previously submitted to the National Highway Traffic Safety Administration, indicate the date on which the document was submitted to the Agency and the person whose signature appeared on the document.

52 F.R. 59
January 2, 1987

Appendix A
Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Aetna Life & Casualty Group
Allstate Insurance Group
American Family Group
American International Group
California State Auto Association
CNA Insurance Companies
Farmers Insurance Group
GEICO Corporation Group
Hanover Insurance Companies
Hartford Insurance Group
Liberty Mutual Group
Nationwide Group
Progressive Group
Prudential of America Group
State Farm Group
Travelers Insurance Group
United States F&G Group
USAA Group **(57 F.R. 23535—June 4, 1992. Effective: July 6, 1992)**

Appendix B
Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements [only in Designated States]

Alfa Insurance Group (Alabama)
Amica Mutual Insurance Company (Rhode Island)
Auto Club of Michigan Group (Michigan)
Commercial Union Assurance Group (Maine)
Concord Group Insurance Companies (Vermont)
Erie Insurance Group (Pennsylvania)
Indiana Farm Bureau Group (Indiana)
Kentucky Farm Bureau Group (Kentucky)
Southern Farm Bureau Casualty Group (Arkansas, Mississippi)
Tennessee Farmers (Tennessee) **(57 F.R. 23535—June 4, 1992. Effective: July 1, 1992)**

Appendix C
Motor Vehicle Rental and Leasing Companies (including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
American International Rent-A-Car Corp./ANSA
Associates Leasing, Inc.
Avis, Inc.
Budget Rent-A-Car Corporation
Dollar Rent-A-Car Systems, Inc.
GE Capital Fleet Services
Hertz Rent-A-Car Division (subsidiary of Hertz Corporation)
McCullagh Leasing, Inc.
National Car Rental System, Inc.
Penske Truck Leasing Company
PHH Fleet America
Rental Concepts, Inc.
Ryder Truck Rental (both rental and leasing operations)
U-Haul International, Inc. (subsidiary of AMERCO)
Wheels, Inc. **(57 F.R. 23535—June 4, 1992. Effective: July 6, 1992)**

PREAMBLE TO PART 551—PROCEDURAL RULES

(Docket No. 4)

The purpose of this rule-making action is to adopt new Part 351—General Procedural Rules.

The new part will eventually contain the rules on those matters that are common to all procedures. At this time only the rules governing submittals in writing, and governing service of process on designated agents of foreign manufacturers, are being adopted.

The rules governing submittals in writing are those considered necessary for the efficient handling of business. These rules apply, of course, to written comments on notices of proposed rulemaking. Designation of agents by foreign manufacturers to receive service of process is required by section 110(e) of the National Traffic and Motor Vehicle Safety Act of 1966, and the rules implement this provision. Both groups of rules are self-explanatory. Since these rules are procedural in character, notice of proposed rulemaking is not required (5 U.S.C. 553(b)).

In consideration of the foregoing, Chapter II of Title 49 of the Code of Federal Regulations is amended by inserting, in Subchapter B, a new part as set forth below. This action is taken under the authority of sections 110(e) and 119 of the National Traffic and Motor Vehicle Safety Act of 1966 (80 Stat. 718); 23 U.S.C. section 315 and chapter 4; and the delegation of authority of October 20, 1966 (31 F.R. 13952).

These rules become effective December 20, 1966.

Issued in Washington, D.C., on December 15, 1966.

Alan S. Boyd,
Under Secretary of Commerce for Transportation

SUBPART A—GENERAL

AUTHORITY: The provisions of this Part 351 issued under secs. 110(e), 119, 80 Stat. 719, 728; 15 U.S.C. 1399, 1407, 23 U.S.C. 315, 401–404; Delegation of Authority, 31 F.R. 13952, 32 F.R. 5606.

31 F.R. 16267
December 20, 1966

PREAMBLE TO AMENDMENT TO PART 551—PROCEDURAL RULES

Parts 501, 551, and 553 of Title 49, Code of Federal Regulations, currently detail the delegated powers, general procedures, and rulemaking procedures utilized by the National Highway Traffic Safety Administration (NHTSA) to implement the National Traffic and Motor Vehicle Safety Act of 1966, Public Law 89–563. The Motor Vehicle Information and Cost Savings Act, Public Law 92–513, vests additional authority in the NHTSA. This amendment extends the applicability of Parts 501, 551, and 553 to the Cost Savings Act to establish uniform rulemaking procedures for both Acts.

Accordingly, amendments are made to 49 CFR, Part 501, "Organization and delegation of powers and duties", Part 551, "Procedural rules", and Part 553, "Rulemaking procedures: motor vehicle safety standards". . . .

Since this amendment relates to NHTSA organization, procedures, and practices, it is found that notice and public procedure thereon are unnecessary.

Effective date: July 27, 1973. Because this notice is only an extension of existing procedures to new areas of jurisdiction, it is found that an immediate effective date is in the public interest.

(Secs. 9, Pub. L. 89–670, 80 Stat. 944, 49 U.S.C. 1657; 103, 119, Pub. L. 89–563, 80 Stat. 718, 15 U.S.C. 1392, 1407; 102, 105, 201, 205, 302, and 408, Pub. L. 92–513, 86 Stat. 947, 15 U.S.C. 1912, 1915, 1941, 1945, 1962, and 1988; delegation of authority at 38 FR 12147).

Issued on July 23, 1973.

James E. Wilson
Associate Administrator
Traffic Safety Programs

38 F.R. 20086
July 27, 1973

PART 551—PROCEDURAL RULES

SUBPART A—GENERAL

§ 551.1. Scope.

This part contains rule of procedure generally applicable to the transaction of official business under the National Traffic and Motor Vehicle Safety Act of 1966, the Motor Vehicle Information and Cost Savings Act, and the Highway Safety Act of 1966. These rules apply in addition to the rules governing specific proceedings. In case of inconsistency with these general rules, the specific rules prevail.

SUBPART B—[RESERVED]

SUBPART C—SUBMITTALS IN WRITING

§ 551.31 Form of Communications.

Any communication in writing relating to official business (including formal documents) shall be on opaque and durable paper not larger than 9 by 14 inches in size. Tables, charts, or originals of other documents that are attached to communications shall be folded to this size, if possible. The left margin of communications shall be at least 1½ inches wide, and if a communication is bound, it shall be bound on the left side. All copies submitted shall be legible.

§ 551.33

Unless otherwise specified, communications shall be addressed to the Administrator, National Highway Traffic Safety Administration, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications may not be addressed to a staff member's private address.

§ 551.35 Subscription of communications.

Each communication shall be signed in ink and shall disclose the full legal name and address of the person signing it and, if he is an agent, of his principal.

§ 551.37 Language of communications.

Communications and attachments thereto shall be in English. Any matter written in a foreign language will be considered only if accompanied by a translation into English. A translation shall bear a certificate by the translator certifying that he is qualified to make the translation; that the translation is complete except as otherwise clearly indicated; and that it is accurate to the best of the translator's knowledge and belief. The translator shall sign the certificate in ink and state his full, legal name, occupation and address.

SUBPART D—SERVICE OF PROCESS; AGENTS

§ 551.41 [Reserved]

§ 551.43 [Reserved]

§ 551.45 Service of process on foreign manufacturers and importers.

(a) *Designation of agent for service.* Any manufacturer, assembler or importer of motor vehicles or motor vehicle equipment (hereinafter called manufacturer) before offering a motor vehicle or item of motor vehicle equipment for importation into the United States, shall designate a permanent resident of the United States as his agent upon whom service of all processes, notices, orders, decisions, and requirements may be made for him and on his behalf as provided in section 110(e) of the National Traffic and Motor Vehicle Safety Act of 1966 (80 Stat. 718) and in this section. The agent may be an individual, a firm, or a domestic corporation. Any number of manufacturers may designate the same person as agent.

(b) *Form and contents of designation.* The designation shall be addressed to the Administrator, National Highway Traffic Safety Administration, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. It shall be in writing and dated; all

signatures shall be in ink. The designation shall be made in legal form required to make it valid, and binding on the laws, or other requirements governing the making of the designation by the manufacturer at the place and time where it is made, and the person or persons signing the designation shall certify that it is so made. The designation shall disclose the full legal name, principal place of business, and mailing address of the manufacturer. If any of the products of the manufacturer do not bear his legal name, the marks, trade names, or other designations of origin which these products bear shall be stated in the designation. The designation of agent shall provide that it remains in effect until withdrawn or replaced by the manufacturer. The designation shall bear a declaration of acceptance duly signed by the designated agent. The full legal name and mailing address of the agent shall be stated. Designations are binding on the manufacturer even when not in compliance with all requirements of this section until rejected by the Administrator. The designated agent may not assign performance of his functions under the designation to another person.

(c) *Method of service.* Service of any process, notice, order, requirement, or decision specified in section 110(e) of the National Traffic and Motor Vehicle Safety Act of 1966 may be made by registered or certified mail addressed to the agent, with return receipt requested, or in any other manner authorized by law. If service cannot be effected because the agent has died (or, if a firm or a corporation ceased to exist) or moved, or otherwise does not receive correctly addressed mail, service may be made by posting as provided in section 110(e).

31 F.R. 16267-8
December 20, 1966

PREAMBLE TO PART 552—PETITIONS FOR RULEMAKING, DEFECT, AND NONCOMPLIANCE ORDERS

(Docket No. 75–12; Notice 2)

This notice establishes a new regulation specifying the requirements for submission of petitions for rulemaking, and petitions for the commencement of defect or non-compliance proceedings in accordance with section 124 of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1410a. It also describes the procedures the NHTSA will follow in acting upon such petitions.

The notice of proposed rulemaking on which this issuance is based was issued on May 16, 1975 (40 CFR 21486), in response to which eight comments were received. After careful consideration of those comments, the NHTSA has determined that no substantial change from the proposal is called for in the language of the rule.

Most of the comments received in response to the proposed resolution supported the establishment of some kind of regulation with respect to petitions for rulemaking. American Motors supported the proposal without qualification, while the other commenters suggested changes of varying import.

The Center for Auto Safety argued that the proposed rule was too narrow, as it did not deal with petitions to close defect investigations. Section 124 of the Act, upon which Part 552 is based, establishes formal requirements for petitions in the major areas of agency activity under the Act: petitions to "commence proceedings" concerning the issuance, amendment, or revocation of a motor vehicle safety standard, and petitions to "commence proceedings" concerning the issuance of an order with respect to the failure to comply with a safety standard or the existence of a safety-related defect. These are in fact the main areas in which petitions have been received by the agency in the past. Section 124 indicates an intent of Congress to provide, and at the same time to limit, formal "petition treatment" to these areas. This treatment includes a statutory deadline for action, and Federal Register publication of reasons for denial. A corollary of this Congressional intent is that an informal response by the agency to other types of requests for action is satisfactory. Accordingly, such other requests will not be treated as petitions, but will be handled informally (as in the past) under existing correspondence or other appropriate NHTSA procedures.

The Center for Auto Safety also urged that, upon denial of a petition, the NHTSA should be required to provide the reasons for the denial in specific detail. This suggestion is outside the intent of the statutory provision, and without merit. A full discussion of the agency's reasons for denial of a petition is provided to the petitioner, and copies of such a denial letter are (except for confidential matter) generally available to any person upon request. This agency does not find any intent of Congress to require the full text of denial letters to be printed in the Federal Register. The NHTSA practice of publishing a summary of its reasons for a denial appears to satisfy both the letter and the spirit of section 124. The reason for the provision is to make the agency publicly accountable and "responsible" (from the title of the section) for its negative decisions, as it naturally is for its positive ones. A person who, put on notice by the Federal Register publication, wishes to delve more deeply into the background of the matter may readily do so by requesting further information from the agency.

General Motors objected to the use of the "reasonable possibility" standard in determining whether to grant or deny a petition because it would allow for the granting of virtually any

petition. The NHTSA does not agree. It should be remembered that the grant of a petition under this part leads only to the commencement of agency action to gather information necessary to make a decision. The use of the modifier "reasonable" limits the discretion of the Administrator to grant only a petition for an order or rule that has a reasonable chance of being issued, not a petition for any order or rule that may conceivably be issued. The substitution of the term "reasonable probability," as urged by GM, would tend to transform a threshold decision as to whether or not the rule or order *might* issue into a determination of whether or not it *should* issue. Such a result would dilute the intent of both section 124 and Part 552 to provide means for interested parties, without access to complete data, to seek remedial action regarding what they consider to be defective or unsafe characteristics of motor vehicles.

GM also urged that a petitioner be required to verify the facts alleged in the petition before any information requests are made to the manufacturer. Such a requirement would preclude the granting of a petition submitted by an individual or organization with limited resources. The technical review conducted by the Associate Administrator necessarily includes an analysis of the facts alleged in the petition. If he determines that the facts need verification by the petitioner, he has the discretion to request that the petitioner submit additional information. However, to require such information as a condition precedent to granting the petition would not only unduly burden the petitioner, but also would exceed the statutory requirement that the petition merely set forth the facts which it is claimed establish the necessity of an order, not that it prove those facts.

The Recreation Vehicle Industry Association (RVIA) objected to the provision denying cross examination of witnesses at hearings held on petitions under Part 552. It is well established that the NHTSA may hold informal hearings under the Traffic Safety Act, in cases such as *Automotive Parts & Accessories Ass'n, Inc.* v. *Boyd*, 407 F.2d 330, 334 (D.C. Cir. 1968). The purpose of an informal hearing is to permit the NHTSA to determine whether or not a petitioner has a valid complaint or request for rulemaking. This purpose is best served by allowing both sides to present information and arguments without the necessity for conforming to strict evidentiary rules. In addition, the drafters of section 124 intended to encourage the free use of the petition procedure in alerting the NHTSA to vehicle safety problems. The possibility of having to submit to rigorous cross-examination might deter many potential petitioners from utilizing this procedure. Accordingly, the provision allowing for an informal hearing has been retained intact.

The RVIA also argued that the manufacturer be allowed to respond to the petition before the Administrator decided whether to grant or deny it. Such a proposal misapprehends the purpose of the petition and ignores the opportunities a manufacturer has to respond to adverse information submitted in a petition. If the NHTSA denies the petition, there is no need for response as there is no action adverse to the manufacturer. If the petition is granted, the applicable rulemaking and investigatory procedures are commenced, with full opportunity for the manufacturer to present data and arguments against the proposed rule or order. As noted above, the purpose of the technical review is to facilitate a threshold decision as to whether an order or rule might issue, not whether it will. Thus it is not necessary to consider the comments of the manufacturer before deciding whether to grant or deny.

The proposed time for Federal Register publication of notice of a denial of a petition was 30 days. In order to allow time to prepare a monthly publication of a notice of denials, in the interest of efficieny and conservation of Federal Register space, this period is set at 45 days.

In light of the foregoing, Title 49, Code of Federal Regulation, is amended by the addition of a new Part 552, *Petitions for Rulemaking, Defect, and Noncompliance Orders*. . . .

Effective date: September 4, 1975.

Issued on September 4, 1975.

James B. Gregory
Administrator

40 F.R. 42013
September 10, 1975

PART 552—PETITIONS FOR RULEMAKING, DEFECT, AND NONCOMPLIANCE ORDERS

Sec.

AUTHORITY: Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718, (15 U.S.C. 1392, 1407); Sec. 124, 152 Pub. L. 93-492, 88 Stat. 1470, (15 U.S.C. 1410a, 1412); delegation of authority at 49 CFR 1.51.

§ 552.1 Scope. This part establishes procedures for the submission and disposition of petitions filed by interested persons pursuant to the National Traffic and Motor Vehicle Safety Act and the Motor Vehicle Information and Cost Savings Act, to initiate rulemaking or to make a determination that a motor vehicle or item of replacement equipment does not comply with an applicable Federal motor vehicle safety standard or contains a defect which relates to motor vehicle safety.

§ 552.2 Purpose. The purpose of this part is to enable the National Highway Traffic Safety Administration to identify and respond on a timely basis to petitions for rulemaking or defect or noncompliance determinations, and to inform the public of the procedures following in response to such petitions.

§ 552.3 General. Any interested person may file with the Administrator a petition requesting him (1) to commence a proceeding respecting the issuance, amendment, or revocation of a motor vehicle safety standard, or (2) to commence a proceeding to determine whether to issue an order concerning the notification and remedy of a failure of a motor vehicle or item of replacement equipment to comply with an applicable motor vehicle safety standard or a defect in such vehicle or equipment that relates to motor vehicle safety.

§ 552.4 Requirements for petition. A petition filed under this part should be addressed and submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Each petition filed under this part must—

(a) Be written in the English language;

(b) Have, preceding its text, a heading that includes the word "Petition";

(c) Set forth facts which it is claimed establish that an order is necessary;

(d) Set forth a brief description of the substance of the order which it is claimed should be issued; and

(e) Contain the name and address of the petitioner.

§ 552.5 Improperly filed petitions. (a) A petition that is not addressed as specified in § 552.4, but that meets the other requirements of that section, will be treated as a properly filed petition, received as of the time it is discovered and identified.

(b) A document that fails to conform to one or more of the requirements of 552.4(a) through (e) will not be treated as a petition under this part. Such a document will be treated according

to the existing correspondence or other appropriate procedures of the NHTSA, and any suggestions contained in it will be considered at the discretion of the Administrator or his delegate.

§ 552.6 Technical review. The appropriate Associate Administrator conducts a technical review of the petition, to determine whether there is a reasonable possibility that the requested order will be issued at the conclusion of the appropriate proceeding. The technical review may consist of an analysis of the material submitted, together with information already in the possession of the agency, or it may also include the collection of additional information, or a public meeting in accordance with § 552.7.

§ 552.7 Public meeting. If the Associate Administrator decides that a public meeting on the subject of the petition would contribute to the determination whether to commence a proceeding, he issues a notice of public meeting for publication in the Federal Register to advise interested persons of the time, place, and subject matter of the public meeting and invite their participation. Interested persons may submit their views and evidence through oral or written presentations, or both. There is no cross examination of witnesses. A transcript of the meeting is kept and exhibits may be accepted as part of the transcript. Sections 556 and 557 of Title 5, United States Code, do not apply to meetings held under this part. The Chief Counsel designates a member of his staff to serve as legal officer at the meeting.

§ 552.8 Determination whether to commence a proceeding. At the conclusion of the technical review, the Administrator or his delegate determines whether there is a reasonable possibility that the order requested in the petition will be issued at the conclusion of the appropriate proceeding. If such a reasonable possibility is found, the petition is granted. If it is not found, the petition is denied. In either event, the petitioner is notified of the grant or denial not more than 120 days after receipt of the petition by the NHTSA.

§ 551.9 Grant of petition. (a) If a petition for rulemaking with respect to a motor vehicle safety standard is granted, a rulemaking proceeding is promptly commenced in accordance with applicable NHTSA and statutory procedures. The granting of such a petition and the commencement of a rulemaking proceeding does not signify, however, that the rule in question will be issued. A decision as to the issuance of the rule is made on the basis of all available information developed in the course of the rulemaking proceeding, in accordance with statutory criteria.

(b) If a petition with respect to a noncompliance or a defect is granted, a proceeding to determine the existence of the noncompliance or defect is promptly commenced by the initiation of an investigation by the Office of Standards Enforcement or the Office of Defects Investigation, as appropriate.

§ 552.10 Denial of petition. If a petition is denied, a Federal Register notice of the denial is issued within 45 days of the denial, setting forth the reasons for denial of the petition.

40 F.R. 42013
September 10, 1975

PREAMBLE TO PART 553—RULEMAKING PROCEDURES: MOTOR VEHICLE SAFETY STANDARDS

This amendment revokes "Part 215—Rule-Making; Initial Safety Standards," 31 F.R. 13127, as amended, in 31 F.R. 15197, 32 F.R. 976, 32 F.R. 5832, and 32 F.R. 13000, and adds a new Part 353—"Rule-Making Procedures: Motor Vehicle Safety Standards" to the regulations of the Federal Highway Administration.

The purpose of this part is to describe the procedures applicable to the Federal Highway Administration in prescribing public rules for motor vehicle safety standards and to provide for appropriate participation by interested persons.

The new part provides for general notices of proposed rule making, to be published in the *Federal Register*, except in cases where the Administration finds that notice is impractical, unnecessary or contrary to the public interest. The new part also provides for petitions for extension of time to comment on notices of proposed rule making, petitions for reconsideration, and petitions for proposed rule making.

Sections 556 and 557 of Title 5, United States Code (formerly sections 7 and 8 of the Administrative Procedure Act), do not apply to rule making under this part. Consequently, hearings are not a required part of the rule-making procedure. However, hearings may be held, whenever it is considered necessary and desirable. Unless otherwise specified, any hearing held would be nonadversary, with no formal pleadings and no adverse party. A rule issued after such hearing would not necessarily be based exclusively on the record of the hearing.

All final rules will be published in the *Federal Register*, unless, in accordance with section 552(a) of Title 5, United States Code, actual and timely notice has been given to all persons subject to it.

Since this amendment relates to Federal Highway Administration organization, procedures, and practices, notice and public procedure hereon is not necessary and it may be made effective in less than thirty (30) days after publication in the *Federal Register*.

This amendment is made under the authority of sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1407), and the delegation of authority of October 14, 1967 (32 F.R. 14277).

In consideration of the foregoing, Title 49[23] of the Code of Federal Regulations is amended by deleting Part 215 and adding the following new Part 353—"Rule-Making Procedures: Motor Vehicle Safety Standards" effective November 17, 1967.

Issued in Washington, D.C., on November 9, 1967.

Lowell K. Bridwell,
Federal Highway Administrator

SUBPART A—GENERAL

SUBPART B—PROCEDURES FOR ADOPTION OF RULES UNDER SECTIONS 103 AND 109 OF THE ACT

AUTHORITY: The provisions of this Part 353 issued under secs. 103 and 119, 80 Stat. 728; 15 U.S.C. 1407; Delegation of Authority of Oct. 14, 1967 (32 F.R. 14277).

32 F.R. 15818
November 17, 1967

PREAMBLE TO AMENDMENT TO PART 553—RULEMAKING PROCEDURES: MOTOR VEHICLE SAFETY STANDARDS

Effect of Petition for Reconsideration

Sections 553.35 and 553.37 of Title 49, Code of Federal Regulations, provide procedural rules for submission of, and action upon, petitions for reconsideration of rules issued under the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.). The purpose of this notice is to establish a new section in Part 553, to make clear the National Highway Safety Bureau's interpretation of the effect of the filing of a petition for reconsideration upon the running of the 60-day period for judicial review of orders issued under the Act (15 U.S.C. 1394).

The Bureau's position is that the 60-day period for judicial review is stayed by a timely petition for reconsideration of an order, and that the review period does not expire until 60 days after the Director's disposition of the petition by notice in the *Federal Register*. A party adversely affected by the order may, however, seek judicial review before the petition is disposed of.

The staying of the expiration of the review period while action is being taken on petitions for reconsideration is manifestly in the interest both of affected parties and orderly administration by the Bureau. Original orders are often amended on reconsideration. If the expiration of the judicial review period is not stayed, affected parties will be forced to file their appeal in court within 30 days after filing a petition for reconsideration, regarding an issue that may subsequently be mooted by Bureau action on the petition. There would be corresponding pressure on the Bureau to take hasty action on the petition. It appears that the intent of the statute would be best carried out by allowing an appeal at any time between the original Bureau order and 60 days after final action on petitions.

The language of the statute can support this interpretation. The key language is that a person may seek judicial review "at any time prior to the 60th day after such order is issued" (15 U.S.C. 1394(a)(1)). Where a rule is promulgated, and then action is taken on a petition for reconsideration, actually both actions can reasonably be viewed as the issuance of an order. A party may accordingly wait until the last "order" in the rulemaking process to prepare his court action, with 60 days to do so. Alternatively, he may appeal immediately after the rule is first issued, as, for example, where the effective date is soon enough that he considers it important to obtain an immediate resolution of the issues.

In light of the foregoing, Part 553, Rulemaking Procedures: Motor Vehicle Safety Standards, of Title 49, Code of Federal Regulations is amended by adding a new § 553.39, Effect of petition for reconsideration on time for seeking judicial review, to read as set forth below. Since this rule is interpretative in nature, notice and public procedure thereon are unnecessary, and it is effective upon publication in the *Federal Register*.

Issued on December 17, 1970.

Douglas W. Toms,
Director.

December 19, 1970
35 F.R. 19268

PREAMBLE TO AMENDMENT TO PART 553—RULEMAKING PROCEDURES: MOTOR VEHICLE SAFETY STANDARDS

Petitions for Extension of Time to Comment

Section 553.19, rulemaking procedures, in Chapter 5 of Title 49, Code of Federal Regulations, currently requires that a petition for extention of time to comment on a rulemaking notice be received not later than 3 days before the expiration of the comment period specified in the notice. The 3-day requirement has proven unsatisfactory in situations where the petition is received close to the deadline, and the agency determines that it should be denied. The 3-day period does not allow sufficient time for the agency to process the petition, notify the petitioner of its determination, and leave time in the comment period for the petitioner to submit comments.

To remedy this problem, § 553.19 is hereby amended to require that petitions for extensions of time be submitted not later than 10 days before the expiration of the comment period. This will provide time for agency action within the comment period, and for petitioners whose petitions are denied to submit comments, if they wish, before the comment period expires.

Since this amendment concerns agency procedure, notice and public procedure thereon are unnecessary, and it is effective upon publication in the *Federal Register* (2–5–71), with respect to all rulemaking notices issued subsequent to its publication.

Issued on February 2, 1971.

Douglas W. Toms,
Acting Administrator.

36 F.R. 2511
February 5, 1971

PREAMBLE TO AMENDMENT TO PART 553—RULEMAKING PROCEDURES: MOTOR VEHICLE SAFETY STANDARDS

Statement of Policy: Action on Petitions for Reconsideration

The Center for Auto Safety has submitted a petition for rulemaking requesting that the NHTSA amend 49 CFR Part 553, Rulemaking Procedures, to provide that NHTSA must respond to petitions for reconsideration within 60 days of the date the rule in question is published in the *Federal Register*. The Center cited the interval of 5 months and 19 days that elapsed before issuance of the recent action on petitions concerning Standard No. 208, Occupant Crash Protection, as an illustration of the need for such a rule.

The NHTSA does not agree that the elapsed interval in that case, in view of the complexity of the issues raised and the hundreds of pages of highly technical material submitted in the petitions, was unjustified. This agency does, however, recognize that the period of reconsideration is one of considerable uncertainty to interested parties, since the rule in question has been issued, the effective date is approaching, and active preparation for compliance presumably is underway.

It has been determined, therefore, that a statement of policy on this subject will be appropriate, for the guidance of all parties concerned. A period of 90 days from issuance of the rule will be the normal period for action on reconsideration. This period will allow only 60 days for agency action, which is considered the shortest practicable period for the necessary steps: detailed review of the petitions, gathering of supplementary information as necessary, making basic technical and policy decisions, drafting of the action document, and review by responsible officials. Where that period is found insufficient, a *Federal Register* notice will be issued stating the date by which action is expected to be completed.

Accordingly, an Appendix is hereby added to 49 CFR Part 553, ...

Effective date: March 1, 1972. This statement is issued in the interest of orderly administration and public information. It shall not affect the validity of any rules hereafter issued by the National Highway Traffic Safety Administration, or the legal rights, duties, or liabilities of any persons pursuant to those rules.

This notice is issued under the authority of section 119 of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1407, and the delegation of authority at 49 CFR 1.51.

Issued on February 14, 1972.

Douglas W. Toms
Administrator

37 F.R. 3632
February 18, 1972

PREAMBLE TO AMENDMENT TO PART 553—RULEMAKING PROCEDURES

Sections 553.31 and 553.35 of Title 49, Code of Federal Regulations, currently specify that petitions for rulemaking and for reconsideration of rules should be addressed to the Docket Room of the National Highway Traffic Safety Administration. To conform to internal NHTSA correspondence procedures, §§ 553.31 and 553.35 are hereby amended by changing the submission address to the general mailing address specified in § 551.33. For public information, the same address is added to § 553.19, *Petitions for extension of time to comment.*

The requirement of § 553.31(b)(1) that petitions for rulemaking be submitted in duplicate is unnecessary and inconsistent with agency policy with respect to other submissions, and is being deleted. As in the case of other petitions and comments, it is requested but not required that 10 copies be submitted.

Accordingly, amendments are made to 49 CFR Part 553, *Rulemaking Procedures: Motor Vehicle Safety Standards. . . .*

Since this amendment concerns internal agency procedure, it is found that notice and public procedure thereon are unnecessary.

Effective date: May 23, 1973.

(Sec. 119, Pub. L. 89–563, 80 Stat. 718, 15 U.S.C. 1407; delegation of authority at 49 CFR 1.51)

Issued on April 13, 1973.

James E. Wilson
Acting Administrator
38 F.R. 9824
April 20, 1973.

PREAMBLE TO AMENDMENT TO PART 553—RULEMAKING PROCEDURES

Parts 501, 551, and 553 of Title 49, Code of Federal Regulations, currently detail the delegated powers, general procedures, and rulemaking procedures utilized by the National Highway Traffic Safety Administration (NHTSA) to implement the National Traffic and Motor Vehicle Safety Act of 1966, Public Law 89–563. The Motor Vehicle Information and Cost Savings Act, Public Law 92–513, vests additional authority in the NHTSA. This amendment extends the applicability of Parts 501, 551, and 553 to the Cost Savings Act to establish uniform rulemaking procedures for both Acts.

Accordingly, amendments are made to 49 CFR, Part 501, "Organization and delegation of powers and duties", Part 551, "Procedural rules", and Part 553, "Rulemaking procedures: motor vehicle safety standards". . . .

Since this amendment relates to NHTSA organization, procedures, and practices, it is found that notice and public procedure thereon are unnecessary.

Effective date: July 27, 1973. Because this notice is only an extension of existing procedures to new areas of jurisdiction, it is found that an immediate effective date is in the public interest.

(Secs. 9, Pub. L. 89–670, 80 Stat. 944, 49 U.S.C. 1657; 103, 119, Pub. L. 89–563, 80 Stat. 718, 15 U.S.C. 1392, 1407; 102, 105, 201, 205, 302, and 408, Pub L. 92–513, 86 Stat. 947, 15 U.S.C. 1912, 1915, 1941, 1945, 1962, and 1988; delegation of authority at 38 FR 12147).

Issued on July 23, 1973.

James E. Wilson
Associate Administrator
Traffic Safety Programs

38 F.R. 20086
July 27, 1973

PREAMBLE TO AMENDMENT TO PART 553—RULEMAKING PROCEDURES

The purpose of this notice is to change the time specified, as an agency policy, for the NHTSA to act on petitions for reconsideration to 90 days from the closing date for the petitions.

On February 18, 1972, the NHTSA published a notice (37 FR 3632) adding an appendix to 49 CFR Part 553 that established an agency policy of responding to petitions for reconsideration within 90 days from publication of the final rule. The policy was instituted in order to remove some uncertaintly as to the time when the agency would act on petitions following the issuance of a rule.

Since a period of 30 days from the issuance of a rule is allowed for the submission of petitions for reconsideration, the present policy allows only 60 days for the NHTSA to analyze the petitions and decide on, draft and have reviewed the appropriate response. It has become apparent that 60 days are not adequate time to complete this process. In conformance with the NHTSA's aim to specify a normal period for action on petitions for reconsideration, the period is being extended to 90 days from the closing date for petitions. It has been determined that this is necessary to afford sufficient time for consideration of the petitions and the issuance of a response to the issues they raise.

As provided in the February 18, 1972 notice (37 FR 3632), where this period is found insufficient, a Federal Register notice will be issued stating the date by which action is expected to be completed.

Accordingly, the appendix to 49 CFR Part 553 is revised:

Effective date: April 25, 1974.

(Sec. 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1407); delegation of authority at 49 CFR 1.51)

Issued on April 22, 1974.

James B. Gregory
Administrator

39 F.R. 14593
April 25, 1974

PREAMBLE TO AMENDMENT TO PART 553—RULEMAKING PROCEDURES

(Docket No. 75–17; Notice 2)

This notice amends title 49, Code of Federal Regulations, Part 553, *Rulemaking Procedures*, by deleting those sections of the part which set out procedures by which interested persons may petition the NHTSA to undertake rulemaking. These procedures have been incorporated in a new Part 552, *Petitions for Rulemaking, Defect, and Noncompliance Orders*, of Title 49, Code of Federal Regulations, published today in a separate notice.

The amendments provide that the National Highway Traffic Safety Administrator may initiate rulemaking on his own motion, on the recommendation of other agencies of the Federal Government, or on petition by any interested person after a determination in accordance with Part 552 that grant of the petition is advisable (§ 553.11).

The amendment also reverses the order of sections dealing with initiation of rulemaking and notice of proposed rulemaking, presently set out in sections 553.13 and 553.11, respectively, to more closely follow the chronology of the rulemaking process.

Only one comment, from American Motors Corporation, was received in response to the notice proposing these amendments (40 F.R. 25480, June 16, 1975). AMC asserted that the language of the new section 553.11 could be misinterpreted to mean that recommendations from other Federal agencies would be treated as another form of petition for rulemaking, rather than as input to the Administrator in making a determination whether or not to commence rulemaking on his own motion. The NHTSA does not agree that the language of section 553.11 is subject to such an interpretation, as it neither expressly nor impliedly directs the Administrator to treat recommendations from other agencies as petitions. It merely continues the intent of the previous section 533.13 that the recommendations of other agencies may be considered by the Administrator in determining whether to initiate rulemaking proceedings in response to a petition from an interested party or on his own motion.

In light of the foregoing, 49 CFR Part 553, *Rulemaking Procedures*, is amended as follows:

Effective date: October 13, 1975.

(Sec. 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1407); delegation of authority at 49 CFR 1.51.)

Issued on September 4, 1975.

James B. Gregory
Administrator

40 F.R. 42015
September 10, 1975

PREAMBLE TO AMENDMENT TO PART 553—RULEMAKING PROCEDURES

(Docket No. 75–17; Notice 1)

On September 10, 1975, a notice was published amending 49 CFR Part 553, *Rulemaking Procedures*, to delete certain provisions of the regulation incorporated in a new Part 552, *Petitions for Rulemaking, Defect, and Noncompliance Orders*, published the same day (40 F.R. 42015). Section 553.35(a) refers to "petitions filed under § 553.31." However, the provisions of § 553.31 are now incorporated in 49 CFR Part 552. As a result, the notice amending Part 553 should have included an amendment to § 553.35(a) reflecting this change.

Accordingly, the phrase "petitions filed under § 553.31" in paragraph (a) of section 553.35 is changed to read "petitions filed under Part 552 of this chapter."

Effective date: November 14, 1975. Because this amendment clarifies a previous notice and imposes no additional burden on any person, it is found for good cause shown that an immediate effective date is in the public interest.

(Sec. 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1407); delegation of authority at 49 CFR 1.51.)

Issued on November 10, 1975.

James B. Gregory
Administrator

40 F.R. 53032
November 14, 1975

PREAMBLE TO AMENDMENT TO PART 553—RULEMAKING PROCEDURES

(Docket No. 77–07; Notice 1)

This notice requires persons who comment on Advance Notices of Proposed Rulemaking or Notices of Proposed Rulemaking and persons who submit Petitions for Reconsideration to limit the length of their written submissions to 15 pages. The 15-page limit will facilitate evaluation of submissions and encourage persons making submissions to detail their primary arguments in a succinct and concise manner.

Effective Date: November 14, 1977.

For Further Information Contact:

Bernard P. Klein
Office of Chief Counsel
National Highway Safety Administration
400 Seventh Street, S.W.
Washington, D.C. 20590
(202–426–1840)

Supplementary Information: 49 CFR 553.21 sets forth the requirements for the contents of written comments which are submitted in response to Advance Notices of Proposed Rulemaking (ANPRM) and Notices of Proposed Rulemaking (NPRM). 49 CFR 553.35 sets forth the requirements for the contents of written statements accompanying Petitions for Reconsideration. The National Highway Traffic Safety Administration (NHTSA) hereby adopts a procedure, effective immediately, requiring the above submissions to be limited to 15 pages in length. Necessary attachments to the submissions may be appended without regard to the 15-page limit.

It has been the experience of NHTSA that submissions significantly longer than 15 pages generally contain repetitious and even extraneous sections, as well as sections more appropriately drafted in an appendix than in the body of the argument. Such drafting detracts from the logic and clarity of a submission, with the result that NHTSA has encountered difficulties in ascertaining the precise import of a comment or statement as well as difficulties in separating arguments from alleged facts. Administrative time is lost and the risk is created that valuable insight which could be provided by a submission escapes notice. It is expected that a clearer statement of the primary argument will aid the public in reviewing the docket. Additionally, it is reasonable to assume that the 15-page limit, by encouraging commenters and petitioners to detail their primary arguments in a succinct and concise fashion, will aid persons making submissions to NHTSA in identifying and expressing the more significant aspects of their communications.

It should be noted that this amendment does not limit the relevant data or supporting arguments that may be submitted by comment or petition for reconsideration, since necessary attachments may be appended to the submission without regard to the 15-page limit. Additionally, it is recognized that there may be instances where, because of the complexity of the subject matter, the 15-page limit would be an inappropriate restriction. The NHTSA may waive the 15-page limit or establish a different limit for a particular Federal Register notice. The waiver will be published in the notice to which it applies.

In consideration of the foregoing, 49 CFR 553 is amended to read as follows . . .

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718, 15 U.S.C. 1392, 1407; secs. 102, 201, 408, 501, Pub. L. 92–513, 86 Stat. 947, 15 U.S.C. 1912, 1941, 1988, 2001; delegation of authority at 49 CFR 1.50)

Issued on November 4, 1977.

Joan Claybrook
Administrator

42 F.R. 58949
November 14, 1977

PART 553—RULEMAKING PROCEDURES

SUBPART A—GENERAL

§ 553.1 Applicability.

This part prescribes rulemaking procedures that apply to the issuance, amendment, and revocation of rules pursuant to the National Traffic and Motor Vehicle Safety Act of 1966 and the Motor Vehicle Information and Cost Savings Act.

§ 553.3 Definitions.

"Acts" means the National Traffic and Motor Vehicle Safety Act of 1966, Public Law 89-563, 15 U.S.C. 1391, et seq., and the Motor Vehicle Information and Cost Savings Act, Public Law 92-513, 15 U.S.C. 1901, et seq.

"Administrator" means the Administrator of the National Highway Traffic Safety Administration or a person to whom he has delegated final authority in the matter concerned.

"Rule" includes any order, regulation, or Federal motor vehicle safety standard issued under the Acts.

§ 553.5 Regulatory docket.

(a) Information and data deemed relevant by the Administrator relating to rulemaking actions, including notices of proposed rulemaking; comments received in response to notices: petitions for rulemaking and reconsideration; denials of petitions for rulemaking and reconsideration; records of additional rulemaking proceedings under § 553.25: and final rules are maintained in the Docket Room, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

(b) Any person may examine any docketed material at the Docket Room at any time during regular business hours after the docket is established, except material ordered withheld from the public under applicable provisions of the Acts and section 552(b) of Title 5 of the United States Code, and may obtain a copy of it upon payment of a fee.

§ 553.7 Records.

Records of the National Highway Traffic Safety Administration relating to rulemaking proceedings are available for inspection as provided in section 552(b) of Title 5 of the United States Code and Part 7 of the Regulations of the Secretary of Transportation (49 CFR Part 7; 32 F.R. 9284 et seq.).

SUBPART B—PROCEDURES FOR ADOPTION OF RULES

§ 553.11 Initiation of rulemaking.

The Administrator may initiate rulemaking either on his own motion or on petition by any interested person after a determination in accordance with Part 552 of this title that grant of the petition is advisable. The Administrator may, in his discretion, also consider the recommendations of other agencies of the United States.

§ 553.13 Notice of proposed rulemaking.

Unless the Administrator, for good cause, finds that notice is impracticable, unnecessary, or contrary to the public interest, and incorporates that finding and a brief statement of the reasons for it in the rule, a notice of proposed rulemaking is issued and interested persons are invited to participate in the rulemaking proceedings under applicable provisions of the Acts.

§ 553.15 Contents of notices of proposed rulemaking.

(a) Each notice of proposed rulemaking is published in the Federal Register, unless all persons subject to it are named and are personally served with a copy of it.

(b) Each notice, whether published in the *Federal Register* or personally served, includes—

(1) A statement of the time, place, and nature of the proposed rulemaking proceedings;

(2) A reference to the authority under which it is issued;

(3) A description of the subjects and issues involved or the substance and terms of the proposed rule;

(4) A statement of the time within which written comments must be submitted; and

(5) A statement of how and to what extent interested persons may participate in the proceeding.

§ 553.17 Participation by interested persons.

(a) Any interested person may participate in rulemaking proceeding by submitting comments in writing containing information, views or arguments.

(b) In his discretion, the Administrator may invite any interested person to participate in the rulemaking procedures described in § 553.25.

§ 553.19 Petitions for extension of time to comment.

A petition for extension of the time to submit comments must be received not later than 10 days before expiration of the time stated in the notice. The petitions must be submitted to: Administrator, National Highway Traffic Safety Administration, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D. C. 20590. It is requested, but not required, that 10 copies be submitted. The filing of the petition does not automatically extend the time for petitioner's comments. Such a petition is granted only if the petitioner shows good cause for the extension, and if the extension is consistent with the public interest. If an extension is granted, it is granted to all persons, and it is published in the *Federal Register*.

§ 553.21 Contents of written comments.

[All written comments shall be in English. Unless otherwise specified in a notice requesting comments, comments may not exceed 15 pages in length, but necessary attachments may be appended to the submission without regard to the 15-page limit. Any interested person shall submit as a part of his written comments all material that he considers relevant to any statement of fact made by him. Incorporation by reference should be avoided. However, if incorporation by reference is necessary, the incorporated material shall be identified with respect to document and page. It is requested, but not required, that 10 copies of the comments and attachments, if any, be submitted. (42 F.R. 58949—November 14, 1977. Effective: 11/14/77)]

§ 553.23 Consideration of comments received.

All timely comments are considered before final action is taken on a rulemaking proposal. Late filed comments may be considered as far as practicable.

§ 553.25 Additional rulemaking proceedings.

The Administrator may initiate any further rulemaking proceedings that he finds necessary or desirable. For example, interested persons may be invited to make oral arguments, to participate in conferences between the Administrator or his representative and interested persons at which minutes of the conference are kept, to appear at informal hearings presided over by officials designated by the Administrator at which a transcript or minutes are kept, or participate in any other proceeding to assure informed administrative action and to protect the public interest.

§ 553.27 Hearings.

(a) Sections 556 and 557 of Title 5, United States Code, do not apply to hearings held under this part. Unless otherwise specified, hearings held under this part are informal, nonadversary, fact-finding proceedings, at which there are no formal pleadings or adverse parties. Any rule issued in a case in which an informal hearing is held is not necessarily based exclusively on the record of the hearing.

(b) The Administrator designates a representative to conduct any hearing held under this part. The Chief Counsel designates a member of his staff to serve as legal officer at the hearing.

§ 553.29 Adoption of final rules.

Final rules are prepared by representatives of the office concerned and the Office of the Chief Counsel. The rule is then submitted to the Administrator for his consideration. If the Administrator adopts the rule, it is published in the Federal Register, unless all persons subject to it are named and are personally served with a copy of it.

§ 553.31 Reserved.

§ 553.33 Reserved.

§ 553.35 Petitions for reconsideration.

[(a) Any interested person may petition the Administrator for reconsideration of any rule issued under this part. The petition shall be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. It is requested, but not required, that 10 copies be submitted. The petition must be received not later than 30 days after publication of the rule in the Federal Register. Petitions filed after that time will be considered as petitions filed under Part 552 of this chapter. The petition must contain a brief statement of the complaint and an explanation as to why compliance with the rule is not practicable, is unreasonable, or is not in the public interest. Unless otherwise specified in the final rule, the statement and explanation together may not exceed 15 pages in length, but necessary attachments may be appended to the submission without regard to the 15-page limit.

(b) If the petitioner requests the consideration of additional facts, he must state the reason they were not presented to the Administrator within the prescribed time.

(c) The Administrator does not consider repetitious petitions.

(d) Unless the Administrator otherwise provides, the filing of a petition under this section does not stay the effectiveness of the rule. (42 F.R. 58949—November 14, 1977. Effective: 11/14/77)]

§ 553.37 Proceedings on petitions for reconsideration.

The Administrator may grant or deny, in whole or in part, any petition for reconsideration without further proceedings. In the event he determines to reconsider any rule, he may issue a final decision on reconsideration without further proceedings, or he may provide such opportunity to submit comment or information and data as he deems appropriate. Whenever the Administrator determines that a petition should be granted or denied, he prepares a notice of the grant or denial of a petition for reconsideration, for issuance to the petitioner and issues it to the petitioner. The Administrator may consolidate petitions relating to the same rule.

§ 553.39 Effect of petition for reconsideration on time for seeking judicial review.

The filing of a timely petition for reconsideration of any rule issued under this part postpones the expiration of the 60-day period in which to seek judicial review of that rule, as to every person adversely affected by the rule. Such a person may file a petition for judicial review at any time from the issuance of the rule in question until 60 days after publication in the Federal Register of the Administrator's disposition of any timely petitions for reconsideration.

APPENDIX

Statement of Policy: Action on Petitions for Reconsideration

It is the policy of National Highway Traffic Safety Administration to issue notice of the action taken on a petition for reconsideration within 90 days after the closing date for receipt

of such petitions, unless it is found impracticable to take action within that time. In cases where it is so found and the delay beyond that period is expected to be substantial, notice of that fact, and the date by which it is expected that action will be taken, will be published in the Federal Register.

32 F.R. 15818
November 17, 1967

PREAMBLE TO PART 554—STANDARDS ENFORCEMENT AND DEFECTS INVESTIGATION

(Docket No. 75-26; Notice 2)

ACTION: Final Rule.

SUMMARY: This notice amends Title 49 of the Code of Federal Regulations by the addition of a new Part 554, "Standards Enforcement and Defects Investigation," to codify existing agency procedures with respect to noncompliance and defect investigations.

EFFECTIVE DATE: March 20, 1980.

FOR FURTHER INFORMATION CONTACT:

Roger Tilton, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-2993)

SUPPLEMENTARY INFORMATION:

A notice of proposed rulemaking to establish Part 554 was published in the Federal Register on September 30, 1975, (40 FR 44842). Ten comments were received from vehicle manufacturers and consumer groups. The National Motor Vehicle Safety Advisory Council did not take a position on the proposal. The Vehicle Equipment Safety Commission did not submit comments.

The NHTSA is adding Part 554 to Title 49 to combine and condense previously published policy directives (39 FR 1373, January 8, 1974; 38 FR 31460, November 14, 1973) and to modify its procedures somewhat, as contemplated by the Motor Vehicle and Schoolbus Safety Amendments of 1974 (Pub. L. 93-492, 88 Stat. 1470). This codification is intended to better inform interested persons of the agency's procedures.

The comments submitted in resonse to the notice of proposed rulemaking were generally in favor of this codification. Most commenters suggested minor changes, and many of the changes have been incorporated into the wording of the final rule.

American Motors Corporation (AMC), Grove Manufacturing Company, and International Harvester (IH) recommended that the scope of the investigatory powers described in section 554.4 be limited to protect the privacy of manufacturers. Section 112 of the Act prescribes the extent of the agency's powers of investigation, and these powers are not expanded, and cannot be, by virtue of this regulation. The purpose of Part 554 is merely to make public the procedures that the agency has employed in the past as authorized by section 112. In view of this limited role, a recitation of limits found in the statute is unnecessary.

The Center for Auto Safety requested that the agency change section 554.4 to amplify the fact that the five investigatory techniques detailed in that section are not the exclusive means available to the agency for pursuing an investigation. The agency agrees with this suggested modification. The enumerated investigatory techniques are only the major methods employed by the agency to pursue investigations. The agency modifies the language of the section to indicate that other investigatory means will be used where necessary.

IH and Recreation Vehicle Industry Association (RVIA) suggested changes to section 554.6. IH recommended written notification of a compliance test failure to an "appropriate designated contact." RVIA requested notification of the commencement of defect investigations as well as compliance test failures.

The notification provided in paragraph (b) is made only upon the finding of a compliance test failure. The NHTSA agrees with RVIA that manufacturers should be notified at the beginning of a defect investigation as well. Additionally, the agency understands the need for timely notification of noncompliance investigations. It has been the policy of the NHTSA to issue written notifica-

tion of the commencement of both defect and noncompliance investigations. The NHTSA, therefore, amends paragraph (b) of section 554.6 to provide for timely written notification to the manufacturer of defect and noncompliance investigations.

The agency always attempts to notify an appropriate official within the company. To require notification of an "appropriate designated contact" as suggested by IH would mean that each manufacturer would be required to file with the NHTSA the name of an individual to whom notification could be sent. Additionally, the manufacturer would need to update this filing whenever necessary. The agency concludes that this would be unnecessarily burdensome and, therefore, reserves the right to contact any person with the apparent authority to receive this notification. There has been no indication that notices to date have gone astray.

The Center for Auto Safety argued that paragraph (b) of section 554.7 should provide more specific criteria for the opening of a formal defects investigation. The NHTSA deems it unnecessary to be more specific about the pertinent criteria that warrant the commencement of an investigation. The decision to proceed with a defects investigation is based upon a careful analysis of a variety of data. These data differ from case to case. Offices within the agency exercise their collective judgment as to the necessity for an investigation, given the particular facts of any case. For this reason, the NHTSA concludes that modification of paragraph (b) is unnecessary.

IH and Ford suggested that the agency define the term "exempt material" in section 554.9 to avoid confusion. Additionally, they both recommended that the NHTSA clarify the section to indicate that the disclosure of exempt communications as well as all other exempt material would be prohibited.

The NHTSA utilizes a two-step approach to the disclosure of confidential material pertaining to safety-related defects and noncompliances. The agency first determines whether the information qualifies for confidential treatment under any statutory authority. Second, the agency exercises its discretion under paragraph (e) of section 112 of the National Traffic and Motor Vehicle Safety Act (the Act) whereby the NHTSA may disclose confidential material if relevent to any proceeding undertaken pursuant to the Act. After determining relevance, the agency, under the authority granted in section 158 (a)(2)(B) of the Act, releases confidential information pertaining to safety-related defects and noncompliances only when deemed necessary by the agency. The agency is amending section 554.9, therefore, to indicate that any communication or part of a file pertaining to a safety-related defect or noncompliance that is considered confidential will not be disclosed unless that disclosure is deemed necessary.

Many commenters suggested changes to section 554.10. Rohr Industries and AMC recommended that the phrase "preliminary determination" be changed to "initial determination" to make it consistent with Part 556. The NHTSA agrees with this suggestion and amends the language accordingly to reflect this change.

IH and General Motors Corporation (GM) suggested that the proposed 30-day time limit would be insufficient to prepare for the hearing that follows an initial determination. The language of this section indicates that any time period is only an approximation of the date upon which a hearing normally would be scheduled. The NHTSA has decided that 30 days allows sufficient time to prepare for the hearing, since manufacturers are forewarned of an investigation at its initiation and can, at that time, commence planning to dispute agency findings. The agency will, however, amend section 554.10 to show that hearings are normally scheduled within 30 days of the initial determination but that the 30-day requirement can be extended by the Administrator for good cause shown.

Most commenters argued that section 554.10 should allow for cross-examination at the hearings as well as other more formal procedures. The NHTSA has carefully considered these and similar comments for this part and in other contexts in our regulations and concludes that the informal procedures, as authorized by Congress, do provide adequate opportunity for comment and presentation of facts.

AMC suggested that paragraph (e) of section 554.10 be deleted. They believe that the file should be closed once the Administrator finds that there is no noncompliance or safety-related defect. The Center for Auto Safety, on the other hand, requested that the agency amend paragraph (e) to allow any interested person to demand a public hearing once the Administrator has made his finding.

The purpose of paragraph (e) is to allow the Administrator to seek further public comments in those rare cases where further comment might add significant new data. Normally, the public meeting held prior to the determination will provide ample opportunity to comment. On those occasions when a public meeting is not held prior to a finding that a noncompliance or safety-related defect does not exist, the Administrator should be permitted, not required, to seek further information by way of a public meeting where, in his opinion, additional information would be useful. To preserve this discretion, the agency retains the paragraph as written and declines to adopt the suggested changes.

GM requested that section 554.11 be modified to state that a manufacturer can proceed to a district court to obtain a trial *de novo* of the Administrator's determination. Judicial review of agency decisions is granted by Congress. The National Traffic and Motor Vehicle Safety Act specifically enumerates the procedures available to manufacturers to review the agency's decisions. Regulations promulgated by the NHTSA can in no way expand or restrict the manufacturer's right to seek judicial review. Since judicial review is a Constitutional guarantee with limited Congressional discretion to allocate it among the several courts, it would be inappropriate for the agency to proffer rules concerning this review.

Rohr Industries requested that the NHTSA change section 554.11 to require publication in the FEDERAL REGISTER of a finding that a defect or noncompliance does not exist. The agency agrees with Rohr's suggestion to publish the Administrator's finding and section 554.11 has been modified accordingly.

In consideration of the foregoing, Title 49, Code of Federal Regulations, is amended by the addition of a new Part 554 titled "Standards Enforcement and Defects Investigation," as set forth below.

Issued on February 11, 1980.

Joan Claybrook
Administrator

45 F.R. 10796
February 19, 1980

PART 554—STANDARDS ENFORCEMENT AND DEFECTS INVESTIGATION

(Docket No. 75-26; Notice 2)

Sec.

§ 554.1 Scope.

This part establishes procedures for enforcing Federal motor vehicle safety standards, and associated regulations investigating possible safety-related defects, and making non-compliance and defect determinations.

§ 554.2 Purpose.

The purpose of this part is to inform interested persons of the procedures followed by the National Highway Traffic Safety Administration in order more fairly and effectively to implement National Traffic and Motor Vehicle Safety Act (the Act).

§ 554.3 Application.

This part applies to actions, investigations, and defect and non-compliance determinations of the National Highway Traffic Safety Administration under sections 109, 112, 124, 152, 156, 157, and 158 of the Act (15 U.S.C. 1398, 1401, 1411, 1412, 1416, 1417, 1418).

§ 554.4 Office of Vehicle Safety Compliance.

The Office of Vehicle Safety Compliance investigates compliance with Federal motor vehicle safety standards and associated regulations, and to this end may—

(a) Verify that manufacturers certify compliance with all applicable safety standards;

(b) Collect field reports from all sources;

(c) Inspect manufacturers' certification test data and other supporting evidence, including dealer communications;

(d) Inspect vehicles and equipment already in use or new vehicles and equipment at any stage of the manufacturing, distribution and sales chain;

(e) Conduct selective compliance tests; and

(f) Utilize other means necessary to conduct investigations.

§ 554.5 Office of Defects Investigation.

The Office of Defects Investigation conducts investigations to implement the provisions of the Act concerning the identification and correction of safety-related defects in motor vehicles and motor vehicle equipment. It elicits from every available source and evaluates on a continuing basis any information suggesting the existence of a safety-related defect.

§ 554.6 Opening an investigation.

(a) A compliance or defect investigation is opened either on the motion of the Administrator or his delegate or on the granting of a petition of an interested party under Part 552 of this chapter.

(b) A manufacturer is notified immediately by telephone of any compliance test failure in order to enable the manufacturer to begin his own investigation. Notification is sent by mail at the beginning of any defect or non-compliance investigation.

§ 554.7 Investigation priorities.

(a) Compliance investigation priorities are reviewed annually and are set according to the following criteria:

(1) Prior compliance test data;

(2) Accident data;

(3) Engineering analysis of vehicle and equipment designs;

(4) Consumer complaints; and

(5) Market share.

(b) Defects inputs are reviewed periodically by an appropriate panel of engineers in consultation with the Office of Chief Counsel to determine whether a formal investigation should be opened by the Office of Defects Investigation.

§ 554.8 Monthly reports.

(a) *Compliance.* A monthly compliance report is issued which lists investigations opened, closed, and pending during that month, identifies compliance test reports accepted, and indicates how individual reports may be obtained.

(b) *Defects.* A monthly defects report is issued which lists investigations opened, closed, pending, and suspended during that month. An investigation may be designated "suspended" where the information available is insufficient to warrant further investigation. Suspended cases are automatically closed 60 days after appearing in a monthly report unless new information is received which justifies a different disposition.

§ 554.9 Availability of files.

All files of closed or suspended investigations are available for public inspection in the NHTSA Technical Reference Library. Communications between the agency and a manufacturer with respect to ongoing investigations are also available. Such files and communications may contain material which is considered confidential but has been determined to be necessary to the subject proceeding. Material which is considered confidential but has not been determined to be necessary to the subject proceeding will not be disclosed. Reproduction of entire public files or of individual documents can be arranged.

§ 554.10 Initial determinations and public meetings.

(a) An initial determination of failure to comply with safety standards or of a safety-related defect is made by the Administrator or his delegate based on the completed investigative file compiled by the appropriate office.

(b) The determination is communicated to the manufacturer in a letter which makes available all information on which the decision is based. The letter advises the manufacturer of his right to present data, views and arguments to establish that there is no defect or failure to comply or that the alleged defect does not affect motor vehicle safety. The letter also specifies the time and place of a public meeting for the presentation of arguments or sets a date by which written comments must be submitted. Submission of all information, whether at a public hearing or in written form, is normally scheduled about 30 days after the initial determination. The deadline for submission of information can be extended by the Administrator for good cause shown.

(c) Public notice of an initial determination is made in a FEDERAL REGISTER notice that—

(1) Identifies the motor vehicle or item of equipment and its manufacturer;

(2) Summarizes the information upon which the determination is based;

(3) Gives the location of all information available for public examination; and

(4) States the time and place of a public meeting or the deadline for written submissions in which the manufacturer and interested persons may present data, views, and arguments respecting the determination.

(d) A transcript of the public meeting is kept and exhibits may be offered. There is no cross-examination of witnesses.

(e) If the Administrator makes a determination that a failure to comply or a safety-related defect does not exist he may, at his discretion in a particular case, within 60 days of the determination, invite interested persons to submit their views on the NHTSA investigation in a public meeting. Notice and procedures for such a meeting are as specified in paragraphs (c) and (d) of this section.

§ 554.11 Final determinations.

(a) The Administrator bases his final determination on the completed investigatory file and the data, views, and arguments submitted at the public meeting.

(b) If the Administrator determines that a failure to comply or a safety-related defect exists, he orders the manufacturer to furnish the notification specified in the Act and to remedy the defect or failure to comply.

(c) If the Administrator determines that a failure to comply or a safety-related defect does not exist, he so notifies the manufacturer and publishes this finding in the *Federal Register*.

(d) A statement of the Administrator's final determination and the reasons for it appears in each completed public file.

45 F.R. 10796
February 19, 1980

PREAMBLE TO PART 555—TEMPORARY EXEMPTION FROM MOTOR VEHICLE SAFETY STANDARDS

(Docket No. 72–30; Notice 2)

This notice amends Title 49 of the Code of Federal Regulations by adding a new Part 555, "Temporary Exemption from Motor Vehicle Safety Standards," effective January 29, 1973. A notice of proposed rulemaking on this subject was published December 1, 1972 (37 F.R. 25533), and opportunity afforded for comment.

On October 25, 1972 P.L. 92–548 was enacted, amending section 123 of the National Traffic and Motor Vehicle Safety Act of 1966 to provide four bases upon which a manufacturer of motor vehicles might apply for a temporary exemption from one or more Federal motor vehicle safety standards. The legislative intent is clearly expressed as to the information required to substantiate an application on each basis. A discussion follows of each basis, the required information and the principal issues raised in response to the proposal.

1. *Substantial Economic Hardship.* A manufacturer whose total motor vehicle production in his most recent year of manufacture did not exceed 10,000 may petition for relief on grounds that compliance would cause him substantial economic hardship and that he has, in good faith, attempted to comply with the standards. Hardship exemptions are granted for periods not to exceed three years. Section 123 of the Act and the proposed regulations require an applicant to include in his petition a complete financial statement showing the basis of the economic hardship and a complete description of his good faith effort to comply with the standards. Although it was not required by the Act, the NHTSA also proposed to require a description of the steps a manufacturer proposes to take during the exemption period to achieve full compliance and the estimated date by which full compliance is to be achieved.

Submissions on the issue of economic hardship were received from Senator Warren Magnuson, Chairman of the Senate Committee on Commerce, the Public Interest Research Group, the Center for Auto Safety, Freightliner Corporation, and Lotus Cars, Ltd. Senator Magnuson and the Research Group have suggested that the NHTSA should adopt application guidelines modeled after those of the Environmental Protection Agency for requests for suspension of the effective date of motor vehicle emission standards. The Research Group has drafted a model application form using the EPA guidelines as a departure point. Senator Magnuson also suggested that cost data concerning the affected component should be required, as well as a chronological analysis by the petitioner of its efforts to comply with the standard following issuance of the notice of proposed rulemaking. Finally, he urged that a company be required to submit an analysis of the effects on its economic stability of the absence of an exemption. The Center for Auto Safety believes that all financial data should be presented in dollar figures. Lotus Cars, Ltd. suggested that, if a manufacturer has no plans to achieve conformity because the production run of a model is nearing its end, the regulations should specifically permit him to so state. Freightliner Corporation commented that hardship should be considered in relation to the total economic picture "including the purchaser" and the particular job a vehicle is intended to perform. It expressed fear that the legislation was not enacted with multi-stage manufacturers in mind. Freightliner appears to be concerned about hardship situations that may occur to manufacturers whose total annual volume exceeds 10,000 units and who are called upon to provide costly custom equipment.

In formulating the regulations for hardship applications the NHTSA has adopted many of the suggestions of Senator Magnuson and the Public Interest Research Group. Engineering and financial data that must be submitted with the application will include a list or description of each component that would have to be modified in order to achieve compliance, together with an itemization of the estimated cost to the petitioner to modify each such component if required to do so on an emergency basis, or at the end of one-, two-, and three-year periods. The manufacturer will also include what it estimates as the price increase per vehicle to balance the total costs incurred were it to achieve compliance, and a statement of the anticipated effect of the price increase. Corporate balance sheets for the three fiscal years immediately preceding the application must be submitted, as well as a projected balance sheet for the fiscal year following any denial of the petition. The financial data must be in dollar figures, as the Center for Auto Safety suggested. The manufacturer would also be allowed to discuss other hardship factors that a denial would cause, such as loss of market. In its description of compliance efforts a manufacturer will be required to submit a chronological analysis showing the relationship of those efforts to the rulemaking history of the standard, and to discuss alternate means of compliance that may have been considered, and the reasons for the rejection of each. As proposed, a manufacturer must also describe the steps to be taken while the exemption is in effect to achieve full compliance, and the estimated date by which full compliance will be achieved.

The NHTSA did not adopt the format and informational content of the EPA guidelines for several reasons. There is a basic difference in the Clean Air Act and the Traffic Safety Act. Under the former, the public health is paramount. All motor vehicles must meet certain emission standards by the 1975 model year. A one-year suspension is possible, but only upon technological grounds, and not for economic hardship. Suspensions are granted on the basis of fulfilling four criteria—(1) that it is essential to the public interest and public health of the United States, (2) that all good faith efforts have been made to meet the established standards, (3) that effective emission control technology is not available, or has not been available for a sufficient time to achieve compliance prior to the effective date of such standard and (4) that the study and investigation of the National Academy of Sciences and other available information has not indicated that technology or other alternatives are available to meet the emission standards. By the 1976 model year all vehicles will comply and no further suspension is possible. The proof to support an emission standard suspension thus differs substantially from that required for hardship. On the other hand, under the Traffic Safety Act, motor vehicle safety must be balanced with other factors of the public interest including the desirability of affording a continuing and wide choice of vehicles to meet differing needs, and encouraging the continuation of relatively small manufacturers. In some instances, the safety exemption sought may be limited in time and scope, and extensively detailed information such as EPA requires may be unnecessary to document the request.

With reference to the comments by Freightliner, the NHTSA does take into account the vehicle purchaser, in that it is concerned with the effect of a denial upon the availability of vehicles and their retail prices. Moreover, throughout its existence this agency has been aware of the problems of custom-truck manufacturers and has tried to accommodate them, consistent with considerations of motor vehicle safety.

2. *Other Bases for Exemption.* A manufacturer may apply for an exemption for a period not to exceed two years and covering up to 2,500 vehicles for any 12-month period that the exemption is in effect on any one of three additional bases: that it would assist in the development or field evaluation of new motor vehicle safety features, that it would assist in the development or field evaluation of a low-emission vehicle, or that, in the absence of an exemption, it would be unable to sell a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of non-exempted motor vehicles. To substantiate the development of safety features, it was proposed that the applicant establish the innovational nature of the safety feature and that it would provide a level of safety at

least equivalent to the level of safety established in the standard from which exemption is sought. To substantiate the development of a low-emission vehicle, it was proposed that the applicant establish the emission feature of his vehicle and that an exemption would aid in its development as well as evidence that a temporary exemption would not unreasonably degrade the safety of the vehicle. Finally, to substantiate that failure to provide an exemption would prevent the sale of an otherwise safe vehicle, it was proposed that an applicant submit evidence that the vehicle could not otherwise be sold, and provide an analysis of how the vehicle provides an overall level of safety equal to or exceeding the overall level of safety of non-exempted vehicles.

The Public Interest Research Group again suggested that the proposal be amplified to provide guidelines similar to those of EPA, and supplied formats for each of the three bases. The NHTSA concurs with the Research Group to the extent that it has expanded the proposal so that the regulation includes some of the information and data suggested, but it has not adopted the format in detail, for the reasons previously discussed.

A manufacturer who wishes to develop or evaluate new safety features must document the innovational nature of the features. He must also submit an analysis establishing that the safety level provided by the feature equals or exceeds the level of safety established in the standard from which exemption is sought, including a description of how complying and non-complying vehicles differ, the results of tests that demonstrate performance which meets or exceeds the safety levels of the standard, and substantiation that a temporary exemption would facilitate the development or field evaluation of the vehicle. The manufacturer is also required to indicate his intent at the end of the exemption period to conform to the standard, or to petition for rulemaking to amend the standard so that the feature might be incorporated into it.

Somewhat similar information is required of a manufacturer who wishes to develop or evaluate a low-emission vehicle, although in this instance the NHTSA is also interested in a manufacturer's test results showing how far the vehicle deviates from the standard, as part of the manufacturer's showing that the exemption would not unreasonably degrade the safety of the vehicle.

A manufacturer who petitions on the basis that the overall level of safety is equivalent to or exceeds the overall level of non-exempted vehicles must describe how exempted and non-exempted vehicles differ, describe safety features that the vehicle offers as standard equipment that are not required by the Federal standards, and submit both comparative test results showing how far the vehicle deviates from the standard, and the results of any tests showing that the vehicle exceeds the minimum requirements of any Federal standard. The manufacturer must also state whether he intends to comply at the end of the exemption period. Petitions for renewal of an exemption under each of these three bases are required to state the number of exempted vehicles sold in the United States under the prior exemption.

3. *Miscellaneous Comments.* The Public Interest Research Group and the Center for Auto Safety requested that § 555.7, *Processing of petitions*, be rewritten to include a provision for informal public hearings to be held at the discretion of the Administrator. Such a provision, in the opinion of the Research Group, "might well preclude protracted litigation by fully addressing issues in an informal public hearing." The requested provision has not been included in the final rule as it is considered unnecessary. Such a power is inherent in the Administrator's general powers and may be invoked in any appropriate occasions. It is not specifically required by the legislation, which deems notice and an opportunity to comment in writing a sufficient forum and means of assuring informed administrative action and of protecting the public interest.

The Center for Auto Safety requested that § 555.8, *Termination of temporary exemptions*, include a provision that the Administrator will entertain petitions for termination from interested persons. Although such a provision is not necessary since the agency would consider any information brought to its attention that is relevant to its regulatory functions, a section to this effect has been added for public information. It pro-

vides that petitions for termination of an exemption will be handled in accordance with the procedures of §§ 553.31 and .33 on petitions for rulemaking. The Center also asked whether the civil penalty provisions of section 109 could apply in the event it was determined that an exemption had been granted on the basis of fraudulent information. The NHTSA believes that civil penalties could apply in this instance, through the application of sections 108, 109, and 112. In addition, the general fraud provisions of 18 U.S.C. 1001 provide both criminal and civil penalties for submission of false information.

Senator Magnuson, Lotus, and the Research Group commented that the temporary exemption labels (§ 555.9) should include the title of the standard as a matter of clearer public disclosure. The comments have merit and the labels, both windshield and certification, must state the title of any exempted standard. The Research Group has further commented that the NHTSA has ignored the provision of Section 123(b) that written notification of the exemption be delivered to the dealer and first purchaser. The agency does not agree with the Research Group and believes that the windshield label constitutes written notification, fulfilling this discretionary requirement.

Finally, comments were addressed to the adequacy of § 555.10, *Availability for public inspection.* The NHTSA has adopted the Center for Auto Safety's comment that subsection (a) should be revised to provide availability of memoranda of all metings held pursuant to § 555.7(a). However, the NHTSA has not agreed with the Center's suggestion that the agency commit itself to make such memoranda available within a specified time limit "such as five working days". The agency will use its best efforts to place memoranda of this nature in the dockets as soon as practicable. The Center, Senator Magnuson, and the Research Group pointed out that Section 123(b) of the Act authorizes the Secretary to withhold only information "not relevant to the application for exemption". This agency concurs and minor rewording of § 555.10(b) clarifies this. Senator Magnuson encourages the agency "as a general policy, to release information contained in applications for exemptions on the basis that all such information is relevant to the application or it would not have been included by the manufacturer". The NHTSA agrees with this general policy. It will carefully scrutinize requests for confidential treatment of information and liberally interpret the relevancy of that information to the petition.

In consideration of the foregoing, Title 49 Code of Federal Regulations is amended by adding Part 555, *Temporary Exemption from Federal Motor Vehicle Safety Standards*, as set forth below.

Effective date: January 29, 1973.

(Sec. 3, Pub. L. 92–548, 86 Stat. 1159; Sec. 119, Pub. L. 89–563 (15 U.S.C. 1410, 1407), 80 Stat. 718; delegation of authority at 49 CFR 1.51)

Issued on January 22, 1973.

Douglas W. Toms
Administrator

38 F.R. 2693
January 29, 1973

PREAMBLE TO AMENDMENT TO PART 555—TEMPORARY EXEMPTION FROM MOTOR VEHICLE SAFETY STANDARDS

(Docket No. 72–30; Notice 4)

This notice amends 49 CFR Part 555 to specify that the NHTSA will notify petitioners directly when their petitions are found not to contain required information, and that income statements must be included in support of hardship petitions.

The NHTSA proposed these amendments on October 29, 1973 (38 F.R. 29817). Interested persons have been offered an opportunity to participate in the making of the amendments and due consideration has been given to the two comments that were received in response to the notice.

A comment by H. E. Waterman of Bowie, Maryland, suggests that the agency adopt the essence of Federal Aviation Regulation § 11.25 *Petition for rulemaking or exemptions* to emphasize public interest factors, rather than the "private interests" of the petitioner. Mr. Waterman commented that "If an applicant considers his finances to be of interest relative to his petition, he should be given an opportunity to state his financial condition, but that should not be emphasized by establishment of such a requirement".

Mr. Waterman's comment is inapposite. The exemption authority of the Federal Aviation Administration is broader than that provided the NHTSA, and grant of exemption under FAR § 11.25 is not based specifically upon factors of substantial economic hardship. The NHTSA has concluded that it must request detailed financial data from hardship petitioners to assist it and the public in evaluating the merits of hardship claims, and it does not request such information of petitioners who file for exemption on other grounds.

Mr. Waterman's comment on public interest factors however is in point. In addition to finding that one of the four appropriate statutory bases for exemption is present, the Administrator must also make a finding that the exemption is in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act. The regulation currently does not specifically require the petitioner to submit public interest arguments, and the NHTSA believes that it should be amended to so provide. Accordingly § 555.5 *Petition for exemption* is being amended to require the petition to "contain any information, views, or arguments available to the petitioner as to why the granting of the petition would be in the public interest and consistent with the objectives of the Act".

American Motors commented that income statements and balance sheets are generally only part of a larger overall picture of the financial impact of compliance, and that to specifically require them might exclude the submission of other documents which could similarly describe the impact. It suggests amending the regulation to require only that the basis for an exemption for substantial economic hardship be fully documented.

The NHTSA does not consider its informational requirements restrictive and has not adopted the comments of American Motors. Section 556.(a)(1) contains a broad request for "engineering and financial information demonstrating in detail how compliance or failure to obtain an exemption would cause substantial economic hardship" which includes but is not limited to five specific categories of information, plus "(vi) A discussion of other hardships (e.g.

loss of market) that the petitioner desires the agency to consider".

In consideration of the foregoing, 49 CFR Part 555 is amended . . . .

Effective date: March 15, 1974.

(Sec. 3, Pub. L. 92–548, 86 Stat 1159, 15 U.S.C. 1410; sec. 119, Pub. L. 89–563, 80 Stat. 718, 15 U.S.C. 1407; delegation of authority at 49 CFR 1.51.)

Issued on February 7, 1974.

James B. Gregory
Administrator

39 F.R. 5489
February 13, 1974

PREAMBLE TO AMENDMENT TO PART 555—TEMPORARY EXEMPTION FROM MOTOR VEHICLE SAFETY STANDARDS

(Docket No. 72–30; Notice 5)

This notice amends 49 CFR Part 555 to specify that denials as well as grants are published in the *Federal Register*, and to clarify that the effective date of a temporary exemption is its date of publication in the *Federal Register* unless a later effective date is specified. The amendments also specify that an expiring exemption does not terminate during consideration of a petition for its renewal.

These amendments pertain to agency practice and are interpretative in nature. Accordingly, pursuant to 5 U.S.C. § 553(b), it has been found that no notice of proposed rulemaking is called for.

Section 555.7(a) is amended to specify that when the Administrator determines that a petition does not contain adequate justification and is denied, the petitioner is notified in writing and a notice of the denial is published in the *Federal Register*. Publication of denials has been an agency practice and the regulation is amended to reflect it.

A new subparagraph (f) is added to 49 CFR 555.7 to specify that the effective date of a temporary exemption is the date of publication of the notice of grant in the *Federal Register* unless a later effective date is specified. Interested persons have asked whether exemptions can be made effective as of the date of the filng of a petition for relief, or can include the total production of a model year that begins before the date an exemption is granted. This amendment is intended to clarify the agency's policy that exemptions should not have a retroactive effect which could serve to excuse manufacture of nonconforming vehicles in violation of section 108(a)(1) of the National Traffic and Motor Vehicle Safety Act.

In section 555.8 the references to paragraph (c) in paragraphs (a) and (b) are changed to paragraph (d), to indicate that the cause of an early termination of an exemption by the Administrator is through administrative action (paragraph (d)), rather than through petition by interested persons (paragraph (c)). A new paragraph (c) is added to § 555.8, implementing the Administrative Procedure Act provision at 5 U.S.C. § 558(c), stating in effect that when a timely and sufficient application for renewal of a temporary exemption has been received before the exemption's termination date, the exemption does not expire until the Administrator grants or denies the petition for renewal. A timely application is one that is received not later than 60 days before the expiration of an exemption. A sufficient application is one that contains information required by § 555.5.

In consideration of the foregoing, 49 CFR Part 555 is amended. . . .

Effective date: November 24, 1974.

(Sec. 3, Pub. L. 92–548, 86 Stat. 1159, 15 U.S.C. 1410; sec. 119, Pub. L. 89–563, 80 Stat. 718, 15 U.S.C. 1407; delegation of authority at 49 CFR 1.51).

Issued on October 21, 1974.

James B. Gregory
Administrator

39 F.R. 37988
October 25, 1974

PREAMBLE TO AMENDMENT TO PART 555—TEMPORARY EXEMPTION FROM MOTOR VEHICLE SAFETY STANDARDS

(Docket No. 73–20; Notice 6)

This notice amends 49 CFR § 555.10(b) to clarify that information made available for public inspection shall include all submitted materials that are specifically required by § 555.6. The amendment is effective 30 days after publication in the *Federal Register.*

This amendment pertains to agency practice and is clarifying and interpretative in nature. Accordingly, pursuant to 5 U.S.C. 553(b), it is found that notice of proposed rulemaking is unnecessary.

Currently § 555.10(b) states that "Information made available for inspection shall not include materials not relevant to the petition that are to be withheld from the public in accordance with sections 112 and 113 of the Act (15 U.S.C. 1401, 1402) and section 552(b) of Title 5 of the United States Code."

Some petitioners for temporary exemptions on hardship grounds have requested that confidential treatment be given such items as estimated price increases that would be caused by compliance, projected balance sheets and income statements for the fiscal year following denial of a petition, or the efforts to be taken to achieve compliance while the exemption is in effect. The usual reason given is that the information could be harmful to the petitioner in the hands of its competitors. The NHTSA has uniformly denied such requests if they involve materials that the regulation specifically requires to be submitted. These materials are necessary for a determination by the NHTSA of whether the statutory basis for exemption exists. This agency finds that all materials it requests pursuant to the regulation, and which are used in its own decisions, should be available for inspection in the docket by members of the public who wish to reach their own conclusion on the merits of the petition. Materials submitted gratuitously will, of course, be withheld from availability for inspection, if the petitioner requests it and if it is a matter that may be withheld in accordance with sections 112, 113, and 158 of the National Traffic and Motor Vehicle Safety Act.

In consideration of the foregoing, 49 CFR § 555.10(b) is amended. . . .

Effective date: May 30, 1975.

(Sec. 3, Pub. L. 92–548, 86 Stat. 1159, 15 U.S.C. 1410, sec. 119, Pub. L. 89–563, 80 Stat. 718, 15 U.S.C. 1407; delegation of authority at 49 CFR 1.51.)

Issued on April 24, 1975.

James B. Gregory
Administrator

40 F.R. 18789
April 30, 1975

PREAMBLE TO AMENDMENT TO PART 555—TEMPORARY EXEMPTION FROM FEDERAL MOTOR VEHICLE SAFETY STANDARDS

(Docket 73–20; Notice 7)

This notice amends 49 CFR Part 555 to reflect the fact that the Administrator considers petitions to modify exemptions.

On July 7, 1975, the Administrator published notice (40 F.R. 28504) of a petition by General Motors Corporation to modify the temporary exemption previously granted Motor Coach Industries, Inc. Under § 555.8(c) the Administrator may receive petitions to terminate temporary exemptions, and, under § 555.8(d), he may terminate them. The Administrator's power with respect to temporary exemptions necessarily includes modification of an exemption when to do so is in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act, or when the exemption is based upon misrepresentations. Accordingly, § 555.8(c) and § 555.8(d) are amended to reflect this fact. In addition, the section references to processing of petitions (§ 555.31, §553.35) are changed to Part 552 to reflect recent amendments (40 F.R. 42014). A new paragraph is added to specify that notices of termination or modification will appear in the Federal Register.

In consideration of the foregoing, in § 555.8 of Title 49, Code of Federal Regulations, paragraph (c) and the introductory phase of paragraph (d) are revised, and paragraph (f) is added. . . .

Effective date: September 10, 1975. Since the amendment reflects internal policy and procedure it may be made effective upon publication.

(Sec. 3, Pub. L. 92–548, 86 Stat 1159, 15 U.S.C. 1410, Sec. 119, Pub. L. 89–563, 80 Stat 718, 15 U.S.C. 1407; delegation of authority at 49 CFR 1.51.)

Issued on September 4, 1975.

James B. Gregory
Administrator

40 F.R. 42015
September 10, 1975

PREAMBLE TO AN AMENDMENT TO PART 555—TEMPORARY EXEMPTION FROM MOTOR VEHICLE SAFETY STANDARDS

(Docket Nos. FE 76-04; Notice 5; FE 77-03, Notice 4; 80-21, Notice 1)

ACTION: Final Rule.

SUMMARY: This notice makes conforming amendments to several of the agency's regulations deleting specific requirements for confidentiality determinations. These conforming amendments are needed as a result of the publication today of a new agency regulation governing requests for confidentiality determinations (Part 512). Since that new regulation supercedes the confidentiality provisions existing in several of the agency's other regulations, these conforming amendments are being made without notice and opportunity for comment.

EFFECTIVE DATE: These amendments are effective April 9, 1981.

FOR FURTHER INFORMATION CONTACT:
Roger Tilton, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-9511).

SUPPLEMENTARY INFORMATION: In accordance with the above, Title 49 of the Code of Federal Regulations is amended as follows.

Part 525, *Exemptions From Average Fuel Economy Standards,* is revised as follows:

(1) Section 525.6(g) (1) and (2) are deleted and replaced with the following:

(g) Specify and segregate any part of the information and data submitted under this part that the petitioner wishes to have withheld from public disclosure in accordance with Part 512 of this Chapter.

(2) Section 525.13 is deleted and section 525.12 is revised to read:

§ 525.12 Public inspection of information.

(a) Except as provided in paragraph (b), any person may inspect available information relevant to a petition under this Part, including the petition and any supporting data, memoranda of informal meetings with the petitioner or any other interested persons, and the notices regarding the petition, in the Docket Section of the National Highway Traffic Safety Administration. Any person may obtain copies of the information available for inspection under this paragraph in accordance with Part 7 of the regulations of the Office of the Secretary of Transportation (49 CFR Part 7).

(b) Except for the release of confidential information authorized by section 505 of the Act and Part 512 of this Chapter, information made available for public inspection does not include information for which confidentiality is requested under § 525.6(g) and is granted in accordance with Part 512 and sections 502 and 505 of the Act and section 552(b) of Title 5 of the United States Code.

Part 537, *Automotive Fuel Economy Reports,* is revised as follows:

(1) Section 537.5(c) (7) (i) and (ii) are deleted and replaced with the following:

(7) Specify any part of the information or data in the report that the manufacturer believes should be withheld from public disclosure as trade secret or other confidential business information in accordance with Part 512 of this Chapter.

(2) Section 537.12 is deleted and section 537.11 is revised to read:

§ 537.11 Public inspection of information.

(a) Except as provided in paragraph (b), any person may inspect the information and data submit-

ted by a manufacturer under this part in the docket section of the National Highway Traffic Safety Administration. Any person may obtain copies of the information available for inspection under this section in accordance with the regulations of the Secretary of Transportation in Part 7 of this title.

(b) Except for the release of confidential information authorized by section 505 of the Act and Part 512 of this Chapter, information made available under paragraph (a) for public inspection does not include information for which confidentiality is requested under § 537.5(c) (7) and is granted in accordance with Part 512 of this Chapter, section 505 of the Act, and section 552(b) of Title 5 of the United States Code.

Part 555, *Temporary Exemption From Motor Vehicle Safety Standards,* is revised as follows:

(1) Section 555.5(b) (6) is revised to read:

(6) Specify any part of the information and data submitted which petitioner requests be withheld from public disclosure in accordance with Part 512 of this Chapter.

(2) Section 555.10(b) is revised to read:

(b) Except for the release of confidential information authorized by Part 512 of this Chapter, information made available for inspection under paragraph (a) shall not include materials not relevant to the petition for which confidentiality is requested and granted in accordance with sections 112, 113, and 158 of the Act (15 U.S.C. 1401, 1402, and 1418) and section 552(b) of Title 5 of the United States Code.

Issued on December 30, 1980.

Joan Claybrook
Administrator

46 F.R. 2063
January 8, 1981

PREAMBLE TO AN AMENDMENT TO PART 555

Temporary Exemption From Federal Motor Vehicle Safety Standards

[Docket No. 82-14; Notice 2]

ACTION: Final rule; correction.

SUMMARY: This notice amends the temporary exemption regulations to correct an error appearing in the Code of Federal Regulations which has left incomplete the wording required for certification labels on exempted vehicles. The error has appeared in Section 555.9 of Title 49 CFR in volumes revised as of October 1, 1982, 1983, and 1984. Since this amendment simply corrects the CFR text, it is effective upon publication without notice or opportunity to comment.

EFFECTIVE DATE: March 18, 1985.

SUPPLEMENTARY INFORMATION: On July 22, 1982, NHTSA issued an amendment to 49 CFR Part 555 updating the certification requirements for exempted vehicles to include certification to Federal bumper requirements (47 FR 31694). These requirements are found in Sections 555.9(c)(1) and (c)(2). In amending the portion of those sections containing the specified certification label wording, NHTSA added the words "and bumper" at the appropriate places, but did not consider it necessary to recite at length in the Federal Register notice the sentences in the regulation which were unchanged after that point. In the drafting style accepted for indicating no further change in text, NHTSA indicated the omission of sequential and unchanged sentences by "* * *". The purpose of this indication was apparently misunderstood by the editors of the CFR and the 1982, 1983, and 1984 revisions of Title 49 of the Code of Federal Regulations quoted verbatim the 1982 notice, ending the requirements with "* * *" and omitting the remaining language. It is therefore necessary to amend Sections 555.9(c)(1) and (c)(2) to correct the error. Because of the technical nature of this amendment, the agency finds for good cause shown that prior notice and public comment on this amendment is unnecessary, and that it may be made effective upon publication.

PART 555—TEMPORARY EXEMPTION FROM MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, Title 49 Code of Federal Regulations Part 555, *Temporary Exemption From Motor Vehicle Safety Standards*, is amended as follows:

Section 555.9(c)(1) and (c)(2) are revised in pertinent part:

§ 555.9 Temporary exemption labels.

* * * * *

(c) * * *

(1) Instead of the statement required by § 567.4(g)(5) of this Chapter, the following statement shall appear: "THIS VEHICLE CONFORMS TO ALL APPLICABLE FEDERAL MOTOR VEHICLE SAFETY (AND BUMPER) STANDARDS IN EFFECT ON THE DATE OF MANUFACTURE SHOWN ABOVE EXCEPT FOR STANDARDS NOS. [listing the standards by number and title for which an exemption has been granted] EXEMPTED PURSUANT TO NHTSA EXEMPTION NO. _____."

(2) Instead of the statement required by § 567.5(c)(7)(iii), the following statement shall appear: "THIS VEHICLE CONFORMS TO ALL APPLICABLE FEDERAL MOTOR VEHICLE SAFETY (AND BUMPER) STANDARDS IN EFFECT IN [Month, Year] EXCEPT FOR STANDARD NOS. [listing the standards by number and title for which an exemption has been granted]

EXEMPTED PURSUANT TO NHTSA EXEMPTION NO. _____."

Issued on March 12, 1985.

Barry Felrice
Associate Administrator
for Rulemaking

50 FR 10771
March 18, 1985

PART 555—TEMPORARY EXEMPTION FROM MOTOR VEHICLE SAFETY STANDARDS

§ 555.1 Scope. This part establishes requirements for the temporary exemption, by the National Highway Traffic Safety Administration (NHTSA), of certain motor vehicles from compliance with one or more Federal motor vehicle safety standards in accordance with section 123 of the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1410.

§ 555.2 Purpose. The purpose of this part is to provide a means by which manufacturers of motor vehicles may obtain temporary exemptions from Federal motor vehicle safety standards on the bases of substantial economic hardship, facilitation of the development of new motor vehicle safety or low-emission engine features, or existence of an equivalent overall level of motor vehicle safety.

§ 555.3 Application. This part applies to manufacturers of motor vehicles.

§ 555.4 Definitions.

"Administrator" means the National Highway Traffic Safety Administrator or his delegate.

"United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa.

§ 555.5 Petition for exemption.

(a) A manufacturer of motor vehicles may petition the NHTSA for a temporary exemption from any Federal motor vehicle safety standard or for a renewal of any exemption on the bases of substantial economic hardship, facilitation of the development of new motor vehicle safety or low-emission engine features, or the existence of an equivalent overall level of motor vehicle safety.

(b) Each petition filed under this part for an exemption or its renewal must—

(1) Be written in the English language;

(2) Be submitted in three copies to: Administrator, National Highway Traffic Safety Administration, Washington, D.C. 20590;

(3) State the full name and address of the applicant, the nature of its organization (individual, partnership, corporation, etc.) and the name of the State or country under the laws of which it is organized;

(4) State the number and title, and the text or substance of the standard or portion thereof from which the temporary exemption is sought, and the length of time desired for such exemption;

(5) Set forth the basis for the petition and the information required by § 555.6(a), (b), (c), or (d) as appropriate.

[(6) Specify any part of the information and data submitted which petitioner requests be withheld from public disclosure in accordance with Part 512 of this Chapter.

(7) Set forth the reasons why the granting of the exemption would be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act.

(c) The knowing and willful submission of false, fictitious or fraudulent information will subject the petitioner to the civil and criminal penalties of 18 U.S.C. 1001. (46 F.R. 2063—January 8, 1981. Effective: April 9, 1981)]

§ 555.6 Basis for petition.

(a) If the basis of the petition is substantial economic hardship the petitioner shall provide the following information.

(1) Engineering and financial information demonstrating in detail how compliance or failure to obtain an exemption would cause substantial economic hardship, including—

(i) A list or description of each item of motor vehicle equipment that would have to be modified in order to achieve compliance;

(ii) The itemized estimated cost to modify each such item of motor vehicle equipment if compliance were to be achieved—

(A) As soon as possible,

(B) At the end of a one-year exemption period, (if the petition is for one year or more)

(C) At the end of a two-year exemption period, (if the petition is for two years or more)

(D) At the end of a three-year exemption period, (if the petition is for three years)

(iii) The estimated price increase per vehicle to balance the total costs incurred pursuant to subdivision (ii) of this subparagraph and a statement of the anticipated effect of each such price increase;

(iv) Corporate balance sheets and income statements for the three fiscal years immediately preceding the filing of the application;

(v) Projected balance sheet and income statement for the fiscal year following a denial of the petition; and

(vi) A discussion of any other hardships (*e.g.*, loss of market) that the petitioner desires the agency to consider.

(2) A description of its efforts to comply with the standards, including—

(i) A chronological analysis of such efforts showing its relationship to the rulemaking history of the standard from which exemption is sought;

(ii) A discussion of alternate means of compliance considered and the reasons for rejection of each;

(iii) A description of the steps to be taken, while the exemption is in effect, and the estimated date by which full compliance will be achieved either by design changes or termination of production of nonconforming vehicles; and

(iv) The total number of motor vehicles produced by or on behalf of the petitioner in the 12-month period prior to filing the petition, and the inclusive dates of the period. (Section 123 of the Act limits eligibility for exemption on the basis of economic hardship to manufacturers whose total motor vehicle production does not exceed 10,000.)

(b) If the basis of the petition is the development or field evaluation of new motor vehicle safety features, the petitioner shall provide the following information:

(1) A description of the safety features, and research, development, and testing documentation establishing the innovational nature of such features.

(2) An analysis establishing that the level of safety of the features is equivalent to or exceeds the level of safety established in the standard from which exemption is sought, including—

(i) A detailed description of how a motor vehicle equipped with the safety features differs from one that complies with the standard;

(ii) If applicant is presently manufacturing a vehicle conforming to the standard, the results of tests conducted to substantiate certification to the standard; and

(iii) The results of tests conducted on the safety features that demonstrate performance which meets or exceeds the requirements of the standard.

(3) Substantiation that a temporary exemption would facilitate the development or field evaluation of the vehicle.

(4) A statement whether, at the end of the exemption period, the manufacturer intends to conform to the standard, apply for a further exemption, or petition for rulemaking to amend the standard to incorporate the safety features.

(5) A statement that not more than 2,500 exempted vehicles will be sold in the United States in any 12-month period for which an exemption may be granted pursuant to this paragraph. A petition for renewal of such an exemption shall also include the total number of exempted vehicles sold in the United States under the existing exemption.

(c) If the basis of the petition is the development or field evaluation of a low-emission vehicle, the petitioner shall provide—

(1) Substantiation that the motor vehicle is a low-emission vehicle as defined by section 123(g) of the Act.

(2) Research, development, and testing documentation establishing that a temporary exemption would not unreasonably degrade the safety of the vehicle, including—

(i) A detailed description of how the motor vehicle equipped with the low-emission engine would, if exempted, differ from one that complies with the standard;

(ii) If applicant is presently manufacturing a vehicle conforming to the standard, the results of tests conducted to substantiate certification to the standard;

(iii) The results of any tests conducted on the vehicle that demonstrate its failure to meet the standard, expressed as comparative performance levels; and

(iv) Reasons why the failure to meet the standard does not unreasonably degrade the safety of the vehicle.

(3) Substantiation that a temporary exemption would facilitate the development or field evaluation of the vehicle.

(4) A statement whether, at the end of the exemption period, the manufacturer intends to conform with the standard.

(5) A statement that not more than 2,500 exempted vehicles will be sold in the United States in any 12-month period for which an exemption may be granted pursuant to this paragraph. A petition for renewal of an exemption shall also include the total number of exempted vehicles sold in the United States under the existing exemption.

(d) If the basis of the petition is that the petitioner is otherwise unable to sell a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of non-exempted motor vehicles, the petitioner shall provide—

(1) A detailed analysis of how the vehicle provides an overall level of safety equivalent to or exceeding the overall safety of non-exempted vehicles, including—

(i) A detailed description of how the motor vehicle, if exempted, differs from one that conforms to the standard;

(ii) A detailed description of any safety features that the motor vehicle offers as standard equipment that are not required by the Federal motor vehicle safety standards;

(iii) The results of any tests conducted on the vehicle demonstrating that it fails to meet the standard, expressed as comparative performance levels;

(iv) The results of any tests conducted on the vehicle demonstrating that its overall level of safety exceeds that which is achieved by conformity to the standards.

(v) Other arguments that the overall level of safety of the vehicle equals or exceeds the level of safety of non-exempted vehicles.

(2) Substantiation that compliance would prevent the sale of the vehicle.

(3) A statement whether, at the end of the exemption period, the manufacturer intends to comply with the standard.

(4) A statement that not more than 2,500 exempted vehicles will be sold in the United States in any 12-month period for which an exemption may be granted pursuant to this paragraph. A petition for renewal of any exemption shall also include the total number of exempted vehicles sold in the United States under the existing exemption.

§ 555.7 Processing of petitions.

(a) The NHTSA publishes in the *Federal Register*, affording opportunity for comment, a notice of each petition containing the information required by this part. However, if the NHTSA finds that a petition does not contain the information required by this part, it so informs the petitioner, pointing out the areas of insufficiency and stating that the petition will not receive further consideration until the required information is submitted.

(b) No public hearing, argument or other formal proceeding is held directly on a petition filed under this part before its disposition under this section.

(c) Any interested person may, upon written request, appear informally before an appropriate official of the NHTSA to discuss a petition for

exemption or the action taken in response to a petition.

(d) If the Administrator determines that the petition does not contain adequate justification, he denies it and notifes the petitioner in writing. He also publishes in the *Federal Register* a notice of the denial and the reasons for it.

(e) If the Administrator determines that the petition contains adequate justification, he grants it, and notifies the petitioner in writing. He also publishes in the *Federal Register* a notice of the grant and the reasons for it.

(f) Unless a later effective date is specified in the notice of the grant, temporary exemption is effective upon publication of the notice in the *Federal Register* and exempts vehicles manufactured on and after the effective date.

§ 555.8 Termination of temporary exemptions.

(a) A temporary exemption from a standard granted on the basis of substantial economic hardship terminates according to its terms but not later than 3 years after the date of issuance unless terminated sooner pursuant to paragraph (d) of this section.

(b) A temporary exemption from a standard granted on a basis other than substantial economic hardship terminates according to its terms but not later than 2 years after the date of issuance unless terminated sooner pursuant to subparagraph (d).

(c) Any interested person may petition for the termination or modification of an exemption granted under this part. The petition will be processed in accordance with the procedures of Part 552 of this chapter.

(d) The Administrator terminates or modifies a temporary exemption if he determines that—

(1) The temporary exemption is no longer consistent with the public interest and the objectives of the Act; or

(2) The temporary exemption was granted on the basis of false, fraudulent, or misleading representations or information.

(e) If a petition for renewal of a temporary exemption that meets the requirements of § 555.5 has been filed not later than 60 days before the termination date of an exemption, the exemption does not terminate until the Administrator grants or denies the petition for renewal.

(f) The Administrator publishes in the *Federal Register* a notice of

(i) a petition for termination or modification of an exemption and the action taken in response to it; and

(ii) any termination or modification of an exemption pursuant to the Administrator's own motion.

§ 555.9 Temporary exemption labels. A manufacturer of an exempted vehicle shall—

(a) Submit to the Administrator, within 30 days after receiving notification of the grant of an exemption, a sample of the certification label required by PART 567 of this chapter and paragraph (c) of this section;

(b) Affix securely to the windshield or side window of each exempted vehicle a label in the English language containing the statement required by paragraph (c) (1) or (c) (2) of this section, and with the words "SHOWN ABOVE" omitted.

(c) Meet all applicable requirements of Part 567 of this chapter, except that—

(1) Instead of the statement required by § 567.4(g) (5) of this Chapter, the following statement shall appear: "THIS VEHICLE CONFORMS TO ALL APPLICABLE FEDERAL MOTOR VEHICLE SAFETY (AND BUMPER) STANDARDS IN EFFECT ON THE DATE OF MANUFACTURE SHOWN ABOVE EXCEPT FOR STANDARDS NOS. [Listing the standards by number and title for which an exemption has been granted]. EXEMPTED PURSUANT TO NHTSA EXEMPTION NO. _____.

(2) Instead of the statement required by § 567.5(c) (7) (iii), the following statement shall appear: THIS VEHICLE CONFORMS TO ALL APPLICABLE FEDERAL MOTOR VEHICLE SAFETY (AND BUMPER) STANDARDS IN EFFECT IN [Month, Year] EXCEPT FOR STANDARD NOS. [Listing the standards by number and title for which an exemption has been granted). EXEMPTED PURSUANT TO NHTSA EXEMPTION NO._____

(50 F.R. 10771—March 18, 1985. Effective: March 18, 1985)

§ 555.10 Availability for public inspection.

(a) Information relevant to a petition under this part, including the petition and supporting data, memoranda of informal meetings with the petitioner or any other interested person, and the grant or denial of the petition, is available for public inspection, except as specified in paragraph (b) of this section, in the Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Copies of available information may be obtained, as provided in Part 7 of the regulations of the Office of the Secretary of Transportation (49 CFR Part 7).

[(b) Except for the release of confidential information authorized by Part 512 of this Chapter, information made available for inspection under paragraph (a) shall not include materials not relevant to the petition for which confidentiality is requested and granted in accordance with sections 112, 113, and 158 of the Act (15 U.S.C. 1401, 1402, and 1418) and section 552(b) of Title 5 of the United States Code. (46 F.R. 2063—January 8, 1981. Effective: April 9, 1981)]

38 F.R. 2693
January 29, 1973

PREAMBLE TO PART 556—EXEMPTION FOR INCONSEQUENTIAL DEFECT OR NONCOMPLIANCE

(Docket No. 75-21; Notice 2)

This notice amends Title 49 of the Code of Federal Regulations to add Part 556, "Exemption for Inconsequential Defect or Noncompliance," which establishes procedures for petitioning by manufacturers for exemption from notice and remedy requirements of the National Traffic and Motor Vehicle Safety Act on grounds that a defect or noncompliance is inconsequential as it relates to motor vehicle safety.

A notice of proposed rulemaking to establish Part 556 was published in the FEDERAL REGISTER on August 25, 1975 (40 FR 37047). Fifteen comments were received from vehicle and equipment manufacturers and trade associations representing these groups. The National Motor Vehicle Safety Advisory Council did not take a position on the proposal. The Vehicle Equipment Safety Commission did not comment on the proposal.

The NHTSA is adding Part 556 to Title 49 to establish procedures that will implement the legislative mandate of section 157 of the National Traffic and Motor Vehicle Safety Act (the Act) (as amended by Pub. L. 93-492, 88 Stat. 1470, October 27, 1974; 15 U.S.C. 1417). The new regulation prescribes procedures for the submission of petitions, including filing time and petition content. Other provisions are included concerning the processing and disposition of petitions, meetings to present oral comments, and the rescission of exemptions.

Comments on the proposal were in agreement with the intent of the regulation. Several comments suggested modification of certain sections with respect to content and language.

International Harvester (IH) requested that the proposed language of sections 556.1 and 556.2 of Part 556 be modified to ensure that the requirements for notification and remedy would be suspended pending a determination on the inconsequentiality petition.

It is the agency's view that the modifications recommended by IH are unnecessary. When the agency initially determines that a defect or noncompliance has occurred, it notifies the manufacturer who is provided a 30-day period in which to submit an inconsequentiality petition. The manufacturer's duty to notify and remedy does not become mandatory until the agency makes two final determinations: the first, that a noncompliance or defect in fact exists, and the second, that it is not inconsequential. These determinations are not made until after receipt of submissions, written and oral, from the manufacturer and other interested parties. Under Part 556, the agency would dispose of the petition for inconsequentiality concurrently with its final determination of a defect or noncompliance. Therefore, the notification and remedy provisions would never become effective until there has been a final determination of the petition for inconsequentiality.

When a manufacturer determines that a defect or noncompliance exists, on the other hand, he will be exempted temporarily from notice and remedy requirements until the NHTSA finally disposes of his petition for exemption. The agency interprets the requirement in the proposed amendment to Part 577 that manufacturers provide notification of a defect or noncompliance unless exempted by the Administrator pursuant to section 157 of the Act to mean that notification need not occur until after the disposition of an inconsequentiality petition.

Association Peugeot-Renault suggested that the phrase "has determined" in the first sentence of paragraph 556.4(a) be changed to "has finally

determined" for purposes of clarification. There is no distinction between these phrases with respect to manufacturer-initiated determinations of a defect or noncompliance. The distinction becomes meaningful only when the NHTSA makes an initial determination as opposed to a final determination. Therefore, the agency has decided to retain the language "has determined," since it is not ambiguous, and it is consistent with Parts 573 and 577.

Comments were received from American Motors Corporation (AMC), Volkswagen, Chrysler, General Motors (GM), and the Motor Vehicle Manufacturers Association (MVMA) requesting clarification of the use of the term "defect" in the regulation. These comments expressed the opinion that the legislative history of section 157 of the Act as well as other provisions of the Act clearly indicate that any defect requiring action must be related to motor vehicle safety.

The NHTSA agrees that the Act and its underlying history are directed to manufacturer responsibility for defects that relate to motor vehicle safety. In view of possible ambiguity in the use of the word "defect" alone, the qualifying words "related to motor vehicle safety" have been added throughout the regulation where appropriate.

The agency is modifying paragraph (b)(4) of section 556.4 to require submission of the number of motor vehicles or replacement equipment and the period in which they were produced for which an exemption is sought. This information is considered necessary and falls within the ambit of the proposal.

Several commenters suggested that the agency delete paragraph (c) of section 556.4, because 18 U.S.C. 1001 applies to all willful submissions of false information to any department or agency from any source, thereby making paragraph (c) redundant. The agency agrees that the reference to this criminal penalty is not necessary to the purpose of the regulation, and it is, therefore, deleted.

Many commenters requested a change in paragraph (d) of section 556.4. AMC, Chrysler, GM, and the MVMA all requested that the 15-day time limit on petitions be deleted. They argued that manufacturers should be able to petition within a reasonable time after a defect is determined to exist as allowed in Part 577. This may not occur until after the final determination is made by the NHTSA.

The agency has concluded that the modification described above would unduly delay remedy of defects and noncompliances, as well as enforcement and compliance actions. The requested modification would allow a manufacturer to proceed through an agency-initiated defect determination, and then, within a reasonable time, petition for a determination of inconsequentiality. This serial procedure would be time-consuming and redundant, allowing potentially dangerous vehicles to go unremedied longer than necessary. It is true that Part 577 specifies notification of the public within a "reasonable time" (conforming to the requirements of § 153(b)(1) of the Act) in the case of a manufacturer's determination. Reasonable time is appropriate in the context of Part 577, since notification might need to be made to thousands of individuals. Part 556 requires only the filing of a single petition and, therefore, should be subject to a time limitation.

White Motor Company and IH proposed that the NHTSA define 15 days to mean 15 working days. Association Peugeot-Renault and Uniroyal, on the other hand, suggested that the agency extend the time limit to 30 days. Some commenters pointed out that the proposed requirement of receipt of the petition within 15 days might leave the manufacturer with only four working days to conduct tests and draft the petitions. After careful consideration, the NHTSA has decided to require petitions to be submitted within 30 days. This provides a reasonable limit on the time for filing a petition for exemption. Moreover, it assures that all submissions will be received prior to the meeting authorized under section 152(a) of the Act.

The MVMA and GM suggested that the language in paragraph (3)(i) of section 556.5 be changed for clarity. They argued that the wording of that paragraph indicates that a public meeting prior to the disposition of a petition for exemption is mandatory. Their modification would require someone to request a meeting before the NHTSA would establish a time and place for it.

This aspect of paragraph (3)(i) was proposed to allow the agency to publish the time and location of a meeting concurrently with the publication in the FEDERAL REGISTER of the manufacturer's petition for an inconsequentiality determination. Since issuance of the proposal, the agency has had more experience with section 157 petitions. To date meetings have not been required for disposition of these petitions. Therefore, the final rule incorporates the language suggested by the MVMA and GM to establish that public meetings will be held "upon request of the petitioner or interested persons."

Many commenters requested that paragraph (a)(3)(ii) of section 556.5 be amended to allow the manufacturer to choose to have a meeting on the inconsequentiality petition that is separate from a meeting held pursuant to section 152(a) of the Act. These commenters believe that prejudice may result if they are required to argue simultaneously that no defect or noncompliance exists and that any defect or noncompliance that may be found is inconsequential.

The language of section 556.4 paragraph (d) was intended to ensure that a petition for inconsequentiality would not constitute a concession of the existence of a defect. Consideration of the petition at the section 152(a) meeting is analogous to the consideration of more formal alternative pleadings in other legal forums. Separate hearings or meetings are not held merely because there exist two alternative defenses. Therefore, the agency does not agree that the consolidation of the two arguments would result in prejudice. Accordingly, the request for separate meetings is denied.

Several comments were made concerning a modification of section 556.6 to require formal adversarial hearings. The meetings proposed by the agency are fact-finding, not adversarial. The purpose of the meetings is to yield further information to facilitate the decision-making process. The informal meeting process is less time-consuming than adversarial proceedings and it yields equally reliable factual information. Further, Congress has authorized the agency in section 157 of the Act to proceed informally. The agency will retain, therefore, the informal meeting procedure.

Association Peugeot-Renault would delete the last sentence in paragraph (b) of section 556.6. They believed that a decision made by the NHTSA on an inconsequentiality petition should be based entirely upon matters covered at a meeting. The agency does not agree. These meetings serve to gather information. They are a supplement to other sources of information utilized by the NHTSA. Decisions must be based upon thorough consideration of all information received from all sources.

The NHTSA in deciding section 157 petitions has afforded an opportunity for manufacturers to appeal the denial of an exemption based upon inconsequentiality of defect or noncompliance. The agency intends to continue this process and, in addition, to allow any interested person to appeal the grant or denial of an exemption by submitting written data, views, or arguments. To reflect this policy, the agency modifies the proposed section 556.7 to allow an appeal procedure within the agency.

Several commenters requested minor modifications of section 556.8. GM suggested that the agency publish guidelines to establish procedures for rescission of an exemption. The agency concludes that the section provides sufficient guidelines for the rescission process. No rescission will be made prior to the receipt of new data and notice and opportunity to comment thereon. In the unlikely circumstance that procedure proves to be insufficient, future opportunity exists for a revision of the procedures. A minor modification of the wording of section 556.8 is made for clarity.

AMC, MVMA, and GM suggested that the agency amend section 556.9 to state that confidential material would not be subject to public inspection. The agency has determined that this modification is unnecessary. Section 112 paragraph (e) of the Act defines the limits for the release of confidential material. A repetition of this restriction in Part 556 would be redundant.

In accordance with recently enunciated Department of Transportation policy encouraging adequate analysis of the consequences of regulatory action (41 FR 16200; April 16, 1976), the agency herewith summarizes its evaluation of the eco-

nomic and other consequences of this action on the public and private sectors, including possible loss of safety benefits. Since this part is merely procedural and fulfills the mandate of section 157 of the Act, there will be at most minimal costs associated with its implementation and no loss of safety benefits.

In consideration of the foregoing, Title 49, Code of Federal Regulations, is amended by the addition of a new Part 556 titled "Exemption for Inconsequential Defect or Noncompliance."

Effective date: March 9, 1977.

(Sec. 102, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1417); delegation of authority at 49 CFR 1.50.)

Issued on January 31, 1977.

John W. Snow
Administrator

42 F.R. 7145
February 7, 1977

PREAMBLE TO AN AMENDMENT TO PART 556

Exemption for Inconsequential Defect or Noncompliance

(Docket No. 75-21; Notice 3)
RIN: 2127-AE30

ACTION: Final rule.

SUMMARY: A manufacturer which determines that its motor vehicle or motor vehicle equipment fails to comply with a Federal motor vehicle safety standard or contains a safety-related defect may, under Part 556, Exemption for Inconsequential Defect or Noncompliance, petition to be exempted from the obligation under the National Traffic and Motor Vehicle Safety Act to notify owners and remedy the noncompliance or defect, upon a showing that the noncompliance or defect is inconsequential as it relates to motor vehicle safety. Under Part 573, Defect and Noncompliance Reports, a manufacturer making a noncomplance or defect determination must, within 5 working days of that determination, file a report with NHTSA. The final rule adopted by this notice requires a manufacturer petitioning under Part 556 to attach a copy of its Part 573 report with its petition.

EFFECTIVE DATE: January 22, 1992.

SUPPLEMENTARY INFORMATION:

Under 49 CFR 573.5(a), "Each manufacturer shall furnish a report to the NHTSA" for each noncompliance with a Federal motor vehicle safety standard or each safety related defect in the vehicles or motor vehicle equipment that he manufactures "that he or the Administrator determines to exist." Section 573.5(b) requires that the manufacturer submit the report "not more than 5 working days after" a noncompliance or safety related defect "has been determined to exist." A manufacturer making such a determination is required by the National Traffic and Motor Vehicle Safety Act to notify its purchasers and to remedy the noncompliance or the safety related defect. However, under 49 CFR 556.4(a), the manufacturer may file a petition with the Administrator for a determination that the noncompliance or safety related defect is inconsequential as it relates to motor vehicle safety. Such petition must be filed within 30 days after the determination. If the petition is granted, the manufacturer is excused from the obligation to notify and remedy.

It is clear that if a noncompliance or safety related defect does not exist, the obligation to notify and remedy does not arise. Thus, section 556.4(a) extends the right to petition only to "A manufacturer who has determined the existence, in a motor vehicle or item of replacement equipment that he produces, of a defect related to motor vehicle safety or a noncompliance with an applicable Federal motor vehicle safety standard . . . ." In other words, the right extends only to a manufacturer which has the related obligation to file a Part 573 report.

On occasion, the fact that a manufacturer must determine the existance of a noncompliance before the manufacturer can file a Part 556 petition does not appear clear to manufacturers seeking an inconsequentiality determination. When the agency receives a petition, but no Part 573 report relating to the noncompliance or defect forming the basis for the petition, the agency must take time to obtain the manufacturer's determination of noncompliance before it can consider the petition. This delay is not in the interest of safety in those instances in which the Administrator ultimately denies the petition because it is important that notification and remedy begin as soon as practicable after the denial. Although the agency believes that the relationship between Part 573 and Part 556 is presently unambiguous, it wishes to make the relationship even clearer by explicitly providing in Part 556 that a petitioning manufacturer is required to submit a copy of its Part 573 report as part of its petition. It is therefore adding that requirement as Section 556.4(b)(6) (the regulation already requires the manufacturer to submit its petition in three copies; thus, three copies of the report will also be required).

In accordance with 5 U.S.C. 553(b)(3)(A) and (B), because the amendment is procedural in nature and does not alter the existing requirement to submit Part 573 reports containing defect or noncompliance determinations, it is hereby found for good cause shown that notice and public procedure thereon are unnecessary, and the amendment is effective thirty days after its publication in the *Federal Register*.

In consideration of the foregoing, 49 CFR 5556 is amended as follows:

In Section 556.4(b), new subsection (6) is added to read: "(6) Be accompanied by three copies of the report the manufacturer has submitted, or is submitting, to NHTSA in accordance with Part 573 of this chapter, relating to its determination of the existence of the safety related defect or noncompliance with an applicable safety standard that is the subject of the petition."

Issued on December 16, 1991.

56 F.R. 66374
December 23, 1991

PART 556—EXEMPTION FOR INCONSEQUENTIAL DEFECT OR NONCOMPLIANCE

§ 556.1 Scope.

This part sets forth procedures, pursuant to section 157 of the Act, for exempting manufacturers of motor vehicles and replacement equipment from the Act's notice and remedy requirements when a defect or noncompliance is determined to be inconsequential as it relates to motor vehicle safety.

§ 556.2 Purpose.

The purpose of this part is to enable manufacturers of motor vehicles and replacement equipment to petition the NHTSA for exemption from the notification and remedy requirements of the Act due to the inconsequentiality of the defect or noncompliance as it relates to motor vehicle safety, and to give all interested persons an opportunity for presentation of data, views, and arguments on the issue of inconsequentiality.

§ 556.3 Application.

This part applies to manufacturers of motor vehicles and replacement equipment.

§ 556.4 Petition for exemption.

(a) A manufacturer who has determined the existence, in a motor vehicle or item of replacement equipment that he produces, of a defect related to motor vehicle safety or a noncompliance with an applicable Federal motor vehicle safety standard, or who has received notice of an initial determination by the NHTSA of the existence of a defect related to motor vehicle safety or a noncompliance, may petition for exemption from the Act's notification and remedy requirements on the grounds that the defect or noncompliance is inconsequential as it relates to motor vehicle safety.

(b) Each petition submitted under this part shall—

(1) Be written in the English language;

(2) Be submitted in three copies to: Administrator, National Highway Traffic Safety Administration, Washington, D.C. 20590;

(3) State the full name and address of the applicant, the nature of its organization (e.g., individual, partnership, or corporation) and the name of the State or country under the laws of which it is organized.

(4) Describe the motor vehicle or item of replacement equipment, including the number involved and the period of production, and the defect or noncompliance concerning which an exemption is sought; and

(5) Set forth all data, veiws, and arguments of the petitioner supporting his petition.

[(6) Be accompanied by three copies of the report the manufacturer has submitted, or is submitting, to NHTSA in accordance with Part 573 of this chapter, relating to its determination of the existence of the safety related defect or noncompliance with an applicable safety standard that is the subject of the petition." **(56 F.R. 66374—December 23, 1991. Effective: January 22, 1992.)]**

(c) In the case of defects related to motor vehicle safety or noncompliances determined to exist by a manufacturer, petitions under this part must be submitted not later than 30 days after such determination. In the case of defects related to motor vehicle safety or noncompliances initially determined to exist by the NHTSA, petitions must be submitted not later than 30 days after notification of the determination has been received by the manufacturer. Such a petition will not constitute a concession by the manufacturer of, nor will it be considered relevant to, the

turer of, nor will it be considered relevant to, the existence of a defect related to motor vehicle safety or a nonconformity.

§ 556.5 Processing of petition.

(a) The NHTSA publishes a notice of each petition in the FEDERAL REGISTER. Such notice includes:

(1) A brief summary of the petition;

(2) A statement of the availability of the petition and other relevant information for public inspection; and

(3) (i) In the case of a defect related to motor vehicle safety or a noncompliance determined to exist by the manufacturer, an invitation to interested persons to submit written data, views, and arguments concerning the petition, and, upon request by the petitioner or interested persons, a statement of the time and place of a public meeting at which such materials may be presented orally if any person so desires.

(ii) In the case of a defect related to motor vehicle safety or a noncompliance initially determined to exist by the NHTSA, an invitation to interested persons to submit written data, views, and arguments concerning the petition or to submit such data, views, and arguments orally at the meeting held pursuant to section 152(a) of the Act following the initial determination, or at a separate meeting if deemed appropriate by the agency.

§ 556.6 Meetings.

(a) At a meeting held under this part, any interested person may make oral (as well as written) presentations of data, views, and arguments on the question of whether the defect or noncompliance described in the FEDERAL REGISTER notice is inconsequential as it relates to motor vehicle safety.

(b) Sections 556 and 557 of Title 5, United States Code, do not apply to any meeting held under this part. Unless otherwise specified, any meeting held under this part is an informal, nonadversary, fact-finding proceeding, at which there are no formal pleadings or adverse parties. A decision to grant or deny a petition, after a meeting on such petition, is not necessarily based exclusively on the record of the meeting.

(c) The Administrator designates a representative to conduct any meeting held under this part. The Chief Counsel designates a member of his staff to serve as legal officer at the meeting. A transcript of the proceeding is kept and exhibits may be kept as part of the transcript.

§ 556.7 Disposition of petition.

Notice of either a grant or denial of a petition for exemption from the notice and remedy requirements of the Act based upon the inconsequentiality of a defect or noncompliance is issued to the petitioner and published in the FEDERAL REGISTER. The effect of a grant of a petition is to relieve the manufacturer from any further responsibility to provide notice and remedy of the defect or noncompliance. The effect of a denial is to continue in force, as against a manufacturer, all duties contained in the Act relating to notice and remedy of the defect or noncompliance. Any interested person may appeal the grant or denial of a petition by submitting written data, views, or arguments to the Administrator.

§ 556.8 Rescission of decision.

The Administrator may rescind a grant or denial of an exemption issued under this part any time after the receipt of new data and notice and opportunity for comment thereon, in accordance with § 556.5 and § 556.7.

§ 556.9 Public inspection of relevant information.

Information relevant to a petition under this part, including the petition and supporting data, memoranda of informal meetings with the petitioner or any other interested person concerning the petition, and the notice granting or denying the petition, are available for public inspection in the Docket Section, Room 5108, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Copies of available information may be obtained in accordance with Part 7 of the regulations of the Office of the Secretary of Transportation (49 CFR Part 7).

42 F.R. 7147
February 7, 1977

PREAMBLE TO PART 557—PETITIONS FOR HEARINGS ON NOTIFICATION AND REMEDY OF DEFECTS

(Docket No. 75–31; Notice 2)

This notice amends Chapter V of Title 49 of the Code of Federal Regulations by the addition of a new Part 557, *Petitions for Hearings on Notification and Remedy of Defects*, governing petitions for hearings on whether or not a manufacturer has reasonably met its obligation to notify owners, dealers, and purchasers of a safety-related defect or noncompliance with a safety standard, or to remedy the defect or noncompliance. The new part also specifies the procedures to be followed in holding such a hearing.

The NHTSA proposed the regulation (40 FR 56926, December 5, 1975) to carry out a statutory provision concerning the hearing. Section 156 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1416) provides that "[u]pon petition of any interested person or on his own motion, the Secretary may hold a hearing in which any interested person (including a manufacturer) may make oral (as well as written) presentations of data, views, and arguments on the question of whether a manufacturer has reasonably met his obligation to notify under section 151 or 152, and to remedy a defect or failure to comply under section 154." Sections 151 and 152 require a manufacturer to notify owners, dealers, and purchasers of a safety-related defect or failure to comply with an applicable Federal motor vehicle safety standard in any motor vhecile or item of equipment manufactured by him. Section 154 requires a manufacturer to remedy without charge such defects or failures to comply. Section 156 also provides that

> [i]f the Secretary determines the manufacturer has not reasonably met such obligation, he shall order the manufacturer to take specified action to comply with such obligation; and in addition, the Secretary may take other action authorized by this title.

Five comments were received from private persons, five comments were received from manufacturers and trade associations, and two comments were received from consumer groups; the Consumer Protection Division of the County Manager's Office for Metropolitan Dade County; and the Center for Auto Safety (the Center). The National Motor Vehicle Safety Advisory Council did not take a position on the proposal. The Vehicle Equipment Safety Commission did not comment on the proposal.

Four of the comments received from private persons objected to the institution of hearings as meaningless or a waste of money. The fifth private party supported issuance of the regulation. The four commenters appeared to be unaware of the provision for these hearings mandated by section 156 of the Act, independent of the promulgation of Part 557. The agency does believe that the informal hearing minimizes the expense that will be involved in fulfilling this statutory mandate.

Walker Manufacturing objected that permitting "[a]ny interested person" to file a petition would invite spurious requests whose pursuit would be a waste of time and money. The agency conformed to the statutory language of section 156 that "any interested person" can petition for this hearing, and concludes that a narrowing of the language would be contrary to the intent of Congress in establishing the right.

The Consumer Protection Division for Metropolitan Dade County suggested that the Consumer Product Safety Commission (CPSC) would be a more suitable agency with which to vest this hearing procedure, because of better public identification with its consumer protection role. However, the jurisdiction of the CPSC

under the Consumer Product Safety Act (15 U.S.C. 2051, et seq.) does not include motor vehicles or motor vehicle equipment (15 U.S.C. 2052), and the authority to carry out section 156 is vested in the Department of Transportation.

Firestone Tire and Rubber Company suggested that the hearing procedure could be consolidated with the hearing procedures set forth in Part 552 (*Petitions for Rulemaking, Defect, and Noncompliance Orders*) of NHTSA regulations (49 CFR Part 552). Part 552 addresses the procedures that arise from a request for the initiation of agency action in a rulemaking defect, or noncompliance area. Unlike those situations, Part 557 addresses the different and more limited considerations of an evaluation of an ongoing action undertaken by persons outside the agency. The separation of these functions into different procedural regulations clarifies these distinct functions. Accordingly, the agency declines to adopt the Firestone suggestion.

The Center appeared to misunderstand why minimum qualification requirements were established for hearing petitions. The regulation states that, to be considered as a petition, a document must be written in English, have the word "petition" preceding its text, request a hearing, and contain a brief statement of the alleged failure and a summary of the data, views, or arguments that would be presented at the hearing. Reasonable considerations underlie these minimum qualification requirements. For example, the agency undertakes to respond to such petitions within 60 days, and the agency must be able to recognize a document as a petition if the writer wishes to have it treated as such. This is the basis for requiring that the word "petition" appear. The Center's request that the specifications be relaxed to recognize as petitions filings in Spanish as well as English from the Commonwealth of Puerto Rico and the Canal Zone does not detract from the intent of the qualification requirements, and the final regulation is accordingly modified.

The Center's more basic objection is that persons effectively will not be on notice that a request for a hearing must conform to the requirements of Part 557 to be treated as a petition. While it is true that it must so conform to achieve petition status (entitling it to a reply within 60 days), it is not true that a non-conforming request would not result in the calling of a hearing. Any complaint, request, or series of them, can result in the calling of a hearing on the Administrator's own motion. The Administrator is not precluded from deciding to hold a hearing simply because a person's complaint does not qualify as a petition. Thus, the agency disagrees with the Center's conclusion that Part 557 "denies an owner the right to a hearing unless he or she follows the regulation in every detail."

For this reason, the agency does not consider necessary the Center's request for an amendment of the newly revised Part 557 (dealing with notification of safety-related defects or noncompliances) to include the detailed specifications for the content of a Part 557 petition. It is noted that the agency is unaware of any supplemental submission by the Center to the docket on revision of Part 577, either at the time the comments on that docket were evaluated, or as of this date. With regard to the Center's suggestion that each complainant be advised by return mail to resubmit any request for a hearing in the proper format, it is just this sort of response the agency intends to avoid by its flexible approach.

In a related matter, the Dade County Manager's office believed that a lawyer would be required to draft the petition specified by § 557.4. This is not the case. A normal letter format, preceded by the word "petition" and containing the petitioner's complaint and its reasons for the complaint are all that is required. In response to the point that every complaint should not precipitate a hearing, it is simply noted that the grant of a petition is within the discretion of the Administrator under the statute, as set forth in § 557.6 of the new regulation.

Section 557.6 of the regulation sets forth the factors considered by the Administrator in determining whether to hold a hearing. The factors listed are: the nature of the complaint; the seriousness of the alleged breach of obligation to remedy; the existence of similar complaints; and the ability of the NHTSA to resolve the problem without holding a hearing. The Center considered the first factor (the nature of the complaint) to be meaningless, and suggested its clarification or deletion.

Stating the nature of the complaint is deemed necessary to allow NHTSA to judge whether the issues of fact or opinion are of a type that could be resolved by a hearing. In those cases where facts or engineering considerations are not at issue and only a policy decision remains to be made, the Administrator could make his finding without holding a hearing. A related factor (listed as § 557.6(a)(4)) is the NHTSA's ability to resolve a particular complaint without a hearing. Such a case would be when factual issues are in dispute, but the facts are already gathered. The agency therefore disagrees with the Center's assessment of § 557.6(a)(1) and declines to modify it or delete it.

The Center viewed the second factor listed in § 557.6 (the seriousness of the alleged breach of obligation to remedy) as impermissibly vague also. The Center's submission implies that only two types of "breach of obligation" exist: failure to repair and refusal to remedy without charge. In fact, every conceivable type of "alleged breach of obligation" exists, all with differing levels of seriousness. For example, in a recall to replace seat belts, an owner could object that a shortage of red seat belts resulted in installation of black seat belts in place of what had been originally fitted. Another example would be a failure of a notification letter to list the correct address of the dealer that will undertake a particular repair. The agency needs to exercise its discretion in such cases to decide whether the gravity of the objection merits a public hearing.

The Center also argued that § 557.6(4) (the ability of the NHTSA to resolve a problem without holding a hearing) constitutes an impermissible "escape hatch" from agency responsibilities. This comment ignores the language of the Act. Section 156 states that the Secretary "may hold a hearing," a statutory grant of discretion now properly reflected in the implementing regulation, and intended to expedite the agency's decisions in the public interest, not avoid them.

The Recreation Vehicle Industry Association (RVIA) requested that the information presented to the NHTSA in accordance with Part 573 (Defect Reports) be listed as a specific factor to be considered in deciding whether to hold a public hearing. The RVIA appears to be requesting that a particular body of information be singled out for review in reaching the decision. Of course, all information related to the case will enter into the decision, but the agency has sought to list in § 557.6 factors other than the information itself that would enter into the decision whether or not a hearing is necessary. This decision is separate from the decision of the adequacy of the notification and remedy itself. For this reason, the RVIA suggestion is not adopted.

The RVIA asked that a manufacturer be advised to the receipt of a petition and its eventual disposition. American Motors Corporation (AMC) also requested notification of receipt. The agency considers these requests reasonable, and will provide in its administrative practices for a copy of the petition acknowledgment and decision letters to be sent to the manufacturer involved.

Section 557.6 provides that the Administrator shall grant or deny the petition in time to notify the petitioner within 60 days of receipt of the petition. The Center argued for a 30-day limit, arguing that a longer period would necessarily have serious safety consequencies in every case. The agency does not agree with this view. First, the decision on whether or not to hold a hearing is not the fundamental question of whether or not the manufacturer has taken the steps required of it by the statute. Also, the significance of the alleged failure to adequately meet responsibilities will vary from case to case, justifying differing periods of time in which to reach a decision. Finally, the 60-day period is a maximum, and a decision in situations in which significant safety gains are made by quick action can be made sooner. For these reasons, the Center's suggestion is not adopted.

The Center also believed that immediate publication of the reasons for denial of a petition would be necessary and desirable. The agency knows no reason why this would be the case, but rather concludes that notice to the petitioner within the allotted period is the significant step in the case of a denial. The publication only serves as a record function. Experience with a similar publication schedule for denial of rulemaking petitions has been satisfactory.

The Center further suggested that all hearings be conducted within 30 days of the decision to grant a hearing, and that a final decision on the adequacy of notification or remedy be made within 30 days of the hearing. The agency intends to schedule hearings within a reasonable time after the petition is granted, but is unable to assure that a hearing can always be held within a 30-day period. As for the request that a decision be reached within 30 days of the hearing, the agency relies on information other than that presented at the hearing and is not able to state unequivocally that the hearing will produce the information necessary to reach a decision within 30 days of holding the hearing. Accordingly, the Center's suggestions are not adopted.

Section 557.7 of the regulation sets forth the nature of the public hearing that is contemplated by the regulation. The section provides for submission of views orally or in writing, the maintenance of a transcript and exhibits, and the presence in some cases of a legal officer. The RVIA, AMC, and International Harvester Company (IH) asked that the informal non-adversarial hearings be revised to permit cross-examination of those who appear by those who disagree with them. IH also asked that, upon agreement of the petitioner and the manufacturer involved, the hearing be modified to conform to the adjudicatory specifications of sections 556 and 557 of the Administrative Procedures Act.

The agency will take into consideration these requests for possible future action. At this time, the NHTSA wishes to conform its regulation to the scope expressed in the proposal. The matter of upgrading hearings to a more adversarial level will be treated therefore at a later date. With regard to IH's request for the opportunity to further develop views on newly developed material, the agency will accept written supplemental views for attachment to the transcript of the hearing. Revision of the regulation to provide for this practice is not necessary.

The RVIA concluded its comments with the recommendation that, in the event of a finding that a manufacturer has not reasonably met its notification and remedy obligations, the finding be accompanied by a statement of the grounds upon which the Administrator based his determination. The agency does not contemplate the issuance of such a finding without stating its reasons, and therefore concludes that its contemplated actions will conform to the RVIA recommendation.

In accordance with Department of Transportation policy encouraging adequate analysis of the consequences of regulatory action (41 FR 16200, April 16, 1976), the agency herewith summarizes its evaluation of the economic and other consequencies of this action on the public and private sectors, including possible loss of safety benefits. In this case, the new regulation merely establishes procedures to carry out the mandate of section 156 of the Act to provide for a possible hearing on the adequacy of notification and remedy in the case where any interested person requests such a hearing. The informal nature of the hearing should have minimal costs of those, including manufacturers, who participate. While minimum requirements for petitioning might result in some increase in time for assessing the adequacy of notificationand remedy in some cases, it is believed that any consequent effect on highway safety was contemplated by Congress in providing for the hearings.

In consideration of the foregoing, a new Part 557, *Petitions for Hearings on Notification and Remedy of Defects*, is added to Title 49 of the Code of Federal Regulations, as set forth below.

Effective date: January 31, 1977. Because the regulation is procedural and does not create a burden upon any regulated person, its found for good cause shown that an effective date earlier than 180 days following issuance is in the public interest.

(Sec. 9, Pub. 89–670, 80 Stat. 931 (49 U.S.C. 1657); Sec. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); Sec. 156, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1416); delegation of authority at 49 CFR 1.50)

Issued on December 22, 1976.

John W. Snow
Administrator

41 F.R. 56810
December 30, 1976

PART 557—PETITIONS FOR HEARINGS ON NOTIFICATION AND REMEDY OF DEFECTS

§ 557.1 Scope.

This part establishes procedures under section 156 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (88 Stat. 1470, 15 U.S.C. 1416), for the submission and disposition of petitions filed by interested persons for hearings on the question of whether a manufacturer has reasonably met his obligation to notify owners, purchasers, and dealers of a safety-related defect or failure to comply with a Federal motor vehicle safety standard, or to remedy such defect or failure to comply. This part also establishes procedures for holding a hearing on these questions.

§ 557.2 Purpose.

The purpose of this part is to enable the National Highway Traffic Safety Administration to identify and respond on a timely basis to petitions for hearings on whether a manufacturer has reasonably met his obligation to notify or remedy, and to establish the procedures for such hearings.

§ 557.3 General.

Any interested person may file with the Administrator a petition requesting him to hold a hearing on—

(a) Whether a manufacturer has reasonably met his obligation to notify owners, purchasers, and dealers of a safety-related defect in any motor vehicle or item of replacement equipment manufactured by him;

(b) Whether a manufacturer has reasonably met his obligation to notify owners, purchasers, and dealers of a failure to comply with an applicable Federal motor vehicle safety standard in any motor vehicle or item of replacement equipment manufactured by him;

(c) Whether the manufacturer has reasonably met his obligation to remedy a safety-related defect in any motor vehicle or item of replacement equipment manufactured by him; or

(d) Whether the manufacturer has reasonably met his obligation to remedy a failure to comply with an applicable Federal motor vehicle safety standard in any motor vehicle or item of replacement equipment manufactured by him.

§ 557.4 Requirements for petition.

A petition filed under this part should be addressed and submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590. Each petition filed under this part must—

(a) Be written in the English or Spanish language;

(b) Have, preceding its text, the word "Petition";

(c) Contain a brief statement concerning the alleged failure of a manufacturer to meet reasonably his obligation to notify or remedy;

(d) Contain a brief summary of the data, views, or arguments that the petitioner wishes to present in a hearing on whether or not a manufacturer has reasonably met his obligations to notify or remedy;

(e) Specifically request a hearing.

§ 557.5 Improperly filed petitions.

(a) A petition that is not addressed as specified in § 557.4, but that meets the other requirements of that section, will be treated as a properly filed petition, received as of the time it is discovered and identified.

(b) A document that fails to conform to one or more of the requirements of paragraphs § 557.4(a)(1) through (5) will not be treated as a petition under this part. Such a document will be treated according to the existing correspondence and other procedures of the NHTSA, and any information contained in it will be considered at the discretion of the Administrator.

§ 557.6 Determination whether to hold a public hearing.

(a) The Administrator considers the following factors in determining whether to hold a hearing:

(1) The nature of the complaint;

(2) The seriousness of the alleged breach of obligation to remedy;

(3) The existence of similar complaints;

(4) The ability of the NHTSA to resolve the problem without holding a hearing; and

(5) Other pertinent matters.

(b) If, after considering the above factors, the Administrator determines that a hearing should be held, the petition is granted. If it is determined that a hearing should not be held, the petition is denied. In either case, the petitioner is notified of the grant or denial not more than 60 days after receipt of the petition by the NHTSA.

(c) If a petition submitted under this part is denied, a FEDERAL REGISTER notice of the denial is issued within 45 days of the denial, setting forth the reasons for it.

(d) The Administrator may conduct a hearing under this part on his own motion.

§ 557.7 Public hearing.

If the Administrator decides that a public hearing under this part is necessary, he issues a notice of public hearing in the FEDERAL REGISTER, to advise interested persons of the time, place, and subject matter of the public hearing and invite their participation. Interested persons may submit their views through oral or written presentation, or both. There is no cross-examination of witnesses. A transcript of the hearing is kept and exhibits may be accepted as part of the transcript. Sections 556 and 557 of Title 5, United States Code, do not apply to hearings held under this part. When appropriate, the Chief Counsel designates a member of his staff to serve as legal officer at the hearing.

§ 557.8 Determination of manufacturer's obligation.

If the Administrator determines, on the basis of the information presented at a hearing or any other information that is available to him, that the manufacturer has not reasonably met his obligation to notify owners, dealers, and purchasers of a safety-related defect or failure to comply with a Federal motor vehicle safety standard or to remedy such defect or failure to comply, he orders the manufacturer to take specified action to comply with his obligation, consistent with the authority granted the Administrator by the Act.

41 F.R. 56810
December 30, 1976

PREAMBLE TO AN AMENDMENT TO PART 565

Vehicle Identification Number Content Requirements

(Docket No. 1-22; Notice 12)

ACTION: Final rule.

SUMMARY: This notice amends Federal Motor Vehicle Safety Standard No. 115, *Vehicle Identification Number,* by deleting portions of that standard and reissuing those portions as a general agency regulation. This is being taken in response to a petition from the Motor Vehicle Manufacturers Association (MVMA). It is intended to assure that the recall and remedy provisions of the National Traffic and Motor Vehicle Safety Act ("the Act") do not apply to certain errors in vehicle identification numbers (VIN's) which are minor and have no safety consequences. The basic substantive requirements of Standard 115 are unchanged by this action.

DATES: This action is effective 30 days after publication in the *Federal Register.*

SUPPLEMENTARY INFORMATION: The VIN is that unique number assigned each vehicle during production by the manufacturer for purposes of identification and inventory control. The VIN has other users. A variety of other organizations use the VIN for such purposes as vehicle registration, insurance rating, and theft investigation. NHTSA uses the VIN in its safety research and investigation activities.

In 1968, Federal Motor Vehicle Safety Standard (FMVSS) 115 was adopted, specifying that each passenger car must be assigned a unique VIN. In 1979, FMVSS 115 was extended to cover motor vehicles other than passenger cars. Also, a uniform, 17-character format for VIN's was then established, specifying coded information such as the identity of the manufacturer, vehicle make, type of vehicle, various vehicle attributes, model year, plant of manufacture, and production sequence. The VIN also contains a check digit which aids in the detection of errors in the transcription of VIN's by the users of the numbers.

On June 13, 1980, MVMA petitioned this agency to withdraw FMVSS 115 and re-issue its provisions in the form of a general agency regulation. The significance of this change stems from section 152 of the Act (15 U.S.C. 1412), which provides that whenever the Secretary of Transportation determines that a vehicle does not comply with a FMVSS, the Secretary must require the vehicle's manufacturer to notify the owners, purchasers, and dealers of the vehicle of that noncompliance and to remedy the noncompliance. However, in the case of a noncompliance with a regulation other than a FMVSS, the notification and remedy requirements of the Act do not apply. For those noncompliances, more flexible methods of enforcement are permitted.

MVMA sought to assure through its requested amendment that errors in the assignment of VIN's would not trigger the recall and remedy provisions of the Act. Requiring that errors in assigned VIN's must be physically corrected would be undesirable in most cases for two reasons. First, correcting the errors would be an expensive and burdensome process, whose possible benefits would be greatly outweighed by the costs. These burdens and costs are discussed in the NPRM. In most cases, simply providing information on the nature of the error to users of the VIN's would solve any problems caused by the incorrect VIN. Second, changing a previously assigned VIN could create anti-theft problems. Law enforcement authorities consider the presence of an altered VIN in a vehicle to be an indication that the vehicle has been stolen. If VIN's were frequently altered lawfully, it would be more difficult for the police to detect stolen vehicles.

Further, if the equipment necessary to alter VIN's were widely available (such as at all auto dealers, as might be necessary to conduct a recall and remedy campaign), thieves' access to such equipment would be greatly increased. Law enforcement authorities have consistently recommended to NHTSA that VIN numbers, once assigned, should not be altered for any reason, even if the original number was incorrect.

The only exception to the recall requirement is contained in section 157 of the Act (15 U.S.C. 1417) which authorizes exemptions from these requirements based on a demonstration that the noncompliance is inconsequential as it relates to safety. This authority could be used to relieve a manufacturer of the necessity of conducting a recall and remedy campaign to correct minor VIN errors. Minor labeling errors were among the examples given in the legislative history of the provision for the sorts of errors that are inconsequential. While exemptions might well be given under section 157 for minor VIN errors, the necessity of conducting the exemption proceedings for such errors imposes an excessive administrative burden. The amendments made by this notice eliminate that burden.

MVMA suggested that one possible consequence of a change in the status of the VIN provisions might be a loss or narrowing of Federal preemption. Under section 103(d) of the Act (15 U.S.C. 1392(d)), whenever a FMVSS is in effect, no State may establish or maintain a requirement applicable to the same aspect of performance unless the State requirement is identical to the FMVSS. The removal of various VIN requirements from FMVSS 115 removes them also from the operation of section 103(d). Recognizing this and the clear undesirability of having differing VIN requirements established by the States, MVMA modified its petition on April 18, 1982. In its modified petition, MVMA requested that only certain VIN provisions be shifted from the standard to the regulation. Requirements establishing the fundamental characteristics of the VIN, such as its length, location, and readability, would remain in the standard. Under the amended petition, the content of the VIN would be specified in the VIN regulation. The combined standard/regulation scheme is intended to remove the threats of potentially costly recall campaigns to correct minor VIN errors or of inconsequentiality proceedings, while ensuring that the preemptive effect of the FMVSS is still maintained for the more significant requirements.

After reviewing the MVMA petition, the agency tentatively concluded that MVMA's suggested regulatory changes have merit, and proposed to adopt those changes. See 47 FR 42004, September 23, 1982. (The agency believes that general principles of Federal preemption are sufficient to assure that the VIN regulation will preempt any inconsistent State requirements.) Based on further review of that petition and the comments received on the September notice of proposed rulemaking (NPRM), the agency is herein adopting these changes in final form.

Comments on the NPRM

Virtually all the comments received on the September NPRM supported the proposed changes to FMVSS 115. However, several commenters suggested slight changes or clarifications to the proposed regulatory language. The most controversial aspect of the proposal was the provision which would exempt from certain VIN requirements vehicles imported into the United States under bond, which do not meet U.S. standards, but which will subsequently be modified to meet those standards. As a practical matter, this provision applies to individuals or organizations which import small numbers of vehicles. Several commenters expressed the fear that this provision could result in the importation of large numbers of vehicles (such as by a foreign manufacturer) with nonconforming VIN's. These commenters suggested that the exemption be limited to a maximum of 5 vehicles per year per individual. While the agency agrees that the exemption should not be applied to an actual manufacturer, it cannot justify selecting any particular arbitrary limit, such as five vehicles, to exclude larger commercial organizations. However, in response to these comments, the agency is amending this provision to exclude actual manufacturers of vehicles and their subsidiaries.

Several commenters also suggested that information on VIN errors should be provided to the National Crime Information Center (NCIC, part of the Federal Bureau of Investigation) and the National Automobile Theft Bureau (NATB, a private organization affiliated with the insurance industry). These organizations could enter the information in their computer systems, thereby making it available to State motor vehicle administrations, law enforcement organizations, and other

VIN users. The agency agrees that taking this step would help assure that VIN users would have complete and accurate information on the VIN's which are actually assigned by the vehicle manufacturers. Accordingly, NHTSA will establish an internal procedure for routinely transmitting VIN error information to NCIC and NATB.

Most commenters also suggested that the agency define the term "trailer kit" and specify in the regulation the agency's previously established policy, i.e., that trailer kits are subject to the same VIN requirements as trailers. The agency believes that making these changes is appropriate, and is adopting a definition of trailer kits based on language in 49 CFR 567.4(g). "Trailer kits" are defined as a trailer which is delivered in complete but unassembled form, and which can be assembled without special machinery or tools.

MVMA suggested that the "trailer kit" definition should be added to the definitions in the beginning of Part 571. Taking that action would not serve any present purpose, since the term is apparently not used in any other FMVSS. MVMA also suggested incorporating all the definitions in Part 571 into FMVSS 115. The agency sees no need for this change, and making the change could have unintended effects, such as where a term's definition in one standard is inappropriate for use in FMVSS 115. Therefore, these recommendations were not adopted.

The International Association of Chiefs of Police and the NATB also suggested that the agency define the term "glider kit" and specify that VIN requirements are applicable to glider kits. Typically, a glider kit is a new truck cab, frame rails, and front suspension without drive train (engine, transmission, and rear axle). The treatment of combinations of new and used components in a single vehicle is currently specified in 49 CFR 571.7. Under that provision, the addition of a new cab, frame rail, and front suspension is deemed to create a new vehicle subject to all applicable safety standards in effect as of the date of remanufacture, unless the engine, transmission, and drive axle (as a minimum) of the assembled vehicle are not new and at least two of those listed components were taken from the same vehicle. Thus, in many situations, the use of a new glider kit would not require that a new VIN be affixed to the assembled vehicle. Further, it would be difficult for the glider kit manufacturer to assign a VIN, as suggested by the two commenters, since a truck VIN must contain coded information regarding the engine type, and the glider kit manufacturer would not generally know what type of engine would be used with a particular kit. Therefore, the agency is not adopting the provisions suggested by these two commenters, and will instead rely on the existing regulations for dealing with glider kits.

The Iowa Department of Transportation objected to the practice of some motorcycle manufacturers of stamping a portion of the VIN on motorcycle frames. The Iowa agency points out that this practice could cause confusion as to which number is the actual VIN. NHTSA has taken the position that, so long as the vehicle manufacturer complies with all requirements in FMVSS 115 with regard to the specified 17 character number, these manufacturers may affix other numbers to the motorcycles for their own purposes. Currently, NHTSA cannot justify altering this policy. However, should we become aware of substantial numbers of incidents where the use of this supplementary number has undermined the Federal VIN system, we may consider prohibiting these supplementary numbers, requiring that supplementary numbers must be the same 17 character number as the VIN, or some clarifying labeling where other than the VIN is used. The NCIC objected to the exemption of farm equipment from VIN requirements. The VIN requirements, like all of the FMVSS, apply only to "motor vehicles", i.e., vehicles which are manufactured primarily for use on the public roads, consistent with the scope of the agency's regulatory authority under the Act. See section 102(3) of the Act. The agency lacks the authority to regulate vehicles which are principally used off the public roads, such as the vehicles cited by these two commenters. Should the States decide to apply VIN requirements to such vehicles as a matter of State law, NHTSA would have no objection.

Ford Motor Company and the MVMA pointed out that the requirement that VIN's affixed to vehicles must have a letter height of at least 4 millimeters should only apply to passenger cars and trucks with a gross vehicle weight rating of 10,000 pounds or less as the requirement has ever since it was established. In the NPRM, this requirement was inadvertently applied to all motor vehicles. The error is corrected in the final rule.

MVMA also requested that the new VIN regulation maintain the requirement that, for manufacturers of under 500 vehicles per year, the third

character of the VIN must be the number 9. The agency deleted this provision, since prior to its amendment today, FMVSS 115 gave the erroneous impression that vehicle manufacturers selected the world manufacturer identifier (WMI) portion of their VIN's. In fact, the Society of Automotive Engineers assigns those characters for U.S. manufacturers. The deletion of the phrase specifying the third character of the VIN for small manufacturers in no way changes the intended numbering system—SAE will continue to assign WMI's as it has in the past.

The American Association of Motor Vehicle Administrators has requested that NHTSA reemphasize that vehicle manufacturers must submit and update deciphering information on their VIN systems. This final rule continues to provide that at least 60 days prior to affixing any VIN, or, when information is unavailable at that time, within one week after it becomes available, each manufacturer must submit information necessary to decipher its VIN system. This requirement, which has been in effect since January 1981, applies to both the original submission of deciphering information and to updates of that information as new products are offered by the manufacturer. It is the manufacturer's responsibility to assure that deciphering information provided to NHTSA is current.

Ford Motor Company argued that sections 108 and 152 of the Act, which the agency listed as part of the legal authority for the new VIN regulation, are not appropriate authority for this action. Section 108 was cited as authority merely to point out that, in conjunction with the reference to section 112 as authority for the action, failure to comply with the VIN regulation would be enforceable as a violation of section 108(a)(1)(E) of the Act. The reference to section 152 is included to point out the regulation is issued to facilitate carrying out the recall provisions of section 152 of the Act. The NPRM should also have included (and this final rule includes) a reference to the safety research authority of section 106 of the Act, a major use of the VIN information.

This action is being made effective 30 days after publication in the *Federal Register*. This relatively expedited effective date is in the public interest since it will quickly remove the potential problem of unwarranted VIN-related recalls.

The principal impact of this action is to remove this threat of an unduly burdensome recall requirement to correct VIN errors. The new Part 565 would not have any requirements not in FMVSS 115 prior to today. The agency anticipates that the manufacturers will continue to assign VIN's in the same manner regardless of whether VIN requirements take the form of a safety standard or a regulation. Further, the agency anticipates that the corrective action required in case of erroneous VIN's would not essentially differ as a result of this proposed change, since only in extreme cases can the agency envision having to order a vehicle recall.

This action should have a small positive impact on foreign trade, since it removes the threat to foreign manufacturers of a potentially burdensome recall campaign to correct minor VIN errors. Also, the exemption of vehicles imported under bond will have a small positive impact on foreign trade.

The agency has concluded that the environmental consequences of this action will be of such limited scope that they clearly will not have a significant effect on the quality of the human environment; that this proposal does not qualify as a "major rule" within the meaning of Executive Order 12291; and that due to its minimal cost impacts, this rule is not "significant" within the meaning of the Department's regulatory procedures. Therefore, preparation of neither a regulatory analysis nor full regulatory evaluation is necessary for this action. The agency notes this rulemaking action should have a small, positive impact on small firms—particularly small manufacturers and small importers. This regulation provides relief to small manufacturers from the generally applicable 60-day VIN prenotification requirements in the case of orders for unique vehicle configurations. The agency is also exempting small importers (principally individuals importing one vehicle for their own use) from certain VIN format and content requirements. Given the relatively minor economic consequences of these changes, I certify that this action will have no significant economic impact on a substantial number of small entities, including small organizations or governmental units. These changes should have no impact on vehicle prices. For this reason and because VIN's will continue to be assigned to new vehicles as before, the agency does not anticipate any impacts on small organizations or governmental

units. Accordingly, no Regulatory Flexibility Analysis has been prepared.

For the reasons stated above, the agency is amending Chapter V of Title 49 of the Code of Federal Regulations by adding a new Part 565.

Issued May 13, 1983.

Raymond A. Peck, Jr.,
Administrator

48 F.R. 22567
May 19, 1983

PREAMBLE TO AN AMENDMENT TO PART 565

Vehicle Identification Number — Content Requirements

[Docket No. 88-02; Notice 2]

ACTION: Final Rule.

SUMMARY: This notice amends 49 CFR Part 565, *Vehicle Identification Number—Content Requirements*, by simplifying vehicle identification information coding requirements for trailer manufacturers. Specifically, this rule amends Table I, section 565.4, by deleting the requirement that trailer manufacturers include in the VIN code a "series" designation for trailers, and by changing vehicle attributes for incomplete trailers. The amendment will bring VIN requirements for trailers in line with actual trailer manufacturing practices, thereby facilitating VIN information retrieval, and increasing the accuracy and efficiency of vehicle defect recall campaigns.

EFFECTIVE DATE: February 16, 1988.

SUPPLEMENTARY INFORMATION: *Introduction.* Under Standard 115, *Vehicle Identification Number—Basic Requirements*, a motor vehicle manufacturer must assign a 17-character vehicle identification number (VIN) to each vehicle it makes. The purposes of the VIN system are to simplify vehicle identification information retrieval, and increase the accuracy and efficiency of vehicle defect recall campaigns. Title 49 CFR Part 565, *Vehicle Identification Number—Content Requirements*, sets forth format and content requirements for VINs. Section 565.4, *General Requirements*, tells what information a manufacturer must code into a VIN, and in what sequence.

Under section 565.4, the 17-character VIN is divided into four sections. The first section uniquely identifies the vehicle manufacturer, make, and type. The second encodes vehicle attributes which vary according to vehicle type. The third section consists of one character (the check digit), and serves to verify the accuracy of a VIN transcription. The final section encodes the vehicle model year, the plant of manufacture, and the number sequentially assigned by the manufacturer in the production process. This amendment affects only the second VIN sequence consisting of the five characters in positions four through eight (4-8).

In this section, a VIN number must disclose those unique motor vehicle attributes set out in Table I of section 565.4. In encoding these attributes, a manufacturer may determine what characters to use and the order in which to place them. The manufacturer must supply NHTSA with whatever information is necessary to decipher the meaning of its characters relative to Table I.

Currently, for trailer or trailer kit, Table I requires a manufacturer to identify (1) the type of trailer; (2) series; (3) body type; (4) length; and (5) axle configuration.

On May 19, 1986, in response to a petition for rulemaking from the Truck Trailer Manufacturers Association (TTMA), this agency published a notice proposing to amend Table I. In support of its petition, TTMA stated that a survey of its membership revealed that trailer manufacturers do not divide their product lines by series as automobile manufacturers do. TTMA asserted that trailers are identified sufficiently by trailer type, body type, length, and axle configuration. Further, TTMA asserted that requiring a series designation in trailer VINs may not simplify vehicle identification information retrieval, or contribute to the accurate identification of a particular trailer. For these reasons, TTMA's first request was that NHTSA remove the "series" designation as an attribute that a trailer manufacturer must identify in a VIN.

TTMA's second request concerned incomplete trailers. Currently, Table I states five attributes which a manufacturer must encode in the VIN for any type of incomplete vehicle, including trailers. These attributes are model or line, series, cab type, engine type, and brake system. TTMA asked that NHTSA amend Table I to delete the "brake system" designation for incomplete trailers. However, upon further examination of this issue, the agency tentatively determined that most of the "incomplete vehicle" attributes may be inappropriate for trailers, and proposed that manufacturers encode the same attributes for incomplete and complete trailers. The VINs for all trailer categories would be required to include information respecting trailer type, body type, length, and axle configuration.

Comments. NHTSA received two comments on the proposed rule—one from the petitioner, and one from Theurer, Inc., a truck trailer manufacturer. TTMA made a summary statement in support of the proposal. Theurer agreed that the term "series" did not apply to its product line, that a trailer manufacturer should encode the same attributes for incomplete and complete trailers, and that the company believed the economic consequences of the revision would be minimal.

Adopting the Proposed Changes. After reviewing the comments, NHTSA has determined that the proposed changes to Table I should be adopted. The primary purpose of the VIN requirement is to facilitate identifying a motor vehicle that may be the subject of a vehicle recall campaign. If one can identify trailers through trailer type, body type, length, and axle configuration, there is no need to require the use of any designation that fails to serve Part 565's purpose, and that compels a manufacturer to include a superfluous designation or risk violating the regulation. Therefore, this rule deletes the requirement that trailers be identified by "series."

Therefore, NHTSA amends Table I of section 565.4 by doing the following: First, the agency is deleting "series" from the list of those attributes a trailer manufacturer must encode in the second VIN sequence. Second, the agency removes "incomplete trailers" from the "incomplete vehicle" category, and places "incomplete trailers," in the "trailer and trailer kits" category. This change means that a trailer manufacturer must encode the same attributes in that second VIN sequence irrespective of whether the trailer is complete or incomplete. Finally, the agency makes a technical correction by removing an erroneous reference to "Footnote 1" after "axle configuration" in the list of trailer attributes. These changes will affect the manufacturers of certain vehicles as follows:

Complete Trailers and Trailer Kits. With respect to complete trailers and trailer kits, the agency would like to emphasize two points. First, the agency notes that this amendment of Table I does not require a manufacturer to change the characters currently used in the second section. Instead, Part 565 permits each trailer manufacturer to decide whether to delete whatever character now occupies the "series" space. If a trailer manufacturer decides to change the VIN by deleting the "series" character or changing the code with respect to these four attributes, then the manufacturer must submit new material to this agency informing NHTSA how to read this sequence.

Second, as a result of this amendment, manufacturers of complete trailers and trailer kits now have five characters with which to describe the four Table I attributes. In this second VIN sequence, a manufacturer determines what characters to use and where to place them. A manufacturer may choose to use two characters to indicate any one of these attributes.

Incomplete Trailers. With respect to incomplete trailers, this amendment changes both the number and nature of the attributes an incomplete trailer manufacturer must encode in the second sequence. Because of this amendment, every manufacturer of incomplete trailers must change the attributes used in this section. Also, these manufacturers must submit material to the agency explaining how to decipher the sequence relative to the four new attributes these manufacturers now must encode in a VIN.

The agency amends Part 565, *Vehicle Identification Number—Content Requirements*, in Title 49 of the Code of Federal Regulations, as follows:

Table I in Section 565.4 is revised to read as follows:

TABLE I—TYPE OF VEHICLE AND INFORMATION DECIPHERABLE

Passenger car: Line, series, body type, engine type,[1] and restraint system type.

Multi-purpose passenger vehicle: Line, series, body type, engine type,[1] gross vehicle weight rating.

Truck: Model or line, series, chassis, cab type, engine type,[1] brake system and gross vehicle weight rating.

Bus: Model or line, series, body type, engine type,[1] and brake system.

Trailer, including trailer kit and incomplete trailer: Type of trailer, body type, length, and axle configuration.

Motorcycle: Type of motorcycle, line, engine type,[1] and net brake horsepower.[1]

Incomplete vehicle other than trailer: Model or line, series, cab type, engine type,[1] and brake system.

Issued January 11, 1988

Diane K. Steed
Administrator

53 F.R. 1032
January 15, 1988

PREAMBLE TO AN AMENDMENT TO PART 565

Vehicle Identification Number—Content Requirements
(Docket No. Not issued)

ACTION: Final rule.

Summary: This notice amends the applicability section of Part 565 to substitute a reference to Part 591 of this title for a reference to 19 CFR 12.80. This amendment conforms to Part 565 with the requirements of amendments made to the National Traffic and Motor Vehicle Safety Act by P. L. 100-562.

EFFECTIVE DATE: January 31, 1990

SUPPLEMENTARY INFORMATION: The National Traffic and Motor Vehicle Safety Act was amended by the Imported Vehicle Safety Compliance Act of 1988 (P.L. 100-562). Those amendments were enacted on October 31, 1988, and will become effective January 31, 1990. The amendments revoke the joint authority previously provided by 15 U.S.C. 1397(b)(3) under which motor vehicles subject to the Federal motor vehicle safety standards are admitted into the United States pursuant to joint regulations issued by the Departments of Treasury and Transportation. Instead, the Vehicle Safety Act, as amended, vests the primary importation regulatory authority in the Department of Transportation.

The existing joint vehicle importation regulation is 19 CFR 12.80. The forthcoming importation regulation of this agency is 49 CFR Part 591. Paragraph S2, Applicability of 49 CFR Part 565, Vehicle Identification Number—Content Requirements, exempts "Vehicles imported into the United States under 19 CFR 12.80(b)(1)(iii), other than by a corporation which was responsible for assembly of that vehicle or a subsidiary of such a corporation . . . ." This relates to the importation of vehicles not originally manufactured to conform to the Federal motor vehicle safety standards. The section of the new importation regulation that corresponds to 12.80(b)(1)(iii) is 49 CFR 591.5(f). This notice amends Part 565 to delete reference to the old authority and to add reference to the new one.

Since the amendment substitutes one authority for another and is procedural in nature, it is hereby found that notice and public comment thereon is unnecessary.

In consideration of the foregoing, Part 565 is amended to read as follows:

In paragraph 565.2, the citation "19 CFR 12.80(b)(1)(iii)" is changed to read "paragraph 591.5(f) of this chapter".

Issued on October 5, 1989.

Jeffrey R. Miller
Acting Administrator

54 F.R. 41843
October 12, 1989

PART 565—VEHICLE IDENTIFICATION NUMBER—CONTENT REQUIREMENTS

§ 565.1 Purpose and scope.

This regulation specifies the format and content for a vehicle identification number (VIN) system to simplify vehicle identification information retrieval and increase the accuracy and efficiency of vehicle defect recall campaigns.

§ 565.2 Applicability.

This regulation applies to passenger cars, multipurpose passenger vehicles, trucks, buses, trailers (including trailer kits), incomplete vehicles and motorcycles. Vehicles imported into the United States under [paragraph 591.5(f) of this chapter], other than by a corporation which was responsible for the assembly of that vehicle or a subsidiary of such a corporation, are exempt from the requirements of this Part. **(54 F.R. 41843. October 12, 1989. Effective: January 31, 1990)**

§ 565.3 Definitions.

(a) Statutory Definitions: All terms used in this part that are defined in section 102 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391) are used as defined in the Act.

(b) Motor Vehicle Safety Standard Definitions: Unless otherwise indicated, all terms used in this part that are defined in 49 CFR 571.115 are used as defined therein.

(c) "Body Type" means the general configuration or shape of a vehicle distinguished by such characteristics as the number of doors or windows, cargo-carrying features and the roofline (e.g., sedan, fastback, hatchback).

(d) "Engine Type" means a power source with defined characteristics such as fuel utilized, number of cylinders, displacement, and net brake horsepower. The specific manufacturer and make shall be represented if the engine powers a passenger car or a multipurpose passenger vehicle, or truck with a gross vehicle weight rating of 10,000 pounds or less.

(e) "Line" means a name which a manufacturer applies to a family of vehicles within a make which have a degree of commonality in construction, such as body, chassis or cab type.

(f) "Make" means a name which a manufacturer applies to a group of vehicles or engines.

(g) "Model" means a name which a manufacturer applies to a family of vehicles of the same type, make, line, series, and body type.

(h) "Model Year" means the year used to designate a discrete vehicle model irrespective of the calendar year in which the vehicle was actually produced, so long as the actual period is less than two calendar years.

(i) "Plant of manufacture" means the plant where the manufacturer affixes the VIN.

(j) "Series" means a name which a manufacturer applies to a subdivision of a "line" denoting price, size or weight identification, and which is utilized by the manufacturer for marketing purposes.

(k) "Type" means a class of vehicle distinguished by common traits, including design and purpose. Passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, incomplete vehicles, and motorcycles are separate types.

§ 565.4 General requirements.

The VIN shall consist of four sections of characters which shall be grouped accordingly:

(a) The first section shall consist of three characters which occupy positions one through three (1–3) in the VIN. This section shall uniquely identify the manufacturer, make and type of the motor vehicle if its manufacturer produces 500 or more motor vehicles of its type annually. If the

manufacturer produces less than 500 motor vehicles of its type annually, those three characters along with the third, fourth and fifth characters of the fourth section shall uniquely identify the manufacturer, make and type of the motor vehicle. These characters are assigned in accordance with section 565.5(c) of this Part.

(b) The second section shall consist of five characters which occupy positions four through eight (4–8) in the VIN. This section shall uniquely identify the attributes of the vehicles as specified in Table I. For passenger cars, and for multipurpose passenger vehicles and trucks with a gross vehicle weight rating of 10,000 pounds or less, the first and second characters shall be alphabetic and the third and fourth characters shall be numeric. The fifth character may be either alphabetic or numeric. The characters utilized and their placement within the section may be determined by the manufacturer, but the specified attributes must be decipherable with information supplied by the manufacturer in accordance with § 565.5(d) of this Part. In submitting the required information to the NHTSA relating to gross vehicle weight rating, the designations in Table II shall be utilized. The use of these designations within the VIN itself is not required.

Table I.—Type of Vehicle and Information Decipherable

Passenger car: Line, series, body type, engine type,[1] and restraint system type.

Multipurpose passenger vehicle: Line, series, body type, engine type,[1] gross vehicle weight rating.

Truck: Model or line, series, chassis, cab type, engine type,[1] brake system and gross vehicle weight rating.

Bus: Model or line, series, body type, engine type,[1] and brake system.

Trailer, including trailer kit [and incomplete trailer:] Type of trailer, series, body type, length, and axle configuration.[1]

Motorcycle: Type of motorcycle, line, engine type,[1] and net brake horsepower.[1]

Incomplete vehicle [other than trailer:] Model or line, series, cab type, engine type,[1] and brake system. **(53 F.R. 1032—January 15, 1988. Effective: February 16, 1988)**

Table II.—Gross Vehicle Weight Rating Classes

Class A	Not greater than 3,000 pounds.
Class B	3,001–4,000 pounds.
Class C	4,001–5,000 pounds.
Class D	5,001–6,000 pounds.
Class E	6,001–7,000 pounds.
Class F	7,001–8,000 pounds.
Class G	8,001–9,000 pounds.
Class H	9,001–10,000 pounds.
Class 3	10,001–14,000 pounds.
Class 4	14,001–16,000 pounds.
Class 5	16,001–19,500 pounds.
Class 6	19,501–26,000 pounds.
Class 7	26,001–33,000 pounds.
Class 8	33,001 pounds and over.

(c) The third section shall consist of one character which occupies position nine (9) in type VIN. This section shall be the check digit whose purpose is to provide a means for verifying the accuracy of any VIN transcription. After all other characters in VIN have been determined by the manufacturer, the check digit shall be calculated by carrying out the mathematical computation specified in paragraphs (c) (1) through (4) of this section.

(1) Assign to each number in the VIN its actual mathematical value and assign to each letter the value specified for it in Table III.

Table III.—Assigned Values

A=1	J=1	T=3
B=2	K=2	U=4
C=3	L=3	V=5
D=4	M=4	W=6
E=5	N=5	X=7
F=6	P=7	Y=8
G=7	R=9	Z=9
H=8	S=2	

(2) Multiply the assigned value for each character in the VIN by the position weight factor specified in Table IV.

[1] Engine net brake horsepower when encoded in the VIN shall differ by no more than 10 percent from the actual net brake horsepower, shall, in the case of motorcycle with an actual net brake horsepower of 2 or less, be not more than 2; and shall, in the case of a motorcycle with an actual brake horsepower greater than 2, be greater than 2.

Table IV.—VIN Position and Weight Factor

1st	8	10th	9
2d	7	11th	8
3d	6	12th	7
4th	5	13th	6
5th	4	14th	5
6th	3	15th	4
7th	2	16th	3
8th	10	17th	2
9th (check digit)	0		

(3) Add the resulting products and divide the total by 11.

(4) The numerical remainder is the check digit. If the remainder is 10 the letter "X" shall be used to designate the check digit. The correct numerical remainder zero through nine (0–9) or the letter "X" shall appear in VIN position nine (9).

(5) A sample check digit calculation is shown in Table V.

Table V.—Calculations of a Check Digit

VIN Position	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Sample VIN	1	G	4	A	H	5	9	H	..	5	G	1	1	8	3	4	1
Assigned Value	1	7	4	1	8	5	9	8	..	5	7	1	1	8	3	4	1
Multiply by weight factor	8	7	6	5	4	3	2	10	0	9	8	7	6	5	4	3	2

Add products $8+49+24+5+32+15+18+80+0+45+56+7+6+40+12+12+2=411$

Divide sum of products by $11: 411/11 = 37\,^{4}/_{11}$

Remainder is check digit #4 (insert in VIN position nine (9))

(d) The fourth section shall consist of eight characters which occupy positions ten through seventeen (10–17) of the VIN. The last five (5) characters of this section shall be numeric for passenger cars, and for multipurpose passenger vehicles and trucks with a gross vehicle weight rating of 10,000 pounds or less, and the last four (4) characters shall be numeric for all other vehicles.

(1) The first character of the fourth section shall represent the vehicle model year. The year shall be designated as indicated in Table VI.

Table VI

Year	Code	Year	Code
1980	A	1997	V
1981	B	1998	W
1982	C	1999	X
1983	D	2000	Y
1984	E	2001	1
1985	F	2002	2
1986	G	2003	3
1987	H	2004	4
1988	J	2005	5
1989	K	2006	6
1990	L	2007	7
1991	M	2008	8
1992	N	2009	9
1993	P	2010	A
1994	R	2011	B
1995	S	2012	C
1996	T	2013	D

(2) The second character of the fourth section shall represent the plant of manufacture.

(3) The third through the eighth characters of the fourth section shall represent the number sequentially assigned by the manufacturer in the production process if the manufacturer produces 500 or more vehicles of its type annually. If the manufacturer produces less than 500 motor vehicles of its type annually, the third, fourth, and fifth characters of the fourth section, combined with the three characters of the first section, shall uniquely identify the manufacturer, make and type of the motor vehicle and the sixth, seventh, and eighth characters of the fourth section shall represent the number sequentially assigned by the manufacturer in the production process.

§ 565.5 Reporting requirements.

(a) Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act (Pub. L. 96–511) and have been assigned OMB Control Number 2127–0051.

(b) Manufacturers of motor vehicles subject to this regulation shall submit, either directly or through an agent, the unique identifier for each make and type of vehicle it manufactures at least

60 days before affixing the first VIN using the identifier. Manufacturers whose unique identifier appears in the fourth section of the VIN shall also submit the three characters of the first section which constitutes a part of their identifier.

(c) The NHTSA has contracted with the Society of Automotive Engineers (SAE) to coordinate the assignment of manufacturer identifiers. Manufacturer identifiers will be supplied by SAE at no charge. All requests for assignments of manufacturer identifiers should be forwarded directly to: Society of Automotive Engineers, 400 Commonwealth Avenue, Warrendale, Pennsylvania 15096, Attention: WMI Coordinator.

Any requests for identifiers submitted to NHTSA will be forwarded to SAE. Manufacturers may request a specific identifier or may request only assignment of an identifier(s). SAE will review requests for specific identifiers to determine that they do not conflict with an identifier already assigned or block of identifiers already reserved. SAE will confirm the assignments in writing to the requester. Once confirmed by SAE, the identifier need not be resubmitted to the NHTSA.

(d) Manufacturers of motor vehicles subject to the requirements of this regulation shall submit to the NHTSA the information necessary to decipher the characters contained in its VIN's. Amendments to this information shall be submitted to the agency for VIN's containing an amended coding. The agency will not routinely provide written approvals of these submissions, but will contact the manufacturer should any corrections to these submissions be necessary.

(e) The information required under paragraph (d) of this section shall be submitted at least 60 days prior to offering for sale the first vehicle identified by a VIN containing that information, or if information concerning vehicle characteristics sufficient to specify the VIN Code is unavailable to the manufacturer by that date, then within one week after that information first becomes available. The information shall be addressed to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, Attention: VIN Coordinator.

PREAMBLE TO PART 566—MANUFACTURER IDENTIFICATION

(Docket No. 71-11; Notice 2)

This notice adopts a new Part 566 in Title 49, Code of Federal Regulations, to require manufacturers of motor vehicles, and manufacturers of motor vehicle equipment to which a motor vehicle safety standard applies, to submit identifying information and a description of the items they produce. A notice of proposed rulemaking on this subject was published on April 28, 1971 (36 F.R. 7970). The comments received in response to the notice have been considered in this issuance of a final rule. The final rule exempts tire manufacturers from coverage, deletes the required submittal of estimated annual production, and requires the manufacturer to submit revised information when necessary to keep his entry current.

As noted in the proposal of April 28, 1971 (36 F.R. 7970) the establishment of a centrally organized system to collect information regarding the manufacturer's corporate status, mailing address, and items manufactured has been found necessary for efficient enforcement of the Act, as well as for distribution of information to manufacturers.

Several manufacturers stated that the information required by the regulations is already submitted to the NHTSA under existing regulations. This claim is true only with respect to tire manufacturers, who are required under Part 574, Tire Identification and Recordkeeping, (36 F.R. 1196, at 1197-8) to submit to the NHTSA data which would meet the requirements of the proposed regulation in order to obtain their code numbers. The tire manufacturers' request for exemption has therefore been granted.

While it is true that the Defect Reports regulation (36 F.R. 3064) requires the submittal of some information similar to the data collected under the proposed regulation, the former requirement does not provide the comprehensive data required by the Administration.

The largest number of comments were directed at the required submittal of estimated annual production figures. Upon consideration of the comments and review of the Administration's need for this data, it has been determined that its collection would create difficulties for the industry that outweigh its benefits, particularly since approximate information about production is available to the NHTSA from other sources. Therefore this requirement is deleted.

A number of manufacturers were uncertain about their coverage under the proposed regulation. One packager of brake fluids stated that he did not manufacture the fluid and wished to know whether he is considered a manufacturer under the regulation. The packager's operations may significantly affect the quality of the brake fluid. Moreover, under amended Federal Vehicle Safety Standard No. 116, "Motor Vehicle Hydraulic Brake Fluids", the original manufacturer in some cases will not be identified on the container label. For these reasons it has been determined that for the purposes of this regulation, a person who packages brake fluid from a bulk state shall be considered a manufacturer of motor vehicle equipment and therefore subject to the regulation.

A manufacturer of mobile homes sought an exemption from coverage on the grounds that the general public does not usually engage in transporting mobile structure trailers. The fact that only "experts" transport the regulated vehicle is not germane to the question of its inclusion under the regulation, however, since the identification requirement is based on the general determination that the centralized data system

will improve enforcement of the Act and communication with manufacturers.

An incomplete vehicle manufacturer submitted a comment regarding the requirement that manufacturers of multipurpose passenger vehicles, trucks and trailers submit a description indicating the intended final use of their product. The final rule as issued does not specifically include incomplete vehicle manufacturers. A notice of proposed rulemaking published in this issue of the Federal Register would, however, amend the regulation to provide coverage of incomplete vehicles.

The time-of-submittal section has been clarified in light of the comments. It is intended that a manufacturer supply the required information when he begins to manufacture the motor vehicle or covered equipment. The regulation has been amended to indicate that subsequent submittals will be necessary only when changes in the manufacturer's business render the submitted data inaccurate or incomplete.

A number of manufacturers offered recommendations as to the classification system to be adopted by the Administration utilizing the data collected under this regulation. Such discussion is beyond the scope of this regulation, but these suggestions will be considered at the appropriate time.

One manufacturer petitioned for a public hearing to discuss the NHTSA's planned use of the information collected under the regulation. Since the required submittal of estimated annual production figures has been deleted from the final rule, the concern about the use of the information by the Administration would appear to be dispelled, and a public hearing has been found to be unnecessary. The petition is therefore denied.

Effective date: February 1, 1972.

In consideration of the above, Part 566, Manufacturer Identification, is added to Title 49, Code of Federal Regulations. . . .

Issued on October 22, 1971.

Douglas W. Toms
Administrator

36 F.R. 20977
November 2, 1971

PREAMBLE TO AMENDMENT TO PART 566—MANUFACTURER IDENTIFICATION

(Docket No. 71-11; Notice 4)

This notice amends Part 566 in Title 49, Code of Federal Regulations, to provide for the coverage of "incomplete vehicles," as defined in Part 568, Vehicles Manufactured in Two or More Stages. A notice of proposed rulemaking on this subject was published on November 2, 1971 (36 F.R. 20987). No comments on the proposed amendment were received, and the amendment is adopted as proposed.

Part 566, published on November 2, 1971 (36 F.R. 20977), requires manufacturers of motor vehicles and of motor vehicle equipment other than tires to which a motor vehicle safety standard applies to submit identifying information and a description of the items which they produce. In responding to a comment on the proposed regulation from an incomplete vehicle manufacturer, it was noted that while the regulation clearly covers intermediate and final-stage manufacturers (as defined in Part 568) it makes no reference to incomplete vehicle manufacturers. This amendment is intended to clarify this ambiguity by specifically providing for coverage of incomplete vehicles.

The incomplete vehicle manufacturer stated that he was unaware of the final use of his light truck vehicles and requested that he be permitted to submit a brief description of the incomplete vehicle expressed in the terminology of the industry as an alternative to the description in terms of final use. This method for incomplete vehicle manufacturers has been found acceptable, and the NHTSA accordingly grants this request.

In consideration of the foregoing, the NHTSA adopts amendments to Part 566 of Title 49, Code of Federal Regulations . . . .

Effective date: February 1, 1972.

This amendment is issued under the authority of sections 103, 108, 112 and 119 of the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1392, 1397, 1401, 1407, and the delegation of authority at 49 CFR 1.51.

Issued on January 24, 1972.

Douglas W. Toms
Administrator

37 F.R. 1364
January 28, 1972

PREAMBLE TO AN AMENDMENT TO PART 566

Manufacturers Identification
(Docket No. 71.1; Notice 3)

ACTION: Final Rule (correction)

SUMMARY: This document corrects two citation references in 49 CFR Part 566, *Manufacturer Identification.* Part 566 requires motor vehicle and motor vehicle equipment manufacturers to supply NHTSA with information identifying themselves, and describing their products.

DATES: This correction is effective June 2, 1988.

SUPPLEMENTARY INFORMATION: On November 2, 1971, NHTSA published a final rule adding Part 566, *Manufacturer Identification,* to title 49 of the Code of Federal Regulations (CFR). (36 FR 20977, November 2, 1971.) This Part requires a manufacturer of motor vehicle or motor vehicle equipment to supply NHTSA with information identifying the manufacturer, and describing its products.

It has come to the agency's attention that section 566.6 incorrectly refers to section 566.4 in two instances. In the first instance, there is a reference to manufacturers required to submit information under section 566.4. In the second instance, there is a reference to information specified under paragraphs (a) through (c) of section 566.4. In both instances, the correct reference is section 566.5, not section 566.4.

Therefore, Section 566.6 is revised as follows:

§566.6 *Submittal of Information.*

In §566.6, remove internal references to "§566.4" and add in its place, "§566.5."

Issued on May 26, 1988.

Barry Felrice
Associate Administrator
for Rulemaking

53 F.R. 20119
June 2, 1988

PART 566—MANUFACTURER IDENTIFICATION

(Docket No. 71-11; Notice 2)

§ 566.1 Scope. This part requires manufacturers of motor vehicles, and of motor vehicle equipment to which a motor vehicle safety standard applies, to submit identifying information and a description of the items they produce.

§ 566.2 Purpose. The purpose of this part is to facilitate the regulation of manufacturers under the National Traffic and Motor Vehicle Safety Act, and to aid in establishing a code numbering system for all regulated manufacturers.

§ 566.3 Application. This part applies to all manufacturers of motor vehicles, and to manufacturers of motor vehicle equipment, other than tires, to which a motor vehicle safety standard applies (hereafter referred to as "covered equipment").

§ 566.4 Definitions. All terms defined in the Act and the rule and standards issued under its authority are used as defined therein. Specifically, "incomplete vehicle," "intermediate manufacturer," and "final-stage manufacturer" are used as defined in Part 568, Vehicles Manufactured in Two or More Stages.

§ 566.5 Requirements. Each manufacturer of motor vehicles, and each manufacturer of covered equipment, shall furnish the information specified in paragraphs (a) through (c) of this section to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

(a) Full individual, partnership, or corporate name of the manufacturer.

(b) Residence address of the manufacturer and State of incorporation if applicable.

(c) Description of each type of motor vehicle or of covered equipment manufactured by the manufacturer, including for motor vehicles, the approximate ranges of gross vehicle weigh ratings for each type.

(1) Except as noted below, the description may be of general types, such as "passenger cars" or "brake fluid."

(2) In the case of multipurpose passenger vehicles, trucks, and trailers, the description shall be specific enough also to indicate the types of use for which the vehicles are intended, such as "tank trailer," "motor home", or "cargo van."

(3) In the case of motor vehicles produced in two or more stages, if the manufacturer is an incomplete vehicle manufacturer, the description shall so state and include a description indicating the stage of completion of the vehicle and, where known, the types of use for which the vehicle is intended.

> **EXAMPLE:** "Incomplete vehicle manufacturer —Chassis-cab intended for completion as van-type truck."

If the manufacturer is an intermediate manufacturer, or a final stage manufacturer, the description shall so state and include a brief description of the work performed.

> **EXAMPLE:** "Multipurpose passenger vehicles: Motor homes with GVWR from 8,000 to 12,000 pounds. Final-stage manufacturer—add body to bare chassis."

§ 566.6 Submittal of information. Each manufacturer required to submit information under [§ 566.5] shall submit the information not later than February 1, 1972. After that date, each person who begins to manufacture a type of motor vehicle or covered equipment for which he has not submitted the required information shall submit the information specified in paragraphs (a) through (c) of [§ 566.5] not later than 30 days after he begins manufacture. Each manufacturer who has submitted required information shall keep his entry current, accurate and complete by submitting revised information not later than 30 days after the relevant changes in his business occur.

36 F.R. 20977
November 2, 1981

PREAMBLE TO PART 567—CERTIFICATION

Regulations for the certification labeling of motor vehicles and motor vehicle equipment, and the provision of identifying information on the label, were issued under sections 112, 114, and 119 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1401, 1403, 1407) by the Federal Highway Administrator and published in the *Federal Register* on January 24, 1969 (34 F.R. 1147). In a notice published on April 29, 1969, (34 F.R. 7031) it was proposed to make certain amendments to those regulations. This amendment to the regulations is based on that proposal.

The notice proposed that sections 367.7 and 367.8, relating to manufacturers and distributors of motor vehicle equipment, be revoked, pending further study of the distribution patterns and the needs of the motor vehicle equipment industry. No adverse comments to that proposal were received. Those two sections are accordingly being revoked with a view to the future issuance of regulations relating to the particular industries whose products are covered by equipment standards. Manufacturers and distributors of motor vehicle equipment must, however, continue to meet the certification requirements of section 114 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1403) as amplified by notice in the *Federal Register* of November 4, 1967 (32 F.R. 15444).

Clarifying language was proposed by the notice adding the phrase "(except chassis-cabs)" to section 367.4(a), and substituting the phrase "door edge that meets the door latch post" in section 367.4(c). A sentence was proposed for addition to section 367.4(g)(1), requiring the name of a person, other than the manufacturer, who affixes a label on an imported vehicle to be shown on the label. No adverse comments were received on these proposals, and they are incorporated into the rule as issued.

It was proposed to delete the reference to the use of tools in section 367.4(b), so that the subsection would read: "The label shall be permanently affixed in such a manner that it cannot be removed without destroying it." Some comments have indicated uncertainty as to the types of label that are permitted by this section. It is intended that the label be affixed so as not to be removable without damage. The purpose is to make sure that a label cannot be easily and undetectably transferred to another vehicle, and to provide that, within this requirement, manufacturers would have discretion in choice of material and adhesive method. In order to clarify the requirement, the words "or defacing" are inserted after "destroying". Several inquiries were directed specifically to the adequacy of riveted labels. This amendment permits riveting since it has been determined to be a generally satisfactory method of affixing the label.

One comment noted that, particularly in some foreign countries, assembly of a vehicle may be performed by a subsidiary corporation controlled by a parent that is the generally known "nameplate" company. It was suggested that the name of the parent corporation should be allowable on the label. The suggestion has been determined to have merit, in that no important purpose is served by requiring the name of a lesser-known subsidiary corporation on the label, and language permitting the use of a parent corporation's name is added to section 367.4(g)(1).

In order to allow exporting and importing manufacturers to indicate the country to which the word "Federal" refers, a sentence is added to section 367.4(g)(3) permitting the insertion of "U.S." or "U.S.A." before the word "Federal" in the conformity statement.

One petitioner suggested permitting the insertion of the model year before the word "vehicle" in the conformity statement, so that it would read "This 1970 vehicle conforms . . .", in the

case of a vehicle manufactured in late 1969. The requirement of stating the month and year of manufacture on the label is intended to eliminate confusion caused by model years that do not match calendar years, and that may mislead consumers as to the standards that are applicable. The manufacturer or dealer is free to indicate the model year of the vehicle by other labels, or any means that do not involve the certification label, and therefore it is not necessary to allow insertion of this possibly confusing additional date.

Objections were made to the requirement of color contrast on the label, and to the requirement of stating the actual manufacturer's name rather than that of a distributor under a "private brand" label. Similar comments were made and rejected at previous stages of rulemaking. Both of these requirements are important aids to enforcement where rapid inspection of large numbers of vehicles must be made.

One comment suggested that it would be misleading for a manufacturer to certify that the vehicle "conforms" to applicable standards, since the manufacturer has no control over the vehicle after it leaves his hands, and proposed that the certification be limited to the statement that the vehicle conformed at the time it was delivered to a distributor or dealer. The requirement for certification is not, however, limited to manufacturers, but extends to all distributors and importers as well. These parties satisfy this requirement by allowing the certification label to remain affixed to the vehicle. A distributor who alters a vehicle so that it does not conform to the manufacturer's certification must certify that the vehicle as altered meets applicable standards or he is subject to penalties under the Act. A dealer who sells a vehicle after altering it so that it does not conform would be subject to penalties under the Act, and prior parties would not be held responsible for the dealer's alterations. Any alterations that came about after a vehicle had been sold to a user would not be relevant to the question of conformity to applicable standards, as provided by section 108(b)(1) of the Act.

One comment raised the question of who should certify a vehicle such as a boat trailer that is shipped complete but in unassembled form by its fabricator, such that it can be easily assembled without special equipment. The fabricator obviously has the technical knowledge on which certification should be based, but the subsequent assembler may be viewed as the "manufacturer" of the vehicle within the meaning of the Act. This question is part of the larger area of kits for the assembly of new vehicles or the renovation or alteration of existing ones. It is expected that separate regulations will be issued concerning standards applicable to such assemblers and their certification. As an interim measure, it has been determined that the purposes of the Act would be served by allowing the fabricator the option of treating itself as the certifying manufacturer under section 114 of the Act and affixing the label in a manner such that it will conform when the vehicle is assembled. Language to that effect is added to section 367.4(g)(1).

In section 367.4(e), describing the label location for motorcycles, the words "except the steering system" are added to the final phrase, "in a location such that it is easily readable without moving any part of the vehicle", in order to allow a location on the steering post that may be obscured when the steering system is turned to a certain position.

Effective date. Since these amendments do not impose substantial additional burdens relative to the regulations as previously issued, this part as amended shall continue to be effective for all motor vehicles manufactured on or after September 1, 1969.

In consideration of the foregoing, 49 CFR Part 367, Certification, is amended to read as set forth below. This amendment is issued under the authority of sections 112, 114, and 119 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1401, 1403, 1407) and the delegation of authority from the Secretary of Transportation to the Federal Highway Administrator, 49 CFR § 1.4(c).

Issued on July 7, 1969.

F. C. Turner
Federal Highway Administrator

34 F.R. 11360
July 9, 1969

PREAMBLE TO PART 567—CERTIFICATION

(Dockets No. 70–6, 70–8, and 70–15)

(Revised and reissued April 8, 1971)

This notice adopts a new Part 568 in Title 49, Code of Federal Regulations, to require the furnishing of information relevant to a vehicle's conformity to motor vehicle safety standards, and makes complementary changes in the certification regulations in Part 567 of that title and in Part 571. It also amends the certification regulations with respect to the manufacturer whose name must appear on the label for trailers and with respect to the information that must appear on the label for all vehicles. Notices of proposed rulemaking on these subjects were published on March 17, 1970 (35 F.R. 4639), May 1, 1970 (35 F.R. 6969), and June 13, 1970 (35 F.R. 9293). The comments received in response to these notices, and the statements made at the public meeting on vehicles manufactured in two or more stages (September 18, 1970; 35 F.R. 13139) have been considered in this issuance of a final rule.

The amendments to the certification regulations proposed on May 1, 1970 (35 F.R. 6969) are adopted as proposed, except that GCWR information is not required.

The most frequently stated objection to the amendments was that the providing of GVWR and GAWR for passenger cars gives the purchaser information that is already provided by the label required by Standard No. 110. Although the information is to some extent duplicative, in that if the consumer knew the vehicle's unloaded weight, he could use the information required by Standard No. 110 to estimate the gross vehicle weight, the gross weight information is more easily usable for regulatory purposes. Requirements of certain standards may in the future apply to a passenger car according to its weight class.

Several comments stated that the inclusion of weight information on the certification label would make the labels awkwardly large. Since only two items would be added to the label, these comments are considered to be without merit.

As amended, the regulation requires a certification label on vehicles sold directly to users, as well as on those sold to dealers and distributors. The Administration regards this as useful to the consumer and necessary to efficient, enforcement of the standards. The authority for requiring information labels is found in sections 112 and 119 of the Act, as well as in section 114.

The requirements for the certification label for multi-stage vehicles, discussed above, include the vehicle type. Under Part 567 as presently in force, the type need only be shown for multipurpose passenger vehicles. This information has been determined to be useful for enforcement and other information purposes, and Part 567 is therefore hereby amended to require the vehicle type to appear on all labels.

Issued on April 8, 1971.

Douglas W. Toms
Acting Administrator

36 F.R. 7054
April 14, 1971

PREAMBLE TO AMENDMENT TO PART 567—CERTIFICATION

and

(Denial of Petitions to Part 568—Vehicles Manufactured in Two or More Stages)

(Docket No. 70–8)

Part 567 of Title 49, Code of Federal Regulations, certification requirements for motor vehicles, as amended, and Part 568, establishing requirements for vehicles manufactured in two or more stages, were published on April 14, 1971 (36 F.R. 7054 *et seq.*). Thereafter, pursuant to 49 CFR 553.35 (35 F.R. 5119), petitions for reconsideration were filed by American Motors Corporation, Chrysler Corporation, Ford Motor Company, General Motors Corporation, and International Harvester Company. On June 22, 1971, a notice proposing the addition of a vehicle identification number to the certification label required for vehicles manufactured in two or more stages was published in the *Federal Register* (Docket No. 71–14; Notice 1, 36 F.R. 11868).

This notice of Reconsideration and Amendment represents the action taken by this agency in response to the petitions and the notice of June 22.

1. *Effective date.* Ford and International Harvester petitioned that the effective date of Part 568 be delayed at least until July 1, 1972, to permit a more orderly development and implementation of systems and procedures pertaining to the documentation requirements of the regulation. Neither petitioner has argued that it is impossible or impracticable for it to comply with Part 568 by January 1, 1972, nor has any other petition been received on this subject. Timely implementation of these regulations is important, because of the need to have the required information in the hands of final-stage manufacturers in advance of the effective date of standards applicable to these types of vehicles. The Administrator therefore has denied the petitions for extension of the effective date.

1. *GVWR; GAWR.* International Harvester stated that if an incomplete vehicle manufacturer installs tires supplied by the customer or ships the vehicle with temporary tires that will be replaced by the customer, the manufacturer should be permitted to base his GVWR and GAWR ratings on the capacity of the vehicle's structure and to disregard the capacity of customer-installed tires. The company therefore requested an interpretation, or revision, of the regulation to exclude tire ratings in the computation of GAWR and GVWR, so long as the exclusion is indicated on the certification label or the document furnished to the final-stage manufacturer.

The NHTSA cannot accept the position that the weight ratings should not be related to the tires on the vehicle. To the contrary, the newly proposed motor vehicle safety standard on Tire and Rim Selection and Rim Performance for vehicles other than passenger cars (36 F.R. 14273, August 3, 1971) would require each completed vehicle to have tires whose load ratings reflect the gross axle weight ratings of the vehicle. If an incomplete vehicle manufacturer installs tires that are intended to be used on the vehicle as completed (whether or not they are "supplied by the customer"), the weight ratings of the vehicle should reflect the capacities of those tires. On the other hand, it is entirely permissible for an incomplete vehicle manufacturer to install "temporary" tires for shipment purposes only, if he provides full information on the subject in the document required to be furnished with the incomplete vehicle under Part 568.

Counsel for the Trailer Manufacturers Association have pointed out that some trailer manufacturers provide different sizes of tires as a customer

option, and have requested permission to state different weight rating values on the label for each tire size that is offered. This request may have merit, since it may not be practicable in some cases for a manufacturer to anticipate which tires will be used on a particular vehicle, or to rely on dealers to affix permanent labels that reflect the tires ultimately selected. A notice of proposed rulemaking that would allow manufacturers to provide several values for GVWR and GAWR, along with tire sizes for each, is published in this issue of the *Federal Register*.

American Motors petitioned for withdrawal of GVWR and GAWR from passenger car certification labels on the grounds that the terms are ambiguous and misleading. Ford also petitioned for a change in the GAWR-GVWR usage, stating that the present placard required on passenger cars by Standard No. 110 makes GAWR and GVWR unnecessary for passenger cars and that a similar reference to vehicle capacity weight should be substituted for GAWR and GVWR in the documents and labels required on multipurpose passenger vehicles, trucks, and buses. American interprets GVWR to be the equivalent of maximum loaded vehicle weight, as well as the equivalent of the sum of unloaded vehicle weight and vehicle capacity weight.

The definitions of gross vehicle weight rating and gross axle weight rating have been developed in order to provide useful and reasonably flexible methods for manufacturers to rate the overall capacities of their vehicles and axle systems respectively, on the basis of which the vehicles will be tested for conformity to various standards. The existing concept of "maximum loaded vehicle weight" has been found deficient for some purposes, because it relies on a complex definition of "curb weight" (found in Standard No. 110, 49 CFR 571.21) that combines both arbitrary and specific elements. It is this agency's intent to allow manufacturers, in stating GVWR and GAWR, to select values that represent the overall performance capabilities of their vehicles as delivered, without necessarily varying the values to allow for minor weight variations in a particular line of vehicles. To preclude the possibility of understating a vehicle's GVWR, however, the certification regulation is herewith amended to provide that the stated GVWR shall not be less than the sum of unloaded vehicle weight, rated cargo load, and 150 pounds times the vehicle's designated seating capacity.

3. *Certification responsibility of the incomplete vehicle manufacturer.* General Motors has petitioned for a revision of Part 568 that would "distinguish between final-stage manufacturers who merely add a van or a work unit to the rear of a chassis-cab, and those manufacturers who perform material alterations to the incomplete vehicle in the process of manufacturing a completed vehicle." In the former case, under the GM scheme, the incomplete vehicle manufacturer would certify that the vehicles complied with all Federal standards except those (such as No. 108) where final compliance depends upon the work performed by the add-on type manufacturers. The latter would then certify that he had made no alterations to the incomplete vehicle other than _____ (describing the work performed), and that the vehicle complied with _____ (standards not certified by the incomplete vehicle manufacturer). GM believes that the incomplete vehicle manufacturer could be required by regulation to provide specific items of information about its product (e.g., maximum height of center of gravity, regarding Standard No. 105) to enable the final-stage manufacturer to add a van or work unit without causing a nonconformity. In the second case, under the GM scheme, the material-alteration type manufacturer would certify the entire vehicle, and could obtain from the incomplete vehicle manufacturer all data needed for certification.

There is considerable similarity between the GM scheme and Part 568. The manufacturer of a vehicle complete except for the addition of a van or work unit, under Part 568, provides a statement (568.4(a)(7)(i)) that the vehicle when completed will conform to specified standards if no alterations are made in identified components of the incomplete vehicle. He also provides an appropriate statement, according to 568.4(a)-(7)(ii) or (iii), as to the remaining standards. On the basis of such statements, and the work he performs, the final stage manufacturer certifies the complete vehicle.

The primary difficulty with the GM scheme is that it is not adequate for such standards as No. 121, *Air Brake Systems*, where end conformance depends upon work performed by both the incomplete vehicle and final-stage manufacturers. GM would not, in that instance, certify conformance as to Standard No. 121, nor would it provide information sufficient for the final-stage manufacturer to produce a conforming vehicle. The scheme with respect to material-alteration type manufacturers as well would not appear to provide as much assistance to final-stage manufacturers as that adopted under Part 568. Traditionally, the final-stage manufacturer is an entity whose resources are limited. The thrust of Part 568 is to place some legal responsibility on the incomplete vehicle manufacturer to supply the final-stage manufacturer with data and conditions under which the completed vehicle will comply, and most importantly, to allocate a fair share of the legal responsibility for conformity to the incomplete vehicle manufacturer. GM's petition is therefore denied.

Chrysler also wishes to split the certification responsibility, and petitioned for an amendment requiring the incomplete vehicle manufacturer to "list . . . only those standards to which full compliance has been achieved . . . ." Otherwise, Chrysler feels it has no alternative other than periodic use of the general statement allowed by § 568.4(a)(7)(iii) that conformity with a standard is not substantially determined by the design of the incomplete vehicle, and that the incomplete vehicle manufacturer makes no representation as to conformity of the incomplete vehicle with such standard.

Since alternative (iii), above, is partially a factual representation, Chrysler may not provide such a statement where conformance with a standard *is* substantially determined by the design of the incomplete vehicle. It is up to the incomplete vehicle manufacturer to decide which type of statement accurately reflects the condition of compliance, and Chrysler may use the general statement in those instances where it is appropriate. Chrysler's petition is therefore denied.

4. *Sequence of required data.* Ford petitioned that Part 567 be amended to make the sequence of the data required on certification labels permanently affixed to completed vehicles consistent with that on the document to be supplied by incomplete vehicle manufacturers (Part 568). Ford's reason for this request is that it would simplify computer print-out of material if the same computer program could be used for both requirements.

Although this request has some technical merit, Ford is the only manufacturer who has commented on variances in data sequence. This agency understands that other manufacturers have already ordered certification labels printed in the sequence required by Part 567, and deems it unfair to them to amend Part 567 at this time. Ford's request is therefore denied.

5. *Proposed VIN.* There were no objections to the proposal that a vehicle identification number be required for labels on vehicles manufactured in two or more stages, and the proposal is adopted.

In consideration of the foregoing changes are made in 49 CFR Part 567.

Effective date: January 1, 1972.

Issued on October 6, 1971.

Douglas W. Toms
Administrator

36 F.R. 19593
October 8, 1971

PREAMBLE TO AMENDMENT TO PART 567—CERTIFICATION

(Docket No. 70–8; Notice 5)

This notice amends the Certification Regulations to allow vehicle manufacturers to list on the certification label more than one set of values for gross vehicle and gross axle weight ratings. It also allows school bus manufacturers to compute the vehicle's GVWR using 120 pounds to represent the weight of an occupant.

On April 14, 1971, (36 F.R. 7054), the certification regulations (49 CFR Part 567) were amended to provide for the furnishing of additional information on the certification label, and a new Part 568, "Vehicles Manufactured in Two or More Stages", was established. On October 8, 1971, (36 F.R. 9593) certain amendments to Part 567 and Part 568 were issued in response to petitions for reconsideration received concerning the amendment of April 14, 1971. Also on October 8, 1971, a notice was issued (36 F.R. 19617) proposing to allow multiple GVWR and GAWR listings to be used in certain circumstances. This notice is issued in response to petitions for reconsideration concerning the amendment of October 8, 1971, and comments concerning the notice of proposed rulemaking of that date.

The proposal of October 8, 1971, allowing multiple GVWR and GAWR listings to be placed on the certification label is adopted as proposed. Comments received by the NHTSA were generally in favor of this amendment. One commentator stated that the proposal would not be practical for large trucks. However, the requirement is only permissive, and it will provide a useful alternative to manufacturers of various other types of vehicles. It is therefore adopted as proposed.

The final rule published in the October 8 notice amended sections 567.4(g)(3) and 567.5(a)(5) to provide for GVWR computation using a multiplier of 150 pounds times the vehicle's designated seating capacity. This agency has received petitions for reconsideration of this provision from the School Bus Manufacturers Institute and Blue Bird Body Company. Both suggested that the figure of 150 pounds is unrealistically high, because the maximum seating capacity of a school bus is based on three children sitting on each standard 39-inch seat. These petitions suggested that a 120-pound figure, found in the 1970 Revised Edition of *Minimum Standards for School Buses*, be used in computing the GVWR of school buses. The NHTSA agrees with these petitions, and the regulation is amended accordingly.

It has been brought to the attention of the NHTSA that on some vehicles it will be difficult to affix the required label in the designated location, because of space limitations. It was requested that the use of a multi-column label or a label in two parts be considered permissible under the regulation. One such request was answered in a letter interpretation to counsel for the Trailer Manufacturers Association, dated November 3, 1971. The substance of the agency's reply is repeated here for the benefit of all interested parties: The NHTSA adheres to the requirement in the certification regulation that the required information be listed "in the order shown," a requirement that since its issuance in September 1969 has been found to enhance the readability and usefulness of the label. However, there is no requirement that the listing be in one column, and as long as it appears in the order specified, multi-column labels or adjacent labels in two or more parts are permitted.

Some inquiries were received concerning the significance of the requirement for a vehicle identification number on the label of a vehicle manufactured in two or more stages (36 F.R. 19593, October 8, 1971). This VIN requirement is not new, as some persons apparently believed, but merely a continuation of the requirement contained in the original certification regulations

effective September 1, 1969 (34 F.R. 11360, July 9, 1969). The VIN requirement is not intended to change existing practices with respect to vehicle numbering.

In consideration of the foregoing, Part 567 of Title 49, Code of Federal Regulations, is hereby amended . . . .

Effective date: As these requirements impose no additional burdens on any person, and as implementation of these requirements as part of the general regulatory scheme is essential, good cause exists for an effective date less than 30 days from the day of publication. The amendments are accordingly effective on January 1, 1972.

This notice is issued pursuant to Sections 103, 112, 114, and 119 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392, 1401, 1403, 1407), and the delegation of authority at 49 CFR 1.51.

Issued on December 8, 1971.

Charles H. Hartman
Acting Administrator

36 F.R. 23571
December 10, 1971

PREAMBLE TO AMENDMENT TO PART 567—CERTIFICATION

(Docket No. 70–8; Notice 7)

The purpose of this notice is to allow manufacturers to specify a tire size on their certification label when they provide only one gross vehicle weight rating, or one gross axle weight rating for each axle, and do not list other optional tire sizes. The provisions of the Certification regulations dealing with gross vehicle weight rating and gross axle weight rating were published April 14, 1971 (36 F.R. 7054), and were amended on October 8, 1971 (36 F.R. 19593) and December 10, 1971 (36 F.R. 23572). In addition, the definition of gross axle weight rating (49 CFR 571.3) was amended February 12, 1972 (37 F.R. 3185).

As issued on April 14, 1971, the certification regulations required each manufacturer (final-stage manufacturers in the case of multi-stage vehicles) to include on his certification label a gross vehicle weight rating, and a gross axle weight rating for each axle. The assigned rating was to be made without reference to particular tires or other components on which the value was based. The amendment of December 10, 1971, modified this result to some extent by allowing a manufacturer, at his option, to list different weight ratings for various tire sizes, with the appropriate tire size listed for each rating.

In response to inquiries by interested persons, the agency has decided not to limit this option to cases of multiple tire sizes. By the amendment issued herewith, manufacturers are allowed to list the appropriate tire size for both gross vehicle and axle weight ratings, even when only one rating is provided. With this information, subsequent manufacturers, distributors, dealers, and users who install or replace tires will be put on notice that the tires they mount on the vehicle might affect the weight ratings provided by the manufacturer.

This amendment also makes a minor correction in a paragraph reference in the regulations.

In light of the above, 49 CFR Part 567, "Certification," is amended . . . .

Effective date: July 13, 1972.

As this amendment provides an optional method of compliance and imposes no additional burdens, it is found for good cause shown that an effective date less than 30 days from the day of issuance is in the public interest.

This notice is issued under the authority of sections 103, 112, 114, and 119 of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1392, 1401, 1403, 1407, and the delegation of authority at 49 CFR 1.51.

Issued on July 6, 1972.

Douglas W. Toms
Administrator

37 F.R. 13696
July 13, 1972

PREAMBLE TO AMENDMENT TO PART 567—CERTIFICATION

(Docket No. 72–27; Notice 2)

This notice establishes certification and labeling responsibilities for persons who alter "completed vehicles" after their certification as conforming to applicable motor vehicle safety standards. The requirements are based on those proposed in a notice of proposed rulemaking published October 25, 1972 (37 F.R. 22800).

Under the new requirements, a person who alters a completed vehicle, other than by the attachment, substitution, or removal of "readily attachable components", will be required to ascertain conformity to all applicable standards as of any date between the manufacture date of the completed vehicle and the manufacture date of the altered vehicle. That person will be required to affix a label (leaving the certification label in place) that identifies the alterer, the date of alteration, the date as of which conformity is determined, and any changes the alteration produces in either gross weight ratings or vehicle classification. A person who does not alter the vehicle, or who adds, substitutes, or removes only readily attachable components will be required to leave the certification label in place, but will not be required, unless the alteration invalidates the stated weight ratings, to provide an additional label. Distributors who do not alter the vehicle, or who alter it using only readily attachable components and do not invalidate the stated weight ratings will meet the certification requirements by leaving the certification label in place. The requirements will place persons who alter completed vehicles on the same basis as final-stage manufacturers, by allowing the former to choose as the date by which vehicle conformity is determined any date between the date on which the completed vehicle is manufactured and the date on which the vehicle is altered. Under previously existing statutory and regulatory provisions, alterers of vehicles were required to use only the date of completion of the altered vehicle as the date by which conformity could be determined.

General Motors, Truck Body and Equipment Association, and Stutz Motor Car of America supported the proposal without qualification. Other comments generally approved the proposal with some suggested changes.

Several comments argued that the limiting concept of "readily attachable components", the addition, removal, or substitution of which does not create a requirement to affix a label, should not include "mirrors or tire and rim assemblies", as the language appears in §§ 567.6 and .7, and § 568.8. It was argued that these items directly affect the vehicle's conformity to the standards or the weight ratings, and should therefore not be alterable without, in effect, a recertification by the alterer. It was variously suggested that explicit inclusion of these items as examples of readily attachable components might cause a safety problem, a false certification, or a misleading of persons such as dealers as to their responsibilities under the Act and the standards.

The NHTSA does not accept these arguments. The provisions for alteration of vehicles, like the larger certification scheme of which they are a part, are intended to reflect the realities of manufacture and distribution. It is a fact that the substitution of tires by a dealer takes place in a substantial fraction of all vehicle sales. Moreover, a large proportion of the components that are in fact frequently altered at the dealer level are directly affected by standards: mirrors, tires, rims, lighting accessories, bumper guards and attachments, windshield wipers and washers, hub caps and wheel nuts, seat belts, and interior components such as air conditioners or radios that come within the head impact area, to name

a few. If these items were not included in the concept of readily attachable components, for which an alteration label is not required, it is safe to say that virtually every dealer in the country would be affixing labels to many of the vehicles he sold.

It was not the intent of this agency to create such a manifold expansion of labeling requirements. The altered-vehicle label is designed primarily to reach those cases where a completed vehicle is significantly altered, in a manner, and with components, not provided by the original manufacturer. The substitution or addition of parts such as tires, rims, and mirrors is a routine aspect of typical vehicle distribution systems, and the cost burden of affixing a permanent label to the vehicle has not been found to be justified in that situation. For these reasons the language of the regulation has in these respects been retained as proposed.

The requirement to keep a vehicle in conformity to the standards and the weight ratings applies throughout the chain of distribution regardless of any labeling requirements, and this agency has no intent of downgrading the importance of that requirement. The comments did reveal a justifiable concern of manufacturers for situations where the vehicle might be altered, as by substitution of tires, in a way that its stated weight ratings are no longer valid. Also, there may well be cases where a customer wants a vehicle to have lighter components for its intended purpose, and would accept lowered weight ratings. To deal with these cases, language has been added to sections 567.6 and .7, and 568.8, to require the affixing of an alteration label whenever any type of alteration is made that would invalidate the stated weight ratings.

American Motors and Jeep argued that requiring alterers to certify conformity discriminates against manufacturers' dealers. They pointed out that dealers, who generally alter vehicles before sale, are required to maintain conformity, while aftermarket installers of equipment, because the additions they make are to "used" vehicles, need not. They suggested that "special add-on accessories" be excepted from the requirements, that a new category of "Special Motorized Equipment" be created to which some of the standards would not apply, that equipment standards be issued to cover aftermarket installers, and that highway safety program standards prohibit the alteration of vehicles such that they would not conform to the standards. These comments are not, in the view of this agency, within the scope of the rulemaking. Requests of this nature should be submitted as petitions for rulemaking, with supporting data, in accordance with the procedures of 49 CFR Part 553.

British Leyland suggested that an exemption to the labeling requirements be made for persons installing accessories which the original vehicle manufacturer makes available, and whose installation he knows will not affect vehicle conformity. The NHTSA expects that most accessories meeting this description will be readily attachable within the sense of the regulation, and no further labeling in these cases will be required. It should be noted that the category of "readily attachable components" cannot be sharply defined, and in any marginal case the NHTSA will accept the reasonable judgment of the parties concerned, especially where the original manufacturer and the alterer are in agreement. In cases where components of this type are not found to be readily attachable, the burden on the alterer to determine that the alteration does not destroy conformity is minimized, leaving him with essentially no more than the attachment of the alterer label.

Certain comments pointed out that while proposed sections 567.7 and 568.8 are not limited in their application to distributors, that limitation had been retained in section 567.6. The comments suggested that, as sections 567.7 and 568.8 applied to dealers, section 567.6 should likewise so apply. The substance of the suggestion has been adopted in the final rule, by modifying § 567.6 to apply to any person.

The Recreation Vehicle Institute (RVI) suggested that manufacturers of completed vehicles be required to supply a document when requested by a vehicle alterer, similar to that provided final-stage manufacturers, that advises alterers how to achieve or retain conformity. This suggestion has not been adopted. If a vehicle manufacturer wishes to provide information on the

alteration of his vehicles, he of course may do so. Once a completed, certified vehicle has been produced, however, the NHTSA does not believe it reasonable to require manufacturers to provide persons who might alter that vehicle with additional certification information. The requirement to provide information concerning incomplete vehicles (Part 568) is founded on the fact that an incomplete vehicle manufacturer has marketed his vehicles with the express intent of having them completed by other persons. This is not the case with completed vehicles.

RVI also suggested that the regulation specifically provide that alterers be allowed to base their conclusions as to conformity on the original certification. The NHTSA does not consider such a provision to be meaningful. The extent to which the alterer's conformity assurance may be based on the original certification depends entirely on what the alterer does to the vehicle, which is a fact peculiarly within his knowledge.

Certain comments suggested that compliance with the requirements be permitted before the specified effective date. The NHTSA believes this request to be meritorious. Alterers will be able to conform to existing requirements or to those issued by this notice at any time up to the effective date.

In light of the above, amendments are made to 49 CFR Parts 567 and 568 . . . .

Effective date: February 1, 1974. However, persons who alter vehicles may at any time before that date conform to the provisions issued in this notice in lieu of existing provisions of 49 CFR Parts 567 and 568.

Sections 103, 112, 114, 119, Pub. L. 89–563, 80 Stat. 718; 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 38 F.R. 12147.

Issued on June 13, 1973.

James E. Wilson
Associate Administrator
Traffic Safety Programs

38 F.R. 15961
June 19, 1973

PREAMBLE TO AMENDMENT TO PART 567—CERTIFICATION

(Docket No. 71–19; Notice 3)

This notice establishes a new Federal Motor Vehicle Safety Standard No. 120, *Tire selection and rims for motor vehicles other than passenger cars*, 49 CFR 571.120, and amends 49 CFR Part 567, *Certification.* The new standard specifies tire and rim selection requirements for multipurpose passenger vehicles (MPV's), trucks, buses, trailers, and motorcycles, and marking requirements for rims for use on these vehicles. It also adds tire and rim matching information to the items required to appear on such vehicles' certification labels. The amendment to Part 567 makes that regulation consistent with the new standard. The notice is based on proposals which were published August 3, 1971 (36 FR 14273) and June 3, 1974 (39 FR 19505).

The standard requires new vehicles (other than passenger cars, which are the subject of Standard No. 110) to be equipped with tires that comply with either Standard No. 109, *New Pneumatic Tires—Passenger Cars*, or Standard No. 119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars.* The tires must be fitted to rims which have been designated by the tire manufacturer, in accordance with S4.4 of Standard No. 109 or S5.1 of Standard No. 119, as suitable for use with those tires. The designations are made by listing the tire-rim matching information in one of seven industry-maintained publications or by furnishing this information to dealers of the manufacturer's tires, to any person upon request, and to the NHTSA.

Each axle must be equipped with tires the sum of whose load ratings is not less than that axle system's Gross Axle Weight Rating (GAWR). In certain situations, discussed below, a vehicle may be equipped with used tires of adequate load rating that were originally manufactured to comply with Standard No. 119. Adequacy is determined as follows: the sum of the maximum load ratings of the tires must be equal to or greater than the GAWR which is specified on the Part 567 certification label, with an exception discussed below. If the certification label lists more than one GAWR-tire combination for the axle, the sum of the tires' maximum load ratings must meet or exceed the GAWR that corresponds to the tires' size designation. If more than one combination is listed, but the size designation of the actual tires on the vehicle is not among those listed, then the sum of the load ratings must simply meet or exceed the lowest GAWR which does appear.

Rims must be marked with five items of information: the size designation (and, in the case of multipiece rims, the type designation), an indication of the source of the rim's nominal dimensions, and the DOT symbol must appear on the weather side, while identification of the manufacturer and date of manufacture may appear at any place on the rim's surface. The standard does not explicitly require that a rim conform to its published dimensions. If a rim's deviation from these nominal dimensions is so great that a safety hazard is presented, however, the defect notification and remedy provisions of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, provide authority to deal with the hazard.

To reduce the possibility of confusion and to minimize the number of characters stamped on the rim, the standard establishes a set of code letters to indicate the source of the rim's nominal dimensions. "T", "E", "J", "D", "M", "B", and "S" indicate the industry publications listed in Standards Nos. 109 and 119, while "N" indicates an independent listing with tire dealers and the NHTSA. The proposed requirement that the marking indicate the date of the publication has not been adopted because it does not appear neces-

sary. The standard does not require manufacturers to be identified with a code number assigned by the NHTSA, because no action has been taken on the proposal published in the Federal Register on June 7, 1973 (38 FR 14968). The rim manufacturer is free to use his name, trademark, or a symbol of his choice. Because a rim's maximum load rating may be limited by its disc, this standard does not require that the maximum load rating be marked. The rim's maximum inflation pressure, while not affected by the choice of disc, is potentially misleading without additional marking of the disc. These rim markings are being considered in conjunction with further NHTSA rulemaking activity concerning wheels.

Several commenters objected to the proposed requirement of a tire-rim information label, required by Part 567. Upon consideration of these comments, the NHTSA agrees that a separate placard is unnecessary. GVWR and GAWR are already required to appear on the certification label. If the vehicle manufacturer exercises his option of listing more than one GVWR–GAWR combination, he is already required to indicate the proper tire size designations after each weight rating. Standard No. 120 further requires, for vehicles other than passenger cars, the following information to appear after each weight rating and tire size designation listed on the certification label: rim size designation, cold inflation pressure for the tires, and speed restriction (if any) for the tires. This information is now required to appear even when only one GVWR–GAWR combination is listed. The Part 567 label is thus expanded to include the information that would have appeared on the separate label described in S5.4 of the proposed standard No. 120.

Many commenters pointed to the large number of possible axle-tire-rim combinations and suggested that the information label would be too large and confusing. Some discussed the vehicle manufacturer's difficulty in ensuring that the required information appear, given the common practice of changing tires and rims after a new vehicle has been shipped to a dealer. These commenters appear to have misunderstood the various proposed and existing requirements. Part 567 does not, in its prior form or as amended today, require a listing for more than one GVWR–GAWR–tire combination. Further, while S5.1.2 of Standard No. 120 requires the tires with which a new vehicle is equipped to be of adequate loading rating for the GAWR, and while S5.3 requires an indication of tires adequate for the GAWR, there is no requirement that the actual tires be listed on the certification label. The tire information on that label is intended as a guide which tells the user what replacement tires, as a minimum, are appropriate for the listed GAWR and what rims are appropriate for those tires.

Guerdon Industries, Inc., objected to the requirement that vehicles be restricted to the load limits molded on tire sidewalls. They pointed to the mobile home industry's practice of loading tires to 150 percent of their load ratings, and argued that this practice should be permitted to continue. Examination of data compiled by the Bureau of Motor Carrier Safety, however, shows that from 1969 to 1972 (the most recent years for which figures are available), tires accounted for 18.0 percent of reported mobile home accidents. The NHTSA therefore rejects the proposition that such overloading does not present a safety hazard. There is no exception to the requirement that all vehicles be equipped with tires of adequate load rating.

Some commenters requested that tire overloading be permitted under restricted speed conditions. These commenters appear to have misunderstood the scope of the standard. Vehicles-in-use are regulated by the States and by the Bureau of Motor Carrier Safety. Standard No. 120 does not prohibit the overloading of tires in speed-restricted service, or otherwise regulate the use of tires or vehicles. The GVWR and GAWR information on the certification level is based on unrestricted service.

The formula described above for tire selection is subject to an exception for MPV's, trucks, buses, and trailers which are equipped with passenger car tires. The combined maximum load rating of the passenger car tires on an axle must be equal to or greater than 110 percent of the axle's GAWR. Some comments supported this exception as it was proposed. Others suggested

that passenger care tires be permitted on such vehicles without the 110% factor, while the RMA and others argued that passenger car tires should not be permitted on trailers at all. The NHTSA rejects the argument that the 110% correction factor is unnecessary. Because non-passenger-car service on the average puts greater stresses on a tire (for example, trucks and trailers are driven at or near their maximum rated loads more often than passenger cars), a given load rating for a Standard No. 109 tire does not have the same meaning as the identical load rating for a Standard No. 119 tire. Conversely, the NHTSA has found no evidence that passenger car tires are inadequate for trailer service when the load correction factor is applied. The 110 percent factor is therefore adopted as proposed.

As proposed, the standard included an exception to the requirement that new vehicles be equipped with new tires conforming to Standard No. 109 or 119. Used tires were to be permitted on a truck, bus, or trailer (other than a mobile structure trailer) under the following conditions: the tires were originally manufactured to comply with Standard No. 119; they were of adequate load rating; they were owned or leased by the purchaser; and they were installed on the new vehicle at its place of manufacture at the purchaser's request. Comments on this exception were generally favorable, although one mobile home manufacturer objected to the exclusion of mobile structure trailers. The exception was intended to accommodate commercial delivery practices in the truck, bus, and trailer industry. While fleets which lease tires on a mileage- contract basis or which install their own used tires on new vehicles are in a good position to know the condition of these tires, the mobile home purchaser has no knowledge of the history of used tires installed on his vehicle. The proposed exception to the new tire requirement is therefore not extended to include all mobile structure trailers. It is, however, extended to include those delivered to the purchaser by a motor carrier, because a motor carrier (who is subject to Bureau of Motor Carrier Safety regulations) can be expected to be more familiar with tire safety needs than a typical purchaser. To clarify the proposed language "originally manufactured to comply with Standard No. 119", the words "as evidenced by the DOT symbol" have been added to the text of the standard.

Several commenters pointed out that certain vehicles are designed for non-uniform side to side loading, and suggested that the proposed method of determining the necessary tire load rating from the GAWR (dividing GAWR by the number of wheel positions on the axle) is inadequate for such vehicles. These commenters argued that tire load rating should be based on the maximum wheel load, rather than on the GAWR. The standard issued today does not specify the maximum load rating to be exceeded by each tire on any given axle. Instead, it requires the sum of those load ratings to meet or exceed the GAWR. The manufacturer of an asymmetrically designed vehicle can therefore equip an axle with tires of differing load ratings. The NHTSA agrees that each tire should be capable of carrying its maximum expected wheel load. At this time, however, the NHTSA considers its defect authority, combined with the new standard, adequate to ensure that vehicles are equipped with such tires.

Definitions have been added to clarify the meaning of "rim base", "rim size designation", "rim type designation", "rim diameter", "rim width", and "'weather side". Definitions suggested for other terms have not been included in the standard because the meaning have been found to be widely understood or self evident.

Many comments pointed out problems with a single effective date. For example, for marked rims to be available to vehicle manufacturers in time, an interval is necessary between the effective dates for the rim marking requirement and the requirement that vehicles be equipped with rims that comply with the standard. Similarly, to require all used tires, otherwise permitted by S5.1.3 to have originally been manufactured to comply with Standard No. 119 would, without a delayed effective date, cause the waste of pre-Standard No. 119 tires of adequate load-carrying capacity. Accordingly, a staggered system of effective dates is established as set out below.

In consideration of the foregoing, Chapter V of Title 49, Code of Federal Regulations, is amended. . . .

Effective dates: For the amendment to Part 567: September 1, 1976. For Standard No. 120: August 1, 1976, for the rim marking requirements (S5.2), and September 1, 1976, for the remaining requirements except as otherwise provided in the standard.

(Secs. 103, 112, 114, 119, 201, 202, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1407, 1421, 1422); delegation of authority at 49 CFR 1.50.)

Issued on January 19, 1976.

James B. Gregory
Administrator

41 F.R. 3478
January 23, 1976

PREAMBLE TO AMENDMENT TO PART 567—CERTIFICATION

(Docket No. 76–1; Notice 2)

This notice amends 49 CFR 567 and 575 to allow manufacturers an alternative method of referring purchasers to appropriate consumer information tables.

On January 22, 1976, the National Highway Traffic Safety Administration issued in the Federal Register (40 FR 3315) a notice which proposed amending 49 CFR 575, Consumer Information and 49 CFR 567, Certification to allow the consumer information document provided to the purchaser of a vehicle to refer the reader to the vehicle's certification label to determine which information applied to that vehicle. This information, which relates to the performance characteristics of the vehicle, is required to be made available to purchasers by 49 CFR 575.6(a). Currently, if the document containing this information also contains information relating to other vehicles, the document itself must clearly indicate which information is applicable to the vehicle purchased. The NHTSA proposal was made in response to a petition from the General Motors Corporation which suggested that the proposed alternative procedure would for some companies be a more efficient and less costly method of accomplishing the purposes of the regulation.

Comments in support of the proposal were received from General Motors Corporation, American Motors Corporation, Chrysler Corporation and Ford Motor Company. No comments in opposition were received.

Based on the petition of General Motors and the comments concerning the notice of proposed rulemaking, the NHTSA concludes that allowing an alternative method of designating the appropriate consumer information tables would reduce the possibility of error and lessen the cost to the manufacturer.

In consideration of the foregoing, Parts 567 and 575 of Title 49, Code of Federal Regulations, are amended. . . .

Effective date: April 1, 1976. Because the procedures established herein are optional and impose no increased burden on any party, it is found for good cause shown that an immediate effective date is in the public interest.

(Sec. 103, 112, 114, 119, Pub. L. 80–563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1403, 1407); delegation of authority at 49 CFR 1.50.)

Issued on: March 26, 1976.

James B. Gregory
Administrator

41 F.R. 13923
April 1, 1976

PREAMBLE TO AMENDMENT TO PART 567—CERTIFICATION

(Docket No. 71–19; Notice 4)

This notice delays the effective dates of certain requirements of Standard No. 120, Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars, and of the conforming amendment to 49 CFR Part 567, Certification, that was issued along with the standard. Its purpose is to permit manufacturers to avoid the burden of preparation for compliance with requirements that the NHTSA has determined should be amended. There is no delay, however, in the standard's basic tire and rim selection requirements, which become effective September 1, 1976.

Standard No. 120 (49 CFR § 571.120) was issued on January 19, 1976 (41 FR 3478; January 23, 1976; Notice 3). It specifies requirements for tire and rim selection, rim marking, and the provision of tire and rim information on vehicle certification labels. Part 567, the certification regulation, was amended in the same Federal Register notice, to accommodate the additional labeling.

Manufacturers are expected to begin preparations for compliance with a standard at the time a final rulemaking notice is issued. Lead times are established in accordance with this expectation, despite the possibility of future amendments. Fifteen petitions for reconsideration of Standard No. 120 have been received. From the petitions and other information available to this agency, the NHTSA has determined that certain provisions of the standard should be amended. However, the agency finds it impracticable to respond to the petitions by May 24, 1976, the date by which a response would be expected under its policy regarding such responses (49 CFR Part 553, Appendix). The agency plans to respond to the petitions not later than July 1, 1976. Without a delay of certain effective dates, manufacturers would be forced to make preparation for compliance with requirements that will, in all likelihood, be changed.

Accordingly, this notice changes from September 1, 1976, to September 1, 1977, the effective date of the requirement, found in S5.3, that certain information appear on a vehicle's certification label. The effective date of the conforming amendment to Part 567, *Certification*, is similarly changed to September 1, 1977. The effective date of S5.2, *Rim Marking*, is changed from August 1, 1976, to August 1, 1977. The date by which vehicles must be equipped with rims that are marked in accordance with the standard, which is presently specified in S5.1.1 as March 1, 1977, is changed to September 1, 1979. The NHTSA is considering the possibility of eliminating this requirement entirely, to simplify the phase-in of properly marked rims as they become available.

Manufacturers should note that, apart from the changed effective date for the requirement in S5.1.1 that vehicles be equipped with properly marked rims, there is no delay in the September 1, 1976, effective date of the standard's basic requirement, S5.1 (*Tire and Rim Selection*).

The symbol "DOT" is required by S5.2(c) to appear on every non-passenger-car rim manufactured on or after the effective date of the rim marking requirements, as a certification by the manufacturer of the rim that it complies with all applicable Federal motor vehicle safety standards. Several manufacturers have requested permission to begin stamping the symbol on rims that otherwise comply with the standard, before that effective date. In the past, the NHTSA has in similar situations taken the position that such use of the DOT symbol to indicate "anticipatory compliance" would necessarily be a false or misleading certification, because no standard would in fact be in effect at the time of its use.

The agency has determined that a limited relaxation of this principle will not adversely affect its enforcement authority, yet will both foster early compliance with impending requirements and ease manufacturer's difficulties in transition to new production procedures. Accordingly, the NHTSA will not consider the use of the symbol "DOT" on an item of motor vehicle equipment that is not subject to any applicable and effective standard to be "false or misleading" if the following conditions are met: (i) there has, as of the date of manufacture of the item of equipment, been issued as a final rule a Federal motor vehicle safety standard to which the item of equipment would, but for that date's being earlier than the standard's effective date, be subject; and (ii) the item of equipment meets all requirements set out in the standard as most recently published before the date of manufacture of the equipment. The NHTSA will continue to consider other, unauthorized uses of the symbol to be "false or misleading in a material respect" within the meaning of Section 108(a)-(1)(C) of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1398(a)(1)(C)).

This interpretation will permit the requested stamping that is discussed above. It will not permit the restamping, requested by several manufacturers, of previously manufactured rims that are in stock. These latter requests, however, are no longer of practical .significance because of the other actions taken in this notice.

In consideration of the foregoing, the effective date of the amendment to 49 CFR Part 567, *Certification*, that was published on January 23, 1976 (49 FR 3478) is changed from September 1, 1976, to September 1, 1977, and changes are made to 49 CFR § 571.120 (Standard No. 120, *Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars*) . . . .

Effective date: These changes in the text of the Code of Federal Regulations should be made immediately.

(Sec. 103, 112, 114, 119, 201, 202, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1403, 1407, 1421, 1422); delegation of authority at 49 CFR 1.50.)

Issued on April 29, 1976.

Robert L. Carter
Acting Administrator

41 F.R. 18659
May 6, 1976

PREAMBLE TO AMENDMENT TO PART 567—CERTIFICATION

(Docket No. 73–31; Notice 02)

The National Highway Traffic Safety Administration's Certification regulations for motor vehicles are amended to allow gross axle weight ratings to be combined on the certification label in the case of consecutive axles that have identical weight ratings. The amendment results from a suggestion from the Trailmobile Company and reflects the view that a separate listing for each GAWR can cause unnecessarily long certification labels that are more difficult to understand than labels containing combined axle weight ratings.

Dates: Effective date June 20, 1977.

Addresses: Requests for reconsideration should refer to the docket number and be submitted to: Docket Section, Room 5108, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

For further information contact:

Mr. David Fay
Motor Vehicle Programs
National Highway Traffic Safety Administration
Washington, D.C. 20590
(202) 426–2817

Supplementary information: Part 567 of NHTSA regulations (49 CFR Part 567, *Certification*) requires, among other things, a listing of the gross axle weight rating (GAWR) for each axle of the certified vehicle (§§ 567.4(g)(4), 567.5(a)(6)).

A manufacturer of trailers urged that a separate listing for each GAWR can, on many-axled vehicles, cause unnecessarily lengthy certification labels that are more difficult to understand than labels containing combined axle weight ratings. The NHTSA agreed and subsequently proposed an amendment of Part 567 to allow GAWR's to be combined on the certification label for consecutive axles that have identical weight ratings (38 FR 33775, December 7, 1973). Each of the eight comments on the proposal supported the concept of combined GAWR ratings, and the NHTSA makes final the amendment essentially in the form proposed.

In response to a Ford question, the option of combining axle ratings as long as the tire designation is listed does not require that axle-by-axle listings also be accompanied by the tire designation. For clarification, the illustration of combined ratings is titled, "EXAMPLES OF COMBINED RATINGS."

International Harvester pointed out that the incomplete vehicle document provided to assist final-stage manufacturers should also be amended to permit the optional listing of combined GAWR listings. The agency agrees that such parallelism is logically justified and accordingly adds the option to the requirements of § 568.4 of Part 568.

International Harvester's understanding that the new language would permit a set of tandem axles to be listed together as the total value of the two separate GAWR's is incorrect. The agency only proposed a new method for statement of the GAWR, which is a concept applicable only to separate axle systems, not combinations of axle systems. It is noted that neither example appended to the proposed language would have suggested the incorrect understanding advanced by International Harvester.

The agency has also clarified that the new means of stating values is optional, by adding the phrase "at the option of the manufacturer" to the second sentence following the word "may."

In consideration of the foregoing, amendments are made in Chapter V of Title 49, Code of Federal Regulations.

Note—The economic and inflationary impacts of this rulemaking have been evaluated in accordance with OMB Circular A–107, and an Economic Impact Statement is not required.

Because the amendment provides an option and does not create additional obligations for any person, the agency finds that the amendment may become effective immediately.

The program official and lawyer principally responsible for this amendment are David Fay and Tad Herlihy, respectively.

(Sec. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50.)

Issued on June 13, 1977.

Joan Claybrook
Administrator

42 F.R. 31161
June 20, 1977

PREAMBLE TO AMENDMENT TO PART 567—CERTIFICATION

(Docket No. 73–31; Notice 03)

In an amendment of agency regulations on June 20, 1977, an incorrect format was published for the listing of tire information. This notice corrects that error by the replacement of the symbol "x" wherever it occurs, with the symbol "–".

Effective date: July 21, 1977.

For further information contact:

Mr. David Fay
Motor Vehicle Programs
National Highway Traffic Safety Administration
Washington, D.C. 20590
(202) 426–2817

Supplementary information: On June 20, 1977 (42 FR 31161), the NHTSA published an amendment to Part 567, *Certification*, and Part 568, *Vehicles Manufactured in Two or More Stages*, permitting the use of the "all axles" designation on the certification label where tire and rim information is identical for all axles. In that amendment, the agency erroneously listed a tire size example that used the symbol "x" to separate tire width from diameter. Current agency regulations use the symbol "–" instead of "x". The agency by this notice corrects the June 20 notice to reflect current agency practice.

Accordingly, Volume 49 of the Code of Federal Regulations, Part 567.4(g)(4) and 567.5(a)(6) and Part 568.4(a)(5) are corrected by substituting the symbol "–" for the symbol "x" wherever it occurs in the examples listed thereunder.

The principal authors of this notice are David Fay of the Office of Motor Vehicle Programs and Roger Tilton of the Office of Chief Counsel.

(Sec. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50.)

Issued on July 15, 1977.

Robert L. Carter
Associate Administrator
Motor Vehicle Programs

42 F.R. 37371
July 21,1977

PREAMBLE TO AMENDMENT TO PART 567—CERTIFICATION

(Docket No. 75–28; Notice 03)

This notice amends the regulations that specify how a truck manufacturer meets its statutory responsibility to certify compliance of its products with Federal motor vehicle safety standards. Most trucks are constructed in at least two separate stages and these regulations have required the basic "chassis-cab" manufacturer to provide necessary engineering calculations to the subsequent manufacturer that permit him to finish the vehicle and certify compliance. The decision in *Rex Chainbelt v. Brinegar*, 511 F.2d 1215 (7th Cir. 1975) directed the NHTSA to amend this regulation so that both manufacturers certify compliance to the degree their work affects the vehicle.

Date: Effective date July 25, 1977.

Addresses: Petitions for reconsideration should refer to the docket number and be submitted to: Docket Section, Room 5108, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

For further information contact:

David Fay
Motor Vehicle Programs
National Highway Traffic Safety Administration
Washington, D.C. 20590
(202) 426–2817

Supplementary information: This notice amends 49 CFR Part 567, *Certification*, by adding a labeling requirement for chassis-cab manufacturers and modifying the labeling requirements for final stage manufacturers, in accordance with the decision in *Rex Chainbelt, Inc. v. Brinegar*, 511 F.2d 1215 (7th Cir. 1975). Conforming amendments are made to 49 CFR Part 568, *Vehicles Manufactured in Two or More Stages*. Certification labeling requirements for intermediate manufacturers are proposed in a companion notice issued today (Notice 4, 42 FR 378).

The notice is based on a proposal that was published as Notice 1 on October 3, 1975 (40 FR 45847). Seventeen comments were received in response to the proposal. The amendments are adopted essentially as proposed. The major change is that the list of permissible locations for the required certification labels has been extended to include the inward-facing surface of the driver's door, in order to accommodate the larger sizes of labels that can now be expected. Any submitted suggestions for changes that are not specifically mentioned herein are declined for action or proposal at this time, on the basis of all the information presently available to the agency.

The existing scheme for the certification of multistage vehicles is found in Parts 567 and 568 of Title 49, Code of Federal Regulations. Briefly, it requires a final-stage manufacturer to certify that his completed vehicle complies with all applicable Federal motor vehicle safety standards, on the basis of (i) the work he has performed and (ii) the information concerning the incomplete vehicle's conformity status with respect to each standard, found in a document (the "Part 568 document") supplied by those who have previously performed work on the incomplete vehicle. This scheme is more fully described in the notice of proposed rulemaking at 40 FR 45847.

Petitioners in the *Rex Chainbelt* case attacked the validity of the scheme as it applied to a company mounting cement mixers on chassis-cabs. The U.S. Court of Appeals for the Seventh Circuit, in its first opinion in this case, invalidated the scheme to the extent that it required a final-stage manufacturer who builds on a chassis-cab to make the "sole certification of compliance of the entire vehicle." *Rex Chainbelt, Inc. v. Volpe*, 486 F.2d 757, 761–762 (7th Cir. 1973).

In its last opinion, the Court restated its holding as meaning that "in instances where the customer purchases a chassis-cab from its manufacturer and thereafter the mixer from the mixer manufacturer, the 'entire vehicle' must be certified via two certifications, with the chassis-cab manufacturer certifying its chassis-cab, and with the mixer manufacturer certifying its mixer and the effect of the mounting, if any, to thus obtain effective certification of the 'entire vehicle.'" *Rex Chainbelt, Inc. v. Brinegar*, 511 F.2d 1215, 1216 (7th Cir. 1975).

Parts 567 and 568 are amended today to conform to this decision. The basic change in Part 567 is to require the manufacturer of a chassis-cab to affix a certification label to his incomplete vehicle, certifying its conformity status with respect to each standard that will be applicable to the vehicle as completed. He will divide the standards into three categories, according to the degrees to which conformity with them is approached in his product, and certify essentially the same facts about them as have merely, up to now, been required to be indicated in the Part 568 document. The final stage manufacturer who uses the chassis-cab will then make a three-part certification statement (to the extent that the three parts are applicable), corresponding to the three statements made by the chassis-cab manufacturer.

More specifically, in the first category on its label, the chassis-cab manufacturer will state, "This chassis-cab conforms to Federal Motor Vehicle Safety Standard Nos. _____ _____," listing the numbers of the standards for which the statement is correct. In the corresponding first category on its label, the final-stage manufacturer will state, "Conformity of the chassis-cab to Federal Motor Vehicle Safety Standard Nos. _____ has not been affected by final-stage manufacturer." This couplet conforms precisely to the mandate of the Court that the chassis-cab manufacturer certify its chassis-cab, and the final-stage manufacturer certify as to the "effect" of its work. It is not necessary for all the standards that were placed in the first category by the chassis-cab manufacturer to be similarly included by the final-stage manufacturer in *his* first category. The latter manufacturer is free to "affect" the manner in which the completed vehicle conforms to any such standards, e.g., by removing and replacing mirrors or lights, as long as he ultimately certifies in his third (final) statement conformity to those affected standards. In the extreme case, if the final-stage manufacturer wishes to exclude all of the standards from the first category, he may omit this statement altogether.

The second category of standards, those that are necessarily strongly affected by what both the chassis-cab and final-stage manufacturers do, is the main target of the regulatory scheme. In its second statement the chassis-cab manufacturer will certify, "This vehicle will conform to Standard Nos. _____ if it is completed in accordance with the instructions contained in the incomplete vehicle document furnished pursuant to 49 CFR Part 568." The final-stage manufacturer's corresponding statement will be, "With respect to Standard Nos. _____, the vehicle has been completed in accordance with the chassis-cab manufacturer's instructions." This statement also conforms to the Court's opinion, although the treatment of this category cannot be as simple. The final-stage manufacturer, in considering a standard such as the one on air brakes that its work must crucially "affect," will thus have a choice. He may conform his completion work to the instructions of the chassis-cab manufacturer, in which case he need only make a statement to that effect, thereby throwing the burden of conformity onto the chassis-cab manufacturer. Or, he may deviate from those instructions, in which case the second statement becomes inapplicable as far as that standard is concerned, and instead include the standard in the residual third statement. Thus, the final-stage manufacturer will describe the "effect of [his] mounting, if any" either by saying he had remained within the Part 568 document's limits, thereby actuating the chassis-cab manufacturer's certification, or by making an original certification of conformity. Again, if the final-stage manufacturer chooses to omit all standards from this second category, the second statement may be omitted.

The third statement by the chassis-cab manufacturer will be, "Conformity to the other safety standards applicable to this vehicle when completed is not substantially affected by the design of the chassis-cab." The expression "substan-

tially affected" replaces "substantially determined," which appeared in the notice of proposed rulemaking, in order to clarify the meaning of this third statement. This subject is discussed further below. The third statement by the final-stage manufacturer will be, "This vehicle conforms to all other applicable Federal Motor Vehicle Safety Standards in effect in [month, year]." Obviously, conformity to standards concerning which the chassis-cab manufacturer makes no representation whatever, or to those where the final-stage manufacturer chooses not to follow the chassis-cab manufacturer's instructions, must be assumed by the final-stage manufacturer. The regulation provides that where the first two statements are omitted, the word "other" be omitted from the third statement. In this form it covers both the cases where the final-stage manufacturer chooses not to follow the chassis-cab manufacturer's instructions concerning any standards, and the cases involving incomplete vehicles other than chassis-cabs, to which the dual-certification scheme is inapplicable. Finally, it covers the cases where the final-stage manufacturer considers the simple conformity statement to adequately represent his rights and duties.

The Motor Vehicle Manufacturers Association (MVMA) and several chassis manufacturers objected to the chassis-cab manufacturer's type (1) certification, "[t]his chassis-cab conforms to Federal Motor Vehicle Safety Standard Nos. _____" on several grounds. The essence of these objections was that such a certification would be both misleading and beyond the statutory authority of the NHTSA to require, because there are no standards applicable to chassis-cabs. These commenters have referred to Section 114 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1391 *et seq.*) (the Act), which requires certification that each "[motor] vehicle or item of motor vehicle equipment conforms to all applicable Federal motor vehicle safety standards." They have correctly pointed out that a chassis-cab, because it is an incomplete vehicle, is not a "motor vehicle" as that term is defined in Section 102(3) of the Act. A chassis-cab is an item of "motor vehicle equipment," as that term is defined in Section 102(4). While Federal motor vehicle safety standards have been issued for certain types of motor vehicle equipment, e.g., tires and motorcycle helmets, no such standards have been issued for chassis-cabs or other incomplete vehicles. The NHTSA agrees that the chassis-cab manufacturer's type (1) certification specified in the rule adopted today is therefore not the certification that is explicitly required by Section 114 of the Act. Even so, the NHTSA considers the former certification to be meaningful and appropriate as part of a scheme for ensuring the full certification of completed motor vehicles by the proper manufacturing parties. Conformity of a physical object (in this case, a chassis-cab) to a safety standard is a concept distinct from that standard's legal applicability to the object. For example, a chassis-cab is not statutorily required to conform to Standard No. 101, *Control Location, Identification, and Illumination*, because chassis-cabs are not listed in *S3. Application* of that standard. Nevertheless, a chassis-cab that does in fact meet the substantive requirements of the standard is accurately described as "conforming" to it.

The NHTSA does not consider the type (1) certification to be misleading provided that it is factually accurate. Any intimation to the reader of such a statement that the safety standards enumerated in it are applicable to the chassis-cab is outweighed by the need for full certification of completed motor vehicles. An untrue type (1) statement, of course, would be considered a noncompliance with 49 CFR Part 567.

Ford Motor Company has suggested that, through the new certification scheme, the NHTSA seeks to impose safety standards on chassis-cabs indirectly—without a statutorily required consideration of whether they are "reasonable, practicable, or appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which [they are] prescribed." This characterization of the new scheme is incorrect. With the three part certification statement, the chassis-cab manufacturer is merely certifying his product's *status* of conformity with respect to each of the safety standards that apply to the completed vehicle. The only standards to which a chassis-cab must actually conform are those that

he has placed in the first category, and he is free to leave that category empty by including all the standards in the succeeding two.

Indeed, the NHTSA has specifically rejected the concept, urged by Ford and others, of Federal motor vehicle safety standards that apply to chassis-cabs. It is the completed motor vehicle with which the NHTSA is most concerned, because that is what is driven on the public highways. The performance capabilities of a chassis-cab affect motor vehicle safety only through their effect on the performance of the vehicle into which the chassis-cab is completed. The consequent inappropriateness of standards applicable to chassis-cabs was discussed fully in the notice of proposed rulemaking.

The MVMA and several chassis manufacturers also objected to the second type of chassis-cab certification—that the chassis-cab will conform to enumerated standards if it is completed in accordance with the instructions found in the incomplete vehicle document. These commenters argued that such a certification statement would require the chassis-cab manufacturer to anticipate conduct over which he has no control. Because conditions on subsequent manufacturing are contained *within* a chassis-cab manufacturer's type (2) certification statement, however, the statement's truth or falsehood is established at the time of chassis-cab manufacture. The work that is actually performed on a chassis-cab following such a certification has no bearing on that truth or falsehood. These objections are thus without foundation. The chassis-cab manufacturer is protected against the wide variety of possible methods of completion over which the NHTSA readily agrees he has no control.

In a similar vein, the MVMA suggested that the chassis-cab certification statements would be susceptible to amendments made to the standards between the time of manufacture of the chassis-cab and the completion of the vehicle, and would thus be unacceptably open-ended. The MVMA is mistaken. The NHTSA interprets all the statements on the chassis-cab manufacturer's label as made with respect to the Federal motor vehicle safety standards in effect at the time of manufacture of the chassis-cab, as that time is indicated on the label.

As noted in the notice of proposed rulemaking, there is a factual limitation on the chassis-cab manufacturer's use of the third type of certification. Where the chassis design is an important determinant of a vehicle's ability to conform to a given standard, it is incorrect to state (whether on a certification label or in a Part 568 document) that conformity to that standard is "not substantially determined by the design of the chassis-cab." Ford and General Motors objected to this position, arguing that where the work of the final-stage manufacturer substantially determines conformity, the design of the chassis-cab must of necessity *not* substantially determine conformity. The NHTSA rejects these objections. It is possible for a completed vehicle's conformity to a standard to be substantially determined by *both* the design of the chassis-cab and the manner of completion by the final-stage manufacturer. Indeed, this is often the case with the braking standards and the fuel system integrity standard, among others. To more precisely characterize the agency's intention and to eliminate further confusion on this subject, the expression "substantially determined" in the chassis-cab manufacturers' type (3) certification is replaced by "substantially affected". In addition, an interpretive amendment is made to the description in Part 568 of the incomplete vehicle document, to effect the same substitution.

Rexnord, Inc. (formerly Rex Chainbelt) argued that the proposed certification scheme would not comply with the *Rex Chainbelt* holding because it would require "that the Final Mfr. certify the Chassis Mfr.'s materials, workmanship and design in some situations." The situations referred to are those in which a final-stage manufacturer affects the manner of conformity to a standard to which the chassis-cab has been certified in category (1) or departs from the completion instructions for a standard respecting which the chassis-cab has been certified in category (2). Rexnord objects to the requirement that, in these situations, the final-stage manufacturer "unconditionally" certify the completed vehicle in category (3), on the ground that he should be able to "preserve so much of the prior certification as he has a right to rely on" despite his departure from the anticipated manner of completion.

The infinite number of modifications that can be made by a final-stage manufacturer in departing from the incomplete-vehicle manufacturer's disposition make "preservation" of the remnants of a prior certification extremely difficult under the general allocation provisions of Part 567. For this reason, the final-stage manufacturer must rely on the requirement that the chassis-cab manufacturer's certification is permanently affixed to the vehicle and thereby "preserves" that portion of the prior certification that can continue to be relied upon.

Rexnord also argued that the completion instructions supplied by chassis-cab manufacturers are often unreasonably restrictive. It urged that a new regulation be established to require those manufacturers to test and certify various "approved modifications" of their chassis-cabs. The NHTSA considers such an approach to be as unwise as the establishment of chassis-cab standards. While there may be many instances in which the chassis manufacturer is in a better position than the final-stage manufacturer to take responsibility for the safety of a modification to the chassis, the variety of manufacturing situations militates against government interference with the freedom of manufacturers to allocate responsibility among themselves as they find it most appropriate.

In response to Rexnord's suggestion, the rule specifies that the name of the chassis-cab manufacturer be preceded on the label affixed by him by the words "CHASSIS-CAB MANUFACTURED BY" or "CHASSIS-CAB MFD BY". Omission of these words from the proposed rule was an oversight. The additional suggestion that the final-stage manufacturer's name be preceded on his label by "FINAL STAGE MANUFACTURE BY" (or an abbreviation) rather than "MANUFACTURED BY" (or an abbreviation), however, is not adopted. Even though the latter designation may oversimplify the final-stage manufacturer's status, such a characterization is necessitated by the Act. In any event, the intimation that he is responsible for the entire vehicle is negated by the accompanying identification of the chassis-cab manufacturer.

The NHTSA declines the suggestion of Mack Trucks that Gross Vehicle and Gross Axle Weight Ratings be required, or at least permitted as an option, to appear on the chassis-cab label. There is great potential for user confusion if chassis-cab and final-stage manufacturers' labels indicate different weight ratings. The need to avoid this confusion outweighs an interest in placarding weight ratings other than those of the completed vehicle. Therefore, Rexnord's request—that the final stage manufacturer who does not depart from a chassis-cab manufacturer's weight ratings be permitted to refrain from "restating" those ratings—cannot be granted.

The Recreation Vehicle Industry Association (RVIA) suggested a change in the definition of "chassis-cab" to include certain incomplete vehicles that are completed as motor homes. These "chopped vans" and "Type C" motor home chassis, however, appear to lack the prerequisite completed occupant compartments of the proposed definition. Because completeness of the occupant compartment is what sets chassis-cabs apart from other incomplete vehicles, the RVIA suggestion is declined. Accordingly, the definition is adopted as proposed. For convenience, it is located in § 567.3 rather than the definitions section of Part 571 of this title. Manufacturers are reminded that Part 568 continues to require the provision of a document with every incomplete vehicle, regardless of whether the incomplete vehicle, by virtue of being a chassis-cab, is also required by the rule issued today to be certified.

The new chassis-cab certification requirements will take effect in one year. This is longer than all the lead times requested by commenters. It provides ample time for chassis-cab manufacturers to prepare for compliance. It also enables the NHTSA to evaluate the comments and take final action on the accompanying proposal to add certification requirements for intermediate manufacturers with sufficient lead time remaining for those manufacturers.

In consideration of the foregoing, the amendments are made in Chapter V of Title 49, Code of Federal Regulations.

Effective dates: Part 567: All changes to the text of the Code of Federal Regulations should be made immediately, to minimize confusion resulting from changes in the designation of para-

graphs. The chassis-cab labeling requirements are effective as indicated in § 567.5(a). Findings: Because § 567.5(c) allows an alternative means of compliance with requirements previously set out in § 567.5(a) and creates no additional burden, the National Highway Traffic Safety Administration finds that an immediate effective date is in the public interest. Paragraphs (d) through (f) of § 567.5 are simply the prior paragraphs (b) through (d) transposed, with corrected cross-references. Because the amendment to § 567.4(c) also allows an alternative means of compliance and creates no additional burden, the NHTSA finds that an immediate effective date for this amendment is also in the public interest. Similarly, the addition of a definition to § 567.3 creates no additional burden.

Part 568: These amendments are effective immediately. The amendment to § 568.4(a)(7) is interpretive in nature. Because the amendments to §§ 568.6 and 568.7 relieve restrictions and create no additional burdens, the NHTSA finds that an immediate effective date for them is also in the public interest.

The principal program official and lawyer responsible for preparation of this rulemaking document are David Fay and Mark Schwimmer, respectively.

(Sec. 103, 108, 112, 114, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1397, 1401, 1403, 1407); delegation of authority at 49 CFR 1.50.)

Issued on July 8, 1977.

Joan Claybrook
Administrator

42 F.R. 37814
July 25, 1977

PREAMBLE TO AMENDMENT TO PART 567—CERTIFICATION OF MULTISTAGE VEHICLES

(Docket No. 75–28; Notice 51)

Agency: National Highway Traffic Safety Administration, DOT.

Action: Correction.

Summary: In an amendment of the agency's certification regulations published July 25, 1977, an incorrect format was established for the listing of tire information. This notice corrects that error and another minor error in the wording of the regulation.

Effective date: September 19, 1977.

For further information contact:

Mr. David Fay, Motor Vehicle Programs, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202–426–2817)

Supplementary information: On July 25, 1977 (42 FR 37814), the NHTSA published an amendment of Part 567, *Certification*, and Part 568, *Vehicles Manufactured in Two or More Stages*, which prescribed regulations for vehicle certification. In that amendment, the agency erroneously listed a tire size example that used the symbol "x" to separate the tire width from diameter. Current agency regulations use the symbol "–" instead of "x". Accordingly, Part 567.5(c)(6) of Title 49 of the Code of Federal Regulations is corrected by the substitution of the symbol "–" for the symbol "x" wherever it occurs in the example listed thereunder.

The second sentence in Part 567.5(c)(7)(ii) is corrected to read: "The statement shall be completed by inserting the numbers of all or less than all of the standards, and only those standards, to which the chassis-cab manufacturer has made the conditional certification under paragraph (a)(2) of this section."

The principal author of this document is Roger Tilton of the Office of Chief Counsel.

(Secs. 103, 108, 112, 114, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1397, 1401, 1403, 1407); delegations of authority at 49 CFR 1.50 and 501.8.)

Issued on September 14, 1977.

Robert L. Carter
Associate Administrator
Motor Vehicle Programs

42 F.R. 46927
September 19, 1977

PREAMBLE TO AMENDMENT TO PART 567—CERTIFICATION AND PART 568—VEHICLES MANUFACTURED IN TWO OR MORE STAGES

(Docket No. 75; Notice 5)

Agency: National Highway Traffic Safety Administration, DOT.

Action: Final Rule.

Summary: This amendment specifies the manner in which intermediate stage manufacturers of trucks must certify compliance with Federal motor vehicle safety standards. Some vehicles are constructed in three or more separate stages. Current regulations require only that the first and final manufacturers certify compliance to the degree that their work affects the vehicle. This amendment includes the "intermediate stage" manufacturer in the certification scheme and completes revisions of the regulations required by *Rex Chainbelt v. Brinegar*, 511 F.2d 1215 (7th Cir. 1975).

Effective date: July 2, 1978.

For further information contact:

David Fay, Engineering Systems Staff, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202–426–2817).

Supplementary information: This notice amends 49 CFR Part 567, *Certification*, to add a labeling requirement for intermediate manufacturers who perform work on chassis-cabs. Conforming amendments to 49 CFR Part 568, *Vehicles Manufactured in Two or More Stages*, are also made.

On July 25, 1977, the NHTSA published in the *Federal Register* (42 FR 37831) a notice proposing to amend the agency's certification regulations by adding certification responsibilities for intermediate manufacturers. That action was responsive to the decision in *Rex Chainbelt*. Currently, intermediate manufacturers are the only major manufacturers in the chain of multistage manufacturing without certification responsibilities. To complete the certification scheme, the agency proposed to require certification by intermediate manufacturers which would indicate that such manufacturer had complied with all of the safety standards applicable to his manufacturing operation. A complete explanation of the intermediate manufacturer's certification responsibilities was printed in the notice proposing the amendment and will not be reprinted here.

No comments were received in response to the notice of proposed rulemaking. Accordingly, the agency adopts, as final, the proposal as it was issued. The agency has reviewed the costs of this regulation and concludes that they are the minimum necessary for compliance with the *Rex Chainbelt* decision.

The principal authors of this notice are David Fay of the Engineering Systems Staff and Roger Tilton of the Office of Chief Counsel.

In consideration of the foregoing, Chapter V of Title 49, Code of Federal Regulations, is amended. . . .

(Secs. 103, 108, 112, 114, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1397, 1401, 1403, 1407); delegation of authority at 49 CFR 1.50.)

Issued on March 1, 1978.

Joan Claybrook
Administrator

43 F.R. 9604
March 9, 1978

PREAMBLE TO PART 567—CERTIFICATION BUMPER STANDARD

(Docket No. 73–19; Notice 24)

Agency: National Highway Traffic Safety Administration, (NHTSA).

Action: Final Rule.

Summary: This notice amends the method by which manufacturers are required to certify compliance with applicable Federal safety standards to require, in the case of passenger cars, simultaneous certification of compliance with Federal bumper standards.

Effective date: May 22, 1978.

For further information contact:

Mr. David Fay, Engineering Systems Staff, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202–426–2817).

Supplementary information: On March 6, 1978, the NHTSA published a notice (43 FR 9167) proposing to amend 49 CFR Part 567, *Certification*, to implement § 105(c) of the Motor Vehicle Information and Cost Savings Act (the Act) (15 U.S.C. § 1901, et seq.), which requires certification of compliance with applicable bumper standards. The agency proposed that the manufacturer or distributor of a passenger car furnish to the distributor or dealer at the time of delivery, a single certification of compliance with all applicable safety and bumper standards. The proposal fulfilled the statutory labeling requirements and avoided the cost and inconvenience of requiring a separate bumper certification label, by simply supplementing the existing requirements of Part 567 for certification to applicable safety standards.

No unfavorable comments were received on the concept of allowing a single certification label for both safety and bumper requirements. One commenter suggested that the agency also encompass the fuel economy standards of Title V of the Act within the certification requirement of Part 567. However, Title V imposes average fuel economy requirements on manufacturer's fleets as a whole rather than on individual vehicles, making fuel economy certification labels inappropriate.

General Motors suggested allowing the label applicable to passenger cars to be used, at the manufacturer's option, on non-passenger vehicles as well, maintaining that use of two different labels could lead to control problems and increased costs. The same statement that the vehicle meets "all applicable safety and bumper standards" could technically be used on non-passenger vehicles because no bumper standards are "applicable" to this vehicle type. The agency declines to adopt General Motors' proposal, however, because consumers may be misled by such a statement into assuming that non-passenger vehicles also meet a bumper performance standard.

Several manufacturers pointed out that the proposed immediate effective date for the change would not allow sufficient lead time for preparation and printing of certification labels. To avoid difficulty in phasing in the new certification labels, the amendment has been modified to allow conversion to the new label at any time prior to September 1, 1978. This change is consistent with the provision of § 571.215 which permits the manufacture of Part 581 bumpers prior to September 1, 1978, and will not be misleading since all vehicles bearing the new label will in fact comply with either the Standard 215 or Part 581 bumper requirements.

The principal author of this notice is Richard Hipolit, Office of Chief Counsel.

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); secs. 102, 105, Pub. L. 92–513, 86 Stat. 947 (15 U.S.C. 1912, 1915); delegation of authority at 49 CFR 1.50.)

Issued on May 15, 1978.

Joan Claybrook
Administrator

43 F.R. 21890
May 22, 1978

PREAMBLE TO AN AMENDMENT TO PART 567

Certification

Docket No. 83-15; Notice 1

ACTION: Final rule; correction.

SUMMARY: This notice amends a reference in NHTSA's motor vehicle certification regulations to a paragraph in the joint motor vehicle importation regulation of the Departments of Treasury and Transportation. The joint regulation was renumbered without a corresponding change having been made to the reference in NHTSA's certification regulations.

EFFECTIVE DATE: October 17, 1983.

SUPPLEMENTARY INFORMATION: 49 CFR Part 567, Certification, implements the statutory requirement of 15 U.S.C. 1403 for certification of compliance with applicable Federal motor vehicle safety standards. Under 49 CFR 567.2(b), as currently written:

"(b) In the case of imported motor vehicles, the requirement of affixing a label or tag applies to importers of vehicles admitted to the United States under Sec. 12.80(b)(2) of the joint regulations for importation of motor vehicles and equipment (19 CFR 12.80(b)(1)) to which the required label or tag is not affixed."

The joint regulations referred to are those of the Department of Transportation and Department of the Treasury on importation of vehicles and equipment subject the Federal motor vehicle safety standards. At the time the joint certification regulation was promulgated (36 FR 7056, April 14, 1971), these regulations provided for unconditional entry of vehicles certified as meeting Federal requirements (19 CFR 12.80(b)(1)) and conditional entry for non-certified vehicles (19 CFR 12.80(b)(2)). On December 14, 1978, the joint importation regulations were amended (43 FR 56655) and certain paragraphs were revised and renumbered. The principal change was to make all entries conditional (the minimum condition, however, for manufacturer-certified vehicles being a simple declaration of conformance). The distinctions between the former 12.80(b)(1) and (b)(2) disappeared and 12.80(b)(2) became (b)(1) in the revision. However, no corresponding correction of reference has been made in Part 567 until now. The current section 12.80(b)(2) in the joint regulations refers to the conditions for on-road use of vehicles imported for experimental purposes, a category of temporary use for which certification is not required.

This amendment is not a major action within the meaning of Executive Order 12291 and is not a significant action under the Department's regulatory policies and procedures, since it makes no substantive change in existing certification requirements. For that same reason, I hereby certify that this amendment will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing, subsection (b) to Section 567.2 of Title 49 Code of Federal Regulations is hereby amended to read:

"(b) In the case of imported motor vehicles, the requirement of affixing a label or tag applies to importers of vehicles admitted to the United States under 19 CFR 12.80(b)(1) to which the required label or tag is not affixed."

Issued on October 7, 1983.

Diane K. Steed
Deputy Administator

48 FR 46994
October 17, 1983

PREAMBLE TO AN AMENDMENT TO PART 567

Certification Requirements
(Docket No. 83-02; Notice 2)

ACTION: Final rule.

SUMMARY: This notice amends NHTSA's safety certification regulations to permit the use of a simplified certification label by final-stage manufacturers of trucks manufactured in two or more stages. This action is being taken in response to a petition by the National Truck Equipment Association (NTEA), and is intended to reduce the administrative burdens imposed on final-stage manufacturers by the certification requirements.

DATES: This amendment is effective on November 8, 1983.

SUPPLEMENTARY INFORMATION: Section 114 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1403) requires each motor vehicle manufacturer to affix to each vehicle it produces a label certifying that the vehicle complies with all applicable Federal motor vehicle safety standards. NHTSA has promulgated regulations specifying the content and location of the required label. See 49 CFR Part 567.

In the case of motor vehicles that are manufactured in two or more stages, chassis-cab manufacturers and intermediate manufacturers who work with chassis cabs are also required to attach labels to their vehicles indicating the extent to which each has assisted in assuring the compliance of the vehicles with the safety standards. The requirements for labeling for the chassis-cab and intermediate manufacturers arose from the court decision in *Rex Chainbelt v. Brinegar*, 511 F. 2d 1215 (7th Cir. 1975), in which the court indicated that all manufacturers involved in the manufacturing process should certify compliance to the degree their work affects the vehicle. Prior to that decision, only the final-stage manufacturer certified the compliance of a multi-stage vehicle.

Part 567 requires chassis-cab, intermediate, and final-stage manufacturers to list those standards for which compliance is being certified on each vehicle's certification label. Final-stage manufacturers can avoid this time-consuming listing of standards by electing to use an abbreviated certification statement that simply indicates that their vehicles comply with all applicable motor vehicle safety standards. However, few final-stage manufacturers make this statement, because they fear potential product liability from making such a broad representation on the certification label. They fear that the statement could be construed as an assumption of responsibility for manufacturing steps conducted entirely by other companies.

On August 17, 1982, NTEA petitioned the agency to amend the labeling requirements for final-stage manufacturers to further simplify the label. NTEA pointed out that in most cases the final-stage manufacturer does not affect compliance with the standards that have been previously certified by the chassis-cab or intermediate vehicle manufacturer. Also, in most cases, they complete the vehicle in accordance with the instructions in the incomplete vehicle document supplied by the previous manufacturer. In these cases, the NTEA argued, the label could be generalized in such a manner that reference to specific standards could be completely deleted, with the final-stage manufacturer only certifying compliance with standards other than those certified by prior manufacturers. This would permit the development of a form label that would not require the time-consuming addition of significant amounts of specialized information by the final-stage manufacturer. This could reduce the burden of certifying for these manufacturers.

The NTEA recommended also that use of the existing, more complex label be retained as an option that can be used by any final-stage manufacturer. Under NTEA recommendations, the detailed label

would be used by those final-stage manufacturers who do not follow the instructions in the incomplete vehicle documents or who affect the compliance of standards that were previously certified by the chassis-cab or intermediate vehicle manufacturers.

On February 13, 1983, NHTSA published a notice granting the NTEA petition and proposing to amend the certification regulations in accordance with NTEA's request. See 48 FR 6565. Based on a review of the comments received concerning that notice and the agency's further consideration of the NTEA petition, the agency is adopting the proposed amendments without change.

Only two commenters recommended changes in the agency's proposal, one opposing the amendment and the other supporting it but suggesting that it be expanded. The National LP-Gas Association opposed the amendment on the basis that requiring final-stage manufacturers to list the standards for which they are certifying compliance assures that those manufacturers have at least some familiarity with those standards. They argue that for manufacturers who are familiar with the standards, the more detailed certification statement imposes no significant burden. The NLPGA feels that the proposed amendment will therefore only aid those final-stage manufacturers who are not concerned about compliance with safety standards.

The agency recognizes that the NLPGA argument has some merit. However, even without this amendment, final-stage manufacturers could certify compliance with all standards without listing the standards by number, by using the abbreviated label. This amendment only clarifies the existing provision by allowing a statement that the final-stage manufacturer is only certifying compliance with standards other than those certified by the chassis-cab manufacturer or the intermediate manufacturer. The agency believes that this clarification is implicit in the existing abbreviated certification option, in any case. Further, the listing of standards by number does not by itself assure any significant degree of familiarity with the standards.

Motor Truck Distributors, Inc., recommended a further simplification of the certification requirements by permitting final-stage manufacturers to eliminate gross vehicle weight rating and gross axle weight rating information from their certification labels if the work they perform does not alter the existing ratings of the chassis manufacturer. However, the current regulations do not require chassis-cab manufacturers to list this weight rating information on their certification labels. Thus, adopting the MTD recommendation could result in situations in which those ratings would not appear anywhere on the vehicle. If the agency were to amend its requirements for chassis-cab manufacturers to specify that those manufacturers must list the weight rating information on their certification labels, conflicting rating values would appear on vehicles whose ratings were modified by either intermediate or final-stage manufacturers. These differing weight ratings could cause confusion for truck operators. Therefore, the agency is not adopting this recommendation.

The agency has determined there is good cause to make this amendment effective upon publication since it "relieves a restriction" within the meaning of 5 U.S.C. 553 (d). Manufacturers may continue to use their existing labels or choose to change to the new system. Accordingly, no adverse economic consequences will result from an immediate effective date.

Executive Order 12291

The agency has evaluated the economic and other effects of this amendment and has determined that it is not major as defined by Executive Order 12291 nor significant as defined by the Department of Transportation's regulatory policies and procedures. The amendment simply allows a shortened certification technique for final-stage manufacturers, but permits them to continue to certify in the same manner that they certify at present if they choose. The only economic result of this amendment might be a slight reduction in the cost of certification for those entities that choose the new certification format. Because the economic and other impacts of this rule are so minimal, a full regulatory evaluation is not being prepared.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, the agency has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendment will not have a significant economic impact on a substantial number of small en-

tities. Accordingly, no regulatory flexibility analysis has been prepared.

While many of the final-stage manufacturers that will be affected by this amendment are considered small entities as defined by the Regulatory Flexibility Act, the effect on them, if any, would be negligible. The amendment would not impose any additional costs and might in fact slightly reduce costs for them. Most important, the amendment will potentially reduce confusion and complexity in the certification of their vehicles. Since the cost effects on manufacturers are minimal, the effects on vehicle prices, and thus on small organizations and governmental units that might purchase new multistage vehicles, are also negligible.

National Environmental Policy Act

The agency has also analyzed this amendment for the purposes of the National Environmental Policy Act. The agency has determined that the amendments to Part 567 will not have any significant effect on the quality of the human environment.

List of Subjects in 49 CFR 567:

Labeling, motor vehicle safety, motor vehicles, rubber and rubber products, reporting requirements.

In accordance with the foregoing, 49 CFR 567.5(c)(7) is revised to read as follows:

§ 567.5(c)(7).

(7) One of the following statements as appropriate. Statements (i), (ii), and (iii) are alternative certification statements. Statement (i) may be used by manufacturers meeting the requirements described in the instruction portion of that paragraph. Statements (ii) and (iii) may be used by any final-stage manufacturer.

(i) "Conformity of the chassis-cab to Federal Motor Vehicle Safety Standards, which have been previously fully certified by the incomplete vehicle manufacturer or intermediate vehicle manufacturer, has not been affected by final-stage manufacture. The vehicle has been completed in accordance with the prior manufacturer's instructions, where applicable. This vehicle conforms to all other applicable Federal Motor Vehicle Safety Standards in effect in (month, year)."

The preceding statement shall be used only in cases in which the final-stage manufacturer has: (A) not affected conformity to standards compliance which has been fully certified by a chassis-cab manufacturer pursuant to paragraph (a)(1) of this section or by an intermediate manufacturer pursuant to paragraphs (b)(1)(i) or (b)(1)(ii) of this section, and (B) has completed the vehicle in accordance with the prior manufacturer's instructions in regard to standards listed, as appropriate, in a chassis-cab manufacturer's conditional statement under paragraph (a)(2) of this section or in an intermediate manufacturer's conditional statement under paragraph (b)(2) of this section. The date shown in the third sentence of the statement shall be not earlier than the manufacturing date of the incomplete vehicle, and not later than the date of completion of final-stage manufacture.

(ii) "Conformity of the chassis-cab to Federal Motor Vehicle Safety Standards Nos. _____ has not been affected by final stage manufacture. With respect to Standards Nos. _____, the vehicle has been completed in accordance with the prior manufacturer's instructions. This vehicle conforms to all other applicable Federal Motor Vehicle Safety Standards in effect in (month, year)."

The first sentence of the preceding statement shall be completed by inserting the numbers of all or less than all the standards, and only those standards, respecting which the latest prior certification statement was made by a chassis-cab manufacturer pursuant to paragraph (a)(1) of this section or by an intermediate manufacturer pursuant to paragraphs (b)(1)(i) or (b)(1)(ii) of this section. The second sentence of the statement shall be completed by inserting the numbers of all or less than all of the standards, and only those standards, respecting which the latest prior certification statement was a chassis-cab manufacturer's conditional statement under paragraph (a)(2) of this section or an intermediate manufacturer's conditional statement under paragraph (b)(2) of this section. The date shown in the third sentence of the statement shall be not earlier than the manufacturing date of the incomplete vehicle, and not later than the date of completion of final-stage manfacture.

(iii) "This vehicle conforms to all applicable Federal Motor Vehicle Safety Standards in effect in (month, year)."

The date shown shall be not earlier than the manufacturing date of the incomplete vehicle and not later than the date of completion of final-stage manufacture.

Issued on November 2, 1983.

Diane K. Steed
Deputy Administrator

48 FR 51308
November 8, 1983

PREAMBLE TO AN AMENDMENT TO PART 567 — CERTIFICATE

[Docket No. T84-01; Notice 7]

ACTION: Final rule.

SUMMARY: This rule establishes a vehicle theft prevention standard, as required by the Motor Vehicle Theft Law Enforcement Act of 1984. The standard contains performance requirements for inscribing or affixing identification numbers onto original equipment major parts and the replacement parts for those original equipment parts on passenger motor vehicle lines selected as high theft lines. The rule also specifies which parts are the major parts that must be so identified. Finally, it sets forth the manner and form for certifying compliance with the standard.

EFFECTIVE DATE: April 24, 1986. This means that the theft prevention standard applies to passenger cars and major replacement parts beginning with the 1987 model year.

SUPPLEMENTARY INFORMATION: The Motor Vehicle Theft Law Enforcement Act of 1984 (Theft Act; Pub. L. 98-547) added Title VI to the Motor Vehicle Information and (Cost Savings Act). Title VI requires NHTSA, by delegation from the Secretary of Transportation, to promptly complete a series of rulemaking actions designed to mount a comprehensive attack on the problem of vehicle theft. This rule contains the most significant of those mandated rulemaking actions, the theft prevention standard setting forth the performance criteria for affixing or inscribing covered major parts of passenger motor vehicles with identifying numbers or symbols, as required by section 602 of the Cost Savings Act (15 U.S.C. 2022). Additionally, this rule carries out the following statutory mandates:

1) it identifies the major parts that must be marked, as specified in section 603(a)(2);

2) it establishes the cost limitation for marking major replacement parts, as specified in section 604; and

3) it establishes the form and manner of certifying compliance with the theft prevention standard, as specified in section 606(c) of the Cost Savings Act.

The Notice of Proposed Rulemaking

To carry out these statutory mandates, NHTSA published a notice of proposed rulemaking (NPRM) at 50 FR 19728, May 10, 1985. The agency has received more than 240 comments on the NPRM, representing the opinions of vehicle and parts manufacturers, law enforcement groups, insurers, automobile dealers, members of Congress, direct importers of vehicles, and individual consumers. "Direct importers" are individuals and commercial enterprises that obtain foreign cars not originally manufactured for sale in the United States, bring those cars into this country under bond, and modify the cars so that they can be certified as being in compliance with the U.S. vehicle safety, emissions, and bumper standards. Each of these comments has been considered and the most significant points are addressed below.

The NPRM contained a detailed background discussion of the provisions of the Theft Act and explained in detail the agency's rationale for proposing each of the requirements. This preamble follows the same organizational format used in the NPRM, so that readers can easily compare the two documents. A brief summary highlighting the most important points of this final rule follows.

Highlights of this Final Rule

1. Markings for Covered Original Equipment Major Parts.

Original equipment covered major parts must be marked with the full 17 character U.S. vehicle identification number (VIN), except for engines and transmissions used by certain manufacturers. Manufacturers marking engines and transmissions with a VIN derivative, consisting of at least the last 8 characters of the VIN, as of the enactment date of the Theft Act may continue to use those derivatives. Section 604(b) of the Cost Savings Act provides that manufacturers engaged in identifying their engines and transmissions in a manner which "substantially complies" with the requirements of this standard shall not be required to conform to any identification system which imposes greater costs than those being incurred under the "substantially complying" identification system. NHTSA deems 8-character VIN derivatives to be substantially in compliance with this standard.

The performance requirements for both labels and other markings have been adopted substantially as proposed in the NPRM. The only noteworthy difference is in the "footprint" requirement for labels. In response to the comments, the proposed requirement has been clarified in this final rule. Removal of a label must leave some residual part of the label or adhesive on the part, such that an investigator could detect that a label was originally present on the part.

2. Covered Major Parts.

This standard specifies 14 major parts as the covered major parts as the covered major parts which must be marked, if present, on all vehicles in lines selected as high theft lines. Those 14 parts consist of the 12 major parts proposed in all three of the alternatives set forth in the NPRM, plus the two rear doors for 4-door vehicles. Two-door cars will be required to have only 12 parts marked.

3. Markings for Replacement Parts.

Replacement parts for covered original equipment parts are required to be marked with the letter "R" and the manufacturer's logo, for purposes of this standard, and with the symbol "DOT", as a certification of compliance with this standard, as proposed in the NPRM. Such markings are subject to the same performance requirements as the markings on original equipment parts. This standard also establishes a cost limit of five dollars (in 1984 dollars) for marking each replacement part.

4. Target Areas for Parts Marking.

The agency had proposed that both original equipment and replacement parts be marked in a 5 centimeter X 5 centimeter target area, and that these target areas be separated by at least 15 centimeters. Many commenters suggested that this small target area was too restrictive and unnecessary to achieve the intended purpose. NHTSA was persuaded by these comments. Accordingly, this theft prevention standard requires the original vehicle manufacturers to designate target areas for marking both original equipment and replacement parts. The target area for the original equipment parts cannot exceed 50 percent of the total surface area of the part surface on which the marking will appear, and the target area for replacement parts cannot exceed 25 percent of the total surface area of the surface on which the marking will appear. The boundaries of the different target areas must be separated by at least 10 centimeters at all points along those boundaries. The vehicle manufacturers will be required to inform NHTSA of the target areas they have designated on each of the parts.

5. Who May Certify Compliance with this Standard.

The NPRM proposed that only original vehicle manufacturers be allowed to certify compliance with this theft prevention standard. The proposal would have had the effect of prohibiting direct importers from importing any high theft vehicles into the U.S. This proposal was based on the Theft Act's prohibition against importing non-complying vehicles into the U.S., together with the Theft Act's ambiguity as to whether persons besides the original manufacturer should be allowed to certify compliance. The proposal was also based on the agency's tentative conclusion that limiting certification authority would enhance the security of the marking technologies and the enforcement of this theft prevention standard.

Upon further consideration, NHTSA has decided that this regulation should not prohibit direct imports of vehicles. NHTSA also believes that the

rulemaking record supports the law enforcement concerns expressed in the NPRM. Accordingly, this theft prevention standard sets forth special requirements for direct imports of vehicles in high theft lines. Such vehicles must:

(1) Be marked with the original Euro-VIN, and not a "home-made" U.S. VIN;

(2) Be marked by inscribing the required markings, and may not have labels affixed to the parts to satisfy this standard; and

(3) Be marked before the vehicle is imported into the U.S. This final requirement is explicitly set forth in section 607(a)(1) of the Cost Savings Act. Accordingly, the agency has concluded that it cannot adopt the suggestion in some of the comments that it implement a bonding program for direct imports, similar to that in effect for the bumper and safety standards. To implement this requirement, this rule specifies that direct importers of high-theft vehicles must certify compliance with this theft prevention standard, by having a certification label permanently affixed to each covered vehicle before it is imported into the United States.

A detailed discussion of these issues and other issues raised during the comment period follows.

The Theft Prevention Standard

A. Original Equipment Parts

As noted in the NPRM, Title VI of the Cost Savings Act requires NHTSA to promulgate a theft prevention standard, which must be a minimum performance standard for the identification of the covered original equipment and replacement major parts of new passenger motor vehicles. This identification is to be achieved by inscribing or affixing numbers or symbols to such parts. The first question addressed in the NPRM concerned the numbers or symbols that should be used to identify original equipment major parts.

1. The full vehicle identification number (VIN) must be inscribed or affixed to all covered major original equipment parts, except the engine and transmission.

The NPRM proposed that the full 17 character VIN be required as the indentifying number to be inscribed or affixed to the covered major original equipment parts, for three reasons. First, the full VIN represents a unique signature which cannot be repeated on any two vehicles during a 30-year period. Second, the full VIN is the basis for the National Crime Information Center's (NCIC) vehicle theft reprting system, which is used by law enforcement officials around the nation to detect and track stolen vehicles. Third, since the full VIN is now in common use for all law enforcement agencies, its continued use would cause minimal disruption in the personnel training and records kept by those agencies. However, the agency also sought public comment on the use of VIN derivatives as the identifying numbers.

Several of the commenters supported the agency's proposed requirement to use the full VIN. These commenters included all the law enforcement organizations, groups organized to try to reduce auto thefts, and Jaguar and Mercedes. Mercedes specifically stated that the use of a VIN derivative would require at least 8 characters to be unique, so the cost advantages of allowing the use of VIN derivatives would be minimal.

On the other hand, many of the vehicle manufacturers argued that they should be allowed to use VIN derivatives. The suggestions ranged from Honda's that manufacturers be required to use only the last 6 characters of the VIN to Volkswagen's that the manufacturers be required to use 11 characters of the VIN. Both General Motors (GM) and the United States Department of Justice urged that manufacturers be required to use the full 17 character VIN on labels, but be permitted to use a VIN derivative if they used other methods of identification, provided that the VIN derivative was also unique.

NHTSA seriously considered allowing the use of VIN derivatives if those derivatives contained enough characters to ensure that they would also be unique. However, NCIC has sent the agency a letter explaining that it has designed its theft reporting system to reject any inquiries concerning stolen vehicles manufactured in 1981 and all subsequent model years which do not consist of the full 17 character VIN. NCIC stated that it had discussed allowing the use of VIN derivatives with state and local law enforcement officials, and the reaction from those officials was "very negative". This reaction was based on the administrative burden which would result from not having a uniform length for reporting the identifying numbers for stolen and recovered vehicles and parts. This would lead to uncertainty that the reporting police department had properly entered the correct VIN derivative of a stolen vehicle, because of the var-

ying lengths of derivatives which could be entered into the tracking system. Such uncertainty would force the law enforcement agencies and officers to expend significant time and effort in checking the accuracy of the reports before arresting suspected criminals in possession of the stolen vehicles. The lost time could result in being unable to arrest the suspect or seize the stolen vehicle.

If they did not expend this time and effort, the law enforcement groups stated their concerns about potential liability. The law enforcement groups would be accused of an improper arrest or vehicle seizure if they were to erroneously identify a vehicle or part as stolen. Such erroneous identifications would inevitably result, according to the law enforcement groups, if they are forced to try to reconstruct quickly the full VIN from a VIN derivative.

One of the primary purposes of the Theft Act is to make it easier for law enforcement agencies to establish that a vehicle or a major part is stolen. See H.R. Rep. No. 1087, 98th Cong., 2d Sess. at 2-3 (1984) (hereinafter referred to as "H. Rept."). If this purpose is to be promoted, this standard must ensure that police officers learning of suspicious, potentially stolen vehicle parts can quickly verify whether those parts are stolen. If this standard were to allow parts to be marked with VIN derivatives, the time necessary to positively identify a part as being from a stolen vehicle would be substantially longer than if the parts were marked with the full VIN. Police officers cannot be expected to wait to learn the true status of parts while the VIN derivative is reconstructed into a full VIN through contacts with the vehicle manufacturer or a private agency.

Further, NCIC has informed the agency that a review of its active record of stolen vehicles currently lists 12,382 cases where the last 8 characters of the VIN are identical in two or more cases. Hence, a match of the last 8 characters of the VIN would not by itself justify seizing the vehicle or arresting the driver. If NHTSA were to permit the use of VIN derivatives for marking parts, it would have to require the use of a least 11 characters of the VIN (the first three characters and the last eight) to ensure the derivative was unique. The cost differences for the vehicle manufacturer to mark the full VIN instead of a shortened 11-character VIN derivative are not significant, and will not cause any manufacturer to exceed the fifteen dollar cost limitation. Additionally, VIN derivatives would require NCIC to restructure its data base, a complex and costly task. Finally, the full 17-character VIN includes the check digit, the purpose of which is to provide a means for verifying the accuracy of any VIN transcription. As such, the check digit ensures that the VIN of a stolen vehicle has been correctly entered. It also quickly shows when a VIN has been altered in an effort to disguise the fact that a vehicle is stolen. Accordingly, the agency has determined that the full 17-character VIN should be marked on covered original equipment major parts.

There is, however, one exception to this requirement. Section 604(b) of the Cost Savings Act [15 U.S.C. 2024(b)] specifies that "any manufacturer engaged in identifying engines or transmissions on the effective date of this title *in a manner which substantially complies with the requirements of the theft prevention standard*" shall not be required to conform to any identification system which imposes greater costs on the manufacturer than those being incurred as of such effective date. This statutory requirement means that the agency must determine what sort of identification system for engines and transmissions substantially complies with the requirements of this standard.

To the agency's knowledge, all manufacturers currently stamp an identifying number on their engines and transmissions. The NPRM stated that all manufacturers currently stamp their engines and transmissions with a VIN derivative, but the vast majority of manufacturers commented that this statement was not true. GM marks its engines and transmissions with a 9-character VIN derivative, and Ford and Chrysler mark those parts with an 8-character VIN derivative. The agency has no information indicating that any other manufacturers mark their engines and transmissions with a VIN derivative.

Two issues are thus presented. First, NHTSA must determine whether manufacturers that mark their engines and transmissions with a number other than a VIN derivative "substantially comply" with the requirement that all covered major parts be marked with the full VIN. Second, NHTSA must determine whether manufacturers that mark their engines and transmissions with 8- or 9-character VIN derivatives can be said to substantially comply with that requirement.

With respect to the markings not derived from the VIN, NHTSA has concluded that such markings do not substantially comply with the requirement that a full 17-character VIN be marked on covered original equipment major parts. Such markings do not provide law enforcement officers with a means for quickly checking whether the component came from a stolen vehicle, because the NCIC data system relies on the VIN. The non-VIN markings consist of numbers generated and assigned by each individual manufacturer. The method for assigning the number is in the nature of a sequential production number for the particular engine or transmission. Accordingly, the number itself does not provide any means for quickly ascertaining the vehicle in which the component was installed, nor does the number identify the model year of the vehicle in which the component was installed. Thus, these markings neither substantially meet the identification requirements of this standard (the full 17-character VIN), nor achieve the purpose of these requirements (allowing law enforcement officers to quickly check whether covered major parts were originally installed on stolen vehicles).

BMW, Mercedes-Benz, Jaguar, Mazda, and the Automobile Importers of America (AIA) all stated that such markings should be found to substantially comply with the requirement that a full VIN be marked on covered original equipment parts. Some of these commenters stated that law enforcement officials from the countries in which the vehicles are produced have asked the manufacturers *not* to mark their engines and transmissions with a VIN derivative, because other numbering systems, according to those law enforcement officials, reduce the likelihood of thieves successfully altering these numbers.

NHTSA does not believe that this point is relevant in determining whether these non-VIN related markings "substantially comply" with the identification requirements for original equipment parts contained in this theft prevention standard. However, as explained above, the NCIC strongly prefers that the full VIN be marked as the identifier on covered parts. NHTSA believes it is more important that the preferences of the NCIC be accommodated in this theft standard than the preferences of law enforcement officials in other countries, since the theft standard applies only to vehicles sold in the United States. The preferences of foreign law enforcement officials can be accommodated in the case of engines and transmissions for vehicles not designed to be sold in the United States.

AIA commented that a requirement forcing manufacturers to change their existing marking systems would require the stamping equipment to be reprogrammed, or might even require new stamping equipment. Further, the AIA stated that such a requirement would impose the significant administrative burden of separating U.S. engine blocks and transmission housings from the blocks and housings made for the rest of the world.

NHTSA recognizes that complying with a requirement to mark the VIN on engines and transmissions, or any other requirement, imposes costs and administrative burdens on the manufacturers. NHTSA must determine whether the requirement is necessary to carry out the purposes of the Theft Act, while imposing costs which can be met within the fifteen dollar per vehicle limit established for this theft prevention standard. As explained above, law enforcement officials have explained that they need parts identified with the VIN, if they are to effectively carry out the purposes of the Theft Act. In NHTSA's judgment, the requirement to mark the VIN on engines and transmissions, as well as the other covered major parts, will not cause any manufacturer to exceed the fifteen dollar cost limit. Hence, any burdens imposed by this requirement are consistent with the intent and provisions of the Theft Act.

AIA noted the practive whereby manufacturers purchase or supply engines and transmissions to other manufacturers, and stated that most of those parts are marked by the original manufacturer. AIA argued that requiring the vehicle manufacturer to obliterate these numbers and replace them with VINs would "not only be costly, but could also be very confusing to law enforcement officials." Additionally, AIA argued that requiring obliteration and new markings would violate the requirement of section 602(d)(1)(A) of the Cost Savings Act. That section provides that this theft prevention standard may not require any original equipment part to have more than a single identification.

This theft prevention standard does not require manufacturers to obliterate markings inscribed by other manufacturers, nor does it require any part to have more than a single identification. This standard requires only that the engines and transmissions be marked with the VIN. Any other iden-

tification markings on those parts are not required by the standard, so their presence or absence is irrelevant for the purposes of section 602(d)(1)(A).

In the case of manufacturers currently marking their engines and transmissions with a VIN derivative, the agency has considered whether those manufacturers that use at least an 8-character VIN derivative, consisting of the last 8 characters of the VIN, can be said to substantially comply with the requirement that covered major parts be marked with the full 17-character VIN. As noted above, an 8-character VIN derivative is not unique. This is because it does not identify the manufacturer of the vehicle or the vehicle attributes, nor does it include the check digit. Accordingly, the agency determined that it would be inappropriate to allow an 8-character VIN derivative for the marking of all covered major parts.

However, an 8-character VIN derivative consisting of the last 8 characters of the VIN does identify the model year of the vehicle, the plant at which it was assembled, and the sequential production number of the vehicle. Trained investigators will be able to identify the manufacturer of an engine or transmission, by noting the particular design characteristics of the component. The manufacturer of the engine or transmission is not necessarily the manufacturer of the vehicle, as noted by AIA in its comments and discussed above. Hence, there will be some instances where the 8-character VIN derivative would not enable investigators to confirm immediately that an engine or transmission was installed in a stolen vehicle.

Permitting the use of VIN derivatives on engines and transmissions does not present as serious a law enforcement problem as would be presented if all covered major parts were permitted to be marked with VIN derivatives. Engines and transmissions are bulkier, heavier, and not as easy to transport as the other major parts of a car. Thus, police officers are more likely to have the time necessary to allow for a reconstruction of the full VIN from the 8-character VIN derivatives marked on these components. That reconstruction can be made reasonably quickly in the majority of cases, where the manufacturer of the engine or transmission and the manufacturer of the vehicle are the same.

After considering these facts, NHTSA has concluded that VIN derivatives consisting of at least the last 8 characters of the full VIN can be said to "substantially comply" with the requirement of this standard that the 17-character VIN be marked on all covered parts. To the agency's knowledge, Chrysler, Ford, and GM are the manufacturers currently using at least an 8-character VIN derivative, consisting of the last 8 characters of the VIN, to identify their engines and transmissions They and any other manufacturers using these VIN derivative markings on their engines and transmissions as of October 24, 1984, the date of enactment of the Theft Act, may continue using those VIN derivatives instead of the 17-character VIN to mark the engines and transmissions. All other vehicle manufacturers will be required to identify their engines and transmissions with the 17-character VIN.

Toyota stated that only one engine part should be required to be marked. Section 602(d) of the Cost Savings Act specifies that a part cannot be required to have more than a single identification, and the NPRM did not propose more than one marking for any part. For the purposes of this part, the engine should be marked on the block and the transmission should be marked on the housing. No other markings are required.

Ford stated that the proposed language, allowing engines and transmissions being marked with a VIN derivative as of the day before the effective date of this theft prevention standard to continue using that derivative for identification required by this theft prevention standard, appeared to be inconsistent with the requirement in section 604(b), which prohibits the agency from requiring manufacturers to conform to a more costly identification system for its engines and transmissions if the manufacturer was already engaged in identifying the engines and transmissions in a manner that substantially complies with this standard. Under the proposed language, Ford believed that new engine and transmission designs which were not being marked with a VIN derivative as of the day before the effective date of the theft prevention standard, because they were not yet in production, would be required to be marked with the full VIN. This, it was asserted, would conflict with the explicit requirement of section 604(b) that a *Manufacturer* whose identification system substantially complied with the requirements of the theft prevention standard could not be required to undertake an identification system which imposed

greater costs. NHTSA agrees with Ford on this point, and has modified the language to reflect this change.

Ford also commented that the NPRM proposed that manufacturers marking engines and transmissions with an acceptable VIN derivative *as of the effective date of the standard* would be permitted to continue such marking of those components. Ford correctly noted that section 604(b) refers to manufacturers using such markings *as of the effective date of the Theft Act* being permitted to continue using such markings. This final rule has been modified to reflect the language of section 604(b) of the Cost Savings Act.

2. The theft prevention standard must be a performance standard, which is practicable and which employs relevant, objective criteria.

The legislative history is very clear on the type of standard which must be promulgated. Page 10 of the House Report reads as follows:

> The DOT will establish the tests or general criteria which the identification must meet, but not how it is to be inscribed or affixed. That is the choice of each manufacturer. For example, we understand that a tamper-resistant label exists. If it can meet the performance tests or general criteria prescribed by the standard, the manufacturer may choose to use it to comply with the standard.

Because of this clearly expressed Congressional intent, this final rule does not adopt the suggestions in some of the comments that the agency mandate the use of a particular marking system, such as stamping, glass etching, or some patented marking systems. Several commenters asserted that the use of a particular marking system would ensure the greatest effectiveness for the theft prevention standard. However, NHTSA has no authority to mandate the use of any particular marking system. NHTSA has authority only to establish performance criteria that will accomplish the purposes of the Theft Act. The manufacturers are free to select any marking system that satisfies those criteria.

NHTSA believes that the performance criteria specified for labels in this final rule are objective, and will ensure that labels will serve effectively the purposes of the Theft Act. The criteria specified for non-label forms of identification are less rigorous, because methods such as etching or stamping the identification into the metal or the glass are inherently more permanent. Alterations of such identifications would be detectable by trained investigators. The criteria for the non-label forms of identification are intended primarily to ensure that the marking will be readily accessible to investigators.

(a) The inscription or affixation must meet size and style requirements to ensure that it is clearly legible to investigators.

The NPRM proposed that the inscription or affixation of the VIN on covered major parts meet the same size and style requirements as the VIN is required to meet in sections 54.6, 54.7, and 54.8 of Standard No. 115 (49 CFR §571.115). Briefly stated, this meant that the characters would have a minimum height of 4 millimeters (mm), would consist of the Arabic or Roman numerals and/or letters set forth in Table 1 of 49 CFR §571.115, and would consist of capital, sans-serif characters.

Many manufacturers commented that the proposed 4mm size was larger than was necessary for the characters. NHTSA proposed this minimum size to ensure that the identification would be clearly legible to investigators. However, a number of commenters observed that the 4 mm height is specified in Standard No. 115 to ensure that the VIN can be easily read through the vehicle's windshield. In the case of the theft prevention standard, these commenters stated that the parts will be examined by trained investigators carefully examining the parts to find the VIN. Several manufacturers and the National Automobile Theft Bureau (NATB) suggested that the minimum height for the characters be reduced to 3/32 inch (approximately 2.5mm), which is the same size as is currently specified for the information required to appear on vehicle certification labels by 49 CFR Part 567.

NHTSA has further considered this issue, and determined that the certification labels required by Part 567 are partly intended to provide information to knowledgeable persons specifically looking for that information. This is analogous to the purpose that the parts marking requirements are intended to fulfill. The 3/32 inch minimum height requirement has been wholly satisfactory for the purposes of Part 567. NHTSA has, therefore, decided not to require larger characters for this theft prevention standard. Accordingly, this final rule adopts the minimum character height requirement currently specified in Part 567, i.e., 3/32 inch.

Ford and GM both specifically commented that the sans-serif requirement for the characters should be deleted. Ford stated that their printers are not technically sans-serif, but that no party has experienced any difficulty in reading the characters. Ford suggested that the agency specify the use of block capital letters and numerals, as is done for the vehicle certification labels in Part 567. GM showed the characters as printed in the "positive identification" system. The positive identification system consists of block capital letters and numerals, but gives unique characteristics to each character so that it is more difficult to alter a character to resemble a different character. GM stated that those characters are readily legible, but asked for the agency's opinion as to whether those characters would satisfy the sans-serif requirement.

Again, the purpose of the proposed sans-serif requirement was to ensure that the markings would be legible to the trained investigators examining the parts. The presence of small serifs would not affect that legibility. Therefore, the agency is not adopting the proposed sans-serif requirement. Instead the agency is adopting a requirement that the identification consist of block capital letters and numerals. This requirement is identical to the style requirements of Part 567. It is the agency's opinion that the GM "positive identification" characters appear to satisfy this requirement.

(b) The inscription or affixation must be as permanent as possible.

The NPRM stated that the identification (whether affixed or inscribed) should be made in such a way that, under normal conditions of wear, tear, and repair, the identification would continue to meet the other performance requirements of the theft prevention standard for the average life of the car, which the NPRM stated to be 10 years. However, the NPRM proposed only that the markings be "permanent", and did not establish any number of years during which the markings would have to satisfy the other performance requirements of this standard. The NPRM also sought comments on requiring only that the marking remain legible for the average length of time during which cars are generally susceptible to high theft rates.

The commenters agreed with the agency's tentative judgment that it would not serve the purposes of the Theft Act to require the markings to remain legible only for the average length of time during which cars are generally susceptible to high theft rates. The theft investigators noted that many cars are stolen after the initial high theft period. If the identification is permitted not to be visible on those parts, it would tend to make such vehicles more attractive to professional thieves. This plainly would not serve the theft deterrent purposes of the Theft Act. No commenters argued in favor of adopting this alternative. For the reasons set forth above, this alternative has not been adopted in this final rule.

Many of the theft investigators urged the agency to specify some minimum period of time during which the markings would have to satisfy all the other performance requirements of this standard. The International Association of Auto Theft Investigators urged that there be a minimum 8 year life for labels, while the Coalition to Halt Automotive Theft (CHAT) urged that labels have a 10 year minimum life.

On the other hand, Chrysler, Ford, and GM all supported the idea of adopting the proposed permanence requirement without specifying a minimum time period as a definition of that concept. GM stated that Part 567 has used the word "permanent" without specifying any time period, and that the vehicle certification labels have been affixed so that there have been no significant disagreements between the manufacturers and the agency as to the meaning of the word. Ford stated its opinion that any greater specificity than "permanent" would require the agency to develop a performance test to measure whether the markings were permanent.

This rule adopts the proposed requirements on permanency, that is, it does not specify any minimum number of years during which the markings must continue to satisfy the other performance requirements of this standard. As noted by GM, this term has served its intended purpose when used in Part 567, and is a concept with which the manufacturers and the agency have had experience. The purpose of Part 567 was explained thusly in the preamble to the final rule establishing that Part: "The intent of the regulation is that the label should remain in place and legible for

the life of the vehicle and not be easily transferable to another vehicle." 34 FR 1147; January 24, 1969. NHTSA believes that the purpose underlying the permanency requirement in Part 567 and this theft prevention standard are sufficiently similar that it is appropriate to express those requirements in the same way. Should that belief be shown to be incorrect, because the labels are not remaining affixed and legible for the life of the vehicle, the agency will initiate rulemaking to specify some minimum length of time during which the labels must satisfy the other requirements of this standard. However, such rulemaking would be premature at this time.

VW asked what the term "permanent" means in this standard. As noted above, it means exactly what it means when used in Part 567. That is, the label should remain in place and legible for the life of the vehicle.

Toyota stated that there was no way of knowing if labels will satisfy the permanence requirement, so this requirement should be deleted. NHTSA does not understand this comment, since Toyota's vehicles presumably comply with the "permanence" requirement in Part 567. NHTSA believes that either Toyota or the label manufacturer can obtain data, through tests or other means, showing whether labels will remain affixed and legible for the life of the car. Those data would form the basis for certifying compliance with this requirement.

Moreover, as stated above, this is a performance standard that sets forth general criteria which must be satisfied by whatever means of marking the manufacturer chooses. If Toyota is unable to certify that its labels will satisfy the permanence requirement, it will have to use stamping, etching, or some other method of marking its parts. The criterion of permanence is very important if this standard is to carry out the intent of the Theft Act. It seems obvious that markings that, after a short period of time, are not present on the vehicle or are not legible to investigators do not serve the purposes of the Theft Act.

c) Locations selected for labels must provide protection from damage as a result of normal maintenance and exposure conditions while still being visible to investigators without further disassembly once the parts are removed from the vehicle.

The NPRM proposed that labels be protected from damage as a result of normal vehicle repair and maintenance and exposure conditions. Inscriptions would not be subject to this requirement, because such marking methods are inherently more durable than labels. Accordingly, the agency does not believe it is necesary to specify protection from damage requirements for inscribed markings. If experience shows that the manufacturers are not locating those markings so as to protect them from damage, NHTSA will consider initiating rulemaking to amend this standard. All means of identification would be subject to the requirement of visibility to investigators without further disassembly once the parts are removed from the vehicle.

The National Automobile Dealers Association (NADA) stated that the legislative history of the Theft Act specifically instructs NHTSA to "consider the location of the number so that it will not be easily susceptible to damage in the normal course of *dealer preparation (for such procedures as rustproofing and undercoating),* or be easily damaged in the course of repair, or regular automobile maintenance by repair shops or car owners;" H. Rept. at 12 (Emphasis added). NADA urged the agency to modify the proposal to explicitly require that the label be protected from damage during dealer preparation operations. NHTSA believes that such a requirement is very closely related to its proposal. Further, it is consistent with the legislative history and needed to ensure that the labels will not routinely be obscured or damaged before the vehicle is sold to the first purchaser. Therefore, this final rule adds this requirement.

Ford commented that the locations chosen for the labels cannot protect the labels against possible damage during a collision and subsequent repairs, where the part might need bumping, grinding and repainting to be repaired. Neither the NPRM nor this final rule require the labels to be protected from damage during every repair for collision damage. Even inscriptions might well be obliterated or rendered illegible during some collision repairs. This rule does not require manufacturers to do the impossible; i.e., certify that labels will never be damaged during any work which might be performed on the part.

However, the legislative history states: "The Committee believes, as already noted, that one of the major factors that the Secretary and the manufacturers should consider in rulemaking is the location of the identification number in relation

of the future repairability of the major part. *The location selected should, to the greatest extent possible, not be a spot likely to be damaged in what is an economically repairable accident, if possible."* H. Rept. at 24-25 (Emphasis added). It is hard to imagine a clearer expression of Congressional desire that the identification on covered major parts should be located so that it will not be damaged during most collision repairs. Hence, placing the labels on the fenders at the height of other vehicles' bumpers would seem to be precluded, since that is the area most likely to need the bumping and grinding to repair collision damage, as noted in Ford's comments.

It is imperative that the identification numbers not be destroyed or rendered illegible during repair and maintenance operations, to the greatest extent practicable, since destroyed or illegible labels will serve the interests of no one but auto thieves. To ensure the efficacy of the labels, this rule simply requires that which Congress intended; namely, that the vehicle manufacturers use their engineering judgement when deciding where to apply the labels, so that those labels will be:

(1) in a place where they won't be disturbed by the use of any tools necessary in the installing, adjusting, or removing of the part or adjoining parts, or any portion thereof;

(2) on a portion of the part not likely to be damaged in a collision; and

(3) protected from damage during normal dealer preparation procedures.

To clarify what is required of vehicle manufacturers, this rule specifies that the label shall be placed on an interior surface of the part as it is installed in the vehicle, if this placement is practicable, and that the label shall be positioned to satisfy the three criteria specified above.

GM commented that the requirement that labels be protected from damage during maintenance and repair of the vehicle should be deleted. GM stated that it was not clear how the manufacturer could certify compliance with the requirement that the label was protected from damage as the result of repair and maintenance. As noted above, the manufacturers are required only to ensure that the labels are protected from damage during foreseeable repair and maintenance operations and during normal dealer preparation operations. The manufacturer specifies the procedures its dealers are to follow during these operations, and recommends the tools to be used during such operations. Accordingly, the manufacturer already knows the procedures it has specified and the portions of the part most likely to be damaged in a collision. The manufacturer is simply required to cerify that it has used this knowledge when deciding where to position the labels on its covered major parts.

VW commented that the agency should allow the use of an integral paint mask, so that the labels can be put on the parts before the vehicle is painted or rustproofed. Such a procedure is permissible under this standard, provided that the paint mask is removed from the label. If the mask were not removed, the identification would not satisfy the requirement that it be visible without further disassembly once the vehicle part has been removed from the vehicle. That requirement is essential if this theft prevention standard is to facilitate the quick and easy identification of parts by trained investigators.

Mazda asked that vehicle hatchbacks be allowed to be marked beneath the trim panels. Otherwise, Mazda commented, the identification marking would be visible to vehicle occupants. This rule does not permit any covered major parts to have identification marks hidden behind trim panels. One of the major purposes of this theft prevention standard is to enable law enforcement officers to quickly determine if a motor vehicle part is stolen. If those officers must disassemble the part to look for the appropriate identification markings, their task would be more difficult. NHTSA believes that the purpose of the Theft Act was to make the task of law enforcement officers as simple as possible, without imposing significant costs on vehicle manufacturers. No greater costs are imposed by requiring the markings to be visible to investigators. Therefore, the requirement for visibility is adopted as proposed.

Target Areas. To ensure that the identification markings are readily located by investigators, the NPRM proposed that those markings be placed in the same 5 centimeter X 5 centimeter (cm) area on each part of that type produced by the manufacturer. The manufacturers were free to select any 5 cm X 5 cm area as the target area, provided of course that the target area met the requirements of protecting the identification from damage during normal repair, maintenance, and dealer preparation operations and was visible to investigators without further disassembly. Comments were requested on whether this target area should

be required to remain unchanged for the entire production run of the covered major parts or whether the manufacturers should be allowed to change this target area every model year.

Most of the manufacturers asked for some modification to the proposed 5 X 5 cm target area. Ford stated that a target area was unnecessary. Chrysler stated that a target area was incompatible with mass production techniques. VW stated that a 5 X 5 cm target area was both unreasonable and unnecessary. Nissan asked that the target area be expanded to 5 X 6 cm. Mercedes and Saab asked that the target area be expanded to 10 cm X 10 cm. GM asked that the target area be expanded to 15 cm X 15 cm. Mazda urged the agency to require only that some part of the identification be within the 5 cm X 5 cm target area.

In response to these comments, NHTSA has carefully examined the reasoning behind its proposed target area requirement. There were two primary reasons for proposing this requirement. First, a standardized location would facilitate quick identification checks by law enforcement officers. If the investigator knew exactly where a particular part on each line was required to be marked, the investigator would know where to look for the identifying number without having to search the part for that number. The investigator would also be alerted to possible suspicious activity if the identifying symbol were in some location other than the required target area.

Second, the proposed target area for original equipment and the companion proposal for a target area for replacement parts were intended to ensure that there would be a separation between the areas where the identification would be marked on such parts. Criminals plainly will not be able to routinely sell stolen parts which can be identified as such, nor should there be a market among honest repair shops for unmarked parts which were required to be marked by this standard. Accordingly, there will probably be an effort by chop shops and other thieves to try to obliterate the identifying numbers on original equipment parts and affix counterfeit replacement part identifications. If that counterfeit replacement part marking can be located directly over the obliterated original equipment part marking, it would be more difficult for the investigator to see the evidence of the obliteration of the original equipment part marking. With the target areas and the requisite distance between that for original equipment parts and replacement parts, the obliteration of the original equipment part marking would leave that area with evidence of the obliteration or with evidence of sanding and repainting. With either sort of evidence, the investigator would be alerted that the replacement identification should be carefully examined for authenticity.

NHTSA believes that both of these objectives are still reasonable and necessary if the theft prevention standard is to achieve its intended objectives. However, the agency also believes that the manufacturers raised valid points in the comments asserting that these objectives could be achieved in a less restrictive manner. Therefore, this final rule retains the target area requirement for original equipment parts, so as to achieve both the intended objectives, but makes the requirement less restrictive. This theft prevention standard requires the vehicle manufacturers to designate a target area for each covered major part. The covered major parts are set forth later in this preamble.

There is only one limitation on the target area which may be designated by the vehicle manufacturers, subject to the other performance requirements for labels set forth above. That is, the target area for original equipment parts cannot exceed 50 percent of the surface area on the surface of the part where the original equipment part will have the identification affixed or inscribed. This requirement is included in this final rule to ensure that there will be adequate separation between the target areas for original equipment parts and those for replacement parts.

The vehicle manufacturers are required to inform the agency of the target areas selected for each covered major part. This information will be made available to the public in the docket section. NHTSA anticipates that the information will be primarily used by replacement part manufacturers and by law enforcement organizations to learn the location of the target areas on each manufacturer's original equipment parts. Further, the agency anticipates that this will be a minimal burden on the manufacturers, since Ford and GM commented that they have voluntarily provided such information to the National Automobile Theft Bureau (NATB) in connection with their voluntary parts marking programs over the past several years.

The agency has determined that this procedure and the companion procedure requiring vehicle manufacturers to designate target areas for marking replacement parts, discussed in detail below, will serve both the objectives the proposed 5 cm X 5 cm target area was designed to serve, by ensuring that trained investigators know the location of the target areas for both original equipment and replacement parts and ensuring an adequate separation of the target areas for marking original equipment and repalcement parts. It will do so while providing manufacturers with maximum flexibility to avoid unnecessary production burdens and/or costs.

Regarding the issue of whether the target area should be maintained for the production run of the major parts or whether that target area should be allowed to be changed each model year, opinion was very divided between vehicle manufacturers and law enforcement groups. The vehicle manufacturers uniformly indicated that they should be allowed to change the target area after each model year. Their position generally was that unexpected design changes sometimes occur between model years, which could make it impracticable to continue using the previously specified target area. On the other hand, the International Association of Auto Theft Investigators and CHAT urged the agency to standardize the location of the original equipment marking over the entire production run of the parts. CHAT stated that a fender from any model year will not have any model year identification other than the VIN. If the target area varies from model year to model year, an investigator might well have to check four or five different places to see if the fender has the necessary marking.

NHTSA believes that the expansion of the permissible target area in this final rule has largely obviated the manufacturers' concern about being required to use the same target area over the entire production run of the part. The expansion of the target area has also increased the need for theft investigators to have such target areas standardized over the entire production run of the parts. Accordingly, this final rule specifies that the target area must remain constant over the entire production run of the parts. It does, however, allow an exception for a situation where a restyling of the part makes it impracticable to mark the part in the original target area. In such cases, the manufacturer would be required to inform the agency of the redesign and the new target area. It will be an easy matter for a trained investigator to differentiate the restyled part from the old part and look for the markings in the different target area.

d) Removal of the identification number must cause that identification to self destruct and alter the appearance of the vehicle part.

The NPRM proposed these requirements for the following reasons. It is critically important that thieves not be able to remove an identification marking label legitimately affixed to the part by a manufacturer and transfer that label intact and undamaged to a stolen part. CHAT commented that this was one of the most significant proposed requirements in the NPRM, and urged the agency to adopt it as proposed. No other commenter specifically addressed this proposed requirement, and it is adopted in this final rule to ensure that legitimately affixed labels cannot be removed from parts and reapplied to other parts.

As a further precaution, the NPRM proposed that an alteration of a character on the label be required to leave traces of the original character or otherwise visibly alter the appearance of the label. For other means of identification, the NPRM proposed that an alteration of any part of the identification be required to visibly alter the appearance of the vehicle part. Both Toyota and Ford commented that the label should only be required to leave evidence that an attempt was made to alter or obliterate a character of the VIN. These commenters noted that this would not necessarily leave a trace of the original character.

The agency notes that the NPRM did *not* propose to require that an attempt to alter or obliterate a character on the label always leave a trace of the original character. It proposed only that it do that *or* otherwise visibly alter the appearance of the label. Ideally the alteration would leave a trace of the original character so that the legitimate owner of the part could be informed of its recovery. However, the NPRM recognized that this would not always be practicable with current labels. In those cases where it is not practicable, the proposed requirement would be satisfied if the appearance of the label was visibly altered. This requirement is identical to the understanding expressed by both Ford and Toyota, and it is adopted as proposed.

Ford also commented that the proposed requirement that alterations of the identification number visibly alter the appearance of the vehicle part, if the identification number is applied by some means other than labels, should be modified. The reasoning behind this comment was as follows: first, according to Ford, it is the identification number, and not that of the vehicle part, which would be altered in appearance. Second, a skillful alteration, such as over-stamping, might not visibly alter the appearance of the number. The alteration would be latent and would be detectable only with further laboratory or further field investigation. Accordingly, Ford requested that the requirement be modified so that attempts to alter the indentification number "be detectable".

NHSTA has carefully considered this comment. The agency did not intend that the alteration of the identification number on an engine, for instance, must visibily alter the appearance of the entire engine. The proposed requirement was intended to refer to the appearance of the part surface on which the identification number is marked, and not to the appearance of the entire part. It is appropriate to be more specific in this final rule, and limit the requirement so that an attempted alteration must visibily alter the appearance of the part surface on which the identification number is marked, rather than generally requiring it to alter the appearance of the part.

However, this rule does not incorporate Ford's suggested requirement that the attempted alteration only "be detectable". That criterion would require that all investigators have laboratory equipment and possess the highest skills, if they were to be alerted to the attempted alteration. However, this theft prevention standard is designed to facilitate the recognition of any alterations by reasonably skilled trained investigators working under field conditions. To serve that function, it is necessary that the attempted alteration at least give some visual indication to the investigator that the part should be more carefully examined. Such indication would not be required under the requirement suggested by Ford, and so it is not adopted in this rule. Attempted alterations must visibly alter the appearance of the part surface on which the identification number is marked, in the case of means of identification other than labels.

A number of commenters addressed the proposed "footprint" requirement for labels under this section. That proposal would have required that removal of the affixation must create or uncover physical evidence that the affixation was originally present or required to be present. The 3M Corporation, a leading manufacturer of these labels, commented that a footprint would not remain if some extraordinary means of eradication were used on the areas where the labels were affixed. VW and Saab stated that the proposed requirement that removal of the label must "discernibly alter the appearance of the vehicle part" should be narrowed to require only that some residual parts of the label must remain. Saab stated that if the agency intends a broader requirement, it ought to include the compliance test procedures it will follow in this standard. Chrysler stated that the footprint requirement should be deleted because it would create engineering problems and might "violate" their rustproofing procedures. GM stated that the footprint requirement should be deleted because of the many unresolved questions surrounding this area. CHAT, on the other hand, stated only that any compromise of the footprint requirement would undermine the integrity and effectiveness of the theft prevention standard.

In light of these comments, the agency reexamined the proposed requirement in detail. If there were no footprint requirement and the label were removed from the stolen part, there would be no evidence that a label had ever been on the part. NHSTA agrees with CHAT's comment that this would substantially reduce the effectiveness of this theft prevention standard.

On the other hand, NHSTA agrees with the manufacturer's comments stating that the footprint left by current labels would not really alter the appearance of the vehicle part. The labels work by leaving a residue of adhesive which cannot be removed by most solvents, but the residue is not visible under natural light conditions. Adopting the proposed requiremnets would require the manufacturers to certify that removal of the labels would not discernibly alter the appearance of the parts, and it is not clear that current labels would do so, particularly if the parts were painted and rustproofed before the labels were affixed.

The label manufacturers have indicated that the developement of an adhesive that would alter the appearance of the part when removed is feasible, but has not yet been developed. While such a feature would significantly enhance the ability of law enforcement personnel to detect tampering with a label, the agency does not believe it is appro-

priate in this case to impose a requirement beyond the limits of current technology. NHSTA anticipates that, as this enhanced label technology is developed and labels incorporating this feature are offered for sale, the vehicle manufacturers will voluntarily include specifications for such technology into their orders for labels used for marking parts in accordance with this standard.

Accordingly, this standard requires only that removal of the labels must leave residual parts of the label, including the adhesive, on the part, and that these residual parts must be discernible by trained investigators. For purposes of this requirement, "discernible" does not mean that the residual parts must be visible under natural light. This modification of the proposed requirements is intended to allay the concerns of those manufacturers who believed that the NPRM was asking them to certify a performance for current labels which is beyond their capabilities. It does not represent any change from what the agency intended to propose in the NPRM.

e) The affixation must be resistant to counterfeiting.

The NPRM proposed that this requirement be applicable only to labels. Aside from steps taken by the label and vehicle manufacturers to safeguard the labels and the marking system, the NPRM would have required each label to bear a distinctive logo or trademark identifier along with the VIN. By requiring the marking to be incorporated in the material of the label itself instead of simply being stamped on the label, the NPRM intended to increase the difficulty of counterfeiting the labels because standard templates could not be readily located or purchased.

3M commented that all means of identification should be required to be resistant to counterfeiting, not just labels. The agency proposed that only labels be subject to this requirement because stamping, etching, and other means of identification are readily available to the public. A stamped or etched marking will resemble any other stamped or etched markings.

3M also commented that it assumed that its CONFIRM logo could serve as the logo for all manufacturers. That assumption is incorrect. As stated above, NHTSA proposed that each manufacturer's distinctive logo or trademark identifier would be incorporated in the material of the label itself, as a further protection against counterfeiting of the labels. CHAT commented that the requirement for each manufacturer's distinctive logo or trademark identifier should minimize the ability of non-legitimate users to use "off-the-shelf" technology to produce their own labels. NHTSA agrees with CHAT, because the proposed requirement would require counterfeiters to alter the process by which the label is produced instead of just altering the finished product. Morever, if those non-legitimate users were to somehow acquire the labels, such labels could only be applied to one manufacturer's vehicles. Therefore, this requirement is adopted as proposed.

Security Etch commented that the resistance to counterfeiting requirement was not objective and, therefore, was not permissible in this theft prevention standard. NHTSA believes that the general criteria set forth in this requirement are sufficient to alert both manufacturers and vehicle manufacturers to what is required. The House Report accompanying the Theft Act explicitly authorized the agency to promulgate "general criteria which the identification must meet." H. Rept. at 10. It is the agency's belief that Congress authorized the use of general criteria because of its desire that the theft prevention standard be swiftly implemented. *See* H. Rept. at 11.

To further specify what is intended by those general criteria, NHTSA has included a specific requirement in this final rule that each manufacturer's logo or trademark identifier be incorporated in labels, as was proposed. The agency believes that these requirements are more than sufficient to satisfy the mandate of the Theft Act that the theft prevention standard be objective, as that term was explained in the relevant legislative history.

3. Parts to be covered by this standard.

Section 602 of the Cost Savings Act provides that this theft prevention standard applies to only the covered major parts of high theft lines, and limits the number of covered major parts to 14 per vehicle. Section 601(7) of the Cost Savings Act sets forth a candidate list of 15 or 17 major parts (depending on whether the car has two or four doors) from which covered major parts can be selected.

To implement these statutory provisions, the NPRM set forth three alternatives for selecting the covered major parts. Alternative 1 listed the following 12 major parts as those which would be selected as covered major parts on all high theft lines:

1. Engine;
2. Transmission;
3. Right front fender;
4. Left front fender;
5. Hood;
6. Right front door;
7. Left front door;
8. Front bumper;
9. Rear bumper;
10. Right rear quarter panel;
11. Left rear quarter panel;
12. Decklid, tailgate, or hatchback (whichever is present).

These 12 parts were selected from section 601(7)'s list of major parts because they were found to be those most frequently repaired or those most costly to replace. This listing did not include the rear doors on 4-door cars, the grille, the trunk floor pan, or the frame, which are all specifically listed in section 601(7).

The second alternative would have required the marking of the same 12 parts as the first alternative, and an additional two parts. These two parts would not have been specified in this standard. Instead, this alternative would have allowed the individual manufacturer to propose the additional two parts to the agency. NHTSA stated in the NPRM that it would agree to the manufacturer's proposal if the two parts were listed in section 601(7), and would initiate rulemaking if the part was comparable in design or function to any of the listed parts. The reason for proposing this alternative was that law enforcement groups have consistently urged the agency to require the marking of the statutory maximum 14 parts on all vehicles.

The third alternative was also based on the agency's inclination to require the marking of the statutory maximum of 14 parts. It was similar to the second alterantive, except that the two additional parts to be marked would be specified in this final rule. The NPRM stated that the candidates for the additional parts to be selected were the five listed in section 601(7) which had not been included in the 12 parts listed in the first alternative.

The comments on these alternatives again reflected a split of opinion between vehicle manufacturers and organizations involved in reducing auto thefts. Chrysler stated that it was not necessary to mark more than 8 parts. BMW urged the agency not to specify that 14 parts must always be marked. VW and AMC urged the agency to require the marking of as few parts as possible by the manufacturers. Ford and Nissan supported the first alternative listed in the NPRM. Ford stated that the uniform marking of certain parts would make it easier for investigators to know on what parts he or she should look for the identification numbers. GM proposed that 10 parts be marked on all high theft cars, and that two additional parts be marked on those cars. Those two additional parts would be selected by agreement between the agency and the individual manufacturer. Saab supported the third alternative and suggested that the rear doors, if present, be the two additional parts selected for marking.

On the other hand, the groups involved in reducing auto theft unanimously supported the concept of requiring 14 parts to be marked on high theft cars. The Delmarva Investigators, the International Association of Auto Theft Investigators, and the Maryland State Police all commented that the frame should be added to the list of 12 parts set forth in the first alternative of the NPRM, and the 14th part to be marked should be selected by agreement between the agency and the manufacturer. CHAT stated that the rear doors should be added to the 12 parts listed in the NPRM, since all four doors are taken from a vehicle when it is stripped. CHAT urged that if any of the 14 required parts were not present on a high theft vehicle, the manufacturer should be required to propose alternate parts to be identified, because 14 parts should be marked on each high theft vehicle. The NATB agreed with CHAT's comments, and suggested three alternatives to require high theft cars to have 14 parts marked, depending on how such cars are configured.

There were a number of commenters addressing the question of whether certain parts should or should not be included in the list of covered major parts. The frame or, in the case of a unitized body, the supporting structure which serves as the frame was recommended to be included in the designation of covered major parts by both manufacturers and theft investigators. For instance, the FBI stated that marking the frame is the only way to identify a stripped or burned-out vehicle. The Delmarva Investigators stated that the frame is often used to identify illegally altered stolen vehicles. GM stated that many manufacturers have voluntarily marked the frame for many years, and this identification has proven useful to

law enforcement. A failure to select the frame as a covered major part in this final rule would cause GM to reevaluate whether it should continue voluntarily marking the frame. Ford, on the other hand, stated that marking the frame should be given a low priority. This was because passenger car design is moving away from traditional frame construction to unitized body construction, which does not use a frame.

NHTSA has determined that the frame need not be selected as one of the covered major parts for the purposes of this standard. The frame itself is almost never stolen or replaced on a vehicle. The only reason for making such a selection would be to ensure that the remains of a stripped vehicle can be identified. As noted by Ford, there will be few, if any, new passenger cars produced in the future using frame construction. In the case of cars using unitized body construction, the objective of ensuring that an identifiable part of the vehicle remains after the vehicle has been stripped can be achieved by requiring the marking of both rear quarter panels. Those rear quarter panels are an integral part of the supporting structure which serves as the frame for unitized bodies, and generally remain with the frame. Accordingly, the agency does not believe there is any reason to select the frame as one of the covered major parts.

A number of commenters also questioned the agency's selection of rear quarter panels as covered major parts. Mitsubishi, BMW, Nissan, and Mazda stated that the rear quarter panels are not really separate parts in the case of unitized bodies, since they can't be removed as separate parts from the unitized body. However, the Theft Act clearly designates the rear quarter panels as separate parts which can be selected as covered major parts. NHTSA believes there is value in marking both rear quarter panels, because they would be among the costliest major parts to replace. They will also serve as an effective surrogate for marking the frame in unitized body vehicles, as discussed above. For these reasons, NHTSA is not convinced by GM's comment that, because there is no evidence that rear quarter panels are by themselves high theft parts, those panels should not be selected as covered major parts. Given the high cost of the rear quarter panels, such parts could be especially profitable to chop shops. One of the purposes of this theft prevention standard is to increase the risks for those chop shops (H. Rept. at 5), and the agency believes it is especially important to increase the risks associated with the most potentially profitable parts. Moreover, marking of both rear quarter panels would serve the law enforcement objective noted above in the discussion on why the frame was not selected as a covered major part. Accordingly, the theft prevention standard requires the marking of both rear quarter panels.

Mazda stated that the rear quarter panels on their unitized body vehicles consist of an inner structural side panel which is an integral part of the unitized body shell to which is attached an exterior body panel. Mazda asked which of those two panels should be marked, or if both should be marked. In these instances, both the inner side panel and the exterior body panel comprise the rear quarter panel of the car. Marking either panel would comply with the requirement that the rear quarter panel be marked.

The commenters generally questioned the agency's selection of the front and rear bumpers as covered major parts. Chrysler stated that most cars in the future will not have traditional chrome-plated bumpers with a face bar. Instead, those vehicles will use soft front and rear fascia materials which are integrated with the front and rear of the body. Chrysler stated that it knows of no feasible way to permanently attach a label to that soft fascia material.

Earlier in this preamble, NHTSA explained that it is required to promulgate a performance standard. The fact that manufacturers may have to use some means of identification other than labeling is not by itself a valid reason for not selecting a part as a covered major part. If a manufacturer is unable to certify that labels can satisfy the performance standard when attached to a covered major part, the manufacturer will have to use some other means of marking the part, such as stamping or etching.

Additionally, Chrysler argued that these bumper designs are not really separate parts, but are an integral part of either the front or rear end. Accordingly, Chrysler argued that the new bumpers will not be high theft items. The Department of Justice commented that, as far as they know, bumpers are not involved in much chop shop activity. The Justice Department accordingly recommended that the rear doors on four door cars should be required to be marked in lieu of the bumpers.

According to the information currently available to NHTSA, the front and rear bumpers are the most often replaced major parts on vehicles. This, of course, results from the function of these components, which is to protect the front and rear end of the vehicle. Hence, these parts would seem to be natural targets for chop shops, since they are such high demand items by repair shops.

Moreover, the fact that current information indicates that bumpers have not been prime targets for chop shops is not dispositive. None of the front end components are marked on most high theft cars today. In this situation, it stands to reason that the most expensive components of the front end, the hood and the fenders, would be most desirable to chop shops, because of the potential profits. However, if this standard were to require the marking of the hood and fenders, but not the bumpers, chop shops could with relative safety "clip" the bumpers of stolen vehicles and fence those parts. The legislative history of the Theft Act noted that marked components are often junked by criminals, while the unmarked components are fenced to salvage and repair shops. H. Rept. at 4. It would be inconsistent with the purposes of the Theft Act to leave open the possibility that chop shops could with relative safety steal and fence the most often replaced major parts of high theft lines, because NHTSA failed to select the bumpers as covered major parts.

Accordingly, this final rule selects the front and rear bumpers as covered major parts. The agency concurs with the manufacturer's comments that these bumpers frequently consist of many components. For the purposes of this requirement, the marking of the bumper will be satisfied by marking the face bar or the fascia, but would not be satisfied by marking the rub strip, bumper guards, or energy absorber.

After having determined that these specific component parts should or should not be selected as "covered major parts" under section 602(a)(1) of the Cost Savings Act, NHTSA had to determine which of the three proposed alternatives should be incorporated into the theft prevention standard. The first proposed alternative offered the advantage of uniformity of parts marking, so that investigators in the field would know which parts were to be marked on all high theft line vehicles. Adopting the second alternative would mean that two of the fourteen parts to be marked would vary from manufacturer to manufacturer, and this would create needless complexity for the investigators. However, the agency agrees with the comments by the Justice Department, CHAT, and Saab that all current evidence indicates that all four doors are taken when a four door vehicle is stripped by criminals. It would be inconsistent with the purposes of the Theft Act to allow the rear doors to be stolen and fenced with minimal risk. For the reasons stated above, this final theft prevention standard adopts the third proposed alternative, adding the two rear doors to the list of the 12 major parts given in the first alternative. This means that two door vehicles in high theft lines will have 12 covered major parts, and four door vehicles will have 14 covered major parts. Further, it includes the advantage of the first proposed alternative of uniformity of parts marking between the different manufacturers.

4. Cost of Compliance with the Theft Prevention Standard.

Section 604(a) of the Cost Savings Act provides that the theft prevention standard "may not . . . impose costs upon any manufacturer of motor vehicles to comply with such standard in excess of $15 per motor vehicle . . ." To amplify this limitation, the House Report stated, "(t)his is a limitation on DOT. If DOT, when promulgating the standard, determines that this cost will be exceeded, the standard should not be issued until it is adjusted to be within the limitation. In short, there is no authority to issue a standard that exceeds the cost limitation." H. Rept. at 16.

NHTSA stated its interpretation of this language in the NPRM. To repeat, NHTSA believes that it has no authority to issue a standard which cannot reasonably be met by all manufacturers for $15 or less, but this language does *not* require the standard to be capable of being met for $15 or less by every manufacturer using every technology. In other words, this standard meets the cost limitation of section 604(a) if there is at least one reasonable means of compliance available to each manufacturer that would cost not more than $15 per vehicle, based on reasonable and generally accepted management and accounting techniques.

The agency has broad discretion to make adjustments to the standard if it exceeds the $15 limit. These adjustments would then be generally applicable to all manufacturers. NHTSA believes

it is clear that Congress did not contemplate that no standard would be issued merely because one manufacturer claims unverified costs above that limit. Moreover, as explained in the NPRM, Congress did not give the agency authority to exempt any manufacturers entirely from the standard, nor does the agency have the authority to modify the standard for a particular manufacturer to bring that manufacturer's costs below the $15 limit. The same performance requirements must pertain to all manufacturers even if adjustments are needed to the standard so that it is within the $15 limit.

The agency concluded this section of the NPRM by stating its anticipation that no manufacturer would make a claim that it is unable to meet the standard for $15 per vehicle, given the availability of inexpensive labeling and engraving technologies. However, Ferrari did make such a claim, and stated that for a small manufacturer the marking of 14 parts with the VIN "would create enormous problems with the management of the system and would raise costs well in excess of $15 for each vehicle". The only substantiation for this claim was that the marking requirements would force the small manufacturer to determine the U.S. versions of its vehicles as early as the bodywork stage of production.

NHTSA is not persuaded by this comment. There are inexpensive labeling and engraving technologies available for use by Ferrari. Foreign manufacturers must determine whether the vehicle is to be a U.S. or European version before the vehicle has been built, so that it can be certified as complying with the U.S. vehicle safety and emissions standards. At that time, Ferrari can assign a U.S. VIN and use the inexpensive marking technologies to mark the covered major parts of its high theft lines, for those vehicles to be sold in the United States. Accordingly, NHTSA believes Ferrari can comply with this standard at a cost of no more than $15 per vehicle.

VW commented that it might not be able to comply with this standard at a cost of $15 or less per vehicle. As support for this position, VW stated only that its cost of compliance would depend upon which of its lines were selected for coverage under this standard. No other manufacturer stated that it could not comply at a per vehicle cost of $15 or less. NHTSA's estimate of compliance costs is less than $10 per vehicle if the parts are stamped or engraved and $5 per vehicle if the parts are labeled for the larger manufacturers. For low volume manufacturers, NHTSA estimates that it will cost between $7 and $9 per vehicle to sandblast the markings into the parts. Based on this information, NHTSA concludes that this standard satisfies the cost limitation of section 604(a) of the Cost Savings Act.

Ferrari also asked that NHTSA exempt from the requirements of this theft prevention standard high theft car lines which have fewer than 20 thefts per model year. Section 603(a)(1) of the Cost Savings Act treats "passenger motor vehicles of any line" as part of a high theft line, if that line meets certain conditions. Congress granted exemption authority to the agency in section 605 of the Cost Savings Act for vehicles with original equipment anti-theft devices which meet certain conditions. There are no other exemptions provided in Title VI of the Cost Savings Act. An old principle of legal interpretion is expressed in the maxim *"expressio unius est exclusio alterius"*; literally, the expression of one thing is the exclusion of another. *See Earl of Southampton's Case*, 1 Dyer 50a, 73 Eng. Rep. 109 (K.B. 1541); *Marbury v. Madison*, 1 Cranch (5 U.S.) 137, at 174, 175 (1803). When Congress drafted the Theft Act so as to provide one means of exempting vehicles from its requirements, it is presumed that Congress intended to exclude other means of exempting vehicles from those requirements.

The presumption that Congress did not intend low volume manufacturers to be excluded from the theft prevention standard because of the relatively few vehicles they produce is reinforced by comparing Title V and Title VI of the Cost Savings Act. Title V expressly provides NHTSA with the authority to exempt small manufacturers from the generally applicable requirements of the fuel economy standards in section 502(c) of the Cost Savings Act. The absence of any comparable exemption authority in Title VI of the Cost Savings Act shows a Congressional intent that vehicles not be exempted from the requirements of the theft prevention standard just because relatively few of those vehicles are produced or stolen. Accordingly, the Ferrari comment is not adopted in this final rule.

B. Performance Standards for Replacement Parts

Title VI of the Cost Savings Act provides that

the theft prevention standard shall apply to replacement parts as well as to the original equipment parts. Section 602(d)(2) specifies that the standard may not require identification of any replacement part which is not designed as a replacement for a covered major part required to be identified under the standard. It further provides that the standard can not require the inscribing or affixing of any identification other than a symbol identifying the manufacturer and a common symbol identifying the part as a major replacement part. The legislative history notes that the marking for replacement parts "could be a manufacturer's logo with the initial "R" for replacement part affixed or inscribed on the part." H. Rept. at 12. To implement these requirements, the NPRM proposed the following requirements.

1. Number or Symbol to be Used and Location of the Marking.

The agency proposed that the replacement parts be marked with the manufacturer's logo and the "R", precisely as Congress had suggested. These markings were required to be at least one cm in height, as compared with the 4 millimeter height proposed for original equipment parts marking.

In response to the proposed requirements, both Ford and GM asked why the minimum size for the replacement part identification was larger than that proposed for original equipment part identification. The larger markings were proposed for replacement parts than original equipment parts because of the different information being marked on the parts. Original equipment parts will be identified with the VIN. Experience has shown that markings which are 3/32 of an inch have been readily legible for investigators. Replacement parts will only be identified with the letter R and the manufacturer's logo. NHTSA proposed the one cm minimum height for these markings so that the logo would be more clearly identifiable and more difficult to counterfeit. These replacement part markings would have to meet the same performance requirements as original equipment parts.

NHTSA believes the replacement parts marking is especially important. Numerous commenters at the public hearing on December 6 and 7, 1984, noted that the theft prevention standard is only as good as the replacement parts marking standard, because chop shops and other motor vehicle thieves will try to obliterate the VIN markings from original equipment parts and to replace those VIN's with counterfeit logos and "R" designations. It seems far easier to counterfeit a single letter and logo than to counterfeit a new VIN marking for each stolen part. Therefore, this rule adopts the proposed one cm minimum height requirement for replacement part markings.

Both the Auto Internacional Association and the Specialty Equipment Market Association commented that the manufacturer of the replacement part should not be required to mark its logo on the replacement part. Instead, these commenters asserted that the manufacturer's initials should be required, since those would also identify the manufacturer and would be required to be permanent, tamper-resistant, etc.

NHTSA is not persuaded by these comments. The manufacturer's logo is more distinctive and more difficult to counterfeit than simple initials would be. If thieves can successfully obliterate the original VIN markings on stolen parts, it would be a very simple task to affix or inscribe initials on the stolen part. Moreover, it would be difficult for investigators in the field to judge if the initials represented legitimate markings or were counterfeit, if the counterfeiting were done with even minimal skill. Logos, on the other hand, are unique indentifiers of each manufacturer and will be quickly identified by the investigator. Further, a counterfeited logo should be easier for investigators to identify than some counterfeited initials. Accordingly, this final standard retains the requirement that covered major replacement parts be marked with the manufacturer's logo and the letter "R".

CHAT commented that the agency should require the manufacturers of replacement parts to register their names, addresses, and logos with the agency. This, according to CHAT, would help both NHTSA and law enforcement officers to identify the replacement part manufacturer from its logo and to verify that the logo was valid. Regardless of the merits of this suggestion, it is outside the scope of this rulemaking. However, should experience with this standard indicate that trained theft investigators are unable to identify or verify logos without a central registry, the agency would consider whether it ought to initiate rulemaking to require this sort of registration.

The NPRM proposed that the logo marked on

the replacement part be that of the part's manufacturer. VW asked that this be modified to specify that the logo be either that of the part's fabricator or that of the vehicle manufacturer for which the part is made, at the vehicle manufacturer's option. This comment relates to the common practice of vehicle manufacturers of leasing out the molds used to make the major parts of their vehicles to another party. That other party then produces the parts using the manufacturer's mold. The parts are then marketed as replacement parts made by the vehicle manufacturer.

NHTSA did not intend to disturb this practice, nor did it intend to require that parts made for a manufacturer by an agreement with a third party be identified as parts not actually made by the vehicle manufacturer. Accordingly, for the purposes of this theft prevention standard, the manufacturer of a replacement part will be considered to be either the actual fabricator of that part or the party that provides the fabricator with the mold used to make that part and markets the replacement part as its own. The question of which of these two parties is the manufacturer for the purposes of this standard is left to those parties to decide, through contract or other agreement. Whichever party agrees to be the manufacturer of the replacement part will be responsible for ensuring that the markings on the part comply with this performance standard, and must certify that compliance. If neither party elects to be the manufacturer of the replacement part, the party that markets the replacement part as its product will be responsible for certifying that the part complies with this standard.

GM commented that the NPRM should be modified to permit the use of labels for replacement part marking. Both the NPRM and this final rule allow manufacturers to label the markings on replacement parts, provided that the labels satisfy the performance criteria. Honda and Jaguar both stated that they will have to inscribe the markings on their replacement parts, to allow for painting and rustproofing. This may well be true, but the standard does not require it. If these manufacturers can devise a way to protect the labels during painting and rustproofing, and satisfy the other performance requirements, they are free to use labels. However, they may inscribe the parts, if they determine that to be the easiest means of complying with the standard.

Mazda stated that its replacement parts are shipped just primed, and the part must be painted and rustproofed by the dealer before it is installed on a vehicle. Mazda noted that the markings may not be clearly visible after these operations have been performed on the replacement part. Therefore, Mazda suggested that the proposed requirement that replacement part markings be protected from damage during maintenance and repair be modified to require such protection "to the maximum extent possible".

NHTSA has not adopted this comment in this final rule. As noted above, many commenters at the public hearing stated that this theft prevention standard will only be as effective as the replacement parts marking requirement. NHTSA concurs in that judgment. If the theft standard were to allow replacement part markings not to be clearly visible to invesigators, those investigators would have no way of determining if the marking had been obliterated during normal maintenance and repair or if it had been obliterated by thieves. This would offer a loophole in the standard for the unscrupulous. Since NHTSA strongly believes no such loophole should exist, it did not adopt the Mazda comment.

VW commented likewise that replacement parts are shipped either unpainted or just primed, and must be painted and rustproofed by the entity that installs the part. VW stated that in some cases "the agency must recognize that it may not be possible to maintain the label." VW must recognize that it cannot certify compliance with this theft prevention standard for its replacement parts, unless it can certify that the marking of those parts will remain permanently attached to the part and will be clearly visible after normal dealer preparation of the replacement part, which includes painting and rustproofing. If VW cannot devise a method that will enable it to certify such compliance using labels, it will have to use some other means of marking those replacement parts, such as stamping or etching.

Both Saab and Mazda asked the agency to confirm that it was acceptable under the provisions of this theft standard for a manufacturer to mark all of its covered major parts with the replacement part markings. Those parts then used as original equipment parts would also be marked with the VIN for the vehicle on which they were used. It was asserted that these "dual markings" would

greatly simplify the manufacturer's task and reduce its costs for complying with this standard.

NHTSA agrees that such dual markings would be simpler for vehicle manufacturers, but the agency cannot allow such dual markings under the theft prevention standard. Dual markings would give thieves the opportunity to present stolen original equipment parts as properly marked replacement parts. Once the original equipment part identification (the VIN) had been obliterated from those stolen parts, a legitimate replacement part marking would remain. Assuming that the obliteration of the VIN were performed reasonably proficiently, repair shops and investigators would have little reason to suspect that this part was anything other than a properly identified replacement part. This would not serve the purpose of the Theft Act of "decreasing the ease with which certain stolen vehicles and their major parts can be fenced". H. Rept. at 2. To make this absolutely clear, this final rule incorporates a provision prohibiting manufacturers from marking a part both as an original equipment part and as a replacement part.

Saab also commented that replacement parts should only have to be marked while the high theft line the parts are designed to fit is in production. This suggestion has not been adopted. The replacement parts will be designed to fit vehicles which have been selected as high theft lines. All available evidence suggests that cars which are subject to high theft rates remain so for a significant period of time. If markings are not required on replacement parts after the manufacturer has ceased production of the corresponding high theft line, thieves could steal those cars and chop the cars into parts. The chop shops could devote their cunning and energy to obliterating the original equipment marking on those parts, and then sell the parts as replacement parts. Since replacement parts for these cars would no longer have to be marked by the manufacturer, the chop shops would not have to bother counterfeiting the replacement part marking. The absence of this marking would give less notice to both repair shops and investigators that the parts were, in fact, stolen. Allowing this would be inconsistent with the purposes of the Theft Act. Accordingly, it is not permitted under this final theft prevention standard. Once a line is selected as a high theft line, each covered major replacement part designed for use on that line must be identified as a replacement part. That requirement remains in effect as long as those replacement parts are produced.

With respect to the location of the replacement part markings, the NPRM proposed that those markings be placed in the same size target area as was proposed for original equipment parts (5 cm X 5 cm) and that this target area be 15 cm away from the target area for original equipment parts. The reasons for proposing the target area were the same two explained above for original equipment parts. Briefly repeated, a target area would alert an investigator as to precisely where he or she should examine the part for the marking and it would ensure that a thief could not obliterate a legitimate marking and place a counterfeit marking on top of the obliterated area, in an effort to hide the obliterated legitimate marking.

The comments on the proposed 5 cm X 5 cm X 5 cm target area for replacement parts were very similar to those for the same target area for original equipment parts, i.e., the area was too small. NHTSA is adopting a less restrictive target area which will achieve the same goals as the proposed target area, but do so in a less burdensome manner. As explained above, the vehicle manufacturers will now be required to designate a target area not to exceed 50 percent of the surface area on the surface for the original equipment parts to be marked with the VIN. Each of those vehicle manufacturers are also the major producers of replacement parts for their vehicles. Accordingly, in conjunction with the target area designations for original equipment parts, those manufacturers will also designate a target area for replacement parts.

There are two limitations on the designation of the target area for replacement parts, to ensure that there will be an adequate separation between the original equipment part markings and the replacement part markings. First, the target area for replacement parts may not exceed 25 percent of surface area on the surface of the part where the replacement marking will appear. If both the original equipment marking target area and the replacement part marking target area were 50 percent of the surface area of the part, and the target areas were on the same surface of the part, the boundaries of the two target areas would touch each other. This would not result in any significant separation of the target areas. Accordingly, one of

the target areas must be less than 50 percent of the surface area of the part. NHTSA believes it is more appropriate to limit the size of the target area for replacement part marking. This is because replacement part marking will not be done on an assembled vehicle, but will be done on the individual part. This makes it easier to position the marking more precisely.

Second, the target area for replacement parts must be at least 10 cm at all points from the target area for original equipment parts. NHTSA believes it is vitally important that investigators be able to see the area in which a thief may have attempted to obliterate an identification marking. This would not be feasible if those thieves could remove an original equipment part label and then apply a replacement part label over the same area. Therefore, the agency has concluded that there must be an adequate separation of the areas in which original equipment and replacement parts will be marked.

A 15 cm separation was proposed to ensure that, even if a manufacturer slightly missed the 5 cm X 5 cm target area, the investigators in the field would have a chance to examine the target area in which a marking may have been obliterated. In response to that proposed requirement, Chrysler commented that a 15 cm separation might eliminate locations for replacement parts marking which would be optimal for visibility or protection of the marking. Jaguar stated that the proposed 15 cm separation could prove unduly restrictive to manufacturers, without furthering the agency's purpose. Jaguar suggested that a 5 cm separation would serve the same purpose in a less restrictive manner.

NHTSA believes that the greatly enlarged target areas in this final rule respond to both these commenters' concerns. Moreover, the required separation has also been lessened to 10 cm in response to these concerns. A further reduction to Jaguar's suggested 5 cm would make it more difficult for investigators to quickly determine that a part was not marked within a designated target area, and would increase the chances for a thief to successfully hide the removal of a proper identification and the application of a counterfeit one. In NHTSA's judgment, the 10 cm separation reflects the best balance between its need to ensure adequate separation of the markings and its desire to give the manufacturers as much flexibility as possible in complying with this standard.

The Specialty Equipment Market Association and the Auto Internacional Association commented that this final rule ought to include a provision to allow replacement parts manufacturers to object to the target areas designated by the original vehicle manufacturer. No such provision is included in this rule, because NHTSA has concluded that such a provision is unnecessary. The covered major parts specified in this theft prevention standard do not include parts such as oil filters and air filters which are made by many manufacturers for a particular vehicle. The original vehicle manufacturers produce the majority of the covered major replacement parts, and most of those which are not produced by the original vehicle manufacturers are made by parties that have leased the original manufacturer's molds for those parts. Thus, the original vehicle manufacturers have no reason to select target areas for replacement parts marking that will make it difficult for them or their lessors to properly mark the part. In fact, those manufacturers have every incentive to ensure that the target area will meet the performance criteria of this standard and allow easy access to the party applying the marking.

2. Cost Limitations of the Replacement Part Standard.

Section 604(a)(2) of the Cost Savings Act limits the costs which may be imposed on replacement parts manufacturers by the marking requirements of this standard, in that those requirements "may not impose costs upon any manufacturer of major replacement parts to comply with such standard in excess of such reasonable lesser amount per major replacement part as the Secretary specifies in such standard." The NPRM noted the difference between this per part cost limitation and the specific $15 per vehicle cost limitation for marking the original equipment parts. The agency believes these differing statutory requirements reflect the difference in economies of scale for original equipment parts manufacturers and replacement parts manufacturers. The amount specified in this standard for replacement parts would be adjusted for inflation in the same manner as the $15 per car cost limitation.

The NPRM solicited comment on what "reasonable lesser amount" should be specified, and specifically asked for comments on levels of $1 and

$5 per part. The Specialty Equipment Market Association and the Auto Internacional Association suggested a complex formula for determining the reasonable lesser amount. They urged the agency to determine the relationship between $15 and the price of the vehicle for which the parts are made. That percentage of $15 should be adopted as the limit for all 14 replacement parts, and one-fourteenth of that number would be the maximum cost that could be added by the marking requirements for an individual part. For example, if a new vehicle sold for $15,000, the $15 cost limit would represent 0.1 percent of the cost of the vehicle. Under this suggested formula, the total cost for marking all 14 replacement parts would be limited to 1.5 cents. Each part could cost no more 0.1 cent to mark.

The agency has not adopted this formula in this final rule. It would result in no replacement parts being marked, and would directly contradict the explicit requirements of, and intent underlying, the Theft Act. If this suggested formula were not adopted in the theft prevention standard, these commenters asked the agency not to specify any cost limit for marking replacement parts. This course of action is not possible because section 604(a)(2) of the Cost Savings Act explicitly requires the agency to specify a cost limit for the marking of replacement parts in the theft prevention standard.

CHAT commented that the suggested $5 limit for marking replacement parts seemed to be an excessive cost to impose on manufacturers. At the same time, CHAT said that the suggested $1 level might be too restrictive for marking purposes, since these manufacturers would not have the economies of scale the vehicle manufacturers would have. CHAT stated that NHTSA should specify a cost limit of $2 or $3 for marking a replacement part. Ford stated its belief that a $1 limit for marking a replacement part was reasonable. GM commented that manufacturers should not be required to incur costs of more than $1 to mark a replacement part, and that the suggested $5 limit per part was excessive.

The agency has reexamined this question in light of these comments. NHTSA has concluded that setting a cost limit of $1 to mark replacement parts would be unreasonably restrictive. The statutory limit of $15 to mark 14 covered parts on a vehicle in effect allows an average cost of $1.07 per part. Setting a $1 limit for the costs of marking replacement parts would require that it cost less to mark those parts than Congress allowed for original equipment parts. In fact, the cost of marking replacement parts will be greater than the costs of marking original equipment parts, because of the lesser economies of scale the replacement parts manufacturers experience. Further, some parts may cost more than others to mark because of individual characteristics, such as the geometry of the part and its ability to withstand stamping loads. A cost limit of $1 per replacement part would force the agency to revise the standard to allow the manufacturers to mark these more costly parts for less than the cost limit. Accordingly, this limit has been rejected as unreasonably low.

As noted above, the agency believes that replacement parts marking is crucial if this standard is to be effective. The replacement parts markings required in this standard are exactly those suggested in the legislative history. NHTSA has concluded that a lessening of these markings would undermine the purpose of those markings, by making it simpler for thieves to falsely mark stolen parts as legitimate replacement parts. Because this standard is directed at very sophisticated criminal enterprises, it must give investigators every opportunity to detect counterfeit markings. Fewer markings make it easier for a criminal to apply counterfeit markings which appear to be legitimate, and give investigators less of an opportunity to detect the counterfeit nature of those markings. Therefore, NHTSA believes it would be inconsistent with the intent of the Theft Act to specify a cost limit for these markings that could not be met by each replacement parts manufacturer.

As with the $15 cost limit to mark the parts on a new vehicle, NHTSA has no authority to exempt a manufacturer or particular parts from the replacement parts marking requirement because of an inability to comply with these requirements by some reasonable means at a cost of this specified limit or less. If a replacement parts manufacturer can show that it is unable to reasonably comply with these markings requirements within such limit for any covered part, the marking requirements of the standard will have to be amended to permit each replacement parts manufacturer to mark each covered major replacement part for the specified limit.

The information currently available to the agency indicates that it could cost a low volume

manufacturer or importer of replacement parts as much as $3.96 to mark certain replacement parts. Accordingly, if the cost limit for marking replacement parts were set below this level, the requirements for such markings would have to be made less stringent, and NHTSA believes this would be inconsistent with the purposes of the Theft Act. To allow for possible error in this agency estimate, this final rule establishes a cost limit of $5 (in 1984 dollars) for marking replacement parts.

NHTSA believes this amount is a "reasonable lesser amount" than $15. The cost to vehicle manufacturers to mark these parts will be well under $1 for each replacement part, and these manufacturers are the source of the vast majority of replacement parts. All available information to the agency indicates that the vehicle manufacturers will not approach this cost limit. As stated above, the limit is directed at the reasonable costs which will be incurred by the smallest manufacturers and importers. These replacement parts are generally chosen by vehicle owners because they cost significantly less than those same parts produced by the vehicle manufacturers and the large replacement parts manufacturers. A $5 price increase for the replacement parts produced by the smallest manufacturers and importers will not significantly reduce the demand for their products, because the major replacement parts covered by this standard are very expensive parts and usually have large retail price mark-ups. Further, the specialty cars for which most of the smaller entities produce major replacement parts generally cannot get parts from junk yards or other salvage operations. This leaves the parts manufacturers with a virtual monopoly on the replacement parts market.

Appendices Setting Forth Lines Selected as High Theft Lines and the Criteria Considered in Selecting High Theft Lines.

The NPRM explained how the agency would select lines as high theft lines. Since then, NHTSA has published a final rule setting forth the procedures for selecting high theft lines from those lines introduced after January 1, 1983 (50 FR 3483; August 28, 1985) and theft data for lines introduced before January 1, 1983 (50 FR 18708; May 2, 1985, 50 FR 32871; August 15, 1985). The issues associated with those selections have been discussed at length in those notices and need not be repeated herein.

Appendix A in the NPRM was proposed simply to create a place for listing the lines which would be selected as high theft lines. No commenters suggested any reasons for not including such an appendix to this theft prevention standard. Accordingly, it is included in this final standard.

Proposed Appendix B listed the criteria the agency would consider in limiting to 14 the number of lines introduced by an individual manufacturer before the effective date of the theft prevention standard that may be selected as high theft lines because of actual or likely high theft rates. This limitation is set forth in section 603(a)(3) of the Cost Savings Act. As announced in the August 28, 1985 notice establishing the final rule for the selection of high theft lines, one of the proposed criteria for that appendix has not been adopted in this theft prevention standard. It was proposed that a manufacturer's plans for installation of an original equipment anti-theft device in a line would be considered as a factor militating against choosing that line as one of the 14 to be subject to this theft prevention standard. As explained at 50 FR 34834-34835, NHTSA has concluded that it would be inappropriate to consider such plans to lessen the possibility of a line being chosen as one of the 14 subject to the standard. All the other parts of Appendix B have been adopted as proposed in the NPRM.

Proposed Appendix C contained criteria for selecting likely high theft lines from those lines introduced after January 1, 1983. Since no commenters objected to these criteria, they are adopted as proposed.

Certification of Compliance with the Theft Prevention Standard.

Section 606(c)(1) of the Cost Savings Act [15 U.S.C. 2026(c)(1)] provides that "[e]very manufacturer of a motor vehicle subject to the standard ... and every manu facturer of any major replacement part subject to such standard, shall furnish at the time of delivery of such vehicle or part a certification that such vehicle or replacement part conforms to the applicable motor vehicle theft prevention standard." It further provides that NHTSA may issue rules prescribing the manner and form of such certification.

Section 607(a) of the Cost Savings Act prohibits any person from importing into the United States any motor vehicle or part covered by this standard, unless it is in conformity with the standard. The House Committee Report states that "[a]ny motor

vehicle not in compliance will be refused admission into the United States." H. Rept. at 18. On that same page of the report, NHTSA is directed to take "into consideration its present certification practices in the case of safety" in determining the method and form of certification for the theft prevention standard.

A. Who May Certify

As noted above, Title VI of the Cost Savings Act requires every "manufacturer" to certify that its motor vehicles and/or covered major parts comply with the requirements of this standard. The term manufacturer is defined in section 2(7) of the Cost Savings Act [15 U.S.C. 1901(7)] as "any person engaged in the manufacturing or assembling of passenger motor vehicles or passenger motor vehicle equipment including any person importing motor vehicles or motor vehicle equipment for resale." Because of concerns about maintaining the security of marking technologies and about enforcement of this standard, the question which arises is whether each and every "manufacturer", as that term is defined in section 2(7), should be permitted to certify that a motor vehicle or part complies with the requirements of this theft prevention standard.

This question arises primarily in connection with "direct importers". These direct importers are individuals and commercial enterprises which obtain foreign cars not originally manufactured for sale in the United States, bring them into this country, and modify them so that they can be certified as being in compliance with the U.S. vehicle safety, emissions, and bumper standards. Under the Federal statutes mandating the vehicle safety, emissions, and bumper standards (15 U.S.C. 1397(b)(3), 42 U.S.C. 7522(b)(2), and 15 U.S.C. 1916(b)(3)) and the implementing regulations (19 CFR 12.73 and 12.80), vehicles not in compliance with those standards may be brought into this country under bond. The bond is released when a statement is submitted showing that the necessary modifications to achieve compliance with those standards have been made. However, Title VI of the Cost Savings Act does not specifically provide for the importation of noncomplying vehicles under bond. Therefore, all vehicles must be certified as complying with requirements of this theft prevention standard before they are "imported".

The NPRM proposed to limit those persons who would be authorized to certify compliance with the theft prevention standard to a narrower subset of the universe of "manufacturers". Instead of allowing all persons who are "manufacturers" within the meaning of section 2(7) (both direct importers and original manufacturers of the vehicles and parts) to certify compliance with the requirements of the theft prevention standard, the NPRM proposed to limit access to marking techology by providing that only original manufacturers of the vehicles and parts would be allowed to certify such compliance.

The language of Title VI and its legislative history neither expressly endorses nor repudiates the definition of "manufacturer" in section 2(7). On the one hand, certain portions of Title VI seem to indicate that Congress did not contemplate that direct importers would be involved in complying with the theft prevention standard. Section 602(a)(1) provides that the standard applies to "the covered major parts *which are installed by manufacturers* into passenger motor vehicles," and 602(d)(1) refers to "major parts *installed by the motor vehicle manufacturer.*" (Emphasis added to both). Direct importers may alter, but do not install major parts. Hence, Congress did not seem to be specifically referring to direct importers as manufacturers for purposes of the Theft Act. Moreover, Senator Percy, the original sponsor of the Senate version of the anti-theft bill, stated during the floor debate that,"[u]nder the bill, motor vehicle manufacturers would be required to apply these numbers *before each vehicle leaves the factory.*" 130 Cong. Rec. S13585, Oct. 4, 1984. This statement could be viewed as support for the concept of limiting certification to original manufacturers, since direct importers could not apply numbers before the vehicle leaves the factory.

Additionally, Congress did not explicitly provide for importing noncomplying vehicles under bond, as it had done for the safety, emissions, and bumper statutes. Earlier versions of the legislation which became the Theft Act contained bonding provisions which were dropped before the law's enactment. The absence of express authority to "import" noncomplying vehicles, particularly when compared with the presence of such authority under the other statutes requiring Federal vehicle standards, might be said to suggest that Congress intended to absolutely prohibit the im-

portation of noncomplying vehicles.

On the other hand, Congress amended the general definitions in section 2 of the Cost Savings Act(15 U.S.C. 1901) so that those definitions apply for the purpose of the Cost Savings Act *"(except title V and except as provided in section 601 of this Act)"*. (Emphasis added). In section 601, Congress set forth the definitions which applied solely for the purposes of the Theft Act (Title VI of the Cost Savings Act). However, it did not amend the definition of "manufacturer" set forth in section 2 of the Cost Savings Act. Had Congress intended to change the definition of manufacturer to exclude direct importers, it would presumably have done so explicitly. This seems particularly true when Congress did, in section 601, change the definition of "passenger motor vehicle" set forth in section 2 for the purposes of Title VI of the Cost Savings Act.

Further, the legislative history explicitly stated that the requirements of the Theft Act were designed to curb motor vehicle thefts "while trying to minimize regulation of the domestic and foreign motor vehicle manufacturing industry, including the aftermarket motor vehicle industry." H. Rept. at 2. It would appear to be inconsistent with this stated goal for the Theft Act requirements to force a small, but recognized, portion of the industry out of that business.

Since the statutory requirements and legislative history appear to give conflicting signals as to the underlying Congressional position on whether direct importers should be allowed to certify compliance with the requirements of this theft prevention standard, the agency had to determine whether the policy goals underlying Congressional passage of the Theft Act would be better served by allowing or prohibiting certification of compliance by direct importers. In the NPRM, the agency tentatively concluded that such certification would be inconsistent with the law enforcement goals of the Theft Act, and proposed to limit certification of compliance with the requirements of this theft prevention standard to original vehicle manufacturers and major replacement part manufacturers.

This proposal was explained at length at 50 FR 19738-19740, and need not be repeated herein. However, NHTSA was sensitive to the economic consequences for direct importers if the theft prevention standard were to prevent their importation of high theft lines, by barring them from certifying the compliance of those vehicles. Accordingly, the NPRM asked for comments on whether there was some scheme consistent with the Theft Act that would permit direct importers to certify compliance with this theft prevention standard, without impeding the enforcement of this standard.

In response to this proposal and request for comments, NHTSA received numerous and voluminous comments on this proposed limitation. Many form letters were submitted by direct importers, opposing the proposed limitation, and by law enforcement groups supporting the proposed limitation.

Original vehicle manufacturers unanimously supported the proposed limitation, and the strongest supporters of that proposal were the foreign manufacturers. These comments amplified the practical enforcement difficulties and substantially reduced effectiveness of the marking requirements which they believed would ensue if direct importers were allowed to mark vehicles. CHAT commented that the security problems associated with the marking technologies would expand considerably if each direct importer had access to those technologies, and supported the proposed limitation. The National Automobile Dealers Association agreed with the proposed limitation, and emphasized the "serious problems for franchised dealers" which have arisen in connection with vehicles imported by the direct importers.

An association of direct importers, the Automobile Importers Compliance Association, strongly opposed the proposed limitation, arguing that if Congress had intended to limit certification authority to original manufacturers, it would have done so explicitly. That group suggested what it felt were a number of ways in which direct importers could be allowed to certify compliance with the theft prevention standard without sacrificing the law enforcement objectives of that standard. These included controlled labeling, in which only one party would obtain the labels to be affixed to direct imports and would distribute these labels to the direct importers once the direct importer had shown proper credentials for the labels. Alternatively, that group suggested that all direct import vehicles be exempted from the marking requirements of this standard, on condition that the vehicles all be equipped with original equipment anti-theft devices. This suggestion arose from the agency's authority to exempt lines from the marking requirements, under section 605(a)(1) of the Cost Savings Act, if the agency determines that the original equipment anti-theft devices on those

lines are likely to be as effective as parts marking in reducing and deterring vehicle thefts. Finally, this group indicated its belief that "NHTSA has inherent authority to establish limited exemptions from (the theft prevention standard's) requirements to assure reasonableness and practicability." The group urged NHTSA to use this inherent authority to exempt direct importer's vehicles from the requirements of the theft prevention standard.

The Justice Department (DOJ) also objected to the proposal to allow only original manufacturers to certify compliance with the theft prevention standard. DOJ stated its belief that the benefits associated with prohibiting direct importers from marking vehicles would be significantly outweighed by the consumer costs resulting from such a prohibition. Absent a clear Congressional directive to eliminate certification by direct importers, and in consideration of the "significant negative economic impact" which would be associated with NHTSA's proposed limitation of certification authority, DOJ suggested that NHTSA should not adopt its proposed limitation.

DOJ agreed with NHTSA that access to marking technologies should be carefully controlled, in order to serve the law enforcement objectives of the Theft Act. DOJ observed that it may be better from a law enforcement standpoint if the markings by direct importers were done in the U.S., since such marking operations could be better monitored. Accordingly, DOJ stated that NHTSA should use its administrative discretion to admit non- complying vehicles under bond, and allow the theft prevention standard's markings to be done at the same time as the modification of the vehicle so that it satisfies the requirements of the vehicle safety and emissions standards. To ensure the effectiveness of the theft prevention standard, DOJ suggested that four additional limitations be placed on direct importers for purposes of the theft prevention standard. These were:

(1) All direct importers would be required to register with NHTSA;

(2) Direct importers must use a numbering system for parts that will uniquely identify both the vehicle parts and the importer. They suggested the use of the Euro-VIN with a prefix code and logo to identify the direct importer;

(3) Direct importers should not be allowed to use labels, since that might present special security problems; and

(4) Direct importers would be required to maintain the records required of all manufacturers under section 606(a) of the Cost Savings Act.

With these additional requirements, DOJ believed that the theft prevention standard would be effective for law enforcement purposes while not banning direct imports of high theft lines.

In response to these comments, NHTSA has thoroughly reexamined this subject. The agency has concluded that this regulation should not prohibit direct imports of vehicles. Accordingly, this final rule allows all entities which are "manufacturers" within the meaning of the Cost Savings Act to certify compliance with the requirements of this standard. This is consistent with existing practice under the Safety Act, the Clean Air Act, and Title I of the Cost Savings Act.

However, NHTSA also believes that the rulemaking record supports its policy concerns about the security of the marking technologies and the enforcement of this standard. The lengthy discussion in the NPRM shows why the issue of direct imports poses special problems for achieving the law enforcement purposes of the Theft Act. Accordingly, this theft prevention standard sets forth the following special provisions for the purposes of certification of compliance by direct importers.

1. Direct imports must be marked with the Euro-VIN.

As noted above, the NCIC computer system for recording and tracking stolen vehicles is set up so that it requires the entry of a full 17-character U.S. VIN. Thus, at first glance, it would seem to be most useful for law enforcement purposes if these vehicles were assigned a U.S. VIN. However, the NPRM sought comments on the use of Euro-VINs for marking direct imports subject to the requirements of this theft prevention standard, because of the problems which might be associated with direct importers assigning U.S. VINs to these vehicles.

The NATB stated that there are reported instances under the current VIN regulations where a direct importer has assigned and affixed new 17-character U.S. type VINs to vehicles with Euro-VINs. "Homemade" VINs give all appearances of having been actually assigned by the vehicle manufacturer, but were actually assigned by the direct importer, without identifying the direct importer. Such "homemade" VINs assign the proper characters to accurately identify the actual manufacturer

of the vehicle. Most even include an accurate check-digit, so it is not apparent that they are "homemade". However, according to NATB, such "homemade" VINs present law enforcement officers with the situation where a vehicle cannot be traced (or its production verified) either to the original manufacturer or to the direct importer. This substantially negates one of the main purposes of the VIN. NATB concluded its comment on this point by repeating its preference for a full 17-character VIN, but stated that vehicles with accurate Euro-VINs could be traced to the actual manufacturer and have the production verified, albeit with additional effort and time delays. Since this could not be done with "homemade" U.S. VINs, NATB urged this agency to require the use of Euro-VINs by direct importers.

NHTSA is persuaded by this comment. While the NCIC tracking system could more readily handle full 17-character VINs, the usefulness of those VINs would be substantially diminished if they do not allow law enforcement personnel to trace the vehicle to its manufacturer. The Euro-VINs are more difficult for the NCIC to enter, but will serve to trace the vehicle to its manufacturer. Further, if the agency were to permit or require assigning U.S. VINs by direct importers, such "homemade" VINs would not be recorded by the manufacturer as assigned. This could result in a situation where a VIN was assigned to two different vehicles (once by the vehicle manufacturer and once by the direct importer). Duplicative VINs would completely fail to serve the purpose of providing a unique identifier for a vehicle for 30 years. Therefore, NHTSA has determined that vehicles imported by direct importers should be marked with the original Euro-VIN assigned to the vehicle by the original manufacturer.

2. Direct imports must have the markings inscribed on the parts.

The 3M Corporation's representatives have repeatedly expressed their concerns that producers of security labeling technology, such as 3M, are able to guarantee the usefulness of their product *only when the distribution of the product can be tightly controlled.* That corporation has stated that the security labeling system's integrity and uniqueness will be easily compromised if they are required to make their security tape more widely available in the marketplace.

Because of these concerns, DOJ commented that direct importers should not be permitted to use labels to mark the parts of their vehicles. According to those comments, "It is reasonable to impose some additional costs on importers to prevent the security risks perceived in a wide availability of labeling technology."

The Automobile Importers Compliance Association acknowledged in its comments that it was necessary to reduce the number of parties in possession of all or some part of the security marking technologies, and suggested that a procedure be set up whereby one party would secure and distribute labels to direct importers. That group suggested that either it or the Department of Transportation should be the party that secures and distributes those labels.

NHTSA has not adopted the suggested procedure for having one party secure and distribute labels to all direct importers. It would be inappropiate for the Department to perform this function, for the reasons stated in the NPRM. Briefly repeated, such a procedure would differ radically from practices under the Safety Act, and the legislative history of the Theft Act directs NHTSA, when establishing procedures for certification, to "take into consideration its present certification practices in the case of safety." H. Rept. at 18. No resources are available for establishing such a procedure in the agency's budget, and the agency does not believe it should seek an increase in its budget to allow it to become involved in the certification of vehicles.

The agency also believes it would be inappropriate to designate the Automobile Importers Compliance Association, or any other group of direct importers, as the sole source of labels for direct importers' vehicles. By choosing a single group as the source of labels for all direct importers, the agency would give it an unintended "government sanction" as the official representative for all direct importers. Conversely, it would have the effect of denigrating the standing of any other direct importers' groups.

In view of these potential problems with designating some group outside of the Department of Transportation as the sole source for labels for direct importers' vehicles, NHTSA has not adopted this suggested approach.

3M has specifically stated that the usefulness of their labels can be guaranteed only when the

distribution is tightly controlled. If a chop shop or some other criminal enterprise were to make a direct import of only one vehicle and were able to obtain an excess supply of security labels, the integrity of the labels would be seriously compromised. If a number of criminal enterprises were to do this, the value of the labels would be even further diminished. The information currently available to the agency suggests that nearly all original manufacturers intend to comply with the parts marking requirements of this theft prevention standard by using those security labels. If criminal enterprises were able to pose as legitimate direct importers and readily obtain access to these labels, the security and effectiveness of these labels on all imported vehicles subject to this theft prevention standard would be seriously compromised, or perhaps rendered useless. This theft prevention standard cannot permit such a result.

Under general legal principles, the Theft Act must be interpreted so as to give NHTSA implied authority to set marking performance requirements that are essential to achieve the purposes of the Theft Act. NHTSA is well aware of the directive in the legislative history that this is to be a performance standard, and that the agency is to establish the "tests or general criteria which the identification must meet, but not how it is to be inscribed or affixed". H. Rept. at 10. Clearly each "manufacturer" was to be allowed to choose how to comply with the requirements of this theft prevention standard.

However, the agency believes that the requirement for a performance standard, read in the context of the Theft Act, means that NHTSA must draft its requirements as broadly as possible, but may also be relatively specific if necessary to ensure that the Theft Act achieves it purposes. The Vehicle Safety Act, on which much of this Act is modeled, contains a similar requirement for performance requirements. The agency has repeatedly interpreted the Safety Act in the manner set forth above.

Moreover, there is a familiar principle of statutory interpretation called "restrictive interpretation". That principle is explained thusly: "When the natural or literal meaning of statutory language embraces applications which would not serve the policy or purpose for which the statute was enacted or help to remedy the mischief at which it was aimed, the courts may construe it restrictively in order not to give it an effect beyond its equity or spirit. ... A restricted interpretation is usually applied when the effect of a literal interpretation will make for injustice and absurdity..." A. Sutherland, *Statutes and Statutory Construction*, §54.06 (4th ed. C.D. Sands 1973). NHTSA has concluded that the principles of restrictive interpretation must be applied to this performance standard requirement as it applies to direct importers.

According to the legislative history of the Theft Act, it is:

> a comprehensive package of proposals designed to curb the theft of motor vehicles by preventing thefts and decreasing the ease with which certain stolen vehicles and their major parts can be fenced, while trying to minimize regulation of the domestic and foreign motor vehicle manufacturing industry, including the aftermarket motor vehicle industry. It also gives law enforcement officials at all levels of government the much-needed prosecutory tools to crack criminal theft rings and related racketeering activities. H. Rept. at 2.

These are truly the essential purposes of the Theft Act. If criminal elements can readily compromise the security and effectiveness of labels, the essential purposes will not be achieved. There is no reasonable basis for supposing that Congress intended the agency to require the original automobile manufacturers to undertake the permanent identification of the covered major parts on all their high theft lines, but also to permit the security and effectiveness of such markings to be readily compromised.

After considering this analysis, NHTSA believes that it has authority to require direct importers to mark their vehicles subject to this theft prevention standard by inscribing the markings on the covered major parts, and not allowing direct importers to affix the markings on the covered major parts by means of labels. There are no security concerns related to the current stamping or etching technologies, because these are already widely available. Hence, allowing direct importers to use such technologies will not reduce the effectiveness of such markings.

This final rule does not adopt DOJ's suggestion that direct importers be required to mark their vehicles with a prefix code for the part and the importer's logo, along with the Euro-VIN. Section 602(d)(1)(A) provides that the theft prevention standard may not require original equipment parts to have more than a single identification. In the case of covered major parts on vehicles imported by direct importers, NHTSA believes that the most useful single identification will be the Euro-VIN, as explained above, and that is what is required in this standard.

The DOJ further suggested that direct importers be required to stamp those covered major parts with "positive identification" characters. The agency has no basis for mandating the use of one specific means of inscribing the markings made by direct importers. NHTSA has no data which show that stamping with "positive identification" characters will produce markings which are more difficult to alter or more readily legible for investigators than markings produced by laser etching, sandblasting, stamping with different characters, and so forth. If there were such evidence, it would perhaps be more appropriate to amend the performance requirements for the markings on all replacement parts, so that all such parts' markings would offer these benefits. Accordingly, this theft prevention standard allows direct importers to use any means of inscribing markings into the covered major parts, provided that those markings comply with the applicable performance requirements.

3. The required markings must be inscribed before the vehicle or parts are "imported into the United States".

Both DOJ and the Automobile Importers Compliance Association asserted in their comments that NHTSA has authority under the Theft Act to allow non-complying vehicles to be imported under bond and marked so as to comply with the requirements of this theft prevention standard. These comments were made in spite of the broad prohibition of section 607(a)(1) that, "No person shall ... import into the United States any motor vehicle subject to the [theft prevention standard], or any major replacement part subject to such standard, which is manufactured on or after the date the [theft prevention standard] takes effect under this title for such vehicle or major replacement part unless it is in conformity with such standard." The only exception to this broad prohibition expressed in the Theft Act is in section 607(b), which provides that section 607(a)(1) "shall not apply to any person who establishes that he did not have reason to know in the exercise of due care that the vehicle or replacement part is not in conformity with an applicable theft prevention standard."

The agency concludes that it has no authority to adopt a program to admit noncomplying vehicles under bond, for essentially the same reasons as it reached that tentative conclusion in the NPRM. Congress expressly granted the agency such authority in Title I of the Cost Savings Act (15 U.S.C. 1916) and in the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1397), but did not grant such authority in Title VI of the Cost Savings Act, relating to the theft prevention standard. The legislative history of the Theft Act referred to the agency's procedures for certification under the National Traffic and Motor Vehicle Safety Act, which contains an express provision authorizing the agency to admit non-complying vehicles under bond. Moreover, earlier versions of the bill which ultimately became the Theft Act contained bonding provisions, but those provisions were dropped from the final bill. For these reasons, NHTSA concludes that Congress did not intend bonding procedures to be used in connection with this standard.

NHTSA would like to emphasize that it is unaware of any policy reason why a program to admit noncomplying vehicles under bond, which is appropriate in the case of the National Traffic and Motor Vehicle Safety Act, the Clean Air Act, and Title I of the Cost Savings Act, should not be permitted under the Theft Act. The agency cannot dispute DOJ's comment that: "If an unsafe or polluting car can be admitted under bond, it is hard to find a public policy justification for irrevocably banning a car lacking $15 theft prevention markings." It would be simpler and more efficient for the direct importers if they were allowed to have the required theft prevention markings inscribed in the U.S. at the same time as the vehicle was being modified to comply with the Federal bumper, safety, and emissions standards. Prohibiting theft prevention markings from being inscribed in the U.S. could encourage more of the required modifications work, with the associated

jobs, to be shifted overseas. Even without considering the negative effects that this possible shift could have on U.S. employment and balance of trade, there would be a small positive impact on U.S. employment and balance of trade if the necessary markings were inscribed after the vehicle was admitted into the U.S. under bond. Notwithstanding these advantages, the agency is constrained from implementing any bonding program by the Theft Act, as explained above.

The Automobile Importers Compliance Association also raised the issue of when a vehicle is imported into the United States. That group asserted that vehicles admitted under bond are not "imported" until that bond has been released. To resolve this issue, NHTSA obtained a legal opinion from the Chief Counsel of the United States Customs Service as to when a vehicle is considered "imported" into the United States. A copy of this letter is available in the docket.

The Customs Service stated that, as a general rule, a vehicle is imported as soon as it enters the customs territory of the United States with the intent by the importer that it remain within the customs territory. Hence, vehicles imported under bond are imported before that bond is liquidated.

The Automobile Importers Compliance Association further commented that vehicles entering foreign-trade zones in the United States would not be "imported" until the vehicles leave such a zone to enter the customs territory of the United States. Foreign-trade zones may be established in or adjacent to ports of entry under the jurisdiction of the United States, and are not deemed to be within the customs territory of the United States. *See* 19 U.S.C. 81a *et seq.* and 19 CFR Part 146. Under this reasoning, the commenter stated its belief that direct importers could, consistent with the provisions of section 607 of the Cost Savings Act (15 U.S.C. 2027), bring vehicles directly into foreign-trade zones, make the necessary markings while the vehicles were inside the zones, and then formally bring the vehicles into the customs territory of the United States.

In a separate opinion from the Customs Service, also available in the public docket, that agency stated that "this suggestion on the part of the importers is clearly incorrect. Foreign merchandise brought into a foreign-trade zone in the United States is indeed imported for Customs purposes." Accordingly, the required markings must be inscribed onto directly imported vehicles before those vehicles are brought into the customs territory of the United States or a foreign-trade zone.

The U.S. Customs Service will be the agency enforcing the Theft Act's prohibition against importing noncomplying vehicles and parts, just as that agency enforces all other statutory prohibitions against importing noncomplying vehicles and items of motor vehicle equipment. Therefore, any further questions about when a product is "imported" into the United States should be addressed to the U.S. Customs Service. Their address is: Office of the Chief Counsel, United States Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

NHTSA has not adopted the Automobile Importers Compliance Association suggestions that all direct imports be excluded from the requirements of this standard on condition that they install an original equipment anti-theft device or that all direct imports be excluded. The exemption from the marking requirements of this standard for vehicles equipped with original equipment anti-theft devices is contained in section 605 of the Cost Savings Act (15 U.S.C. 2025), and requires the agency to make a determination that such anti-theft device "is likely to be as effective in reducing and deterring motor vehice theft as compliance with the requirements of this standard." NHTSA has no basis for making such a determination for all anti-theft devices on all direct imports. Absent some basis for making the requisite determination, NHTSA has no authority to exempt those vehicles under section 605 of the Cost Savings Act.

With respect to the suggestion that all direct imports be excluded from the theft prevention standard, NHTSA has no authority to exempt vehicles except under section 605 of the Cost Savings Act. Although it was suggested that the agency has "inherent authority to establish limited exemptions from its requirements", no authority was cited for the suggestion. NHTSA believes that when Congress explicitly provides one basis for exempting vehicles from the requirements of this theft prevention standard, as it did in section 605 of the Cost Savings Act, the expression excludes any other bases for exempting vehicles. The application of the legal principle, *"Expressio unius est exclusio alterius"* is as apt here as it was when NHTSA considered Ferrari's request that low volume manufacturer's vehicles be exempted from the requirements of this standard, as set forth

above in this preamble.

B. Manner of Certification

1. Vehicles Subject to the Theft Prevention Standard.

The NPRM proposed a simple amendment to the certification procedures applicable under the Safety Act. At present, the Safety Act requires manufacturers to affix a permanent plate or label to each vehicle providing a number of items of information, including the following statement: "This vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture shown above." For all passenger cars manufactured on or after September 1, 1978, the phrase "and bumper" is required to appear in the above statement immediately following the word "safety".

The NPRM proposed that, in the case of passenger cars manufactured on or after the effective date of the theft prevention standard and subject to the requirements of this standard, the expression "bumper, and theft prevention" be substituted in the statement immediately following the word "safety". Ford commented that the proposal should be revised, because it would require separate certification labels for cars subject to the theft prevention standard and cars not subject to this standard. Ford stated that separate certifications would "cause disruption of the assembly plant process", particularly in a plant which produced some lines subject to the standard and others which were not. Ford concluded this comment by noting that the statement that the vehicle conforms to all "applicable" theft prevention standards would ensure that it was accurate in the case of vehicles not subject to this standard.

NHTSA did not intend to require separate certifications for passenger cars, and has adopted Ford's comment for the reasons stated in that comment.

As a related matter, VW, Mazda, and Saab noted that a few of their vehicles are damaged so badly in shipment that a major part may be among those that need to be replaced before the vehicles are offered for sale to the public. The commenters asked if the manufacturer was required to replace the damaged part with a part marked with the VIN, as is required for original equipment parts, or if the dealer could replace the part with a replacement part. The commenters noted the certification difficulties they would have if a VIN marking were required on the replacement part. Mazda further commented that if those VIN markings were required, it would have to provide each of its dealers with the labeling technology.

Section 606(c)(1) of the Cost Savings Act requires that "every manufacturer of a motor vehicle subject to the [theft prevention standard]...shall furnish at the time of delivery of such vehicle ... a certification that such vehicle conforms to the applicable motor vehicle theft prevention standard. Such certification shall accompany such vehicle...until delivery to the first purchaser."

This latter sentence is consistent with the position NHTSA has taken for purposes of the Safety Act; i.e., it is not sufficient for a vehicle to satisfy the applicable safety standards at the time it leaves the assembly line. Instead, the manufacturer must certify that the vehicle satisfies all applicable safety standards at the time it is delivered to the first purchaser.

However, NHTSA does not understand these commenters to be suggesting that this theft prevention standard should permit new vehicles to be delivered which do not comply with this standard; i.e., with unmarked covered major parts. It is implicit in these comments that all vehicles must comply with this theft prevention standard. The question, however, is whether all parts of new vehicles must comply with the vehicle standard (marked with the VIN) at the time of delivery to the first purchaser, or whether some parts of the new vehicle may comply with the replacement part standard (marked with the letter "R" and the manufacturer's logo) at the time of delivery to the first purchaser.

Section 606(c)(1) specifies that the vehicle manufacturer must certify that the vehicle complies with the vehicle standard (all covered major parts marked with the VIN) "at the time of delivery of such vehicle". This requirement leaves two question concerning the manufacturer's certification to be resolved:

(1) what is the "time of delivery"?; and
(2) the "delivery" to whom?

Neither the language of section 606 nor its legislative history makes clear the answers to these questions. However, the legislative history does specify that: "The method and form of certification

shall be prescribed by the DOT by rule, taking into consideration its present certification practices in the case of safety." H. Rept. at 18. Section 114 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1403) states that: "Every manufacturer or distributor of a motor vehicle or motor vehicle equipment shall furnish to the distributor or dealer at the time of delivery of such vehicle or equipment by such manufacturer or distributor the certification that each such vehicle or item of motor vehicle equipment conforms to all applicable Federal motor vehicle safety standards." This certification practice with respect to the Safety Act suggests that Congress was referring to a delivery to the dealer or distributor as the point when a certification must be made by the vehicle manufacturer.

That conclusion is reinforced by section 606(c)(1)'s reference to "delivery to the first purchaser" in the next sentence. Had Congress intended to refer to delivery to the first purchaser in both instances, it would presumably have used the same phrase. Since it did not refer to "delivery to the first purchaser" as the point when the vehicle manufacturer must certify that the vehicle complies with this theft prevention standard, Congress must have intended that the "delivery" in question be that to a dealer or distributor. This is because there are no other parties to whom the manufacturer could be said to deliver a vehicle. Accordingly, NHTSA has determined that the delivery referred to in the first sentence of section 606(c)(1) is a delivery by a vehicle or replacement parts manufacturer to a dealer or distributor.

This determination means that the vehicle manufacturer satisfies its *certification* responsibilities under the Theft Act when it delivers to a dealer or distributor a vehicle with all covered major parts marked with the VIN and conforming to the performance requirements set forth for those markings. Thus, a manufacturer will not be subject to civil penalties under section 607(a)(4)(B), which prohibits the issuance of false or misleading certifications of compliance, if it delivers such a vehicle to a distributor or dealer. However, as noted above, section 606(c)(1) of the Cost Savings Act makes the vehicle manufacturer responsible for delivering to the first purchaser a vehicle that *complies* with the applicable requirements of this theft prevention standard. Therefore, a manufacturer that delivers a complying vehicle to a dealer or distributor may be subject to civil penalties under section 607(a)(1), which prohibits the manufacture or sale of a noncomplying vehicle, if the vehicle does not comply with the theft standard when it is delivered to the first purchaser. In such an instance, the manufacturer could assert the defense set forth in section 607(b) that it did not have reason to know in the exercise of due care that the vehicle was not in conformity with this standard. If some person actually altered or obliterated the markings, such person would have violated section 201 of the Theft Act (18 U.S.C. 511).

This leaves open the question of what the time of delivery of a vehicle is, for the purposes of the Theft Act. NHTSA has not specifically addressed the "time of delivery" of a vehicle for the purposes of the Safety Act, so there is no general practice for the agency to consider. Absent clear legislative guidance or any clearly established practice under the Safety Act, the agency must examine other sources and consider the purposes of the Theft Act to determine what the "time of delivery" means under the Theft Act.

Delivery is a concept used for commercial transactions, and has been defined in the Uniform Commercial Code (U.C.C.). The U.C.C. has been adopted in whole or in part by all 50 states and the District of Columbia. NHTSA believes that the generally accepted definition of "delivery", as set forth in the U.C.C., is a useful indicator of what Congress intended when it used that term in section 606 of the Theft Act.

The rule under the Uniform Commercial Code is that when a seller ships goods by carrier, the delivery occurs when the goods are delivered by the seller to the carrier, unless the contract requires the seller to deliver the goods to the purchaser at a particular destination. U.C.C. §2-504 and §2-509 (1977). If this rule were applied in the case of a vehicle, the delivery to the dealer or distributor would occur when the manufacturer shipped the vehicle, unless the contract specifies delivery occurs when the vehicle is tendered to the dealer. In the interests of ease of administration, NHTSA believes it is appropriate to define "delivery" so that it occurs at the same point in any given transaction. It would be unwise policy and an onerous burden on the agency and the regulated parties if the agency were forced to examine the contractual terms between every manufacturer and each of its dealers and distributors to determine when

"delivery" occurs in each case. Therefore, NHTSA has concluded that, for the purposes of this theft prevention standard, delivery occurs when the vehicle manufacturer delivers the vehicle to a shipper to be transported to a dealer or distributor. As noted above, this is the general rule under the U.C.C.

In practical terms, this means that, if a vehicle is so badly damaged that a covered major part needs to be replaced before the manufacturer has delivered the vehicle to the shipper, the vehicle manufacturer will have to mark a part with the VIN of that vehicle and install that part before delivering the vehicle to a dealer or distributor. If, on the other hand, a vehicle is so badly damaged after the manufacturer has delivered a properly marked and certified vehicle to the shipper that a covered major part needs to be replaced before the first sale of the vehicle for purposes other than resale, the dealer or distributor may install a replacement part on the vehicle. The replacement part must comply with the applicable requirements for replacement parts, and need not have the VIN marked on it, as would be necessary if it were subject to the original equipment part requirements.

The certification which the first purchaser of the vehicle must receive, pursuant to section 606(c)(1), will indicate that the vehicle conforms to all applicable Federal theft prevention standards. This statement will not be misleading, because the undamaged original equipment parts must comply with the requirements applicable to original equipment parts, while the substituted replacement parts must comply with the requirements applicable to replacement parts.

NHTSA believes that this definition of "delivery" is the only one consistent with the purposes of the Theft Act to require markings of vehicle parts while imposing nominal burdens on the motor vehicle manufacturing industry. The agency recognizes that replacement parts installed on vehicles will be particularly attractive to thieves, since they can remove that part from the vehicle and sell it as a legitimate replacement part. However, vehicles are very infrequently damaged so badly before sale to the public that a major part would need to be replaced. If a major part were replaced with a replacement part, thieves will not be alerted to the fact that the vehicle has only 13 parts marked with the VIN and one marked with an "R" and the manufacturer's logo. Even if a thief were to learn this fact, the 13 marked parts would still show that a vehicle had been stolen by that person.

On the other hand, had the agency concluded that delivery to a dealer or distributor occurs when the dealer or distributor takes physical possession of the vehicle, enormous burdens would result for the dealers and distributors. Section 607(a)(1) of the Cost Savings Act specifies that no person shall sell or offer for sale a vehicle subject to this theft prevention standard that does not conform to this standard. Accordingly, dealers and distributors would have to hold the vehicle until the vehicle manufacturer had marked a part with the vehicle's VIN and shipped the part to the dealer or distributor. This would create a financial burden for the dealer or distributor holding the vehicle, since it would be paying interest on the vehicle from the date it received the vehicle, but could not offer to sell the vehicle until it had received and installed a properly marked part from the manufacturer. It would also create a burden on the manufacturer to produce one part not marked as a replacement part, label that part with the proper VIN, and ship the part to the dealer or distributor.

NHTSA would like to note that Mazda's comment that it would have to provide its dealers with labels and marking technology is incorrect. The Theft Act places the burden of marking the parts exclusively on the manufacturer, not the dealer. Therefore, any necessary marking of parts under this theft prevention standard is the responsibility of the vehicle's manufacturer.

NHTSA also wishes to emphasize that this determination of when delivery occurs is solely applicable for the purposes of determining compliance with the requirements of the theft prevention standard. It does not affect any contractual provisions concerning which party bears the risk of loss for vehicle damaged in shipment, nor is it applicable to the provisions of the Safety Act or any other statutes administered by the agency. Those statutes may have differing underlying policy considerations from those of the Theft Act, and those considerations might mandate a contrary determination of when delivery occurs.

This final rule must also establish rules for certification of direct imports subject to the requirements of this standard. The NPRM noted that

requiring alterations in the certification plate should prove feasible for all affected parties, since that notice proposed to limit certification authority to original manufacturers only.

However, this procedure would not be feasible for direct importers. The safety certification label can not be affixed to the vehicle until the vehicle is certified as complying with the applicable safety standards. In the case of direct imports, that certification is not made until after the vehicle has been imported under bond and the necessary modifications have been made. As noted above, the Theft Act does not permit any vehicles to be imported which do not conform to the requirements of this standard. Therefore, a separate certification label will have to be affixed to these vehicles before they are "imported".

The agency believes that the direct importers' certification should be simple for the benefit of both Customs officials and the direct importers. Accordingly, the theft prevention standard requires that direct imported vehicles have a label permanently attached to each vehicle subject to this theft prevention standard, in the same positions on the vehicle and with the same lettering size and contrast requirements as is required for the safety certification labels by Part 567, with the statement: "This vehicle conforms to the applicable federal theft prevention standard in effect on the date of manufacture." Additionally, the label must identify the model year and line of the vehicle. Finally, the label must display the corporate or individual name of the direct importer that is certifying the vehicle's compliance with the theft prevention standard's requirements, preceded by the words "Imported by". This will be sufficient to inform Customs officials that the vehicle has been properly marked and identify the party which is certifying the conformity of the markings.

NHTSA wishes to emphasize that this separate certification is necessary only for those directly imported vehicles subject to this theft prevention standard. Those vehicles not subject to this standard need not be so certified. The other information required to appear on the Part 567 certification label will be affixed to the vehicle when that certification label is affixed, i.e., after the direct importer certifies that the vehicle complies with the applicable safety and bumper standards.

2. Replacement Parts.

Again relying on the legislative instructions that the agency take into account current certification practices under the Safety Act, NHTSA proposed in the NPRM that certification of compliance with the replacement parts standard be accomplished by marking each replacement part with the symbol "DOT", and that the "DOT" symbol appear immediately adjacent to the "R" and manufacturer's logo required to appear on replacement parts.

Ford supported the proposed certification, noting that the DOT symbol has been effectively used as a certification of compliance with many standards applicable to motor vehicle equipment. Ford listed lighting equipment, brake hoses, brake fluids, automotive glazing, new and retreaded pneumatic tires, and motorcycle helmets as examples of motor vehicle equipment which must display the DOT symbol as the manufacturer's certification of compliance with the applicable safety standard. GM objected to the requirement to mark the DOT symbol on replacement parts as a certification of compliance. GM explained its objection by stating that the addition of the DOT symbol would not "add to the effectiveness of the marking, but it would increase its cost". GM concluded by recommending that should NHTSA decide to require the DOT marking to appear on replacement parts, it should delete the requirement to mark either the logo or the "R" on the parts. No other commenters addressed this proposed certification requirement.

The agency has decided to adopt the certification requirement proposed for replacement parts. Section 606(c)(1) of the Cost Savings Act requires manufacturers of covered major replacement parts to furnish a certification that the part conforms to this standard at the time of delivery. For purposes of the Safety Act, the agency has used the DOT symbol as the certification of compliance for most of its motor vehicle equipment standards. Accordingly, it is appropriate to require this simple but effective certification for purposes of the Theft Act.

GM's comments are not persuasive. The agency intends that this standard impose the lowest costs necessary to comply with the requirements of the Theft Act. However, NHTSA has concluded that the costs of marking the letters "DOT" in addition

to the letter "R" and the manufacturer's logo will be minimal, whether the markings are inscribed or affixed. The agency is unaware of, and GM did not explain, how the addition of these three letters would present any difficulties in either designing the replacement part markings or in ensuring that the markings are within the designated target area.

Further, GM's suggestion that either the letter "R" or the manufacturer's logo could serve as the certification of compliance was unsupported by any reasoning or precedent in the safety standards. The letter "R" and the manufacturer's logo were suggested by Congress and are adopted in this standard as the *means* of complying with the replacement parts marking requirement. It is still necessary to *certify* that those means of compliance have been used, under the requirements of section 606. If the means of compliance were also interpreted as a certification, the agency would be ignoring the Congressional admonition to take into account its certification practices under the Safety Act when establishing the certification practices under this theft prevention standard. Most of the agency's equipment standards require the manufacturer either to affix the letters "DOT" as a certification or to furnish a full statement that the equipment complies with the applicable standard, in the case of child restraint systems or slide-in campers. There are no examples under the Safety Act where the required markings also serve as a certification of compliance. For these reasons, the GM suggestion has not been adopted.

No special provisions have been made for direct imports of covered major parts. Such direct imports must be properly marked and so certified before they are imported into the United States, per section 607(a)(1) of the Cost Savings Act. This means that the markings and the "DOT" symbol must be inscribed on the part outside the customs territory of the United States. The NPRM proposed that the "DOT" symbol be the certification of compliance with this standard. This requirement, adopted in this final rule, poses no special problems for direct importers of covered major replacement parts similar to those which would have been posed for direct importers of vehicles under the proposed vehicle certification requirements.

Effective Date of this Theft Prevention Standard

Section 602(c)(4) of the Cost Savings Act specifies that this theft prevention standard shall take effect not earlier than 6 months after the date this final rule is published, except that an earlier effective date may be specified if the agency finds good cause for an earlier effective date, and publishes the reasons for that finding. In the legislative history, it was emphasized that "the Committee expects the Secretary to promulgate the [theft prevention] standard as expeditiously as possible so that major parts may begin to be numbered by the earliest possible model year." H. Rept. at 11. In consideration of these facts, the NPRM proposed that this standard would become effective 6 months after this final rule was issued, and that it would apply to new passenger cars and their covered major replacement parts beginning in the 1987 model year.

In response to this proposal, Mazda asked that the standard's effective date be set at September 1, 1986. They asserted that an effective date in the spring of 1986 would have severe consequences for manufacturers planning to introduce new 1987 models in the spring of 1986. The available lead time would, according to Mazda, force postponement of the model introduction for no reason other than the requirements of the theft prevention standard and the manufacturer's need for more lead time. Additionally, Mazda hypothesized that the manufacturer could advance the introduction of that new model to the fall of 1985 and designate it as a 1986 model year vehicle. This would result in the vehicle not being subject to the standard until its 1987 model year. Mazda asserted that this earlier introduction would not satisfy the intent of the theft prevention standard, because the manufacturer would not be able to offer the same level of theft deterrence on the vehicle.

NHTSA is not persuaded by this comment. In the legislative history, Congress expressly stated: "The standard cannot apply to a car in the middle of the model year." H. Rept. at 11. It is generally known that the various manufacturers have different model years and that the various lines produced by the same manufacturer have different introduction dates, and, therefore, different model years. Given that this standard cannot apply to a car in the middle of a model year, setting an effective date of September 1, 1986 would allow manu-

facturers to avoid being subject to the standard in the 1987 model year, simply by introducing their high theft lines before September 1, 1986. Such a result would delay the marking of high theft lines until the 1988 model year. This is plainly inconsistent with the Congressional intent that this standard be effective as soon as possible. H. Rept. at 11. Accordingly, this suggestion has not been adopted.

Parenthetically, it is worth noting that Congress provided that manufacturers do not have to begin to comply with the theft prevention standard for a line which is selected for coverage under this standard less than 6 months before the start of the model year; section 603(a)(5) of the Cost Savings Act [15 U.S.C. 2023(a)(5)]. If Mazda is asserting that it needs more than 6 months lead time, its assertion is directed at the language of the Theft Act itself, and not this theft prevention standard.

VW commented that no effective date should be set for this theft prevention standard until the agency had responded to the petitions for reconsideration of this rule, which petitions were "highly likely" in VW's view. NHTSA understands VW's concerns, but does not believe it would be appropriate to adopt this comment. Based on the comments and other information available to NHTSA at this time, the effective date for this standard is reasonable. With this rule, as with any other published by the agency, NHTSA sets an effective date for the requirements and allows the public to file petitions for reconsideration of those requirements. If, in response to such petitions, NHTSA concludes that the requirements should be significantly amended or the effective date no longer appears reasonable, the agency has authority to amend the effective date. 49 CFR §553.35(d). This procedure has worked well for all of NHTSA's rules, and NHTSA sees no reason to alter it for this theft prevention standard.

Honda commented that the effective date for this standard should be set so that dealers can use up their inventory of unmarked replacement parts without violating this standard. The effective date for this standard means that the covered major parts of high theft lines will have to be marked in the 1987 model year and thereafter, while covered major replacement parts *which are manufactured after the effective date of this standard and for use on 1987 or subsequent model year high theft line vehicles* will have to be marked. All major replacement parts in dealers' stock as of the effective date of this standard will have been manufactured before that effective date, and are not subject to the requirements of this standard. Dealers are free to use such parts without violating any of the requirements of this standard.

Regulatory Impacts

A. Costs and Benefits to Manufacturers and Consumers.

NHTSA has analyzed this rule and determined that it is not "major" within the meaning of Executive Order 12291. It is, however, "significant" within the meaning of the Department of Transportation regulatory policies and procedures, because of the high level of public and Congressional interest. A regulatory evaluation, analyzing in detail the impacts of the theft prevention standard has been placed in Docket No. T84-01, Notice 7. A copy of this evaluation may be obtained by any interested person by writing to: NHTSA Docket Section, Room 5109, 400 Seventh Street, S.W., Washington, D.C. 20590, or by calling the Docket Section at (202) 426-2768.

To summarize that evaluation, the agency estimates that about 48 percent of all cars produced will be selected as high theft lines. Assuming 10 million passenger cars are manufactured in a model year, 4.8 million cars will be covered by this standard each model year. Some of these cars may eventually be equipped with original equipment anti-theft devices, instead of being marked. For the large manufacturers, NHTSA estimates that the costs of marking parts as required by this standard will be $9.80 per vehicle, if the parts are stamped, and $5.00 per vehicle, if the parts are labeled. The total annual fleet costs are thus estimated at $47 million for stamped identifiers and $24 million for labeled identifiers. Low volume manufacturers will probably use other technologies, such as hand stamping, hand engraving, or sand blasting. Their total costs will still be well under $15 per vehicle.

The benefits associated with this theft prevention standard depend upon the effectiveness of the marking requirements in reducing thefts. Assuming that these marking requirements will reduce thefts of high theft lines by 10 percent, NHTSA estimates that 25,000 vehicle thefts per year will be averted by this standard. Since the average value of a stolen vehicle is $3,900, the annual value of a 10 percent reduction in thefts of high theft lines is $98 million. However, this estimate should be considered preliminary, be-

cause no data exist to show the effectiveness of a full-scale marking system as mandated by this rule.

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B. Small Business Impacts

The agency has also considered the impacts of this rulemaking action as required by the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Few of the passenger car or replacement part manufacturers subject to this standard are small entities. This theft prevention standard will not significantly increase the production or certification costs for those manufacturers which do quality as small entities. Small organizations and governmental jurisdictions will be affected as purchasers of new passenger cars. However, the cost impacts of this standard will be minimal. Accordingly, a regulatory flexibility analysis has not been prepared.

C. Environmental Impacts

NHTSA has considered the environmental implications of this rule, in accordance with the National Environmental Policy Act, and determined that it will not significantly affect the human environment. Accordingly, an environmental impact statement has not been prepared.

D. Paperwork Reduction Act

The Office of Management and Budget (OMB) has already approved the NHTSA requirement that VINs appear on all new vehicles (OMB #2127-0051). However, this rule expands the scope and uses for the VIN. It also requires vehicle manufacturers to designate target areas for marking original equipment and replacement parts. Both these

requirements are considered to be information collection requirements, as that term is defined by OMB in 5 CFR Part 1320. Accordingly, these requirements will be submitted to OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). A notice will be published in the Federal Register when OMB makes its decision on this request.

List of Subjects

49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

49 CFR Part 567

Labeling, motor vehicle safety, reporting, and recordkeeping requirements.

Part 567 is amended as follows:

2. The authority citation for Part 567 is revised to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, and 1407; 15 U.S.C. 1912 and 1915; 15 U.S.C. 2021, 2022, and 2026; delegation of authority at 49 CFR 1.50.

3. Section 567.1 is revised to read as follows:

§567.1 Purpose.

The purpose of this part is to specify the content and location of, and other requirements for, the certification label or tag to be affixed to motor vehicles as required by section 114 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1403) (the Safety Act) and by sections 105(c)(1) and 606(c) of the Motor Vehicle Information and Cost Savings Act (15U.S.C. 1915(c) and 2026(c))(the Cost Savings Act), and to provide the consumer with information to assist him or her in determining which of the Federal Motor Vehicle Safety Standards (Part 571 of this chapter) and Federal Theft Prevention Standards (Part 541 of this chapter) (standards) are applicable to the vehicle.

Section 567.4 is amended by revising paragraph (g)(5) and adding paragraph (k) to read as follow:

§567.4 Requirements for manufacturers of motor vehicles.

* * * * *

(g) * * *

(5) The statement: "This vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture shown above." The expression "U.S." or "U.S.A." may be inserted before the word "Federal".

(i) In the case of passenger cars manufactured on or after September 1, 1978, the expression "and bumper" shall be included in the statement following the word "safety".

(ii) In the case of 1987 model year passenger cars manufactured on or after April 24, 1986 the expression "safety, bumper, and theft prevention" shall be substituted in the statement for the word "safety".

(k) In the case of passenger cars admitted to the United States under 19 CFR 12.80(b)(1) to which the label required by this section has not been affixed by the original producer or assembler of the passenger car, a label meeting the requirements of this paragraph shall be affixed by the importer before the vehicle is imported into the United States, if the car is from a line listed in Appendix A of Part 541 of this chapter. This label shall be in addition to, and not in place of, the label required by paragraphs (a) through (j), inclusive, of this part.

(1) The label shall, unless riveted, be permanently affixed in such a manner that it cannot be removed without destroying or defacing it.

(2) The label shall be affixed to either the hinge pillar, door-latch post, or the door edge that meets the door-latch post, next to the driver's seating position, or, if none of these locations is practicable, to the left side of the instrument panel. If that location is also not practicable, the label shall be affixed to the inward-facing surface of the door next to the driver's seating position. The location of the label shall be such that it is easily readable without moving any part of the vehicle except an outer door.

(3) The lettering on the label shall be of a color that contrasts with the background of the label.

(4) The label shall contain the following statements, in the English language, lettered in block capitals and numerals not less than three thirty-seconds of an inch high, in the order shown:

(i) Model year and line of the vehicle, as reported by the manufacturer that produced or assembled the vehicle. "Line" is used as defined in §541.4 of this chapter.

(ii) Name of the importer: The full corporate or individual name of the importer of the vehicle shall be spelled out, except that such abbreviations as "Co." or "Inc." and their foreign equivalents and the middle initial of individuals, may be used. The name of the importer shall be preceded by the words "Imported By".

(iii) The statement: "This vehicle conforms to the applicable Federal motor vehicle theft prevention standard in effect on the date of manufacture."

Issued on: October 17, 1985.

Diane K. Steed
Administrator

50 FR 43166
October 24, 1985

PREAMBLE TO AN AMENDMENT TO PART 567 AND FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 115

Vehicle Identification Number; Basic Requirements
(Docket No. 88-08; Notice 2)
RIN: 2127-AC65

ACTION: Final Rule.

SUMMARY: In this final rule, NHTSA changes vehicle identification number and certification requirements for motor vehicles that were not originally manufactured for sale in this country, do not comply with the Federal motor vehicle safety standards, and are imported into the United States by businesses unaffiliated with the original manufacturer. This final rule would make it clear that the importer of such vehicles would be required to use one of the unique coding identifiers that the original manufacturer assigned to the vehicle, in lieu of using the 17-character U.S. vehicle identification number (VIN) required to be placed on vehicles originally manufactured for sale in this country. The direct importer must place the original manufacturer's identifier on a plate that would appear inside the passenger compartment of the motor vehicle, so that the number may be observed through the glazing, and adjacent to the left windshield pillar.

EFFECTIVE DATE: December 4, 1989.

SUPPLEMENTARY INFORMATION: ***Background.*** Under section 108(b)(3) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1397(b)(3)), a vehicle that does not conform with applicable safety standards may nonetheless enter the United States under "such terms and conditions" as the Secretaries of Transportation and Treasury prescribe. Title 19 CFR 12.80 is a joint Transportation/Treasury regulation setting forth those terms and conditions. Subparagraph (b)(1)(iii) of that regulation requires that a person seeking to bring a nonconforming import (direct import vehicle) into the United States file a declaration that the vehicle will be modified so as to conform with applicable Federal Motor Vehicle Safety Standards. Among those Standards is 115, Vehicle Identification Number—Basic Requirements.

In order to comply with Standard 115 requirements, many direct importers have been applying a "homemade" VIN plate to their imported vehicles. The VINs added by direct importers are so different in appearance from VINs on similar vehicles manufactured for sale in the United States that law enforcement officials have mistaken them for altered VINs. Other concerns presented by these "homemade" VIN plates are identification problems that have been created for insurance investigators and encoding errors that compromise the integrity of the VIN system.

This rulemaking arose when the agency granted a petition submitted by the National Automobile Theft Bureau (NATB or petitioner) to amend Standard 115 to address problems arising when direct importers create a VIN and a VIN plate using an identification number and plate production process other than the ones which the original vehicle manufacturer uses. Among problems noted by the NATB were an increased prospect of encoding errors in a homemade VIN, law enforcement officials mistaking homemade VIN plates for altered plates, and the resulting risk that individuals lawfully possessing direct import vehicles may be subjected to criminal charges.

The petitioner recommended that NHTSA take action to prevent the direct importer from creating its own VIN. In place of its own VIN, the importer would be required to follow one of two alternative means of identifying a vehicle. First, if the original manufacturer had placed any kind of identification number plate in the passenger compartment where Standard 115 would otherwise require a 17-character VIN plate, the importer would retain the original manufacturer's plate as the vehicle's VIN plate. Among the original manufacturer identification numbers that one might use in place of the United States VIN are the European vehicle identification number (EuroVIN), the World Market vehicle identification number (WorldVIN), the chassis number, or the vehicle serial number.

Second, if the original manufacturer had not affixed a plate of the type and in the location described at S4.6 of Standard 115 (49 CFR 571.115), then the importer would be required to affix a plate in that location stating that the vehicle is "partially exempt" from Standard 115. This plate would refer a person to the driver's door post, where the importer would be required to affix a label with information that cited the Joint Transportation/Treasury regulation under which a person directly imports a noncomplying vehicle, identified the location on the vehicle of the original

manufacturer's number to be used in lieu of the 17 character VIN, gave the name and address of those bringing the vehicle into compliance with Standard 115, stated the date of importation and of certification, and gave the name and address of the person who made the certification.

Notice of Proposed Rulemaking. In the notice of proposed rulemaking (NPRM) published May 13, 1988 (53 Federal Register 17088), the agency acknowledged the problems with VINs on direct import vehicles and proposed to amend Standard 115 so that a direct importer need not create a VIN or VIN plate in order to comply with United States vehicle identification requirements under Standard 115. NHTSA could not agree that *any* extant original manufacturer identifier in the S4.6 location would obviate the need for some notice that the vehicle is partially exempt from Standard 115.

The agency believed it would be a relatively simple matter to affix a plate informing an interested person that a vehicle is partially exempt, and refer the person to another label on the door post that would specify the unique identifying number for the vehicle. The agency therefore proposed to require such a plate on any vehicle that did not have the 17-character United States VIN. Because of this proposed approach, the agency believed it was unnecessary to consider NATB's suggestion that a EuroVIN, WorldVIN, chassis, or serial number be exempted from the readability and location requirements in S4.6.

A second way in which NHTSA's proposal varied from the NATB petition was that the agency did not propose to require a lengthy label with a citation to 19 CFR 12.80, and information about the person performing work to bring the vehicle into compliance with Standard 115. The agency proposed instead to require a simplified label that stated where an interested person could find the unique manufacturer identifying number that would be used in lieu of the United States VIN. Further, for consistency, the agency proposed to include labeling requirements under Part 567. It was proposed that paragraph (k) of section 567.4 be deleted and that sections 567.5, 567.6 and 567.7 be redesignated as sections 567.6, 567.7, and 567.8, respectively. Under a new section 567.5 (for the most part former section 567.4(k)), the language regarding labeling requirements for high theft lines imported into the United States would be retained, with minor changes, as section 567.5(a). The proposed section 567.5(b) outlined a requirement for a label for direct import vehicles that would be affixed in one of three locations. This label would state: "Original Manufacturer's Identification Number Substituting for U.S. VIN is located," and direct the reader to the location on the vehicle where the original manufacturer's identification number, placed by the original manufacturer, could be found.

NHTSA also sought comment, particularly from law enforcement officials, on two issues:

(1) Whether the proposed changes could, in some circumstances, increase the fraudulent use of VINs or impede law enforcement actions. As an example, the agency noted that in certain circumstances, vehicles with the proposed FMVSS 115 exemption label would no longer have a VIN visible through the glazing. NHTSA requested comment on whether this situation would create a law enforcement problem by precluding the inspection of VINs on parked and locked vehicles.

(2) Whether the proposal could lead to improper use of VIN exemption plates (e.g., replacing a legitimate VIN), since, under certain circumstances, it would allow an exemption plate where the VIN would be if it had been a passenger car built for the U.S. market.

The Comments and the Agency Response. The agency received eight responses to the NPRM. Four commenters addressed the first question presented in the NPRM, concerning using an exemption plate in lieu of a VIN or other identification number in the S4.6 location. The Automobile Importers of America, Inc. (AIA), Porsche, the International Association of Auto Theft Investigators (IAATI), and the National Automotive Theft Bureau (NATB) recommended that NHTSA require each vehicle to have an identification number visible from the outside of the vehicle. In response to these comments, the agency has adopted a requirement for a plate or label containing the original manufacturer's identification number in the S4.6 location, with a reference to Standard 115.

The agency believes that this solution addresses the agency's initial concern about the possibility of transcription errors while at the same time maintaining an identification number in the place where law enforcement officials are accustomed to see it. In cases where the original manufacturer's identification number is in the S4.6 location and does not conform to Part 565, the presence of the identifying notice alongside it will serve to inform law enforcement personnel that the vehicle is a direct import vehicle that has been modified to conform to U.S. safety standards. Any transcription errors would be immediately evident, since the number on the identifying notice should be identical to the original number alongside it. Where the original manufacturer's identification is located elsewhere, the identifying notice will provide the number and also alert an investigating officer that the number is a substitute for the number ordinarily required by FMVSS 115.

Further investigation by the agency has not found any evidence indicating that direct importers have been using a 17-character VIN that they have created themselves; conformity bonds are not released if they do. However, they do create another plate using the original manufacturer's identification number that

they install behind the windshield, in the S4.6 location. In the interest of clarity and to the extent direct imports have been a problem to theft investigators and other interested parties, the requirement is being amended. Also, in the NPRM, the notice in the S4.6 location was proposed to read: "FMVSS 115 EXEMPT VEHICLE. SEE DRIVER'S SIDE DOOR POST." After reevaluation, the agency had determined that the wording "FMVSS 115 EXEMPT VEHICLE" may imply that direct importers are being exempted from all aspects of FMVSS 115. It is more accurate to state that the original manufacturer's identification number is used as a substitute for a VIN, required by FMVSS 115.

The following language will therefore be required in the final rule:

SUBSTITUTE FOR U.S. VIN:
SEE FMVSS 115.

With this alternative, law enforcement officials would also know that the passenger car in question does not have a U.S. VIN.

The second question raised in the NPRM, whether the proposal would lead to improper use of VIN exemption plates, was addressed by one commenter. The NATB expressed a belief that it would be very important to prevent any VIN exemption plate from being overlaid on the original manufacturer's identifier in the S4.6 position. NATB commented: "Unless there is a specific anti-overlayment provision included in FMVSS 115 it is a virtual certainty that organized theft perpetrators will take advantage of the situation and affix the VIN exemption notice over the location of the legitimate VIN plate." NATB suggested that the notice be required to be affixed in a location other than the location used by the vehicle's original manufacturer for affixing VIN plates in the same or similar vehicle lines. The agency agrees, and has accordingly adopted the following language in the final rule as Paragraph S4.9(c) to ensure the original manufacturer's identification number will not be covered, obscured, or overlaid:

(c) The plate or label by (b) shall be permanently affixed in a location that conforms to S4.6, in such manner as not to cover, obscure, or overlay any part of any identification number affixed by the original manufacturer, and shall conform to S4.7 and S4.8.

Two commenters expressed concern about the lack of a check digit in the original manufacturer's identification number. Besides noting that lack of a check digit could be a problem, AIA cited errors in transcription which are not caught despite a check digit system, resulting in vehicles with incorrect VINs. AIA suggested that the solution to this problem is to ensure that all entries are transcribed correctly, and that all other regulations are complied with.

In noting that original manufacturer's identification numbers from various makes would not have the benefit of a check digit, Porsche asserted that "[t]his lack of a check-digit negates another of the prime features of the current VIN — the ability to rapidly check for transcription mistakes." Although the agency believes that a check-digit is useful in preventing transcription errors, it regards the risk of error from "homemade" VINs as significantly greater. It has therefore concluded that the original manufacturer's identification number should be retained by the direct importer.

Besides the comments summarized above, AIA pointed out to the agency that there is no concept of "model year" in Europe. AIA believed that for this reason, "gray market importers cannot possibly discern a model year to put on the label." NHTSA has accepted this comment from AIA. Accordingly, § 567.4(k)(4)(i) has been amended to read: "Model year (if applicable) or year of manufacture, and line of the vehicle as reported by the manufacturer that produced or assembled the vehicle." Also included is a statement that " 'Model year' is used as defined in § 565.3(h) of this chapter."

IAATI also recommended a separate label that would provide information on the person who performed the work bringing the vehicle into compliance with Standard 115. The rationale for this recommendation is that it would give an investigator a starting point to trace the vehicle through the person performing the compliance work and back to the original manufacturer. The agency believes it is already requiring enough information, on as many as three labels at the door post or alternate positions, without requiring this information also. In the few instances where law enforcement officers or other investigators need this information, they would obtain information about who did the compliance work by contacting the direct importer or NHTSA.

In addition to the comments recommending specific changes in the final rule, the agency also received several comments from Allstate Insurance Company and the Highway Loss Data Institute in general support of the rulemaking. The National Automobile Dealers Association supported the NHTSA proposal and urged NHTSA "to consider the need to readily and clearly identify these vehicles as being direct imports." They believed that the proposed amendments to the VIN standards would "serve to establish a nationally recognized gray market identifier on each vehicle."

Volkswagen of America, Inc. encouraged NHTSA to "promote enforcement of the safety standards for all vehicles regardless of who the manufacturer or importer may be." They noted that although the proposal would eliminate encoding errors in "homemade" VINs, the same result could be had by enforcement of the existing regulation requiring display of the correct VIN on all vehicles.

The agency is aware that this rule will be more effectual for original manufacturer identifiers utilizing Roman letters or Arabic numerals than for manufacturer identifiers which may be used in countries with non-Roman letters. If the use of non-Roman letters becomes a source of confusion, the agency may undertake further remedial action.

Other Changes in the Final Rule.

Redesignation of Sections in Part 567.

The NPRM proposed that Section 557.4(k) be dropped, that Sections 567.5, 567.6, and 567.7 be redesignated as Sections 567.6, 567.7, and 567.8, respectively, and that a new Section 567.5 *Special requirements for motor vehicles admitted under 19 CFR 12.80* be added. Upon reevaluation, the agency has decided that rather than redesignating existing provisions in Part 567, and adding new sections with whole paragraphs that are identical to old paragraphs, the same end would be accomplished more simply by adding a new 567.4(1) (that would require identification on the vehicle of the original manufacturer's number) after §567.4(k). This new §567.4(1) is the same in substance as §567.5(b) in the notice of proposed rulemaking.

High Theft Lines.

49 CFR Part 541 requires that 14 major parts of designated passenger motor vehicle lines be marked with Vehicle Identification Numbers, even if the vehicle was not originally manufactured for the U.S. market. FMVSS 115 does not exempt importers of vehicles not manufactured for sale in the U.S. from complying with the parts-marking requirements of 49 CFR Part 541 for the car lines listed in Appendix A to Part 541. As a result of the agency's decision to require retention of the original manufacturer's VIN, the fourteen designated major parts (Section 541.5(a)) must be marked with the original VIN assigned to the car by its original manufacturer. The subject vehicle *must* be in compliance with the theft prevention standard before it is imported into the United States. The markings must be affixed or inscribed in accordance with the target area requirements designated by the manufacturer that is the original producer who installs or assembles the covered major parts on a line.

Section 567.5(k) applies to direct import high theft lines. §567.5(l) refers to the direct import vehicles without 17-character U.S. VINs. Therefore, if there should be high theft lines that are brought to the U.S. by direct importers, they would have to have three labels in the positions in the passenger car designated in §567.4(c), namely, the certification label required by §567.4(a), the compliance with Federal motor vehcile theft prevention standard label required by §567.4(k), and the label designating where the original manufacturer's identification number may be found, as required by §567.4(l).

In consideration of the foregoing, Title 49 CFR 567, *Certification*, and 49 CFR 571.115, *Vehicle Identification Number—Basic Requirements*, are amended as follows:

1. The authority citation for Part 567 is revised to read as follows:

Authority: 15 U.S.C. 1392, 1397, 1401, 1403, and 1407; 15 U.S.C. 1912 and 1915; 15 U.S.C. 2021, 2022, and 2026; delegation of authority at 49 CFR 1.50.

567.4 [Amended]

2. Subparagraph (k)(4)(i) of 567.4 is revised to read as follows:

* * * * *

(k) * * * * *

(4) * * * * *

(i) Model year (if applicable) or year of manufacture and line of the vehicle, as reported by the manufacturer that produced or assembled the vehicle. "Model year" is used as defined in 565.3(h) of this chapter. "Line" is used as defined in 541.4 of this chapter.

3. A new paragraph (1) is added to 567.4 as follows:

(l)(1) In the case of a passenger car imported into the United States under 19 CFR 12.80(b)(1)(iii) or 49 CFR Part 591 which does not have an identification number that complies with paragraph S4.2, S4.3, and S4.7 of 49 CFR 571.115 at the time of importation, the importer shall permanently affix a label to the vehicle in such a manner that, unless the label is riveted, it cannot be removed without being destroyed or defaced. The label shall be in addition to the label required by subsection (a) of this section, and shall be affixed to the vehicle in a location specified in subsection (c) of this section.

(2) The label shall contain the following statement, in the English language, lettered in block capitals and numerals not less than three thirty-seconds of an inch high, with the location on the vehicle of the original manufacturer's identification number provided in the blank: ORIGINAL MANUFACTURER'S IDENTIFICATION NUMBER SUBSTITUTING FOR U.S. VIN IS LOCATED _____.

PART 571 [AMENDED]

4. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

571.115 [AMENDED]

5. S.2 is revised by adding the words "or 49 CFR 591" after the words "19 CFR 12.80(b)(1)(iii)."

6. A new paragraph S4.9 is added to 571.115 to read as follows:

S4.9(a) A passenger car imported into the United States under 19 CFR 12.80(b)(1)(iii) or 49 CFR Part 591 shall retain any identification number affixed by the original manufacturer.

(b) A vehicle described in (a) shall have a plate or label that contains the following statement in char-

(c) The plate or label required by (b) shall be permanently affixed in a location that conforms to S4.6, in such manner as not to cover, obscure, or overlay any part of any identification number affixed by the original manufacturer, and shall conform to S4.7 and S4.8.

Issued on: October 26, 1989

Barry Felrice
Associate Administrator for
Rulemaking

54 F.R. 46253
November 2, 1989.

PREAMBLE TO AN AMENDMENT TO PART 567

Certification
(Docket No. 91-24; Notice 1)

ACTION: Technical amendments; final rule.

SUMMARY: This notice makes several technical amendments to conform the language of Part 567, Certification, to new regulations, issued in September 1989, regarding the importation of motor vehicles not originally manufactured in compliance with the Federal Motor Vehicle Safety Standards. As amended, Part 567 cites the new regulations, instead of the prior ones, and refers to "Registered Importers" instead of "importers."

EFFECTIVE DATE: The amendments are effective on May 15, 1991.

SUPPLEMENTARY INFORMATION: The Imported Vehicle Safety Compliance Act of 1988, (the 1988 Act), Public Law 100-562, amended the National Traffic and Motor Vehicle Safety Act (the Vehicle Safety Act) to give the Department of Transportation sole rulemaking authority regarding regulations governing the importation of vehicles not originally manufactured to comply with the Federal motor vehicle safety standards. Among the amendments made by the 1988 Act were ones revoking sections 108(b)(3) and (b)(4) of the Vehicle Safety Act, effective January 31, 1990. These sections authorized the issuance of regulations jointly by the Secretaries of Transportation and Treasury to prohibit the importation of motor vehicles and equipment not complying with the Federal motor vehicle safety standards, except under such terms and conditions as the two Departments may specify to ensure that a noncomplying vehicle or equipment item will be brought into conformance or will be exported or abandoned to the United States. Pursuant to this authority, the two Secretaries issued an implementing regulation, 19 CFR 12.80, which governed the importation of merchandise subject to Federal motor vehicle safety standards beginning in 1968, and continued to do so through January 31, 1990. In place of the deleted sections, the 1988 Act added new sections which include authority vested alone in the Secretary of Transportation to establish new regulations regarding importation.

In addition, the 1988 Act amended the Vehicle Safety Act to permit a motor vehicle not originally manufactured to conform to Federal motor vehicle safety standards to be imported only by a person who has registered with this agency, or by an individual who has a contract with a registered importer for making the modifications necessary for bringing the vehicle into conformance with applicable safety standards.

Pursuant to the amendments made to the Vehicle Safety Act by the 1988 Act, the agency issued final rules on September 29, 1989, establishing 49 CFR Part 591, "Importation of Vehicles and Equipment Subject to Federal Motor Vehicle Safety Standards" (54 F.R. 40078), and Part 592, "Registered Importers of Vehicles Not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards" (54 F.R. 40063). Part 591 superseded the prior joint regulation of the Departments of Treasury and Transportation on importation statements and documentation at 19 CFR § 12.80 promulgated jointly by the Customs Service, Department of the Treasury, and NHTSA. In Part 592, the agency set forth procedures and requirements regarding the registration of importers and the duties and obligations of Registered Importers.

To supplement those 1989 final rules, the agency needs to make conforming amendments to another NHTSA regulation referring to or relying on NHTSA's importation regulations. Specifically, it desires to amend 49 CFR Part 567, "Certification." Part 567 specifies requirements for certification by manufacturers, including importers, of the compliance of motor vehicles with applicable Federal Motor Vehicle Safety Standards, the Bumper Standard (Part 581) and the Theft Prevention Standard (Part 541), as required by Section 114 of the Vehicle Safety Act (15 U.S.C. 1403) and by sections 105(c)(1) and 606(c) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C.

1915(c) and 2026(c)). Part 567 contains special certification requirements for importers of motor vehicles that were not originally manufactured to conform to the Federal Motor Vehicle Safety Standards and Theft Prevention Standard, but are nevertheless presented for importation into the United States. However, those special requirements currently contain references to 19 CFR § 12.80 instead of Part 592, and to "importers," instead of "Registered Importers."

This notice amends Part 567 to reflect the supersession of 19 CFR § 12.80 by Part 591 and the necessity for an importer to be a Registered Importer or to have a contract for modification with a Registered Importer.

1. Section 567.2(b) is revised to read as follows:

(b) In the case of imported motor vehicles, the requirement of affixing a label or tag applies to Registered Importers of vehicles admitted to the United States under 49 CFR 591.5(f) to which the required label or tag is not affixed.

§ 567.4 [Amended]

2. The last sentence of Section 567.4(g)(1) is revised to read as follows:

(g)(1) * * * In the case of imported vehicles, where the label required by this section is affixed by the Registered Importer, the name of the Registered Importer shall also be placed on the label in the manner described in this paragraph, directly below the name of the final assembler.

3. The first sentence of Section 567.4(1)(1) is revised to read as follows:

(1)(1) In the case of a passenger car imported into the United States under 49 CFR 591.5(f) which does not have an identification number that complies with paragraph S4.2, S4.3, and S4.7 of 49 CFR 571.115 at the time of importation, the Registered Importer shall permanently affix a label to the vehicle in such a manner that, unless the label is riveted, it cannot be removed without being destroyed or defaced. * * *

Issued on: May 10, 1991

Jerry Ralph Curry
Administrator

56 F.R. 22355
May 15, 1991

PART 567—CERTIFICATION

(Dockets No. 73-31 and 75-28)

§ 567.1 Purpose.

The purpose of this part is to specify the content and location of, and other requirements for, the certification label or tag to be affixed to motor vehicles as required by section 114 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C.1403) (the Safety Act) and by sections 105(c) (1) and 606 (c) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1915(c) and 2026(c))(the Cost Savings Act), and to provide the consumer with information to assist him or her in determining which of the Federal Motor Vehicle Safety Standards (Part 571 of this chapter) and Federal Theft Prevention Standards (Part 541 of this chapter) (standards) are applicable to the vehicle.

§ 567.2 Application.

(a) This part applies to manufacturers and distributors of motor vehicles to which one or more standards are applicable.

(b) [In the case of imported motor vehicles, the requirement of affixing a label or tag applies to Registered Importers of vehicles admitted to the United States under 49 CFR 591.5(f) to which the required label or tag is not affixed. **(56 F.R. 22355—May 15, 1991. Effective: May 15, 1991)**]

§ 567.3 Definitions.

All terms that are defined in the Act and the rules and standards issued under its authority are used as defined therein. The term "bumper" has the meaning assigned to it in Title I of the Cost Savings Act and the rules and standards issued under its authority.

"Chasis-cab" means an incomplete vehicle, with a completed occupant compartment, that requires only the addition of cargo-carrying, work-performing, or load-bearing components to perform its intended functions.

§ 567.4 Requirements for manufacturers of motor vehicles.

(a) Each manufacturer of motor vehicles (except vehicles manufactured in two or more stages) shall affix to each vehicle a label, of the type and in the manner described below, containing the statements specified in paragraph (g) of this section.

(b) The label shall, unless riveted, be permanently affixed in such a manner that it cannot be removed without destroying or defacing it.

(c) Except for trailers and motorcycles, the label shall be affixed to either the hinge pillar, door-latch post, or the door edge that meets the door-latch post, next to the driver's seating position, or if none of these locations is practicable, to the left side of the instrument panel. If that location is also not practicable, the label shall be affixed to the inward-facing surface of the door next to the driver's seating position. If none of the preceding locations is practicable, notification of that fact, together with drawings or photographs showing a suggested alternate location in the same general area, shall be submitted for approval to the Administrator, National Highway Traffic Safety Administration, Washington, D.C. 20590. The location of the label shall be such that it is easily readable without moving any part of the vehicle except an outer door.

(d) The label for trailers shall be affixed to a location on the forward half of the left side, such that it is easily readable from outside the vehicle without moving any part of the vehicle.

(e) The label for motorcycles shall be affixed to a permanent member of the vehicle as close as is practicable to the intersection of the steering post with the handle bars, in a location such that it is easily readable without moving any part of the vehicle except the steering system.

(f) The lettering on the label shall be of a color that contrasts with the background of the label.

(g) The label shall contain the following statements, in the English language, lettered in block capitals and numerals not less than three thirty-seconds of an inch high, in the order shown:

(1) Name of manufacturer: Except as provided in (i), (ii), and (iii) below, the full corporate or individual name of the actual assembler of the vehicle shall be spelled out, except that such abbreviations as "Co." or "Inc." and their foreign equivalents, and the first and middle initials of individuals, may be used. The name of the manufacturer shall be preceded by the words "Manufactured By" or "Mfd By." In the case of imported vehicles, where the label required by this section is affixed by the Registered Importer, the name of the Registered Importer shall also be placed on the label in the manner described in this paragraph, directly below the name of the final assembler. **(56 F.R. 22355—May 15, 1991. Effective: May 15, 1991)**

(i) If a vehicle is assembled by a corporation that is controlled by another corporation that assumes responsibility for conformity with the standards, the name of the controlling corporation may be used.

(ii) If a vehicle is fabricated and delivered in complete but unassembled form, such that it is designed to be assembled without special machinery or tools, the fabricator of the vehicle may affix the label and name itself as the manufacturer for the purposes of this section.

(iii) If a trailer is sold by a person who is not its manufacturer, but who is engaged in the manufacture of trailers and assumes legal responsibility for all duties and liabilities imposed by the Act with respect to that trailer, the name of that person may appear on the label as the manufacturer. In such a case the name shall be preceded by the words "Responsible Manufacturer" or "Resp Mfr."

(2) Month and year of manufacture: This shall be the time during which work was completed at the place of main assembly of the vehicle. It may be spelled out, as "June 1970," or expressed in numerals, as "6/70."

(3) "Gross Vehicle Weight Rating" or "GVWR" followed by the appropriate value in pounds, which shall not be less than the sum of the unloaded vehicle weight, rated cargo load, and 150 pounds times the vehicle's designated seating capacity. However, for school buses the minimum occupant weight allowance shall be 120 pounds.

(4) "Gross Axle Weight Rating" or "GAWR" followed by the appropriate value in pounds, for each axle, identified in order from front to rear (e.g., front, first intermediate, second intermediate, rear). The ratings for any consecutive axles having identical gross axle weight ratings when equipped with tires having the same tire size designation may, at the option of the manufacturer, be stated as a single value, with the label indicating to which axles the ratings apply.

EXAMPLES OF COMBINED RATINGS GAWR:

(a) All axles—4080 with 7.00-15 LT(D) tires.

(b) Front—12,000 with 10.00-20 (G) tires.
First intermediate to rear—15,000 with 12.00-20 (H) tires.

(5) The statement: "This vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture shown above." The expression "U.S." or "U.S.A." may be inserted before the word "Federal."—

(i) In the case of passenger cars manufactured on or after September 1, 1978, the expression "and bumper" shall be included in the statement following the word "safety."

(ii) In the case of 1987 and subsequent model year passenger cars manufactured on or after April 24, 1986 the expression "safety, bumper, and theft prevention" shall be substituted in the statement for the word "safety."

(6) Vehicle identification number.

(7) The type classification of the vehicle as defined in § 571.3 of Title 49 of the Code of Federal Regulations (*e.g.*, truck, MPV, bus, trailer).

(h) Multiple GVWR-GAWR ratings.

(1) (For passenger cars only) In cases where different tire sizes are offered as a customer option, a manufacturer may at his option list more than one set of values for GVWR and GAWR, in response to the requirements of paragraphs (g) (3) and (4) of this section. If the label shows more than one set of weight rating values, each value shall be followed by the phrase "with _____ tires," inserting the proper tire size designations. A manufacturer may at his option list one or more tire sizes where only one set of weight ratings is provided.

Passenger Car Example

GVWR:

4400 LB with G78–14B Tires. 4800 LB with H78–14B Tires.

GAWR:

Front—2000 LB with G78–14B Tires at 24 psi, 2200 LB with H78–14B Tires at 24 psi.

Rear—2400 LB with G78–Tires at 28 psi, 2600 LB with H78–14B Tires at 28 psi.

(2) (For multipurpose passenger vehicles, trucks, buses, trailers, and motorcycles) The manufacturer may, at its option, list more than one GVWR–GAWR-tire-rim-combination on the label, as long as the list conforms in content and format to the requirements for tire rim-inflation information set forth in Standard No. 120 of this chapter (§ 571.120).

(3) At the option of the manufacturer, additional GVWR–GAWR ratings for operation of the vehicle at reduced speeds may be listed at the bottom of the certification label following any information that is required to be listed.

(i) **Reserved**

(j) A manufacturer may, at his option, provide information concerning which tables in the document that accompanies the vehicle pursuant to § 575.6(a) of this chapter apply to the vehicle. This information may not precede or interrupt the information required by paragraph (g).

(k) In the case of passenger cars admitted to the United States under 19 CFR 12.80(b) (1) to which the label required by this section has not been affixed by the original producer or assembler of the passenger car, a label meeting the requirements of this paragraph shall be affixed by the importer before the vehicle is imported into the United States, if the car is from a line listed in Appendix A of Part 541 of this chapter. This label shall be in addition to, and not in place of, the label required by paragraphs (a) through (j), inclusive, of this part.

(1) The label shall, unless riveted, be permanently affixed in such a manner that it cannot be removed without destroying or defacing it.

(2) The label shall be affixed to either the hinge pillar, door-latch post, or the door edge that meets the door-latch post, next to the driver's seating position, or, if none of these locations is practicable, to the left side of the instrument panel. If that location is also not practicable, the label shall be affixed to the inward-facing surface of the door next to the driver's seating position. The location of the label shall be such that it is easily readable without moving any part of the vehicle except an outer door.

(3) The lettering on the label shall be of a color that contrasts with the background of the label.

(4) The label shall contain the following statements, in the English language, lettered in block capitals and numerals not less than three thirty-seconds of an inch high, in the order shown:

(i) Model year (if applicable) or year of manufacture and line of the vehicle, as reported by the manufacturer that produced or assembled the vehicle. "Model year" is used as defined in § 565.3(h) of this chapter. "Line" is used as defined in § 541.4 of this chapter.

(ii) Name of the importer: The full corporate or individual name of the importer of the vehicle shall be spelled out, except that such abbreviations as "Co." or "Inc." and their foreign equivalents and the middle initial of individuals, may be used. The name of the importer shall be preceded by the words "Imported By."

(iii) The statement: "This vehicle conforms to the applicable Federal motor vehicle theft prevention standard in effect on the date of manufacture."

(l) (1) [In the case of a passenger car imported into the United States under 49 CFR 591.5(f) which does not have an identification number that complies with paragraph S4.2, S4.3, and S4.7 of 49

CFR 571.115 at the time of importation, the Registered Importer shall permanently affix a label to the vehicle in such a manner that, unless the label is riveted, it cannot be removed without being destroyed or defaced. The label shall be in addition to the label required by subsection (a) of this section, and shall be affixed to the vehicle in a location specified in subsection (c) of this section. **(56 F.R. 22355—May 15, 1991. Effective: May 15, 1991.)]**

(2) The label shall contain the following statement, in the English language, lettered in block capitals and numerals not less than three thirty-seconds of an inch high, with the location on the vehicle of the original manufacturer's identification number provided in the blank: ORIGINAL MANUFACTURER'S IDENTIFICATION NUMBER SUBSTITUTING FOR U.S. VIN. IS LOCATED _____.

§ 567.5 Requirements for manufacturers of vehicles manufactured in two or more stages.

(a) Except as provided in paragraph (e) of this section, each manufacturer of a chassis-cab shall affix a label to each chassis-cab manufactured on or after July 25, 1978, in the location and form specified in § 567.4, that contains the following statements, to the extent that they are applicable.

(1) "This chassis-cab conforms to Federal Motor Vehicle Safety Standard Nos. _____." The statement shall be completed by inserting the numbers of the safety standards (*e.g.*, 101, 207) to which the chassis-cab conforms.

(2) "This vehicle will conform to Standard Nos. _____ if it is completed in accordance with the instructions contained in the incomplete vehicle document furnished pursuant to 49 CFR Part 568." The statement shall be completed by inserting the numbers of the safety standards conformity to which is substantially affected by both the design of the chassis-cab and the manner in which the vehicle is completed (*i.e.*, the standards listed under category (ii) in paragraph 568.4(a) (7) of this chapter).

(3) "Conformity to the other safety standards applicable to this vehicle when completed is not substantially affected by the design of the chassis-cab."

(4) Name of chassis-cab manufacturer preceded by the words "CHASSIS-CAB MANUFACTURED BY" or "CHASSIS-CAB MFD BY."

(5) Month and year of manufacture of chassis-cab. This may be spelled out, as in "June 1970," or expressed in numerals, as in "6/70." No preface is required.

(b) Except as provided in paragraphs (e) and (f) of this section, each intermediate manufacturer of a vehicle manufactured in two or more stages shall affix a label, in the location and form specified in § 567.4, to each chassis-cab respecting which he is required by § 568.5 to furnish an addendum to the incomplete vehicle document described in § 568.4. However, this paragraph applies only to chassis-cabs that have been certified by a chassis-cab manufacturer in accordance with paragraph (a) of this section. The label shall contain the following statements as appropriate:

(1) (i) "With respect to Standard Nos. _____, the instructions of prior manufacturers have been followed so that the chassis-cab now conforms to these standards." The statement shall be completed by inserting the numbers of all or less than all of the standards, and only those standards, respecting which the latest prior certification statement was in the form prescribed in paragraphs (a) (2) or (b) (2) of this section.

(ii) "This chassis-cab conforms to Federal Motor Vehicle Safety Standard Nos. _____." The statement shall be completed by inserting the numbers of the other standards to which the chassis-cab conforms, excluding those standards respecting which the latest prior certification statement was in the form prescribed in paragraphs (a) (1), (b) (1) (i), or this paragraph.

(2) "This vehicle will conform to Standard Nos. _____ if it is completed in accordance with the instructions contained in the amended incomplete vehicle document furnished pursuant to 49 CFR Part 568." The statement shall be completed by inserting the numbers of the standards conformity to which is substantially affected by both the design of the chassis-cab (as modified by the intermediate manufacturer) and the manner in which the vehicle is completed.

(3) "Conformity to Standard Nos. _____ is no longer substantially affected by the design of this chassis-cab." The statement shall be completed by inserting the numbers of all or less than all of the standards, and only those standards, respecting which the latest prior certification statement was in the form prescribed in paragraphs (a) (1), (a) (2), (b) (1) (i), (b) (1) (B), or (b) (2) of this section.

(4) Name of intermediate manufacturer, preceded by the words "INTERMEDIATE MANUFACTURE BY" or "INTERMEDIATE MFR BY".

(5) Month and year in which the intermediate manufacturer performed his last manu facturing operation on the chassis-cab. This may be spelled out, as "JUNE 1970", or expressed as numerals, as "6/70". No preface is required.

(c) Except as provided in paragraphs (e) and (f) of this section, each final-stage manufacturer, as defined in § 568.3 of Title 49 of the Code of Federal Regulations, of a vehicle manufactured in two or more stages shall affix to each vehicle a label, of the type and in the manner and form described in § 567.4 of this part, containing the following statements:

(1) Name of final-stage manufacturer, preceded by the words "MANUFACTURED BY" or "MFD BY".

(2) Month and year in which final-stage manufacture is completed. This may be spelled out, as in "JUNE 1970", or expressed in numerals, as in "6/70". No preface is required.

(3) Name of original manufacturer of the incomplete vehicle, preceded by the words "INCOMPLETE VEHICLE MANUFACTURED BY" or "INC VEH MFD BY". This item and item (4) may be omitted in cases where the incomplete vehicle was a chassis-cab.

(4) Month and year in which the original manufacturer of the incomplete vehicle performed his last manufacturing operation on the incomplete vehicle, in the same form as (2) above.

(5) "GROSS VEHICLE WEIGHT RATING" or "GVWR", followed by the appropriate value in pounds, which shall not be less than the sum of the unloaded vehicle weight, rated cargo load, and 150 pounds times the vehicle's designated seating capacity. However, for school buses the minimum occupant weight allowance shall be 120 pounds.

(6) "GROSS AXLE WEIGHT RATING" or "GAWR", followed by the appropriate value in pounds for each axle, identified in order from front to rear (*e.g.*, front, first intermediate, second intermediate, rear). The ratings for any consecutive axles having identical gross axle weight ratings when equipped with tires having the same tire size designation may be stated as a single value, with the label indicating to which axles the ratings apply.

Examples of Combined Ratings

GAWR:

(a) All axles—4080 with 7.00–15 LT(D) tires.

(b) Front—12,000 with 10.00–20 (G) tires.
First intermediate to rear—15,000 with 12.00–20 (H) tires.

(7) [One of the following statements as appropriate. Statements (i),(ii), and (iii) are alternative certification statements. Statement (i) may be used by manufacturers meeting the requirements described in the instruction portion of that paragraph. Statements (ii) and (iii) may be used by any final-stage manufacturer.

(i) "Conformity of the chassis-cab to Federal Motor Vehicle Safety Standards, which have been previously fully certified by the incomplete vehicle manufacturer or intermediate vehicle manufacturer, has not been affected by final-stage manufacture. The vehicle has been completed in accordance with the prior manufacturer's instructions, where applicable. This vehicle conforms to all other applicable Federal Motor Vehicle Safety Standards in effect in (month, year)."

The preceding statement shall be used only in cases in which the final-stage manufacturer has: (A) not affected conformity to standards compliance with which has been fully certified by a chassis-cab manufacturer pursuant to paragraph (a) (1) of this section or by an intermediate manufacturer pursuant to paragraphs (b) (1) (i) or (b) (1) (ii) of this section, and (B) has completed the vehicle in accordance with the prior manufacturer's instructions in regard to standards listed, as appropriate, in a chassis-cab manufacturer's conditional statement under paragraph (a) (2)

of this section or in an intermediate manufacturer's conditional statement under paragraph (b) (2) of this section. The date shown in the third sentence of the statement shall be not earlier than the manufacturing date of the incomplete vehicle, and not later than the date of completion of final-stage manufacture.

(ii) "Conformity of the chassis-cab to Federal Motor Vehicle Safety Standards Nos. _____ has not been affected by final stage manufacture. With respect to Standards Nos. _____, the vehicle has been completed in accordance with the prior manufacturer's instructions. This vehicle conforms to all other applicable Federal Motor Vehicle Safety Standards in effect in (month, year)."

The first sentence of the preceding statement shall be completed by inserting the numbers of all or less than all of the standards, and only those standards, respecting which the latest prior certification statement was made by a chassis-cab manufacturer pursuant to paragraph (a) (1) of this section or by an intermediate manufacturer pursuant to paragraphs (b) (1) (i) or (b) (1) (ii) of this section. The second sentence of the statement shall be completed by inserting the numbers of all or less than all of the standards and only those standards, respecting which the latest prior certification statement was a chassis-cab manufacturer's conditional statement under paragraph (a) (2) of this section or an intermediate manufacturer's conditional statement under paragraph (b) (2) of this section. The date shown in the third sentence of the statement shall be not earlier than the manufacturing date of the incomplete vehicle, and not later than the date of completion of final-stage manufacture.

(iii) "This vehicle conforms to all applicable Federal Motor Vehicle Safety Standards in effect in (month, year)."

The date shown shall be not earlier than the manufacturing date of the incomplete vehicle and not later than the date of completion of final-stage manufacture. **(48 F.R. 51308—November 8, 1983. Effective: November 8, 1983)]**

(8) Vehicle identification number.

(9) The type classification of the vehicle as defined in § 571.3 of Title 49 of the Code of Federal Regulations (*e.g.*, truck, MPV, bus, trailer).

(d) More than one set of figures for GVWR and GAWR, and one or more tire sizes, may be listed in satisfaction of the requirements of paragraphs (c) (5) and (6) of this section, as provided in § 567.4(h).

(e) If an incomplete vehicle manufacturer assumes legal responsibility for all duties and liabilities imposed by the Act, with respect to the vehicle as finally manufactured, the incomplete vehicle manufacturer shall ensure that a label is affixed to the final vehicle in conformity with paragraph (c) of this section, except that the name of the incomplete vehicle manufacturer shall appear instead of the name of the final-stage manufacturer after the words "MANUFACTURED BY" or "MFD BY" required by subparagraph (c) (1) of this section, the additional manufacturer's name required by subparagraph (c) (3) of this section shall be omitted, and the date required by subparagraph (c) (4) of this section shall be preceded by the words "INCOMPLETE VEHICLE MANUFACTURED" or "INC VEH MFD."

(f) If an intermediate manufacturer of a vehicle assumes legal responsibility for all duties and liabilities imposed on manufacturers by the Act, with respect to the vehicle as finally manufactured, the intermediate manufacturer shall ensure that a label is affixed to the final vehicle in conformity with paragraph (c) of this section, except that the name of the intermediate manufacturer shall appear instead of the name of the final-stage manufacturer after the words "MANUFACTURED BY" or "MFD BY" required by subparagraph (c) (1) of this section.

§ 567.6 Requirements for persons who do not alter certified vehicles or do so with readily attachable components.

A person who does not alter a motor vehicle or who alters such a vehicle only by the addition, substitution, or removal of readily attachable components such as mirrors or tire and rim assemblies,

or minor finishing operations such as painting, in such a manner that the vehicle's stated weight ratings are still valid, need not affix a label to the vehicle, but shall allow a manufacturer's label that conforms to the requirements of this part to remain affixed to the vehicle. If such a person is a distributor of the motor vehicle, allowing the manufacturer's label to remain affixed to the vehicle shall satisfy the distributor's certification requirements under the Act.

§ 567.7 Requirements for persons who alter certified vehicles.

A person who alters a vehicle that has previously been certified in accordance with § 567.4 or § 567.5, other than by the addition, substitution, or removal of readily attachable components such as mirrors or tire and rim assemblies, or minor finishing operations such as painting, or who alters The vehicle in such a manner that its stated weight ratings are no longer valid, before the first purchase of the vehicle in good faith for purposes other than resale, shall allow the original certification label to remain on the vehicle, and shall affix to the vehcile and additional label of the type and in the manner and form described in § 567.4, containing the following information:

(a) [The statement: "This vehicle was altered by (individual or corporate name) in (month and year in which alterations were completed) and as altered it conforms to all applicable Federal Motor Vehicle Safety Standards affected by the alteration and in effect in (month, year)."] The second date shall be no earlier than the manufacturing date of the original vehicle, and no later than the date alterations were completed. However, in the case of passenger cars, the expression "and bumper"—**(45 F.R. 18928—March 24, 1980. Effective: March 24, 1980)**

(1) May, at the option of the manufacturer, be included in the statement following the word "safety"; and

(2) Shall be included in the statement following the word "safety" in the case of passenger cars manufactured on or after September 1, 1978.

(b) If the gross vehicle weight rating or any of the gross axle weight ratings of the vehicle as altered are different from those shown on the original certification label, the modified values shall be provided in the form specified in § 567.4(g) (3) and (4).

(c) If the vehicle as altered has a different type classification from that shown on the original certification label, the type as modified shall be provided.

36 F.R. 7054
April 14, 1971

PREAMBLE TO PART 568—VEHICLES MANUFACTURED IN TWO OR MORE STAGES

(Dockets No. 70–6, 70–8, and 70–15)

This notice adopts a new Part 568 in Title 49, Code of Federal Regulations, to require the furnishing of information relevant to a vehicle's conformity to motor vehicle safety standards, and makes complementary changes in the certification regulations in Part 567 of that title and in Part 571. It also amends the certification regulations with respect to the manufacturer whose name must appear on the label for trailers and with respect to the information that must appear on the label for all vehicles. Notices of proposed rulemaking on these subjects were published on March 17, 1970 (35 F.R. 4639), May 1, 1970 (35 F.R. 6969), and June 13, 1970 (35 F.R. 9293). The comments received in response to these notices, and the statements made at the public meeting on vehicles manufactured in two or more stages (September 18, 1970; 35 F.R. 13139) have been considered in this issuance of a final rule.

In adopting the new Part 568, *Vehicles Manufactured in Two or More Stages*, in a form similar to that proposed in the March 17 notice, the Administration has determined that there is a need to regulate the relationships between manufacturers of multi-stage vehicles to the extent those relationships affect the conformity of the final vehicle to the motor vehicle safety standards, and that the regulation will meet this need with a minimum disruption of established industry practices. Comments received from persons who would occupy the positions of intermediate and final-stage manufacturers were substantially in favor of the proposal.

The definitions by which the regulation establishes the categories of "incomplete vehicle," "completed vehicle," and the three categories of vehicle manufacturers provide a framework within which each may categorize himself and his products. Of necessity, the definitions are broad and may not clearly define individual situations. The primary distinction between the incomplete vehicle and the completed vehicle is whether the vehicle can perform its intended function without further manufacturing operations other than the addition of readily attachable components or minor finishing operations. The comments indicated there may sometimes be a close question as to whether or not a missing component is "readily attachable." How the question is answered may determine the vehicle's status as a "completed vehicle," or an "incomplete vehicle" and the corresponding status of the manufacturers involved. It has not been found feasible or desirable at this time to regulate the numerous variations in relationships that may develop. In the usual case, it will be possible for the affected manufacturers to reach agreement between themselves as to their respective obligations.

The largest number of comments were directed at the section (§ 568.4) establishing requirements for incomplete vehicle manufacturers. That section provides, first, that an incomplete vehicle manufacturer must furnish a document with the vehicle to contain the information specified by the section. The document may be attached to the vehicle in such a manner that it will not be inadvertently detached, or it may be sent directly to a subsequent manufacturer or a purchaser for purposes other than resale. Several comments requested that the information be placed on a permanent label, although the commenters disagreed as to the amount of information to be so placed. Some chassis-cab manufacturers wanted to retain the chassis-cab label, perhaps with the addition of weight ratings, while several body assemblers wanted to have a label containing all the information specified in the regulation. Apart from the greater amount of information

required, which could make a label inconveniently large, there will often be a need for the final-stage manufacturer to retain copies of the document in his files. A detachable document would meet this much better than a label affixed to the vehicle. Despite complaints from some final-stage manufacturers that detachable documents are too easily lost, there was ample indication at the public meeting that other final-stage manufacturers do not experience such problems. It is the Administration's position that the transmittal of the required documents can be reasonably assured by secure attachment and prominent identification, and that no further regulation of the transmittal process is necessary.

The listing of ratings for the gross vehicle weight and the gross axle weight was not objected to except with respect to multipurpose passenger vehicles. It was suggested that "vehicle capacity weight" or a similar term reflecting the passenger capacity be used. After review of the suggestions, the Administration has concluded that the GVWR-GAWR usage, though perhaps not current in some parts of the industry, is nonetheless the simplest and most accurate means of informing subsequent manufacturers of the vehicle's weight characteristics.

After review of the numerous comments on the subject, the Administration has decided not to require manufacturers to provide information on gross combination weight ratings. The term is not in general use in the country and its application is not clear with respect to certain types of combinations. For this reason, and because there are no existing or proposed standards that refer to gross combination weight ratings, it is not now appropriate to require GCWR information.

The regulation adopts the requirement that the incomplete vehicle manufacturer must list in the document each standard, applicable to the types of vehicles into which the incomplete vehicle may be manufactured, that is in effect at the time of manufacture of the incomplete vehicle. He must provide, with respect to each of these standards, one of the three types of statements proposed in the notice, depending on the degree to which his vehicle complies with each standard. If compliance is complete, and certification of the completed vehicle requires only that the final-stage vehicle manufacturer not alter certain portions of the vehicle, the incomplete vehicle manufacturer may so state. There is no need for parts to be listed in detail, as suggested by one commenting party. The portions of the vehicle may be referred to by part, system, dimensions, or any other method sufficient to objectively identify them.

At the other extreme, an incomplete vehicle manufacturer may state that the design of the incomplete vehicle does not substantially determine the completed vehicle's conformity with a standard. This would be the case, for example, with respect to Standard No. 205, Glazing Materials, if the incomplete vehicle is a stripped chassis. Some comments stated that it appeared unnecessary to recite such standards if the incomplete vehicle manufacturer has nothing to do with them. It is the Administration's position, however, that such a recitation serves as useful notice to final-stage vehicle manufacturers, many of whom may be less familiar with the standards than the incomplete vehicle manufacturers.

Between these two extremes are the situations in which the work of the incomplete vehicle manufacturer partially determines the conformity of the final vehicle, but in which the input of subsequent manufacturers will necessarily affect such conformity. It may be that the main system components are furnished and installed by the incomplete vehicle manufacturer, as in the case of the recently adopted standard on air brake systems, but that the final-stage vehicle manufacturer must necessarily perform operations that affect the performance of the components, such as placing a body on the chassis, thereby affecting the vehicle's weight distribution and center of gravity. In some cases, as under the lighting standard, the incomplete vehicle manufacturer will suppy some components that will be installed by the final-stage manufacturer, with or without additional components. In either case, the ultimate conformity of the vehicle is determined by more than one manufacturer, and the regulation deals with this problem by requiring the incomplete vehicle manufacturer to set forth specific conditions under which the completed vehicle will conform to the standard. It is not intended that the incomplete vehicle manufacturer should indicate

all possible conditions under which a vehicle will or will not conform. He must, however, specify at least one set of conditions under which the completed vehicle will conform. A final-stage manufacturer who wishes to act outside these conditions will be on notice that he should consult further with the incomplete vehicle manufacturer, or accept responsibility for conformity with the standard in question. Since the information that the incomplete vehicle manufacturer is required to gather will be developed in the course of his engineering development program, the requirement that this information be supplied to subsequent manufacturers does not appear unduly burdensome, and the requirement is adopted as proposed.

The obligations of the final-stage manufacturer have also been adopted without change from the notice of March 17. The major objection expressed in the comments was that the final-stage manufacturer was often a small company whose input was small relative to that of the incomplete vehicle manufacturer and that he should not bear the burden of certifying that the vehicle fully conforms to the standards. This objection confuses certification with liability. Although the certifying manufacturer may be approached first in the event of his vehicle's nonconformity, if the nonconforming aspect of the vehicle is a component or system supplied by the incomplete vehicle manufacturer, the final-stage manufacturer may establish that he exercised due care by showing that he observed the conditions stated by the incomplete vehicle manufacturer. To the extent that the final vehicle's conformity is determined by work done by the incomplete vehicle manufacturer, the final manufacturer's burden is thus reduced.

Several comments stated that considerable time may elapse between the date of manufacture of the incomplete vehicle and the date of completion of the final-stage vehicle. The regulation deals with this situation by permitting the final-stage manufacturer to select either date or any date in between as the certification date. Although this aspect of the regulation appears to be generally understood, the question arose at the September 18 meeting as to whether a manufacturer may certify compliance with standards as they are effective at different dates between initial and final manufacture. This question has been answered in the negative. The regulation requires manufacturers to conform to all the standards in effect on a particular date, between the two limits. The NHTSA may repeal certain requirements while instituting others, and those in effect at a particular time must be viewed, and conformed to, as a system. A manufacturer who wishes to comply with a standard before its effective date may do so, of course, even though he is not required to certify. Where amendments to an existing standard are such that a vehicle complying with the amended standard will not comply with the earlier version, the Administration will ordinarily provide in the standard that a manufacturer may elect to comply with the amendment before its effective date, if such a course is considered acceptable.

A further question raised in the comments concerns the status of a manufacturer who does not have title to the vehicle on which he performs manufacturing operations. The Administration's response, as stated at the September 18 meeting, is that if a manufacturer produces a completed vehicle from the incomplete stage, he is a final-stage manufacturer, regardless of title. Basing responsibility for conformity on title would present too many opportunities for evasion, and the actual assembler is the party most likely to have the technical knowledge necessary for effective exercise of responsibility.

Another question concerns the magnitude of the manufacturing operation that makes the vehicle a completed vehicle and its manufacturer a final-stage manufacturer. By its definition a completed vehicle is one that requires no further manufacturing operations in order to perform its intended function, other than the attachment of readily attachable components and minor finishing operations. If a manufacturer installs a component that is not readily attachable, such as a fifth wheel, then he is a final-stage manufacturer even though his contribution to the overall vehicle may appear small. In any case, however, an incomplete vehicle or intermediate manufacturer may assume legal responsibility for the

vehicle and affix the appropriate label under 567.5(b) or 567.5(c) of the certification regulations.

In the event that a "readily attachable component" is a component regulated by the standards, such as a mirror or a tire, the final-stage manufacturer must assume responsibility and certify the vehicle even though he does not install the particular component. Otherwise, the installers of mirrors and tires would be considered final-stage manufacturers, a status that they would probably find unacceptable and that would tend to make certification less meaningful.

In consideration of the above, Title 49, Code of Federal Regulations, is amended as follows:

A new part 568, *Vehicles Manufactured in Two or More Stages*, is added, reading as set forth below.

Section 571.3 is amended by deleting the definition of "chassis cab."

Sections 571.5(b) and 571.13, and the Ruling Regarding Chassis-cabs appearing at 33 F.R. 29 (January 3, 1968), are revoked.

Issued on April 8, 1971.

Douglas W. Toms
Acting Administrator

36 F.R. 7054
April 14, 1971

PREAMBLE TO AMENDMENT TO PART 568—VEHICLES MANUFACTURED IN TWO OR MORE STAGES

This notice extends the applicability of the definitions used in the Federal Motor Vehicle Safety Standards to other regulations contained in Chapter V of Title 49, Code of Federal Regulations, and deletes the definitions of "Gross axle weight rating" and "Gross vehicle weight rating" from the regulations governing vehicles manufactured in two or more stages.

49 CFR 571.3(b) contains the definitions used in the Federal Motor Vehicle Safety Standards. Some of the regulations other than standards contain their own definition sections defining terms unique to the regulation, and otherwise incorporating by reference the definitions of Part 571. An example of this is the definition section in the Certification Regulation, 49 CFR 567.3: "All terms that are defined in the Act and the rules and standards issued under its authority are used as defined therein." However, there is no reverse applicability of 49 CFR 571.3(b), which applies only to terms "as used in this part." One result has been that duplicate definitions appear in certain regulations, specifically, the identical definitions of "Gross axle weight rating" and "Gross vehicle weight rating" found in both Part 571 and the regulation on Vehicles Manufactured in Two or More Stages, Part 568. To prevent unnecessary duplication and the possibility of confusion in the future, the Administration has determined that the definitions used in Part 571 should apply to all regulations in Chapter V, and also that Part 568 should be amended by deleting the definitions of "Gross axle weight rating" and "Gross vehicle weight rating." In consideration of the foregoing 49 CFR 568.3 is amended . . .

Effective date: June 1, 1972. Since this amendment is administrative and interpretive in nature and imposes no additional burden upon any person, notice and public procedure thereon is unnecessary and it may be made effective in less than 30 days after publication in the *Federal Register.*

This notice is issued under the authority of section 103 and 119 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1392, 1407), and the delegation of authority from the Secretary of Transportation to the National Highway Traffic Safety Administration 49 CFR 1.51.

Issued on May 9, 1972.

Douglas W. Toms
Administrator

37 F.R. 10938
June 1, 1972

PREAMBLE TO AMENDMENT TO PART 568—
VEHICLES MANUFACTURED IN TWO OR MORE STAGES

(Docket No. 72–27; Notice 2)

This notice establishes certification and labeling responsibilities for persons who alter "completed vehicles" after their certification as conforming to applicable motor vehicle safety standards. The requirements are based on those proposed in a notice of proposed rulemaking published October 25, 1972 (37 F.R. 22800).

Under the new requirements, a person who alters a completed vehicle, other than by the attachment, substitution, or removal of "readily attachable components", will be required to ascertain conformity to all applicable standards as of any date between the manufacture date of the completed vehicle and the manufacture date of the altered vehicle. That person will be required to affix a label (leaving the certification label in place) that identifies the alterer, the date of alteration, the date as of which conformity is determined, and any changes the alteration produces in either gross weight ratings or vehicle classification. A person who does not alter the vehicle, or who adds, substitutes, or removes only readily attachable components will be required to leave the certification label in place, but will not be required, unless the alteration invalidates the stated weight ratings, to provide an additional label. Distributors who do not alter the vehicle, or who alter it using only readily attachable components and do not invalidate the stated weight ratings will meet the certification requirements by leaving the certification label in place. The requirements will place persons who alter completed vehicles on the same basis as final-stage manufacturers, by allowing the former to choose as the date by which vehicle conformity is determined any date between the date on which the completed vehicle is manufactured and the date on which the vehicle is altered. Under previously existing statutory and regulatory provisions, alterers of vehicles were required to use only the date of completion of the altered vehicle as the date by which conformity could be determined.

General Motors, Truck Body and Equipment Association, and Stutz Motor Car of America supported the proposal without qualification. Other comments generally approved the proposal with some suggested changes.

Several comments argued that the limiting concept of "readily attachable components", the addition, removal, or substitution of which does not create a requirement to affix a label, should not include "mirrors or tire and rim assemblies", as the language appears in §§ 567.6 and .7, and § 568.8. It was argued that these items directly affect the vehicle's conformity to the standards or the weight ratings, and should therefore not be alterable without, in effect, a recertification by the alterer. It was variously suggested that explicit inclusion of these items as examples of readily attachable components might cause a safety problem, a false certification, or a misleading of persons such as dealers as to their responsibilities under the Act and the standards.

The NHTSA does not accept these arguments. The provisions for alteration of vehicles, like the larger certification scheme of which they are a part, are intended to reflect the realities of manufacture and distribution. It is a fact that the substitution of tires by a dealer takes place in a substantial fraction of all vehicle sales. Moreover, a large proportion of the components that are in fact frequently altered at the dealer level are directly affected by standards: mirrors, tires, rims, lighting accessories, bumper guards and attachments, windshield wipers and washers, hub

caps and wheel nuts, seat belts, and interior components such as air conditioners or radios that come within the head impact area, to name a few. If these items were not included in the concept of readily attachable components, for which an alteration label is not required, it is safe to say that virtually every dealer in the country would be affixing labels to many of the vehicles he sold.

It was not the intent of this agency to create such a manifold expansion of labeling requirements. The altered-vehicle label is designed primarily to reach those cases where a completed vehicle is significantly altered, in a manner, and with components, not provided by the original manufacturer. The substitution or addition of parts such as tires, rims, and mirrors is a routine aspect of typical vehicle distribution systems, and the cost burden of affixing a permanent label to the vehicle has not been found to be justified in that situation. For these reasons the language of the regulation has in these respects been retained as proposed.

The requirement to keep a vehicle in conformity to the standards and the weight ratings applies throughout the chain of distribution regardless of any labeling requirements, and this agency has no intent of downgrading the importance of that requirement. The comments did reveal a justifiable concern of manufacturers for situations where the vehicle might be altered, as by substitution of tires, in a way that its stated weight ratings are no longer valid. Also, there may well be cases where a customer wants a vehicle to have lighter components for its intended purpose, and would accept lowered weight ratings. To deal with these cases, language has been added to sections 567.6 and .7, and 568.8, to require the affixing of an alteration label whenever any type of alteration is made that would invalidate the stated weight ratings.

American Motors and Jeep argued that requiring alterers to certify conformity discriminates against manufacturers' dealers. They pointed out that dealers, who generally alter vehicles before sale, are required to maintain conformity, while aftermarket installers of equipment, because the additions they make are to "used" vehicles, need not. They suggested that "special add-on accessories" be excepted from the requirements, that a new category of "Special Motorized Equipment" be created to which some of the standards would not apply, that equipment standards be issued to cover aftermarket installers, and that highway safety program standards prohibit the alteration of vehicles such that they would not conform to the standards. These comments are not, in the view of this agency, within the scope of the rulemaking. Requests of this nature should be submitted as petitions for rulemaking, with supporting data, in accordance with the procedures of 49 CFR Part 553.

British Leyland suggested that an exemption to the labeling requirements be made for persons installing accessories which the original vehicle manufacturer makes available, and whose installation he knows will not affect vehicle conformity. The NHTSA expects that most accessories meeting this description will be readily attachable within the sense of the regulation, and no further labeling in these cases will be required. It should be noted that the category of "readily attachable components" cannot be sharply defined, and in any marginal case the NHTSA will accept the reasonable judgment of the parties concerned, especially where the original manufacturer and the alterer are in agreement. In cases where components of this type are not found to be readily attachable, the burden on the alterer to determine that the alteration does not destroy conformity is minimized, leaving him with essentially no more than the attachment of the alterer label.

Certain comments pointed out that while proposed sections 567.7 and 568.8 are not limited in their application to distributors, that limitation had been retained in section 567.6. The comments suggested that, as sections 567.7 and 568.8 applied to dealers, section 567.6 should likewise so apply. The substance of the suggestion has been adopted in the final rule, by modifying § 567.6 to apply to any "person".

The Recreation Vehicle Institute (RVI) suggested that manufacturers of completed vehicles be required to supply a document when requested by a vehicle alterer, similar to that provided final-stage manufacturers, that advises alterers how to achieve or retain conformity. This sug-

gestion has not been adopted. If a vehicle manufacturer wishes to provide information on the alteration of his vehicles, he of course may do so. Once a completed, certified vehicle has been produced, however, the NHTSA does not believe it reasonable to require manufacturers to provide persons who might alter that vehicle with additional certification information. The requirement to provide information concerning incomplete vehicles (Part 568) is founded on the fact that an incomplete vehicle manufacturer has marketed his vehicles with the express intent of having them completed by other persons. This is not the case with completed vehicles.

RVI also suggested that the regulation specifically provide that alterers be allowed to base their conclusions as to conformity on the original certification. The NHTSA does not consider such a provision to be meaningful. The extent to which the alterer's conformity assurance may be based on the original certification depends entirely on what the alterer does to the vehicle, which is a fact peculiarly within his knowledge.

Certain comments suggested that compliance with the requirements be permitted before the specified effective date. The NHTSA believes this request to be meritorious. Alterers will be able to conform to existing requirements or to those issued by this notice at any time up to the effective date.

In light of the above, amendments are made to 49 CFR Parts 567 and 568 . . . .

Effective date: February 1, 1974. However, persons who alter vehicles may at any time before that date conform to the provisions issued in this in lieu of existing provisions of 49 CFR Parts 567 and 568.

Sections 103, 112, 114, 119, Pub. L. 89–563, 80 Stat. 718; 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 38 F.R. 12147.

Issued on June 13, 1973.

James E. Wilson
Associate Administrator
Traffic Safety Programs

38 F.R. 15961
June 19, 1973

PREAMBLE TO AN AMENDMENT TO PART 568
VEHICLES MANUFACTURED IN TWO OR MORE STAGES

[Docket No. 75-28; Notice 3]

ACTION: Final rule.

SUMMARY: This notice amends the regulations that specify how a truck manufacturer meets its statutory responsibility to certify compliance of its products with Federal Motor vehicle safety standards. Most trucks are constructed in at least two separate stages and these regulations have required the basic "chassis-cab" manufacturer to provide necessary engineering calculations to the subsequent manufacturer that permits him to finish the vehicle and certify compliance. The decision in *Rex Chainbelt v. Brinegar,* 511 F. 2d 1215 (7th Cir. 1975) directed the NHTSA to amend this regulation so that both manufacturers certify compliance to the degree their work affects the vehicle.

DATE: Effective date July 25, 1977.

SUPPLEMENTARY INFORMATION: This notice amends 49 CFR Part 567, Certification, by adding a labeling requirement for chassis-cab manufacturers and modifying the labeling requirements for final stage manufacturers, in accordance with the decision in *Rex Chainbelt, Inc. v. Brinegar,* 511 F. 2d 1215 (7th Cir. 1975). Conforming amendments are made to 49 CFR Part 568, Vehicles Manufactured in Two or More Stages. Certification labeling requirements for intermediate manufacturers are proposed in a companion notice issued today (Notice 4, 42 FR 37831).

The notice is based on a proposal that was published as Notice 1 on October 3, 1975 (40 FR 45847). Seventeen comments were received in response to the proposal. The amendments are adopted essentially as proposed. The major change is that the list of permissible locations for the required certification labels has been extended to include the inward-facing surface of the driver's door, in order to accommodate the larger sizes of labels that can now be expected. Any submitted suggestions for changes that are not specifically mentioned herein are declined for action or proposal at this time, on the basis of all the information presently available to the agency.

The existing scheme for the certification of multistage vehicles is found in Parts 567 and 568 of Title 49, Code of Federal Regulations. Briefly, it requires a final-stage manufacturer to certify that his completed vehicle complies with all applicable Federal motor vehicle safety standards, on the basis of (i) the work he has performed, and (ii) the information concerning the incomplete vehicle's conformity status with respect to each standard, found in a document (the "Part 568 document") supplied by those who have previously performed work on the incomplete vehicle. This scheme is more fully described in the notice of proposed rulemaking at 40 FR 45847.

Petitioners in the *Rex Chainbelt* case attacked the validity of the scheme as it applied to a company mounting cement mixers on chassis-cabs. The U.S. Court of Appeals for the Seventh Circuit, in its first opinion in this case, invalidated the scheme to the extent that it required a final-stage manufacturer who builds on a chassis-cab to make the "sole certification of compliance of the entire vehicle." *Rex Chainbelt, Inc. v. Volpe,* 486 F. 2d 757, 761-762 (7th Cir. 1973). In its last opinion, the Court restated its holding as meaning that "in instances where the customer purchases a chassis-cab from its manufacturer and thereafter the mixer from the mixer manufacturer, and with the mixer manufacturer certifying its mixer and the effect of the mounting, if any, to thus obtain effective certification of the 'entire vehicle.' " *Rex Chainbelt, Inc. v. Brinegar,* 511 F. 2d 1215, 1216 7th Cir. 1975).

Parts 567 and 568 are amended today to conform to this decision. The basic change in Part 567 is to require the manufacturer of a chassis-cab to affix a certification label to his incomplete vehicle, certifying its conformity status with respect to each standard that will be applicable to the vehicle as completed. He will divide the standards into three categories, according to the degrees to which conformity with them is approached in his product, and certify essentially the same facts about them as have merely, up to now, been required to be indicated in the Part 568 document. The final stage manufacturer who uses the chassis-cab will then make a three-part certification statement (to the extent that the three parts are applicable), corresponding to the three statements made by the chassis-cab manufacturer.

More specifically, in the first category on its label, the chassis-cab manufacturer will state, "This chassis-cab conforms to Federal Motor Vehicle Safety Standard Nos.------," listing the numbers of the standards for which the statement is correct. In the corresponding first category on its label, the final-stage manufacturer will state, "conformity of the chassis-cab to Federal Motor Vehicle Safety Standard Nos.------ has not been affected by final-stage manufacture." This couplet conforms precisely to the mandate of the Court that the chassis-cab manufacturer certify its chassis-cab, and the final-stage manufacturer certify as to the "effect" of its work. It is not necessary for all the standards that were placed in the first category by the chassis-cab manufacturer to be similarly included by the final-stage manufacturer in his first category. The latter manufacturer is free to "affect" the manner in which the completed vehicle conforms to any such standards, e.g., by removing and replacing mirrors or lights, as long as he ultimately certifies in his third (final) statement conformity to those affected standards. In the extreme case, if the final-stage manufacturer wishes to exclude all of the standards from the first category, he may omit this statement altogether.

The second category of standards, those that are necessarily strongly affected by what both the chassis-cab and final-stage manufacturers do, is the main target of the regulatory scheme. In its second statement the chassis-cab manufacturer will certify, "This vehicle will conform to Standard Nos.------ if it is completed in accordance with the instructions contained in the incomplete vehicle document furnished pursuant to 49 CFR Part 568." The final-stage manufacturer's corresponding statement will be, "With respect to Standard Nos.------, the vehicle has been completed in accordance with the chassis-cab manufacturer's instructions." This statement also conforms to the Court's opinion, although the treatment of this category cannot be as simple. The final-stage manufacturer, in considering a standard such as the one on air brakes that its work must crucially "affect," will thus have a choice. He may conform his completion work to the instructions of the chassis-cab manufacturer, in which case he need only make a statement to that effect, thereby throwing the burden of conformity onto the chassis-cab manufacturer. Or, he may deviate from those instructions, in which case the second statement becomes inapplicable as far as that standard is concerned, and instead include the standard in the residual third statement. Thus, the final-stage manufacturer will describe the "effect of (his) mounting, if any" either by saying he had remained within the Part 568 document's limits, thereby actuating the chassis-cab manufacturer's certification, or by making an original certification of conformity. Again, if the final-stage manufacturer chooses to omit all standards from this second category, the second statement may be omitted.

The third statement by the chassis-cab manufacturer will be, "Conformity to the other safety standards applicable to this vehicle when completed is not substantially affected by the design of the chassis-cab." The expression "substantially affected" replaces "substantially determined", which appeared in the notice of proposed rulemaking, in order to clarify the meaning of this third statement. This subject is discussed further below. The third statement by the final-stage manufacturer will be, "This vehicle conforms to all other applicable Federal Motor Vehicle Safety Standards in effect in (month, year)." Obviously, conformity to standards concerning which the chassis-cab manufacturer makes no representation whatever, or to those where the final-stage manufacturer chooses not to follow the chassis-cab manufacturer's instructions, must be assumed by the final-stage manufacturer. The regulation provides that where the first two statements are omitted, the word "other" be omitted from the third statement. In this form it covers both the cases where the final-stage manufacturer chooses not to follow the chassis-cab manufacturer's instructions concerning any standards, and the cases involving incomplete vehicles other than chassis-cabs, to which the dual-certification scheme is inapplicable. Finally, it covers the cases where the final-stage manufacturer considers the simple con-

formity statement to adequately represent his rights and duties.

The Motor Vehicle Manufacturers Association (MVMA) and several chassis manufacturers objected to the chassis-cab manufacturer's type (1) certification, "[t]his chassis-cab conforms to Federal Motor Vehicle Safety Standard Nos.------", on several grounds. The essence of these objections was that such a certification would be both misleading and beyond the statutory authority of the NHTSA to require, because there are no standards applicable to chassis-cabs. These commenters have referred to Section 114 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1391 et seq.) (the Act), which requires certification that each "(motor) vehicle or item of motor vehicle equipment conform to all applicable Federal Motor vehicle safety standards." They have correctly pointed out that chassis-cab, because it is an incomplete vehicle, is not a "motor vehicle" as that term is defined in section 102(3) of the Act. A chassis-cab is an item of "motor vehicle equipment", as that term is defined in section 102(4). While Federal motor vehicle safety standards have been issued for certain types of motor vehicle equipment, e.g., tires and motorcycle helmets, no such standards have been issued for chassis-cabs or other incomplete vehicles. The NHTSA agrees that the chassis-cab manufacturer's type (1) certification specified in the rule adopted today is therefore not the certification that is explicitly required by section 114 of the Act. Even so, the NHTSA considers the former certification to be meaningful and appropriate as part of a scheme for ensuring the full certification of completed motor vehicles by the proper manufacturing parties. Conformity of a physical object (in this case, a chassis-cab) to a safety standard is a concept distinct from that standard's legal applicability to the object. For example, a chassis-cab is not statutorily required to conform to Standard No. 101, Control Location, Identification, and Illumination, because chassis-cabs are not listed in S3, Application of that standard. Nevertheless, a chassis-cab that does in fact meet the substantive requirements of the standard is accurately described as "conforming" to it.

The NHTSA does not consider the type (1) certification to be misleading provided that it is factually accurate. Any intimation to the reader of such a statement that the safety standards enumerated in it are applicable to the chassis-cab is outweighed by the need for full certification of completed motor vehicles. An untrue type (1) statement, of course, would be considered a noncompliance with 49 CFR Part 567.

Ford Motor Company has suggested that, through the new certification scheme, the NHTSA seeks to impose safety standards on chassis-cabs indirectly—without a statutorily required consideration of whether they are "reasonable, practicable, or appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which (they are) prescribed." This characterization of the new scheme is incorrect. With the three part certification statement, the chassis-cab manufacturer is merely certifying his product's status of conformity with respect to each of the safety standards that apply to the completed vehicle. The only standards to which a chassis-cab must actually conform are those that he has placed in the first category, and he is free to leave that category empty by including all the standards in the succeeding two.

Indeed, the NHTSA has specifically rejected the concept, urged by Ford and others, of Federal motor vehicle safety standards that apply to chassis-cabs. It is the completed motor vehicle with which the NHTSA is most concerned, because that is what is driven on the public highways. The performance capabilities of a chassis-cab affect motor vehicle safety only through their effect on the performance of the vehicle into which the chassis-cab is completed. The consequent inappropriateness of standards applicable to chassis-cabs was discussed fully in the notice of proposed rulemaking.

The MVMA and several chassis manufacturers also objected to the second type of chassis-cab certification—that the chassis-cab will conform to enumerated standards if it is completed in accordance with the instructions found in the incomplete vehicle document. These commenters argued that such a certification statement would require the chassis-cab manufacturer to anticipate conduct over which he has no control. Because conditions on subsequent manufacturing are contained within a chassis-cab manufacturer's type (2) certification statement, however, the statement's truth or falsehood is established at the time of chassis-cab manufacture. The work that is actually performed on a chassis-cab following such a certification has no bearing on that truth or falsehood. These objections are thus without foundation. The chassis-cab manufacturer is protected against the wide variety of possible methods of completion over which the NHTSA readily agrees he has no control.

In a similar vein, the MVMA suggested that the

chassis-cab certification statements would be susceptible to amendments made to the standards between the time of manufacture of the chassis-cab and the completion of the vehicle, and would thus be unacceptably open-ended. The MVMA is mistaken. The NHTSA interprets all the statements on the chassis-cab manufacturer's label as made with respect to the Federal motor vehicle safety standards in effect at the time of manufacture of the chassis-cab, as that time is indicated on the label.

As noted in the notice of proposed rulemaking, there is a factual limitation on the chassis-cab manufacturer's use of the third type of certification. Where the chassis design is an important determinant of a vehicle's ability to conform to a given standard, it is incorrect to state (whether on a certification label or in a Part 568 document) that conformity to that standard is "not substantially determined by the design of the chassis-cab." Ford and General Motors objected to this position, arguing that where the work of the final-stage manufacturer substantially determines conformity, the design of the chassis-cab must of necessity not substantially determine conformity. The NHTSA rejects these objections. It is possible for a completed vehicle's conformity to a standard to be substantially determined by both the design of the chassis-cab and the manner of completion by the final-stage manufacturer. Indeed, this is often the case with the braking standards and the fuel system integrity standard, among others. To more precisely characterize the agency's intention and to eliminate further confusion on this subject, the expression "substantially determined" in the chassis-cab manufacturers' type (3) certification is replaced by "substantially affected". In addition, an interpretive amendment is made to the description in Part 568 of the incomplete vehicle document, to effect the same substitution.

Rexnord, Inc. (formerly Rex Chainbelt) argued that the proposed certification scheme would not comply with the *Rex Chainbelt* holding because it would require "that the Final Mfr. certify the Chassis Mfr.'s materials, workmanship and design in some situations." The situations referred to are those in which a final-stage manufacturer affects the manner of conformity to a standard to which the chassis-cab has been certified in category (1) or departs from the completion instructions for a standard respecting which the chassis-cab has been certified in category (2). Rexnord objects to the requirement that, in these situations, the final-stage manufacturer "unconditionally" certify the completed vehicle in category (3), on the ground that he should be able to "preserve so much of the prior certification as he has a right to rely on" despite his departure from the anticipated manner of completion.

The infinite number of modifications that can be made by a final-stage manufacturer in departing from the incomplete-vehicle manufacturer's disposition make "preservation" of the remnants of a prior certification extremely difficult under the general allocation provisions of Part 567. For this reason, the final-stage manufacturer must rely on the requirement that the chassis-cab manufacturer's certification is permanently affixed to the vehicle and thereby "preserves" that portion of the prior certification that can continue to be relied upon.

Rexnord also argued that the completion instructions supplied by chassis-cab manufacturers are often unreasonably restrictive. It urged that a new regulation be established to require those manufacturers to test and certify various "approved modifications" of their chassis-cabs. The NHTSA considers such an approach to be as unwise as the establishment of chassis-cab standards. While there may be many instances in which the chassis manufacturer is in a better position than the final-stage manufacturer to take responsibility for the safety of a modification to the chassis, the variety of manufacturing situations militates against government interference with the freedom of manufacturers to allocate responsibility among themselves as they find it most appropriate.

In response to Rexnord's suggestion, the rule specifies that the name of the chassis-cab manufacturer be preceded on the label affixed by him by the words "CHASSIS-CAB MANUFACTURED BY" or "CHASSIS-CAB MFD BY". Omission of these words from the proposed rule was an oversight. The additional suggestion that the final-stage manufacturer's name be preceded on his label by "FINAL STAGE MANUFACTURE BY" (or an abbreviation) rather than "MANUFACTURED BY" (or an abbreviation), however, is not adopted. Even though the latter designation may oversimplify the final-stage manufacturer's status, such a characterization is necessitated by the Act. In any event, the intimation that he is responsible for the entire vehicle is negated by the accompanying identification of the chassis-cab manufacturer.

The NHTSA declines the suggestion of Mack Trucks that Gross Vehicle and Gross Axle Weight Ratings be required, or at least permitted as an option, to appear on the chassis-cab label. There is

great potential for user confusion if chassis-cab and final-stage manufacturers' labels indicate different weight ratings. The need to avoid this confusion outweighs an interest in placarding weight ratings other than those of the completed vehicle. Therefore, Rexnord's request—that the final stage manufacturer who does not depart from a chassis-cab manufacturer's weight ratings be permitted to refrain from "restating" those ratings—cannot be granted.

The Recreation Vehicle Industry Association (RVIA) suggested a change in the definition of "chassis-cab" to include certain incomplete vehicles that are completed as motor homes. These "chopped vans" and "Type C" motor home chassis, however, appear to lack the prerequisite completed occupant compartments of the proposed definition. Because completeness of the occupant compartment is what sets chassis-cabs apart from other incomplete vehicles, the RVIA suggestion is declined. Accordingly, the definition is adopted as proposed. For convenience, it is located in §567.3 rather than the definitions section of Part 571 of this title. Manufacturers are reminded that Part 568 continues to require the provision of a document with every incomplete vehicle, regardless of whether the incomplete vehicle, by virtue of being a chassis-cab, is also required by the rule issued today to be certified.

The new chassis-cab certification requirements will take effect in one year. This is longer than all the lead times requested by commenters. It provides ample time for chassis-cab manufacturers to prepare for compliance. It also enables the NHTSA to evaluate the comments and take final action on the accompanying proposal to add certification requirements for intermediate manufacturers with sufficient lead time remaining for those manufacturers.

Issued on July 8, 1977.

Joan Claybrook
Administrator

42 F.R. 37814
July 25, 1977

PREAMBLE TO AN AMENDMENT TO PART 568—VEHICLES MANUFACTURED IN TWO OR MORE STAGES

(Docket No. 80-04; Notice 1)

ACTION: Interpretive amendment, final rule.

SUMMARY: This notice amends the certification regulations to modify the certification statement required to be made on alterers' labels. This notice responds to a petition by the National Truck Equipment Association to change the certification statement to show that alterers are only responsible for the compliance of their vehicles with standards that are affected by their alteration. The agency has frequently issued interpretations taking that position and accordingly modifies the certification statement to reflect this interpretation. Since this amendment merely incorporates an existing interpretation, it is being made without notice and opportunity for comment.

EFFECTIVE DATE: Since this amendment incorporates an existing interpretation, it is effective immediately upon publication, March 24, 1980. However, since manufacturers and alterers need time to modify their labels in accordance with this change and may have supplies of labels with the old language, the NHTSA will permit the use of either the new or the existing label language.

FOR FURTHER INFORMATION CONTACT:

Mr. David Fay, Engineering Systems Staff, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-2817).

SUPPLEMENTARY INFORMATION:

In response to the decision in *Rex Chainbelt v. Brinegar,* 511 F.2d 1215 (7th Cir. 1975), the agency issued several amendments to its certification regulations bringing them into compliance with the court's mandate. The court ordered the agency to establish a certification scheme that would require each manufacturer of a vehicle to be responsible for the standards affected by its manufacturing process. During the amendment of the certification regulation, the agency did not change the label used by vehicle alterers. Vehicle alterers are those businesses or individuals that alter previously certified vehicles prior to their first sale. The agency concluded that the simplicity of the alterers' label should be retained, and that, as it was then worded, the alterers' label was sufficient to indicate that alterers were only responsible for the compliance of standards that might have been affected by their alteration.

The National Truck Equipment Association (NTEA) first petitioned the agency in December 1978 to amend the alterers' label stating that the language in fact made the alterer responsible for the entire compliance of the vehicle with all standards even though the alterer may not have affected any of those standards by its alteration. To accomplish its goal, the NTEA proposed a complicated alterers' label that would have listed the standards affected by the alteration as well as listing those standards for which the alterer claimed no responsibility. The label would have looked much like the current incomplete- or intermediate-manufacturer's labels.

The agency objected to this proposal, because it would have overly complicated the alterers' label. Alterers frequently are small businesses and the alterations they perform are often minor. Many of these small businesses are aware of their responsibilities and know that their alterations do not affect the compliance of a vehicle with safety standards. However, many of these businesses are not familiar with all of the agency's safety standards. Accordingly, it would have burdened them extensively to have familiarized themselves to the point where they could list all of the standards on their labels indicating which, if any, were affected by their alterations. In light of this problem, the agency denied the NTEA's petition while indicating that the agency would be responsive to the suggestion of an amendment that would achieve their goals without adding complexity to the alterers' label.

On August 16, 1979, the NTEA again petitioned the agency to amend the label. This time, however, the NTEA asked the agency simply to add several words to the alterers' label to indicate that the alterer is responsible only for the standards "affected by the alteration." The NTEA argued that this would accomplish their goal of ensuring that an alterer would not be held responsible for compliance of vehicles with safety standards that are not affected by an alterer's modifications. This notice grants their petition.

The agency has indicated by letter in the past that it considers each manufacturer or alterer only to be responsible for the compliance of the standards that it affects by its manufacture or alteration. Thus, the agency would not hold an alterer responsible for the compliance of the entire vehicle when in acutality the final-stage manufacturer or some other manufacturer in the manufacturing chain might have been responsible for a noncompliance with a standard. The agency can understand, however, how some people might read the existing language of the label more broadly than intended. To avoid any such misunderstandings, the agency is amending Part 567, *Certification*, and Part 568, *Vehicles Manufactured in Two or More Stages*, to incorporate the agency's interpretation of an alterer's responsibilities for compliance with safety standards.

In consideration of the foregoing, Title 49 of the Code of Federal Regulations is amended as follows:

1. Part 567, *Certification*, is amended by changing the first sentence of § 567.7(a) to read:

(a) The statement: "This vehicle was altered by (individual or corporate name) in (month and year in which alterations were completed) and as altered it conforms to all applicable Federal Motor Vehicle Safety Standards affected by the alteration and in effect in (month, year)."

2. Part 568, *Vehicles Manufactured in Two or More Stages*, is amended by revising section 568.8 as follows:

§ 568.8 Requirements for persons who alter certified vehicles.

A person who alters a vehicle that has been previously certified in accordance with § 567.4 or § 567.5, other than by the addition, substitution, or removal of readily attachable components such as mirrors or tire and rim assemblies, or minor finishing operations such as painting, or who alters a vehicle in such a manner that its stated weight ratings are no longer valid, before the first purchase of the vehicle in good faith for purposes other than resale, shall ascertain that the vehicle as altered conforms to the standards which are affected by the alteration and are in effect on the original date of manufacture of the vehicle, the date of final completion, or a date between those two dates. That person shall certify the vehicle in accordance with § 567.7 of this chapter.

* * * * *

Since this modification of the alterers' label merely incorporates an existing interpretation of the certification regulations, the Administrative Procedure Act (5 U.S.C. 553) permits the NHTSA to make the amendment without notice and opportunity to comment. Further, the change is being made effective immediately since it does not change the certification responsibilities of any manufacturer or alterer.

The agency realizes that alterers preprint their labels, and accordingly, any change in the language on the alterers' label requires some leadtime for manufacturers to obtain new complying labels. Accordingly, the agency will permit the use of either the old or new language on the alterers' label until existing supplies of labels are depleted. This will allow those alterers who wish to change their labels immediately the opportunity to do so while providing for an orderly transition for those alterers that wish to use their existing supply of labels. The agency has reviewed this amendment in accordance with E.O. 12044 and implementing departmental guidelines and concludes that it is not significant within the meaning of the Order. The agency has concluded further that preparation of a regulatory evaluation is not warranted. This amendment permits alterers to exhaust their current label supply and to obtain modified labels with their next order. Further, the new labels will be no more costly than the current ones. Accordingly, there should be minimal costs associated with the implementation of this amendment.

The principal authors of this notice are David Fay of the Engineering Systems Staff and Roger Tilton of the Office of Chief Counsel.

Issued on March 17, 1980.

Joan Claybrook
Administrator

45 F.R. 18928
March 24, 1980

PART 568—VEHICLES MANUFACTURED IN TWO OR MORE STAGES

(Dockets No. 70-6, 70-8, and 70-15)

§ 568.1 Purpose and scope.

The purpose of this part is to prescribe the method by which manufacturers of vehicles manufactured in two or more stages shall ensure conformity of those vehicles with the Federal motor vehicle safety standards ("standards") and other regulations issued under the National Traffic and Motor Vehicle Safety Act.

§ 568.2 Application.

This part applies to incomplete vehicle manufacturers, intermediate manufacturers, and final-stage manufacturers of vehicles manufactured in two or more stages.

§ 568.3 Definitions.

"Completed vehicle" means a vehicle that requires no further manufacturing operations to perform its intended function, other than the addition of readily attachable components, such as mirrors or tire and rim assemblies, or minor finishing operations such as painting.

"Final-stage manufacturer" means a person who performs such manufacturing operations on an incomplete vehicle that it becomes a completed vehicle.

"Incomplete vehicle" means an assemblage consisting, as a minimum, of frame and chassis structure, power train, steering system, suspension system, and braking system, to the extent that those systems are to be part of the completed vehicle, that requires further manufacturing operations, other than the addition of readily attachable components, such as mirrors or tire and rim assemblies, or minor finishing operations such as painting, to become a completed vehicle.

"Intermediate manufacturer" means a person, other than the incomplete vehicle manufacturer or the final-stage manufacturer, who performs manufacturing operations on an incomplete vehicle.

"Incomplete vehicle manufacturer" means a person who manufactures an incomplete vehicle by assembling components none of which, taken separately, constitute an incomplete vehicle.

§ 568.4 Requirements for incomplete vehicle manufacturers.

(a) The incomplete vehicle manufacturer shall furnish with the incomplete vehicle, at or before the time of delivery, a document that contains the following statements, in the order shown, and any other information required by this chapter to be included therein.

(1) Name and mailing address of the incomplete vehicle manufacturer.

(2) Month and year during which the incomplete vehicle manufacturer performed his last manufacturing operation on the incomplete vehicle.

(3) Identification of the incomplete vehicle(s) to which the document applies. The identification may be by serial number, groups of serial numbers, or otherwise, but it must be sufficient to ascertain positively that a document applies to a particular incomplete vehicle after the document has been removed from the vehicle.

(4) Gross vehicle weight rating of the completed vehicle for which the incomplete vehicle is intended.

(5) Gross axle weight rating for each axle of the completed vehicle, listed and identified in order from front to rear.

(6) Listing of the vehicle types as defined in 49 CFR § 571.3 (*e.g.*, truck, MPV, bus, trailer) into which the incomplete vehicle may appropriately be manufactured.

(7) Listing by number of each standard, in effect at the time of manufacture of the incomplete vehicle, that applies to any of the vehicle types listed in subparagraph (6) of this paragraph, followed in each case by one of the following three types of statement, as applicable:

(i) A statement that the vehicle when completed will conform to the standard if no alterations are made in identified components of the incomplete vehicle.

EXAMPLE:

"107—This vehicle when completed will conform to Standard 107, Reflecting Surfaces, if no alterations are made in the windshield wiper components or in the reflecting surfaces in the interior of the cab."

(ii) A statement of specific conditions of final manufacture under which the manufacturer specifies that the completed vehicle will conform to the standard.

EXAMPLE:

"121—This vehicle when completed will conform to Standard 121, Air Brake Systems, if it does not exceed any of the gross axle weight ratings, if the center of gravity at GVWR is not higher than nine feet above the ground, and if no alterations are made in any brake system component.

(iii) A statement that conformity with the standard is not substantially affected by the design of the incomplete vehicle, and that the incomplete vehicle manufacturer makes no representation as to conformity with the standard.

(b) The document shall be attached to the incomplete vehicle in such a manner that it will not be inadvertently detached, or alternatively, it may be sent directly to a final-stage manufacturer, intermediate manufacturer or purchaser for purposes other than resale to whom the incomplete vehicle is delivered.

§ 568.5 Requirements for intermediate manufacturers.

(a) Each intermediate manufacturer of an incomplete vehicle shall furnish the document required by § 568.4 inthe manner specified in that section. If any of the changes in the vehicle made by the intermediate manufacturer affect the validity of the statements in the document as provided to him he shall furnish an addendum to the document that contains his name and mailing address and an indication of all changes that should be made in the document to reflect changes that he made in the vehicle.

(b) Each intermediate manufacturer shall, in accordance with § 567.5 of this chapter, affix a label to each chassis-cab respecting which he is required by paragraph (a) above to furnish an addendum to the document required by § 568.4.

§ 568.6 Requirements for final-stage manufacturers.

(a) Each final-stage manufacturer shall complete the vehicle in such a manner that it conforms to the standards in effect on the date of manufacture of the incomplete vehicle, the date of final completion, or a date between those two dates. This requirement shall, however, be superseded by any conflicting provisions of a standard that applies by its terms to vehicles manufactured in two or more stages.

(b) [Each final-stage manufacturer shall affix a label to the completed vehicle in accordance with 567.5 of this chapter. (42 F.R. 37817—July 25, 1977—Effective: July 25, 1977)]

§ 568.7 Requirements for manufacturers who assume legal responsibility for the vehicle.

(a) If an incomplete vehicle manufacturer assumes legal responsibility for all duties and liabilities imposed on manufacturers by the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381–1425) (hereafter referred to as "the Act"), with respect to the vehicle as finally manufactured, the requirements of §§ 568.4, 568.5 and 568.6(b) of this part do not apply to that vehicle. In such a case, the incomplete vehicle manufacturer shall ensure that a label is affixed to the final vehicle in conformity with § 567.5(e) of this chapter.

(b) If an intermediate manufacturer of a vehicle assumes legal responsibility for all duties and liabilities imposed on manufacturers by the Act, with respect to the vehicle as finally manufactured, § § 568.5 and 568.6(b) of this part do not apply to that vehicle. In such a case, the manufacturer assuming responsibility shall ensure that a label is affixed to the final vehicle in conformity with § 567.5(f) of this chapter. The assumption of responsibility by an intermediate manufacturer does not, however, change the requirements for incomplete vehicle manufacturers in 568.4.

§ 568.8 Requirements for persons who alter certified vehicles.

[A person who alters a vehicle that has been previously certified in accordance with § 567.4 or § 567.5, other than by the addition, substitution, or removal of readily attachable components such as mirrors or tire and rim assemblies, or minor finishing operations such as painting, or who alters a vehicle in such a manner that its stated weight ratings are no longer valid, before the first purchase of the vehicle in good faith for purposes other than resale, shall ascertain that the vehicle as altered conforms to the standards which are affected by the alteration and are in effect on the original date of manufacture of the vehicle, the date of final completion, or a date between those two dates. That person shall certify the vehicle in accordance with § 567.7 of this chapter. (45 F.R. 18928—March 24, 1980. Effective: March 24, 1980)]

April 14, 1971
36 F.R. 7054

PREAMBLE TO PART 569—REGROOVED TIRES

(Docket No. 20; Notice No. 4)

The purpose of this amendment is to establish criteria under which regrooved tires may be sold or delivered for introduction into interstate commerce. The regulation allows only tires designed for the regrooving process to be regrooved; specifies dimensional and conditional requirements for the tire after the regrooving process; and sets forth labeling requirements for the tire which is to be regrooved.

Section 204(a) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1424) provides that no person shall sell, offer for sale, or introduce for sale or delivery for introduction into interstate commerce, any tire or motor vehicle equipped with any tire which has been regrooved but gives the Secretary the authority to permit the sale of regrooved tires and motor vehicles equipped with regrooved tires when the regrooved tires are designed and constructed in a manner consistent with the purposes of the Act.

A Notice was published (32 F.R. 11579) affording interested persons an opportunity to present views, information and data to form the basis for permitting the sale and delivery for introduction into interstate commerce of regrooved tires and motor vehicles equipped with regrooved tires.

After considering the comments, data, information received and the state-of-the-art a proposed regulation setting forth criteria to govern the regrooving of tires was published (33 F.R. 8603). All comments received have been considered.

As proposed, it was not clear that the definition of regroovable and regrooved tires would allow the regrooving of retreaded tires. Two comments asked whether the regulation would allow the established practice of regrooving a retreaded motor vehicle tire. The Administrator has determined that regrooving sound retreaded tires does not affect their level of safety performance. Accordingly, the regulation as issued is clarified so as to allow regrooving of both original tread and retreaded motor vehicle tires. There is presently under consideration a Federal motor vehicle safety standard for retreaded tires. When this standard is established, retreaded tires that are regrooved will have to conform to the retread requirements as well as the regrooved tire regulations.

*The Notice of Proposed Rule Making appearing in June 12, 1968, issue of the *Federal Register* (33 F.R. 8603) was issued under 23 CFR 256, Parts of the Code of Federal Regulations relating to motor vehicle safety were transferred to Title 49 by Part II of the *Federal Register* of December 25, 1968 (33 F.R. 19700).

Section 256.5(a)(3) as contained in the Notice of Proposed Rule Making would have required that, after the regrooving process, there be a protective covering of tread material at least 3/32-inch thick over the tire cord. Four comments asked that this requirement be deleted. It was argued that this would require the removal of regrooved tires with "many usable miles" remaining on the tires.

The 3/32-inch undertread requirement is directly comparable to the undertread of a new tire. It is considered necessary that there be 3/32 of an inch of rubber over the cord material as a protection against road hazard damage. Furthermore, this protection is considered essential in order to prevent moisture entering the ply material and subsequently causing deterioration of the tire fabric and ply adhesion. For these reasons, it is concluded that to allow an undertread of less than 3/32 of an inch would not be in the public interest.

One comment argued that a tire would have to be completely cut to determine the thickness of the undertread. Since it is acceptable practice to determine undertread depth by use of an awl and only a very limited degree of expertise is

needed to make this measurement without causing damage to the tire, this argument has been rejected.

Section 256.5(a)(4) as contained in the Notice of Proposed Rule Making would have required that after regrooving, the tire have a minimum of 90 linear inches of tread edges per linear foot of tire circumference. Four comments requested clarification of this requirement as to whether the original molded tread was to be included in the measurements for this requirement. The initial intent of this requirement was to include only the newly cut grooves. However, after considering the fact that residual existent grooves offer tread edges which contribute to the traction of the tire, the regulation as issued is revised to allow that portion of the original tread pattern of a regroovable tire which is at least as deep as the new regroove depth to be included within the calculation of the 90 linear inches of tread edges required in each foot of tire circumference.

Section 256.5(a)(5) as contained in the Notice of Proposed Rule Making would have required that, after regrooving, the groove width be a minimum of $\frac{3}{16}$-inch and a maximum of $\frac{5}{16}$-inch. Four comments requested clarification whether this requirement applied to the original molded tread pattern as well as the tread pattern created by regrooving. It was not intended that this requirement apply to the original molded tread pattern and the regulation as issued is revised to make this clear.

One comment pointed out that the use of the term "tractionizing" within Section 256.5(b) was too general and that the proper term for cross-cutting the tread without rubber removal is "siping." Accordingly, the regulation as issued is revised to reflect this suggestion.

Section 256.7 as contained in the Notice of Proposed Rule Making specified certain labeling requirements for regroovable and regrooved tires. Four comments contended that the labeling requirements should not be included within the regulation. Two other comments stated that the proposed labeling was too large and requested smaller size symbols and letters. The Administrator recognizes that several names or brands are used to identify regroovable tires and has therefore determined that concise identification of regroovable tires is needed. For this reason the regulation as issued requires molding on a regroovable tire the word "Regroovable," but permits lettering one half the size proposed in the Notice of Proposed Rule Making. However, with regard to the proposed requirement that each regrooving be indicated on the tire, it was found that such a requirement was not necessary in view of the minimum undertread requirement in the regulation and that proposed requirement has been deleted.

In consideration of the foregoing, Part 369—Regrooved Tire Regulation set forth below is added to Title 49—Transportation, Chapter III—Federal Highway Administration, Department of Transportation, Subchapter A—Motor Vehicle Safety Regulations. [This regulation becomes effective April 1, 1969. (34 F.R. 3687—March 1, 1969.)]

This regulation is issued under authority of Sections 119 and 204 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1407 and 1424) and the delegation from the Secretary of Transportation, Part I of the Regulations of the Office of the Secretary (49 CFR § 1.4(c)).

Issued January 17, 1969.

Lowell K. Bridwell,
Federal Highway Administrator

34 F.R. 1149
January 24, 1969

SECTION

PREAMBLE TO AMENDMENT TO PART 569—REGROOVED TIRES

(Docket No. 20; Notice 5)

Extension of Effective Date

On January 24, 1969, the Federal Highway Administrator published in the *Federal Register* (34 F.R. 1149) a regulation setting forth the conditions under which regrooved tires would be allowed to be sold, offered for sale, introduced for sale, or delivered for introduction into interstate commerce. As published the regulation had an effective date of February 28, 1969.

Several petitions have been received requesting reconsideration of the regrooved tire regulation. The Administrator finds that the petitions do not raise either substantial arguments that have not been carefully considered in issuing the regulation or matters that would require a change in the regulation, and, therefore, the petitions are denied.

Several petitioners have requested that the effective date of the regulation be postponed. Upon consideration of these requests, I find that good cause exists for postponing the effective date of the regrooved tire regulation, 49 CFR Part 369, from February 28, 1969, to April 1, 1969.

Issued on February 28, 1969.

John R. Jamieson,
Federal Highway Administrator

34 F.R. 3687
March 1, 1969

PREAMBLE TO AMENDMENT TO PART 569—REGROOVED TIRES

(Docket 74–19; Notice 1)

This notice amends regulations applicable to regrooved and regroovable tires in response to an opinion of the United States Court of Appeals in *NAMBO* v. *Volpe* 484 F.2d 1294 (D.C. Cir., 1973), cert. denied _____US_____ (1974). The Regrooved Tire regulation was published January 24, 1969 (34 F.R. 1149).

In light of the decision in the case cited, 49 CFR Part 569, "Regrooved Tires," is revised....

Effective date: April 30, 1974. This amendment is issued in response to a decision of the United States Court of Appeals, and in accordance therewith imposes restrictions required by statute. Accordingly, notice and public procedure thereon are unnecessary and good cause is found for an effective date less than 30 days from publication.

(Secs. 119, 204, Pub. L. 89–563, 80 Stat. 718, 15 U.S.C. 1407, 1424; delegation of authority at 49 CFR 1.51.)

Issued on April 24, 1974.

James B. Gregory
Administrator

39 F.R. 15038
April 30, 1974

PREAMBLE TO AMENDMENT TO PART 569—REGROOVED TIRES

(Docket No. 74–19; Notice 2)

This amendment of the regulation governing the sale and use of regrooved tires implements a provision of the National Traffic and Motor Vehicle Safety Act (the Act) that the lease as well as the sale of certain regrooved tires be permitted. The Act was amended in 1974 to permit lease as well as sale, following a court decision which construed the Act to permit only the sale of regrooved tires.

Effective Date: March 7, 1977.

For Further Information Contact:

Tad Herlihy, Office of Chief Counsel,
National Highway Traffic Safety Administration,
Washington, D.C. 20590.
(202–426–9511)

Supplementary Information: Section 204(a) of the National Traffic and Motor Vehicle Safety Act (the Act) (15 U.S.C. § 1424(a)) governs the sale and use of regrooved tires. Regrooved tires are defined in the Act as tires on which a new tread has been produced by cutting into the tread of a worn tire. As enacted originally, § 204(a) provided:

> Sec. 204. (a) No person shall sell, offer for sale, or introduce for sale or deliver for introduction in interstate commerce, any tire or motor vehicle equipped with any tire which has been regrooved, except that the Secretary may by order permit the sale of regrooved tires [designed and constructed in accordance with the Act's intent].

Part 569 of NHTSA regulations was issued (34 FR 1149, January 24, 1969) to implement this provision, and its addressed both the circumstances under which lease and sale of regrooved tires would be permissible. A United States Court of Appeals found this aspect of Part 569 impermissibly broad, and held invalid that portion of the regulation which would authorize the introduction in interstate commerce of regrooved tires by means other than by sale. (*National Association of Motor Bus Owners* v. *Brinegar*, 483 F2d 1284 (7th Cir 1973)) Subsequently, the agency amended Part 569 to conform to the court's decision (39 FR 15038, April 30, 1974).

Section 204(a) was amended in 1974 so that the Secretary may by order permit the sale, offer for sale, introduction for sale, or delivery for introduction in interstate commerce of regrooved tires that are properly designed and constructed. (Pub. L. 93–492, § 110(c) (October 27, 1974)) The agency hereby amends § 569.1 and 569.7(a) to reflect this statutory change.

In consideration of the foregoing, 49 CFR Part 569, "Regrooved Tires," is amended. . . .

Effective Date Finding: Because this amendment implements a statutory provision and creates no additional requirement for any person, it is found that notice and public procedure thereon are unnecessary and that an immediate effective date is in the public interest.

(Sec. 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1407); Sec. 110(c), Pub. L. 93–492, 88 Stat. 1484 (15 U.S.C. 1424); delegation of authority at 49 CFR 1.50.)

Issued on February 28, 1977.

John W. Snow
Administrator

42 F.R. 21612
April 28, 1977

PART 569—REGROOVED TIRES

§ 569.1 Purpose and Scope.

This part sets forth the conditions under which regrooved and regroovable tires manufactured or regrooved after the effective date of the regulation may be sold, offered for sale, introduced for sale or delivered for introduction into interstate commerce.

§ 569.3 Definitions.

(a) *Statutory Definitions.* All terms used in this part that are defined in Section 102 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391) are used as defined in the Act.

(b) *Motor Vehicle Safety Standard Definitions.* Unless otherwise indicated, all terms used in this part that are defined in the Motor Vehicle Safety Standards, Part 371, of this subchapter (hereinafter "The Standards") are used as defined therein without regard to the applicability of a standard in which a definition is contained.

(c) "Regroovable tire" means a tire, either original tread or retread, designed and constructed with sufficient tread material to permit renewal of the tread pattern or the generation of a new tread pattern in a manner which conforms to this part.

(d) "Regrooved tire" means a tire, either original tread or retread, on which the tread pattern has been renewed or a new tread has been produced by cutting into the tread of a worn tire to a depth equal to or deeper than the molded original groove depth.

§ 569.5 Applicability.

(a) *General.* Except as provided in paragraph (b) of this section, this part applies to all motor vehicle regrooved or regroovable tires manufactured or regrooved after the effective date of the regulation.

(b) *Export.* This part does not apply to regrooved or regroovable tires intended solely for export and so labeled or tagged.

§ 569.7 Requirements.

(a) *Regrooved tires.*

(1) Except insofar as permitted by paragraph (a)(2) of this section, no person shall sell, offer for sale, or introduce or deliver for introduction into interstate commerce regrooved tires produced by removing rubber from the surface of a worn tire tread to generate a new tread pattern. Any person who regrooves tires and leases them to owners or operators of motor vehicles and any person who regrooves his own tires for use on motor vehicle is considered to be a person delivering for introduction into interstate commerce within the meaning of this part.

(2) A regrooved tire may be sold, offered for sale, or introduced for sale or delivered for introduction into interstate commerce only if it conforms to each of the following requirements:

(i) The tire being regrooved shall be a regroovable tire;

(ii) After regrooving, cord material below the grooves shall have a protective covering of tread material at least $\frac{3}{32}$-inch thick.

(iii) After regrooving, the new grooves generated into the tread material and any residual original molded tread groove which is at or below the new regrooved groove depth shall have a minimum of 90 linear inches of tread edges per linear foot of the circumference:

(iv) After regrooving, the new groove width generated into the tread material shall

be a minimum of $\frac{3}{16}$-inch and a maximum of $\frac{5}{16}$-inch.

(v) After regrooving, all new grooves cut into the tread shall provide unobstructed fluid escape passages; and

(vi) After regooving, the tire shall not contain any of the following defects, as determined by a visual examination of the tire either mounted on the rim, or dismounted. whichever is applicable:

(A) Cracking which extends to the fabric,

(B) Groove cracks or wear extending to the fabric, or

(c) Evidence of ply, tread, or sidewall separation.

(vi) If the tire is siped by cutting the tread surface without removing rubber, the tire cord material shall not be damaged as a result of the siping process, and no sipe shall be deeper than the original or retread groove depth.

(b) *Siped regroovable tires.* No person shall sell, offer for sale, or introduce for sale or deliver for introduction into interstate commerce a regroovable tire that has been siped by cutting the tread surface without removing rubber if the tire cord material is damaged as a result of the siping process, or if the tire is siped deeper than the original or retread groove depth.

§ 569.9 Labeling of Regroovable Tires.

(a) *Regroovable Tires.* After August 30, 1969, each tire designed and constructed for regrooving shall be labeled on both sidewalls with the word "Regroovable" molded on or into the tire in raised or recessed letters .025 to .040 inches. The word "Regroovable" shall be in letters 0.38 to 0.50 inches in height and not less than 4 inches and not more than 6 inches in length. The lettering shall be located in the sidewall of the tire between the maximum section width and the bead in an area which will not be obstructed by the rim flange.

34 F.R. 1150
January 24, 1969

PREAMBLE TO PART 570—VEHICLE IN USE INSPECTION STANDARDS

(Docket No. 73–9; Notice 2)

This notice adds Part 570, *Vehicle In Use Inspection Standards* to Chapter V, Title 49, Code of Federal Regulations.

Part 570 does not in itself impose requirements on any person. It is intended to be implemented by the States through the highway safety program standards issued under the Highway Safety Act (23 U.S.C. 402) with respect to inspection of motor vehicles with a gross vehicle weight rating of 10,000 pounds or less, except motorcycles and trailers. General provisions regarding vehicle inspection are set forth in NHTSA Highway Safety Program Manual Vol. 1 *Periodic Motor Vehicle Inspection.* Standards and procedures are adopted for hydraulic service brake systems, steering and suspension systems, tire and wheel assemblies.

Interested persons have been afforded an opportunity to participate in the making of these amendments by a notice of proposed rulemaking published in the *Federal Register* on April 2, 1973 (38 F.R. 8451), and due consideration has been given to all comments received in response to the notice, insofar as they relate to matters within the scope of the notice. Except for editorial changes, and except as specifically discussed herein, these amendments and the reasons therefore are the same as those contained in the notice.

Policy considerations. A total of 120 comments were received in response to the notice. These comments were submitted by State motor vehicle agencies, national safety organizations, motor vehicle associations, vehicle and equipment manufacturers, antique car clubs and owners, public interest groups, and individual citizens. The commenters were predominantly in favor of periodic motor vehicle inspection (PMVI) and the establishment of uniform motor vehicle in use safety standards throughout the United States.

As the NHTSA stated in the prior notice, cost-benefit factors were the primary policy consideration in developing the inspection standards and procedures. The primary concern of the States was the socioeconomic impact on the motoring public as well as the impact on the State itself. The general consensus was that the proposed inspection requirements would require a significant increase in facilities, operating personnel, and equipment. Though cost effectiveness was a predominant concern the States nevertheless felt that inspections should include vehicles over 10,000 pounds gross vehicle weight and be extended to include other vehicle systems. Several States expressed concern for the cost of implementing the proposed standards, estimating it at from $10 to $14 per car. Even though these States favored PMVI and now have PMVI or random inspection they felt that implementation costs would have a decided economic impact.

NHTSA has responded to these comments allowing an optional road test as a check of service brake system performance, adopting neither of the proposed parking brake procedures, and simplifying test procedures where possible so that tests may be conducted with a minimum added expenditure for equipment, personnel, and facilities. These matters will be discussed subsequently.

The establishment of the proposed standards as "minimum requirements" was questioned by several States as leading to a "watering down" of current requirements in those States which currently meet or exceed them. The NHTSA repeats its intent that the standards are not intended to supplant State standards that establish a higher performance, or to discourage them from establishing or maintaining standards for other vehicle systems not covered by NHTSA.

A number of comments were received from antique car clubs and individual owners who believe that antique, special interest, and vintage cars should be exempt from the proposed standards. These comments should be directed to the States. Each State has its own definitions and registration requirements for vehicles of this nature, and the NHTSA intends the States to implement Part 570 to the extent that it is compatible with its current requirements for these special vehicles.

Several respondents commented that the proposed standard should be expanded to include lighting, glazing, exhaust, wipers, horns, controls, and instrumentation systems. The consensus was that the cost-benefit ratio would materially increase if these systems were included in the proposed standard since inspection of these systems does not require time-consuming procedures or special tools, and corrective measures are less costly to the owner. Some considered it contradictory that safety systems covered by the Federal standards must meet safety performance requirements at the time of manufacture and not during the service life of the vehicle. As the NHTSA stated in the prior notice, the initial Federal effort is intended to cover those vehicles and vehicle systems whose maintenance in good order has proven critical to the prevention of traffic accidents. Requirements for motorcycles and trailers, and for less critical systems, are under study, and the NHTSA intends to take such rulemaking action in the future as may be appropriate to cover them.

Applicability. A frequent comment was that the standards and procedures should be extended to cover vehicles whose GVWR exceeds 10,000 pounds. Because braking and steering and suspension systems on these vehicles differ materially from those on lighter vehicles, different criteria must be established and the proposed standards simply cannot be extended to cover them. The NHTSA, however, is developing appropriate inspection standards and procedures for heavy vehicles and will propose them in a notice to be issued by mid-October 1973.

Brake systems. Several comments were received questioning the procedure for determining operability of the brake failure indicator lamp. In some vehicles the parking brake indicator and service brake system failure indicator use the lamp and the methods of simulating failure vary.

It is realized that the procedure specified by the standard is general in nature and cannot cover all possible systems. In those vehicles where a lamp test cannot be executed in the normal manner the test will have to be conducted in accordance with the manufacturer's specifications, as determined by the vehicle inspector.

The brake system integrity test for fluid leakage has been modified on the basis of comments that it was not stringent enough. It was proposed that decrease in pedal height under 125 pounds force for 10 seconds should not exceed one-quarter of an inch. The requirement adopted is that there be no perceptible decrease in pedal height when 125 pounds of force is applied to the brake pedal and held for 30 seconds.

The brake pedal reserve test has been adopted substantially as proposed, and specifies that the engine be operating at the time of the test. Vehicles with full power (central hydraulic) brake systems are exempted from this test as the service brake performance test will be adequate to test such systems.

The service brake performance test offers the option of a road test, or testing upon a drive-on platform or roller-type brake analyzer (originally proposed under the title "Brake equalization"). States that conduct random inspections, and those that designate agents to perform vehicle inspections, objected strenuously to a test requiring the use of roller-type or drive-on test equipment. Consequently, an alternate test has been adopted which requires vehicles to stop from 20 mph in 25 feet or less without leaving a 12-foot wide lane. It is intended that this option be used only by States where it is current practice, and it is hoped that such States where practicable will change to the drive-on brake platform or roller-type brake analyzer tests. The terms "crimped" and "damaged" have been eliminated as causes for rejection of brake hoses, as redundant. If brake discs and drums are not embossed with safety tolerances, the requirement has been added that they be within the manufacturer's recommended specifications.

The primary concern regarding power assist units was that the brake pedal will rise instead of falling on a full-power brake system when tested according to the procedure proposed. In view of the basic design of a full-power brake system this test would not be a proper check of system operation, and will not be required. As noted earlier, the service brake performance test will be used as the primary test of the full-power brake performance. To accord with the terminology of Standard No. 105a this section has been renamed "Brake power units."

The parking brake system inspection proposal proved controversial. The NHTSA proposed two objective, alternate tests, the first requiring the system to hold the vehicle on a 17 percent grade, and the second requiring the system to stop the vehicle from 20 mph within 54 feet. The first was objected to principally on the ground that each inspection station would have to construct a 17 percent grade. This would present problems for both in-line and bay type inspection facilities. The stopping distance test, on the other hand, was opposed as a dynamic test more appropriate for service brake evaluation. In view of these objections, the parking brake inspection requirements were not adopted.

Steering and suspension systems. The primary objections to the steering wheel test for free play concerned the test condition with the engine off on vehicles equipped with power steering, the linear measure of system free play (instead of angular measure to eliminate the variance due to steering wheel diameters), and the 2-inch free play limit for rack and pinion type steering gear.

The tolerance proposed and adopted for steering wheel free play is 2 inches for wheels of 16 inches diameter or less, since few passenger car steering wheels exceed this diameter. However, a table of free play values for older vehicles with steering wheels over 16 inches in diameter has been added to the standard. The requirement to have the engine running is being added to the procedure since steering wheel play can be greater with the engine off than with the engine on for cars equipped with power steering. Steering play on cars equipped with rack and pinion type steering will require further review to determine if the 2-inch tolerance should be changed.

Some comments argued that wheel alignment tolerances were considered too restrictive in the toe-in condition, and too lenient in toe-out. Some comments recommended visual inspection of tire wear as criteria to determine alignment. However, visual inspection of tire wear is not considered a valid method of checking alignment, and therefore was not adopted as an alternate method. No consensus of alternative values could be derived from the comments, and the proposed tolerances of 30 feet per mile have been adopted.

The requirements for the condition of shock absorber mountings, shackles, and U-bolts have been changed from "tight" to "securely attached" as a clarification.

Tire and wheel assembly standards and inspection procedures. Several comments were received suggesting that rim deformation in excess of one-sixteenth of an inch be permitted, as the proposed tolerance would result in rejection of otherwise safe vehicles. The primary concern of the requirement is air retention, and since vehicles with wheel deformation of one-sixteenth of an inch apparently perform satisfactorily in service without hazard the deformation tolerance has been increased to three thirty-seconds of an inch runout for both lateral and radial bead seat areas.

Effectivity. Several commenters questioned the proposed effective date, 30 days after publication of the final rule. The NHTSA considers it in the public interest that minimum Federal standards for motor vehicles in use become effective without further delay. Implementation by the States will take place within the context of their highway safety programs, and the plans approved by the NHTSA under the Highway Safety Act, 23 U.S.C. 402.

In consideration of the foregoing, Title 49, Code of Federal Regulations is amended by adding Part 570 to read as set forth below.

Effective date. Sept. 28, 1973. Since this part does not in itself impose requirements on any person it is determined for good cause shown that an effective date earlier than 180 days after

publication of the final rule is in the public interest.

(Sec. 103, 108, 119, Pub. L. 89–563, 80 Stat. 718, 15 U.S.C. 1392, 1397, 1407; delegation of authority at 49 CFR 1.51.)

Issued on: Aug. 29, 1973.

James B. Gregory
Administrator

38 F.R. 23949
September 5, 1973

PREAMBLE TO AMENDMENT TO PART 570—VEHICLE IN USE INSPECTION STANDARDS

(Docket No. 73–9; Notice 4)

This notice responds to petitions for reconsideration of Vehicle In Use Inspection Standards and amends the standards in certain minor respects.

The Vehicle In Use Inspection Standards, 49 CFR Part 570, were published on September 5, 1973 (38 F.R. 23919). Thereafter, pursuant to 49 CFR 553.35, petitions for reconsideration of the rule were received from Motor Vehicle Manufacturers Association (MVMA), Rubber Manufacturers Association (RMA), Firestone Tire and Rubber Company (Firestone), General Motors Corporation (GM), and Ford Motor Company (Ford). This notice discusses the major issues raised by these petitions and their resolution.

Ford called NHTSA's attention to an oversight in the inspection procedure for brake pedal reserve in § 570.5. Notice 1 proposed a force of 25 pounds for power-assisted brake systems and 50 pounds for all other brake systems. These forces were inadvertently omitted in Notice 2, and, accordingly, § 570.5 is amended to include them.

GM and the MVMA requested that the period during which a 125-pound force is applied to the brake pedal be reduced from 30 seconds to 10 seconds. Since the purpose of the standard is to check for brake fluid leakage, and this can be determined during a 10-second period, the petition is granted.

Ford requested that § 570.5(e) "Service Brake System—Brake Hoses and Assemblies" be amended to allow "rub rings," installed as hose protection devices, to come in contact with a vehicle body or chassis. The purpose of these devices as stated by Ford is to prevent damage to hose or tubing and thus promote motor vehicle safety. NHTSA, after investigation, has determined that rub rings or similar protective devices do provide brake hose and tube protection, and § 570.5(e) is amended accordingly. However, should the rub rings wear or abrade to the extent that the hoses or tubing contact the chassis or vehicle body, the vehicle should be rejected.

GM requested that the procedure for inspecting steering wheel lash in § 570.7(a) be revised so as to yield more consistent results between examiners and inspection stations. It was GM's contention that the term "perceptible movement" was too subjective, and that the many intangible factors involved in the inspection procedure would not provide an objective and repeatable test. The procedure recommended by GM would involve applying a specified force in one direction to remove lash and provide a small amount of torsional wind up, releasing the wheel, and applying another force in the same direction to establish a reference point. The process would be repeated in the opposite direction to establish a second reference point. The distance between the two points would then be measured.

Although the inspection procedure proposed by GM may provide a more objective test of steering system play, it is the belief of NHTSA that additional time will be required to evaluate their proposal under field test conditions with various steering wheel diameters. Therefore, action on this request will be held in abeyance pending completion of such a study.

Ford and GM requested a change in the toe-in alignment specifications listed in § 570.7(d), stating that several vehicles currently in service would exceed the 30 ft/mi toe-in limits established in the standard. For example, 1974 Ford Service Specifications—Tire Scrub (based on a 29-in diameter tire/wheel assembly) shows a maximum toe-in for certain Ford vehicles of 82.5 ft/mi based on 11.78 ft/mi tire scrub for each $\frac{1}{16}$-in toe-in. In its submission to Docket

No. 73–9, Ford recommended that the toe-in requirement be no more stringent than 1.5 times the manufacturer's maximum toe-in specification. In consideration of the wide variance between manufacturers' toe-in specification, the limits of ±30 ft/mi currently used in some State inspections appear to be reasonable for some vehicles and unduly restrictive for others. § 570.7(d), therefore, is amended to make the requirement more equitable.

The NHTSA, however, believes that wheel alignment designs with high toe-in values are not in the best interests of the consumer, as both tire wear and fuel economy are affected adversely with high toe-in/toe-out conditions. For this reason, industry action to alleviate this problem will be carefully observed.

RMA and Firestone petitioned for a clarification of the language of § 570.9(b) concerning tire type. It was suggested that "tire size designation" would be more explicit than tire "nominal size." NHTSA believes the suggested phrase more clearly defines the intent of the standard, and the petition is granted.

The petitioners additionally contend that the language in § 570.9(b)(i), notably "major mismatch" and "major deviation," could lead the inspector to reject tires that do not have exactly the tire size designation(s) specified by the vehicle manufacturer. NHTSA disagrees with this interpretation of the inspection procedure. The language allows the inspector to pass any vehicle equipped with tires that meet the published vehicle-manufacturer or RMA criteria for tire replacement. Tires with special characteristics such as extra wide sport type tires, "slicks", and extra low profile tires would not meet the criteria for replacement tires. The petition is, therefore, denied.

Both RMA and Firestone requested a change in the language of § 570.9(d)(i) which specified the use of an awl to probe cuts on tires as a method for evaluating the extent of tire damage. Firestone strongly recommended the use of a "blunt instrument" rather than an awl to prevent further damage to the tire. The NHTSA feels that this is a constructive request, and the petition is granted.

RMA and GM requested a change in § 570.10 (b) regarding the limits and the procedure for checking lateral and radial runout of wheel assemblies. GM contended, based on a survey of 500 vehicles of its employees, that the $\frac{3}{32}$ in runout specification is too restrictive and that owners of vehicle with runouts of 0.050 to 0.225 in did not experience loss of air pressure or any detectable vibration. GM recommended a runout specification of at least $\frac{1}{8}$ in. After reviewing the GM data, NHTSA has determined that the request is reasonable and, therefore, the petition is granted. Accordingly § 570.10(b) is amended to reflect the $\frac{1}{8}$-in radial and lateral runout limits.

Finally there were several requests to include provisions for non-matching spare or emergency tires, prohibition of radial-ply tire mix with any other tire type on the same vehicle, and recommendations for inclusion of minimum criteria for accuracy of test devices. Since these topics were not included in prior rulemaking notices, these recommendations will be considered for future action.

In consideration of the foregoing, 49 CFR Part 570, Vehicle In Use Inspection Standards, is amended. . . .

Effective date: May 9, 1974.

(Sec. 103, 108, 119, Pub. L. 89–563, 80 Stat. 718, 15 U.S.C. 1392, 1397, 1401; delegation of authority at 49 CFR 1.51.)

Issued on April 3, 1974.

James B. Gregory
Administrator

39 F.R. 12867
April 9, 1974

PREAMBLE TO AMENDMENT TO PART 570—VEHICLE IN USE INSPECTION STANDARDS

(Docket No. 73–9; Notice 7)

This notice amends Part 570, Vehicle in Use Inspection Standards, Chapter V, Title 49, Code of Federal Regulations by adding inspection standards and procedures for brake systems, steering and suspension systems, and tire and wheel assemblies for all motor vehicles with a gross vehicle weight rating that exceeds 10,000 pounds.

Interested persons have been afforded an opportunity to participate in the making of these amendments by a notice of proposed rulemaking published in the *Federal Register* on October 11, 1973 (38 CFR 28077), and due consideration has been given to all comments received in response to the notice.

A total of twenty-nine comments were received in response to the notice. These comments were submitted by State motor vehicle agencies, motor vehicle manufacturers, tire and brake equipment manufacturers, the Motor Vehicle Manufacturers Association, and the American Association of Motor Vehicle Administrators. The comments were predominantly in favor of periodic motor vehicle inspection, although problem areas in the inspection of vehicles over 10,000 pounds were presented.

An exemption for mobile homes from the proposed rulemaking action was requested by the Mobile Home Manufacturers Association who contended that since mobile homes are moved about 2.3 times during their life span and are constructed for use primarily as residential dwellings and not as motor vehicles for use on the highways, they should be excluded from the proposed regulation. The Recreational Vehicle Institute, however, suggested that different inspection frequencies for motor homes and recreational trailers as related to other commercial vehicles would be appropriate. The NHTSA concludes that motor homes and recreational vehicles should not be excluded from periodic inspection, but the period between inspections should be determined by the States based on the requirements that may be unique to their particular jurisdiction.

The Professional Drivers Council suggested that inspection intervals should be based upon vehicle use, in lieu of calendar periods, in order to ensure adequate inspection frequency. They suggested 20,000 miles between inspections as a feasible criterion. Although NHTSA agrees that distance as well as time is an important criterion in determining inspection intervals, it has concluded that each State should determine inspection intervals based upon the driving conditions experienced by motor vehicles within its jurisdiction.

Many comments questioned the time required to check the brake system integrity of a hydraulic brake system, and suggested that the time of application be changed to 10 seconds. Since the purpose of this check is to determine whether there is any leakage of hydraulic fluid during operational conditions, and the consensus of comments indicates that this can be accomplished equally well during a 10-second test, the suggestion is adopted and § 570.55 will be worded accordingly.

Ford and MVMA requested that a brake pedal force be included in the brake pedal reserve check, and that a note be added regarding the effect of a vacuum booster on test validity. The suggestion to include a pedal force is considered valid, and § 570.55(c) will include a brake pedal force of 50 lbs. NHTSA concludes, however, that the terminology "full power (central hydraulic) brake system and brake systems de-

signed to operate with greater than 80% pedal travel" properly describes brake systems, and that a note to include a reference to a vacuum booster is not required.

Several comments suggested exemption of protective rings from consideration as part of a hose or tubing assembly. These have been found to have merit, and § 570.55(d) exempts protective rings or devices from consideration in regard to contact with vehicle body or chassis.

Several comments were received requesting clarification of the requirements of truck and trailer vacuum system checks in § 570.56. In response, this section has been rewritten to require the capability of at least one service brake application at a 50-pound brake pedal pressure after the engine has been turned off to verify operation of vacuum system. The inspection procedure has been revised to cover trailers equipped either with brake chamber rods or with enclosed chambers and hydraulic systems.

A large number of comments were received regarding § 570.57 (Air Brake System Integrity). This section has been altered from the proposal to change air pressure limits, time of test, and engine idling speed, thus clarifying the terminology and allowing test limits to more properly reflect operating conditions.

Comments on § 570.58 were submitted by Wagner and MVMA regarding wire gage and current capacity, sensing of surge force during test, and comparison of GVWR to capacity and number of brakes. The NHTSA concludes that § 570.58 properly covers these areas and that no change from the proposal is necessary.

Several comments were received on § 570.59, service brake system testing, regarding the feasibility of roller-type or drive-on platform testers for large vehicles, and questioning the 25-percent allowable imbalance of braking forces between wheels on same axle. Since the test procedure is designed to locate a serious imbalance condition, the NHTSA concludes that the recommended 25 percent or less imbalance requirement will provide the desired safety benefit. However, if future test data show that upgrading the requirement to a 20 percent maximum imbalance is warranted, NHTSA shall propose that the requirement be made more stringent.

The feasibility of inspection of brake linings and other internal components as compared to road testing was questioned by several commentors. While the optimum inspection of brake assemblies would require the removal of the wheels, the NHTSA has found that the removal of a wheel in most vehicles in the 10,000 pound and over GVWR class requires special skills and training, as well as replacement of oil seals, for reassembly. Therefore, this inspection procedure is limited to wheels which are equipped with inspection ports or access openings, thereby avoiding the need to remove the wheels.

Several comments were received regarding stopping distances of 35 feet versus 40 feet for combination vehicles and truck tractors for the road test at 20 mph. The present Bureau of Motor Carrier Safety standard is 40 feet, and NHTSA has decided that this value is adequate for safety purposes. The standard is worded accordingly.

In response to the comments received, the inspection procedure for checking front wheel steering linkage free play in § 570.60 is changed from the proposal to provide for proper testing of vehicles with and without power steering. Alignment limits are increased to 1.5 times the value listed in the vehicle manufacturer's service specification for alignment setting to allow for variations in vehicles due to age and differences in test equipment readouts.

Commentors on § 570.61, suspension system, requested clarification of the proposed requirement that "Springs shall not be broken or extended by spacers." This sentence is reworded to read "Springs shall not be broken and coil springs shall not be extended by spacers."

Several comments were received regarding tread depth requirements in § 570.62, and the number of places around the circumference of a tire where measurements should be taken. The standard is worded so as to measure tread depth in two adjacent major grooves at three locations spaced approximately 120 degrees apart for tires without tread wear indicators. A clarification was requested of the use of the terms "construction", "profile", and "nominal size" in describing tires and of the ⅜ in. limit on overall diameter.

In response, this section is worded to read "Vehicles should be equipped with tires on the same axle that are matched in construction and size designation, and dual tires shall be matched for overall diameter within one-half inch."

In consideration of the foregoing, 49 CFR Part 570, Vehicle In Use Inspection Standards, is amended by denoting the existing sections 570.1 through 570.10 as Subpart A, *Vehicles with GVWR of 10,000 Pounds or Less*, and by adding a new Subpart B, *Vehicles with GVWR of More Than 10,000 Pounds* . . . .

Effective date: August 14, 1974. Since this part consists of standards for State inspection programs and does not directly impose requirements on any person, it is determined for good cause shown that an effective date earlier than 180 days after publication of the final rule is in the public interest.

(Secs. 103, 108, 119, Public Law 89-563, 80 Stat. 718, 15 U.S.C. 1392, 1397, 1407; delegation of authority at 49 CFR 1.51.)

Issued on July 9, 1974.

James B. Gregory
Administrator

39 F.R. 26026
July 16, 1974

PREAMBLE TO AMENDMENT TO PART 570—VEHICLE IN USE INSPECTION STANDARDS

(Docket No. 73–9; Notice 8)

This notice amends Part 570, Subpart B, Vehicle in Use Inspection Standards, Motor Vehicles with a GVWR of More Than 10,000 Pounds, in Title 49, Code of Federal Regulations, by making it clear that the standard does not apply to mobile structure trailers.

On July 16, 1974, NHTSA promulgated Subpart B to Part 570 which consisted of vehicle in use standards for motor vehicles with a GVWR of more than 10,000 pounds (39 F.R. 26026). In response to the notice of proposed rulemaking which preceded it (38 F.R. 28077), the Mobile Homes Manufacturers Association (MHMA) commented that their data indicated that the average mobile home is moved once every 40 months or about 2.3 times during its life, that it spends less than 12 hours on the public roads during its 18 to 20 year life span, and that it spends 0.055% of its useful life on the highway. NHTSA concluded, therefore, that mobile structure trailers should not fall within the ambit of the standard at this time.

By letter of July 19, 1974, the Mobile Homes Manufacturers Association (MHMA) pointed out that while motor homes and recreational vehicles were specifically made subject to the standard, no reference was made to mobile structure trailers except to reiterate MHMA's comments to the proposed rule. To clarify this ambiguity and the agency's intent, § 510.53 is hereby amended . . . .

Effective date: August 13, 1974. Since this amendment does not impose requirements on any person and is meant to clarify a preceding rule, it is found for good cause shown that an immediate effective date is in the public interest.

(Secs. 103, 108, 119, Public Law 89–563, 80 Stat. 718, 15 U.S.C. 1392, 1397, 1407; delegation of authority at 49 CFR 1.51.)

Issued on August 7, 1974.

James B. Gregory
Administrator

39 F.R. 28980
August 13, 1974

PREAMBLE TO AMENDMENT TO PART 570—VEHICLE IN USE INSPECTION STANDARDS

(Docket No. 73–9; Notice 9)

This notice responds to petitions for reconsideration of Vehicle in Use Inspection Standards for vehicles with a GVWR of more than 10,000 pounds.

NHTSA issued on July 16, 1974, the vehicle in use inspection standards to be implemented by the States for vehicles with a GVWR of more than 10,000 pounds (39 F.R. 26026). Subsequently, petitions for reconsideration were received from Ford Motor Company (Ford), General Motors Corporation (GM), the Motor Vehicle Manufacturers Association (MVMA), the Midland-Ross Corporation (Midland) and the Bendix-Westinghouse Corporation (Bendix). The NHTSA response to matters raised in these petitions will be given by subject grouping.

Brake Pedal Reserve

Ford has called the attention of NHTSA to a typographical error in the formula shown in subparagraph 570.55(c)(1) and used for computing the brake pedal reserve. Instead of the relationship $\frac{A-B}{A \times 100}$, the formula should be shown as $\frac{A-B}{A} \times 100$. The standard will be corrected accordingly.

Midland petitioned to revise the wording in paragraph 570.55(c) to require vehicles with modified vehicle brake systems, such as with an additional tag axle utilizing existing hydraulic brake fluid capacity, to meet the requirements of the brake pedal reserve test. Currently, this test is waived for all vehicles with brake systems designed to operate with greater than 80 percent pedal travel, whether through original design or modification. Since it was NHTSA's original intent that the waiver apply only when the original manufacturer's design criteria established pedal travel at greater than 80%, this petition is granted, and the second sentence of paragraph 570.55(c) is amended to read:

"The brake pedal reserve test is not required for vehicles with brake systems designed by the original vehicle manufacturer to operate with greater than 80 percent pedal travel."

Air Brake System Integrity

Ford petitioned to expand Table 1 (Air brake system pressure build-up time) to include vehicles equipped with reservoirs of smaller capacities and varying designs, such as vehicles that use wedge brakes and the newly-developed compact brake chambers. Further, GM recommended that the values in Table 1 representing total reservoir volume be separated by 1 cubic inch to avoid column overlapping and resultant errors in utilizing the tables. The NHTSA concurs with these suggestions, and Table 1 is expanded to include requirements for 9-inch and 12-inch brake chambers and the columnar reservoir volume range values are separated by 1 cubic inch.

GM questioned the chamber volumes used in Table 1 as "not reflecting a substantial portion of industry usage." This question was also discussed by Midland-Ross, which submitted chamber area volume figures ranging from 16 inches to 36 inches. Likewise, Bendix submitted volume figures which were consistent with those submitted by Midland-Ross. The Midland-Ross petition also suggested that to be fair to all manufacturers, the reservoir build-up times as shown in Table 1 should be increased by a factor of 20 percent to compensate for normal compressor wear and deterioration. NHTSA concurs in these views, and Table 1 is amended to utilize composite volume figures deemed representative of industry practice for the representative brake chambers as shown in Table 2 below:

TABLE 2.—Chamber Volumes for Representative Brake Chambers

Chamber Size (Inches)	*Volume (Cubic Inches)*
9	18
12	25
16	43
20	51
24	66
30	88
36	125

Further, the following formula is established to compute the time in seconds:

$$\text{Time (Seconds)} = \frac{\text{Actual Reservoir Capacity} \times 25 \times 1.20}{\text{Required Reservoir Capacity}}$$

Bendix petitioned for the use of only a single maximum time figure of 30 seconds for an increase in the air pressure from 85 to 100 psi in the reservoirs with the engine running at the vehicle manufacturer's maximum recommended number of revolutions per minute. Although this requirement would simplify Table 1, it would not cover all of the combinations of brake chambers and reservoirs used in the trucking industry. NHTSA therefore concludes that Table 1 is necessary, and Bendix's petition is accordingly denied.

MVMA in its petition pointed out the problems involved in requiring the inspector to identify the number and size of brake chambers and the number and size of the reservoirs before he could use Table 1. In the judgment of this agency, it is not an unreasonable burden on the truck owner or operator to provide this readily-available information to an inspector at the time of inspection. MVMA's petition is therefore denied.

Midland petitioned to revise paragraph 570.57 (a)(1) to assure conformity of test conditions between FMVSS 121 and the air brake system pressure build-up test of Table 1. This request is considered valid, and paragraph 570.57(a)(1) is revised to read: "The air brake system compressor shall increase the air pressure in the truck or truck tractor reservoir(s) from 85 to 100 psi in not more than the time specified in Table 1, with the engine running at the vehicle manufacturer's maximum recommended number of revolutions per minute."

Ford petitioned for the elimination of 570.61(b), Shock absorber condition, contending that shock absorbers do not affect the safety of all large motor vehicles, are offered only to improve operator comfort and have only a minimal effect on vehicle stability. Although the relationship between comfort and control may be hard to define, NHTSA concludes that the operator's response to varying loads, weather conditions, and road conditions is affected by the condition of the shock absorbers on the motor vehicle being driven. Further, results of two test programs carried out by NHTSA indicate that shock absorber degradation does have an effect on the handling characteristics of motor vehicles. Therefore, based on currently available data, NHTSA concludes that the shock absorbers are a contributing factor to safe motor vehicle operations, and Ford's petition is denied.

In consideration of the foregoing, 49 CFR Part 570, Subpart B, Motor Vehicles With a GVWR of More Than 10,000 Pounds, is amended as follows:

Effective date: February 4, 1975. Because the amendments correct errors and modify inspection procedures, but create no additional burden, it is found for good cause shown that they should be effective immediately on publication.

(Secs. 103, 108, 119, Pub. L. 84–563, 80 Stat. 718; 15 U.S.C. 1392, 1397, 1401; delegation of authority at 49 CFR 1.51)

Issued on January 24, 1975.

Noel C. Bufe
Acting Administrator

40 F.R. 5159
February 4, 1975

PREAMBLE TO AMENDMENT TO PART 570—VEHICLE IN USE INSPECTION STANDARDS

(Docket No. 73–9; Notice 10)

This notice amends 49 CFR Part 570, Subpart B, Vehicle in Use Inspection Standards for Vehicles With GVWR of More Than 10,000 Pounds, and responds to a petition to amend 49 CFR Part 570, Subpart A, Vehicle in Use Inspection Standards for Vehicles With GVWR of 10,000 Pounds or Less.

On December 17, 1974, the Illinois Department of Transportation on behalf of the American Association of Motor Vehicle Administrators petitioned the National Highway Traffic Safety Administration (NHTSA) to revise the toe-in alignment tolerances found in § 570.7(d) of the Vehicle in Use Inspection Standards (49 CFR 570.7(d)). In support of its petition, Illinois forwarded a report written by the Amerco Technical Center, a wholly-owned subsidiary of the firm which also owns the U-Haul rental system and Kar-Go manufacturing service, and vehicle repair centers. The report recommended that the Vehicle in Use Inspection Standards should be amended to establish maximum toe-in readings based on vehicle type rather than vehicle model and manufacturer.

Section 570.7(d), Steering systems alignment, requires that toe-in and toe-out measurements for motor vehicles with a GVWR of 10,000 pounds or less shall not be greater than 1.5 times the values listed in the vehicle manufacturer's service specifications for alignment settings. This tolerance was established to allow for the degradation that occurs in the vehicle alignment system due to wear, while maintaining a reasonable safety standard for wheel alignment.

Toe-in settings are established by and are available through vehicle manufacturers for the specific vehicle under consideration. For ease of usage, these specifications have also been summarized in chart form by manufacturers of test and alignment equipment, and are readily available to inspection stations, service stations, wheel alignment centers, and other businesses or agencies that perform toe-in inspection or wheel alignment adjustment services. Applying a factor of 1.5 times the manufacturer's toe-in specifications is relatively simple and should not lead to confusion on the part of persons performing vehicle inspections or adjustment services.

The NHTSA concludes that the recommendation of Amerco to establish one specification for all American made passenger cars (1960–1974), one specification for all light duty trucks under 10,000 pounds GVWR (1962–1974), and one specification for the majority of all foreign made vehicles would be unreasonable in light of the wide variations in toe-in specifications for these vehicles. Each vehicle manufacturer tailors the wheel alignment specifications to obtain optimum vehicle handling characteristics. Although standardization in the area of toe-in alignment tolerances might be desirable, the wide variance of specific toe-in settings required for the different makes, models, and years of manufacture of vehicles covered under this section precludes standardization by regulatory fiat. Therefore, the petition of the Illinois Department of Transportation is denied.

On February 4, 1975, amendments to Part 570, Subpart B, Vehicle in Use Inspection Standards for Vehicles With GVWR of More Than 10,000 Pounds, were published in the Federal Register (40 F.R. 5159). Requests for clarification, the correction of clerical errors and petitions for reconsideration were received from Midland-Ross Corporation (Midland), Bendix Corporation (Bendix), American Trucking Association (ATA) and Mack Truck Co. (Mack).

Petitions for reconsideration of § 570.57, *Air brake system and air-over-hydraulic brake subsystem*, were received from ATA, Bendix, Mack, and Midland-Ross. The petitioners were concerned with the air brake system pressure build-up time requirements and the associated inspection procedures.

The ATA petition pointed out the problems involved with inspector identification of the number and type of brake chambers and the size of the air reservoir used with existing air brake systems on certain vehicles. It suggested that it may be difficult for an inspector to obtain the required reference information prior to his being able to use Table 1, "Air Brake System Pressure Build-Up Time." Placarding truck units with this information would be difficult, inasmuch as there are no existing standards relative to the placement of or requirements for placards. Retrofitting older vehicles with placards is equally difficult. Combination vehicles would pose additional problems because a tractor manufacturer could not anticipate the type of trailer that might be coupled to his tractor, thus making it difficult to label it with the information necessary to utilize Table 1 and Table 2.

Bendix and Mack petitioned for clarification of the values used in the calculation of Table 2, "Chamber Volumes for Representative Brake Chambers," as well as the use of the values from Table 2 in calculating the build-up time values in Table 1. The petitioners were concerned with the values used because the chamber volumes utilized in Table 2 were developed for use with air reservoir systems using an 8:1 ratio of air reservoir volume to brake chamber volume, rather than the present 12:1 ratio required by Standard No. 121 for vehicles manufactured on or after March 1, 1975. The petitioners were also concerned with the problems in inspection of brake systems, caused by the fact that the majority of trucks on the road were built prior to March 1, 1975, and would not have adequate reservoir capacity in relation to brake chamber volume.

The ATA suggested adoption of the industry accepted procedure of combining the pressure drop test with the pressure recovery test, thereby eliminating all questions concerning reservoir size, compressor capacity, and the number and size of brake chambers. By doing this, the inspection procedure will be greatly simplified without sacrificing the effectiveness of the inspection. With the elimination of the requirement for the determination of brake chamber volumes and reservoir capacities, the necessity for Table 1 and Table 2 no longer exists in the determination of air brake system build-up time.

For the reasons discussed, the petitions from ATA, Bendix, Mack, and Midland-Ross are hereby granted. In addition, other subparagraphs of § 570.57(a) are reworded to clarify their meaning.

In consideration of the foregoing, 49 CFR Part 570, Subpart B, Vehicle in Use Inspection Standards for Vehicles With GVWR of More Than 10,000 Pounds, is amended . . . .

Effective date: April 1, 1976. Because the amendments create no additional burden on any person, it is found for good cause shown that an immediate effective date is in the public interest.

(Sec. 103, 108, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1397, 1407); delegation of authority at 49 CFR 1.50.)

Issued on March 29, 1976.

James B. Gregory
Administrator

41 F.R. 13923
April 1, 1976

PART 570—VEHICLE IN USE INSPECTION STANDARDS

AUTHORITY: Secs. 103, 108, 119, Public Law 89-563, 80 Stat. 718, 15 U.S.C. 1392, 1397, 1407; delegation of authority at 49 CFR 1.51.

§ 570.1 Scope. This part specifies standards and procedures for inspection of hydraulic service brake systems, steering and suspension systems, and tire and wheel assemblies of motor vehicles in use.

§ 570.2 Purpose. The purpose of this part is to establish criteria for the inspection of motor vehicles by State inspection systems, in order to reduce death and injuries attributable to failure or inadequate performance of motor vehicle systems.

§ 570.3 Applicability. This part does not in itself impose requirements on any person. It is intended to be implemented by States through the highway safety program standards issued under the Highway Safety Act (23 U.S.C. 402) with respect to inspection of motor vehicles with gross vehicle weight rating of 10,000 pounds or less, except motorcycles or trailers.

§ 570.4 Definitions. Unless otherwise indicated, all terms used in this part that are defined in 49 CFR Part 571, Motor Vehicle Safety Standards, are used as defined in that part.

§ 570.5 Service brake system. Unless otherwise noted, the force to be applied during inspection procedures to power-assisted and full-power brake systems is 25 lb., and to all other systems, 50 lb.

(a) *Failure indicator.* The brake system failure indicator lamp, if part of a vehicle's original equipment, shall be operable. (This lamp is required by Federal Motor Vehicle Safety Standard No. 105, 49 CFR 571.105, on every new passenger car manufactured on or after January 1, 1968, and on other types of motor vehicles manufactured on or after September 1, 1975.)

Inspection procedure. Apply the parking brake and turn the ignition to start, or verify lamp operation by other means indicated by the vehicle manufacturer that the brake system failure indicator lamp is operable.

(b) *Brake system integrity.* The brake system shall demonstrate integrity as indicated by no perceptible decrease in pedal height under a 125 pound force applied to the brake pedal or by no illumination of the brake system failure indicator lamp. The brake system shall withstand the application of force to the pedal without failure of any line or other part.

Inspection procedure. With the engine running on vehicles equipped with power brake systems, and the ignition turned to "on" in other vehicles, apply a force of 125 pounds to the brake pedal and hold for 10 seconds. Note any decrease in pedal height, and whether the lamp illuminates.

(c) *Brake pedal reserve.* When the brake pedal is fully depressed, the distance that the pedal has traveled from its free position shall

be not greater than 80 percent of the total distance from its free position to the floorboard or other object that restricts pedal travel.

Inspection procedure. Measure the distance (A) from the free pedal position to the floorboard or other object that restricts brake pedal travel. Depress the brake pedal, and with the force applied measure the distance (B) from the depressed pedal position to the floorboard or other object that restricts pedal travel. Determine the percentage as $\frac{A-B}{A} \times 100$. The engine must be operating when power-assisted brakes are checked. The pedal reserve check is not required for vehicles equipped with full-power (central hydraulic) brake systems, or to vehicles with brake systems designed to operate with greater than 80 percent pedal travel.

(d) *Service brake performance.* Compliance with one of the following performance criteria will satisfy the requirements of this section. Verify that tire inflation pressure is within the limits recommended by vehicle manufacturer before conducting either of the following tests.

(1) *Roller-type or drive-on platform tests.* The force applied by the brake on a front wheel or a rear wheel shall not differ by more than 20 percent from the force applied by the brake on the other front wheel or the other rear wheel respectively.

Inspection procedure. The vehicle shall be tested on a drive-on platform, or a roller-type brake analyzer with the capability of measuring equalization. The test shall be conducted in accordance with the test equipment manufacturer's specifications. Note the left to right brake force variance.

(2) *Road test.* The service brake system shall stop the vehicle in a distance of 25 feet or less from a speed of 20 miles per hour without leaving a 12-foot-wide lane.

Inspection procedure. The road test shall be conducted on a level (not to exceed plus or minus one percent grade) dry, smooth, hard-surfaced road that is free from loose material, oil or grease. The service brakes shall be applied at a vehicle speed of 20 miles per hour and the vehicle shall be brought to a stop as specified. Measure the distance required to stop.

(e) *Brake hoses and Assemblies.* Brake hoses shall not be mounted so as to contact the vehicle body or chassis. Hoses shall not be cracked, chafed, or flattened. Protective devices, such as "rub rings," shall not be considered part of the hose or tubing.

Inspection procedure. Examine visually, inspecting front brake hoses through all wheel positions from full left to full right for conditions indicated.

[NOTE: to inspect for (f), (g), and (h) below, remove at a minimum one front wheel and one rear wheel.]

(f) *Disc and drum condition.* If the drum is embossed with a maximum safe diameter dimension or the rotor is embossed with a minimum safety thickness dimension, the drum or disc shall be within the appropriate specifications. These dimensions will be found on motor vehicles manufactured since January 1, 1971, and may be found on vehicles manufactured for several years prior to that time. If the drums and discs are not embossed the drums and discs shall be within the manufacturer's specifications.

Inspection procedure. Examine visually for condition indicated, measuring as necessary.

(g) *Friction materials.* On each brake the thickness of the lining or pad shall not be less than one thirty-second of an inch over the rivet heads, or the brake shoe on bonded linings or pads. Brake linings and pads shall not have cracks or breaks that extend to rivet holes except minor cracks that do not impair attachment. Drum brake linings shall be securely attached to brake shoes. Disc brake pads shall be securely attached to shoe plates.

Inspection procedure. Examine visually for conditions indicated, and measure height of rubbing surface of lining over rivet heads. Measure bonded lining thickness over shoe surface at the thinnest point on the lining or pad.

(h) *Structural and mechanical parts.* Backing plates and caliper assemblies shall not be deformed or cracked. System parts shall not be broken, misaligned, missing, binding, or show evidence of severe wear. Automatic adjusters and other parts shall be assembled and installed correctly.

Inspection procedure. Examine visually for conditions indicated.

§ 570.6 Brake power unit. Vacuum hoses shall not be collapsed, abraded, broken, improperly mounted or audibly leaking. With residual vacuum exhausted and a constant 25 pound force on the brake pedal, the pedal shall fall slightly when the engine is started, demonstrating integrity of the power assist system. This test is not applicable to vehicles equipped with full power brake system as the service brake performance test shall be considered adequate test of system performance.

Inspection procedure. With engine running, examine hose visually and aurally for conditions indicated. Stop engine and apply service brakes several times to destroy vacuum in system. Depress brake pedal with 25 pounds of force and while maintaining that force, start the engine. If brake pedal does not fall slightly under force when the engine starts, there is a malfunction in the power assist system.

§ 570.7 Steering systems.

(a) *System play.* Lash or free play in the steering system shall not exceed values shown in Table 1.

Inspection procedure. With the engine on and the wheels in the straight ahead position, turn the steering wheel in one direction until there is a perceptible movement of a front wheel. If a point on the steering wheel rim moves more than the value shown in Table 1 before perceptible return movement of the wheel under observation, there is excessive lash or free play in the steering system.

TABLE 1.—Steering System Free Play Values

Steering Wheel Diameter (In.)	*Lash (In.)*
16 or less	2
18	2¼
20	2½
22	2¾

(b) *Linkage play.* Free play in the steering linkage shall not exceed one-quarter of an inch.

Inspection procedure. Elevate the front end of the vehicle to load the ball joints. Insure that wheel bearings are correctly adjusted. Grasp the front and rear of a tire and attempt to turn the tire and wheel assembly left and right. If the free movement at the front or rear tread of the tire exceeds one-quarter inch there is excessive steering linkage play.

(c) *Free turning.* Steering wheels shall turn freely through the limit of travel in both directions.

Inspection procedure. Turn the steering wheel through the limit of travel in both directions. Feel for binding or jamming in the steering gear mechanism.

(d) *Alignment.* Toe-in and toe-out measurements shall not be greater than 1.5 times the value listed in the vehicle manufacturer's service specification for alignment setting.

Inspection procedure. Verify that toe-in or toe-out is not greater than 1.5 times the values listed in the vehicle manufacturer's service specifications for alignment settings as measured by a bar-type scuff gauge or other toe-in measuring device. Values to convert toe-in readings in inches to scuff gauge readings in ft/mi side-slip for different wheel sizes are provided in Table 2. Tire diameters used in computing scuff gauge readings are based on the average maximum tire dimensions of grown tires in service for typical wheel and tire assemblies.

(e) *Power steering system.* The power steering system shall not have cracked or slipping belts, or insufficient fluid in the reservoir.

Inspection procedure. Examine fluid reservoir and pump belts for conditions indicated.

§ 570.8 Suspension systems.

(a) *Suspension condition.* Ball joint seals shall not be cut or cracked. Structural parts shall not be bent or damaged. Stabilizer bars shall be connected. Springs shall not be broken, or extended by spacers. Shock absorber mountings, shackles, and U-bolts shall be securely attached. Rubber bushings shall not be cracked, extruded out from or missing from suspension joints. Radius rods shall not be missing or damaged.

Inspection procedure. Examine front and rear end suspension parts for conditions indicated.

TABLE 2.—Toe-In Settings From Vehicle MFR's Service Specifications

Wheel Size (In)	*Nominal Tire Diameter (In)*	*Readings in Feet Per Mile Sideslip*								
		1/16"	1/8"	3/16"	1/4"	5/16"	3/8"	7/16"	1/2"	9/16"
13	25.2	13.1	26.2	39.3	52.4	65.5	78.6	91.7	104.8	117.9
14	26.4	12.5	25.0	37.5	50.0	62.5	75.0	87.5	100.	112.5
15	28.5	11.5	23.0	34.5	46.0	57.5	69.0	80.5	92.0	103.5
16	35.6	9.3	18.6	27.9	37.2	46.5	55.8	65.1	74.4	83.7

(39 F.R. 12867—April 9, 1974. Effective: 5/9/74)

(b) *Shock absorber conditions.* There shall be no oil on the shock absorber housing attributable to leakage by the seal, and the vehicle shall not continue free rocking motion for more than two cycles.

Inspection procedure. Examine shock absorbers for oil leaking from within, then with vehicle on a level surface, push down on one end of vehicle and release. Note number of cycles of free rocking motion. Repeat procedure at other end of vehicle.

§ 570.9 Tires.

(a) *Tread depth.* The tread on each tire shall be not less than two thirty-seconds of an inch deep.

Inspection procedure. Passenger car tires have tread depth indicators that become exposed when tread depth is less than two thirty-seconds of an inch. Inspect for indicators in any two adjacent major grooves at three locations spaced approximately equally around the outside of the tire. For vehicles other than passenger cars it may be necessary to measure tread depth with a tread gauge.

(b) *Type.* Vehicle shall be equipped with tires on the same axle that are matched in tire size designation, construction, and profile.

Inspection procedure. Examine visually. A major mismatch in tire size designation, construction, and profile between tires on the same axle, or a major deviation from the size as recommended by the manfuacturer (e.g. as indicated on the glove box placard on 1968 and later passenger cars) are causes for rejection.

(c) *General condition.* Tires shall be free from chunking, bumps, knots, or bulges evidencing cord, ply, or tread separation from the casing or other adjacent materials.

(d) *Damage.* Tire cords or belting materials shall not be exposed, either to the naked eye or when cuts or abrasions on the tire are probed.

Inspection procedures. Examine visually for conditions indicated, using a blunt instrument if necesary to probe cuts or abrasions.

§ 570.10 Wheel assemblies.

(a) *Wheel integrity.* A tire rim, wheel disc, or spider shall have no visible cracks, elongated bolt holes or indication of repair by welding.

Inspection procedure. Examine visually for conditions indicated.

(b) *Deformation.* The lateral and radial runout of each rim bead area shall not exceed one-eighth of an inch of total indicated runout.

Inspection procedure. Using a runout indicator gauge, and a suitable stand, measure lateral and radial runout of rim bead through one full wheel revolution and note runout in excess of one-eighth of an inch.

(c) *Mounting.* All wheel nuts and bolts shall be in place and tight.

Inspection procedure. Check wheel retention for conditions indicated.

38 F.R. 23949
September 5, 1973

Subpart B—Vehicles With GVWR of More Than 10,000 Pounds

AUTHORITY: Secs. 103, 108, 119, Public Law 89-563, 80 Stat 78, 15 U.S.C. 1392, 1397, 1407; delegation of authority at 49 CFR 1.51.

§ 570.51 Scope. This part specifies standards and procedures for the inspection of brake, steering and suspension systems, and tire and wheel assemblies, of motor vehicles in use with a gross vehicle weight rating of more than 10,000 pounds.

§ 570.52 Purpose. The purpose of this part is to establish criteria for the inspection of motor vehicles through State inspection programs, in order to reduce deaths and injuries attributable to failure or inadequate performance of the motor vehicle systems covered by this part.

§ 570.53 Applicability. This part does not in itself impose requirements on any person. It is intended to be implemented by States through the highway safety program standards issued under the Highway Safety Act (23 U.S.C. 402) with respect to inspection of motor vehicles with gross vehicle weight rating greater than 10,000 pounds, except mobile structure trailers.

§ 570.54 Definitions. Unless otherwise indicated, all terms used in this part that are defined in 49 CFR Part 571, Motor Vehicle Safety Standards, are used as defined in that part.

"Air-over-hydraulic brake subsystem" means a subsystem of the air brake that uses compressed air to transmit a force from the driver control to a hydraulic brake system to actuate the service brakes.

"Electric brake system" means a system that uses electric current to actuate the service brake.

"Vacuum brake system" means a system that uses a vacuum and atmospheric pressure for transmitting a force from the driver control to the service brake, but does not include a system that uses vacuum only to assist the driver in applying muscular force to hydraulic or mechanical components.

§ 570.55 Hydraulic brake system. The following requirements apply to vehicles with hydraulic brake systems.

(a) *Brake system failure indicator.* The hydraulic brake system failure indicator lamp, if part of a vehicle's original equipment, shall be operable.

Inspection procedure. Apply the parking brake and turn the ignition to start to verify that the brake system failure indicator lamp is operable, or verify by other means recommended by the vehicle manufacturer.

(b) *Brake system integrity.* The hydraulic brake system shall demonstrate integrity as indicated by no perceptible decrease in pedal height under a 125-pound force applied to the brake pedal and by no illumination of the brake system failure indicator lamp. The brake system shall withstand the application of force to the pedal without failure of any tube, hose or other part.

Inspection procedure. With the engine running in vehicles equipped with power brake systems and the ignition turned to "on" in other vehicles, apply a force of 125 pounds to the brake pedal and hold for 10 seconds. Note any additional decrease in pedal height after the initial decrease, and whether the brake system failure indicator lamp illuminates.

(c) *Brake pedal reserve.* When the brake pedal is depressed with a force of 50 pounds, the distance that the pedal has traveled from its free position shall be not greater than 80 percent of the total distance from its free position to the

floorboard or other object that restricts pedal travel. The brake pedal reserve test is not required for vehicles with brake systems designed by the original vehicle manufacturer to operate with greater than 80 percent pedal travel.

Inspection procedure. Measure the distance (A) from the free pedal position to the floorboard or other object that restricts brake pedal travel. Depress the brake pedal, and with the force applied measure the distance (B) from the depressed pedal position to the floorboard or other object that restricts pedal travel. Determine the pedal travel percentage as $\frac{A-B}{A} \times 100$.

The engine must be operating when power-assisted brakes are checked.

(d) *Brake hoses, master cylinder, tubes and tube assemblies.* Hydraulic brake hoses shall not be mounted so as to contact the vehicle body or chassis. Hoses shall not be cracked, chafed, or flattened. Brake tubes shall not be flattened or restricted. Brake hoses and tubes shall be attached or supported to prevent damage by vibration or abrasion. Master cylinder shall not show signs of leakage. Hose or tube protective rings or devices shall not be considered part of the hose or tubing.

Inspection procedure. Examine visually brake master cylinder, hoses and tubes, including front brake hoses, through all wheel positions from full left turn to full right turn for conditions indicated.

§ 570.56 Vacuum brake assist unit and vacuum brake system. The following requirements apply to vehicles with vacuum brake assist units and vacuum brake systems.

(a) *Vacuum brake assist unit integrity.* The vacuum brake assist unit shall demonstrate integrity as indicated by a decrease in pedal height when the engine is started and a constant 50-pound force is maintained on the pedal.

Inspection procedure. Stop the engine and apply service brake several times to destroy vacuum in system. Depress the brake pedal with 50 pounds of force and while maintaining that force, start the engine. If the brake pedal does not move slightly under force when the engine starts, there is a malfunction in the power assist unit.

(b) *Low-vacuum indicator.* If the vehicle has a low-vacuum indicator, the indicator activation level shall not be less than 8 inches of mercury.

Inspection procedure. Run the engine to evacuate the system fully. Shut off the engine and slowly reduce the vacuum in the system by moderate brake applications until the vehicle gauge reads 8 inches of mercury. Observe the functioning of the low-vacuum indicator.

(c) *Vacuum brake system integrity.* The vacuum brake system shall demonstrate integrity by meeting the following requirements: (1) The vacuum brake system shall provide vacuum reserve to permit one service brake application with a brake pedal force of 50 pounds after the engine is turned off without actuating the low vacuum indicator. (2) Trailer vacuum brakes shall operate in conjunction with the truck or truck tractor brake pedal.

Inspection procedure. Check the trailer vacuum system by coupling trailer(s) to truck or truck tractor and opening trailer shutoff valves. Start the engine and after allowing approximately 1 minute to build up the vacuum, apply and release the brake pedal. In the case of trailer brakes equipped with brake chamber rods, observe the chamber rod movement. Run the engine to re-establish maximum vacuum, then shut off the engine and apply the brakes with a 50-pound force on the brake pedal. Note the brake application and check for low-vacuum indicator activation.

For a combination vehicle equipped with breakaway protection and no reservoir on the towing vehicle supply line, close the supply line shutoff valve and disconnect the supply line. Apply a 50-pound force to the brake pedal on the towing vehicle and release. Trailer brakes should remain in the applied position.

(d) *Vacuum system hoses, tubes and connections.* Vacuum hoses, tubes and connections shall be in place and properly supported. Vacuum hoses shall not be collapsed, cracked or abraded.

Inspection procedure. With the engine running, examine hoses and tubes for the conditions indicated and note broken or missing clamps.

§ 570.57 Air brake system and air-over-hydraulic brake subsystem. The following requirements apply to vehicles with air brake and air-over-hydraulic brake systems. Trailer(s) must be coupled to a truck or truck-tractor for the purpose of this inspection, except as noted.

(a) *Air brake system integrity.* The air brake system shall demonstrate integrity by meeting the following requirements.:

(1) With the vehicle in a stationary position, compressed air reserve shall be sufficient to permit one full service brake application, after the engine is stopped and with the system fully charged, without lowering reservoir pressure more than 20 percent below the initial reading.

(2) The air brake system compressor shall increase the air pressure in the reservoir(s) from the level developed after the test prescribed in § 570.57(a) (1) to the initial pressure noted before the full brake application, with the engine running at the manufacturer's maximum recommended number of revolutions per minute with the compressor governor in the cut-off position, in not more than 30 seconds for vehicles manufactured prior to March 1, 1975. For vehicles manufactured on or after March 1, 1975, the time allowed for air pressure build-up shall not exceed 45 seconds.

(3) The warning device (visual or audible) connected to the brake system air pressure source shall be activated when air pressure is lowered to an activating level that is not less than 50 psi. For vehicles manufactured to conform to Federal Motor Vehicle Safety Standard No. 121, the low-pressure indicator shall be activated when air pressure is lowered to an activating level that is not less than 60 psi.

(4) The governor cut-in pressure shall be not lower than 80 psi, and the cut-out pressure shall be not higher than 135 psi, unless other values are recommended by the vehicle manufacturer.

(5) Air brake pressure shall not drop more than 2 psi in 1 minute for single vehicles or more than 3 psi in 1 minute for combination vehicles, with the engine stopped and service brakes released. There may be an additional 1 psi drop per minute for each additional towed vehicle.

(6) With the reservoir(s) fully charged, air pressure shall not drop more than 3 psi in 1 minute for single vehicles or more than 4 psi in 1 minute for combination vehicles, with the engine stopped and service brakes fully applied. There may be an additional 1 psi drop per minute for each additional towed vehicle.

(7) The compressor drive belt shall not be badly worn or frayed and belt-tension shall be sufficient to prevent slippage.

Inspection procedure. With the air system charged, open the drain cocks in the service and supply reservoir on the truck or truck-tractor. Note the pressure at which the visual or audible warning device connected to the low-pressure indicator is activated. Close the drain cocks, and, with the trailer(s) uncoupled, check air pressure build-up at the manufacturer's recommended engine speed. Observe the time required to raise the air pressure from 85 to 100 psi. Continue running the engine until the governor cuts out and note the pressure. Reduce engine speed to idle, couple the trailer(s), if applicable, and make a series of brake applications. Note the pressure at which the governor cuts in. Increase engine speed to fast idle and charge the system to its governed pressure. Stop the engine and record the pressure drop in psi per minute with brakes released and with brakes fully applied.

(b) *Air brake system hoses, tubes and connections.* Air system tubes, hoses and connections shall not be restricted, cracked or improperly supported, and the air hose shall not be abraded.

Inspection procedure. Stop the engine and examine air hoses, tubes and connections visually for conditions specified.

(c) *Air-over-hydraulic brake subsystem integrity.* The air-over-hydraulic brake subsystem shall demonstrate integrity by meeting the following requirements:

(1) The air brake system compressor shall increase the air pressure in the reservoir(s) from the level developed after the test prescribed in § 570.57(a) (1) to the initial pressure noted before the full brake application, with the engine running at the manufacturer's recommended number of revolutions per minute and the compressor governor in the cut-out

position, in not more than 30 seconds for vehicles manufactured prior to March 1, 1975. For vehicles manufactured on or after March 1, 1975, the time for air pressure build up shall not exceed 45 seconds.

(2) The warning device (visual or audible) connected to the brake system air pressure source shall be activated when the air pressure is lowered to not less than 50 psi.

(3) The governor cut-in pressure shall be not lower than 80 psi, and the cut-out pressure shall not be higher than 135 psi, unless other values are recommended by the vehicle manufacturer.

(4) Air brake pressure shall not drop more than 2 psi in 1 minute for single vehicles or more than 3 psi in 1 minute for combination vehicles, with the engine stopped and service brakes released. Allow a 1-psi drop per minute for each additional towed vehicle.

(5) With the reservoir(s) fully charged, air pressure shall not drop more than 3 psi in 1 minute for single vehicles or more than 4 psi in 1 minute for combination vehicles, with the engine stopped and service brakes fully applied. Allow a 1-psi pressure drop in 1 minute for each additional towed vehicle.

(6) The compressor drive belt shall not be badly worn or frayed and belt tension shall be sufficient to prevent slippage

Inspection procedure. With the air system charged, open the drain cocks in the service and supply reservoir on the truck or truck-tractor. Note the pressure at which the visual or audible warning device connected to the low pressure indicator is activated. Close the drain cocks and, with the trailers uncoupled, check air pressure build up at the manufacturer's recommended engine speed. Observe the time required to raise the air pressure from 85 to 100 psi. Continue running the engine until the governor cuts out and note the pressure. Reduce engine speed to idle, couple trailers, and make a series of brake applications. Note the pressure at which the governor cuts in. Increase engine speed to fast idle and charge the system to its governed pressure. Stop the engine and record the pressure drop in psi per minute with brakes released and with brakes fully applied.

(d) *Air-over-hydraulic brake subsystem hoses, master cylinder, tubes and connections.* System tubes, hoses and connections shall not be cracked or improperly supported, the air and hydraulic hoses shall not be abraded and the master cylinder shall not show signs of leakage.

Inspection procedure. Stop the engine and examine air and hydraulic brake hoses, brake master cylinder, tubes and connections visually for conditions specified.

§ 570.58 Electric brake system.

(a) *Electric brake system integrity.* The average brake amperage value shall be not more than 20 percent above, and not less than 30 percent below, the brake manufacturer's maximum current rating. In progressing from zero to maximum, the ammeter indication shall show no fluctuation evidencing a short circuit or other interruption of current.

Inspection procedure. Insert a low range (0 to 25 amperes for most 2- and 4-brake systems and 0 to 40 amperes for a 6-brake system) d.c. ammeter into the brake circuit between the controller and the brakes. With the controller in the "off" position, the ammeter should read zero. Gradually apply the controller to the "full on" position for a brief period (not to exceed 1 minute) and observe the maximum ammeter reading. Gradually return the controller to "full off" and observe return to zero amperes. Divide the maximum ammeter reading by the number of brakes and determine the brake amperage value.

(b) *Electric brake wiring condition.* Electric brake wiring shall not be frayed. Wiring clips or brackets shall not be broken or missing. Terminal connections shall be clean. Conductor wire gauge shall not be below the brake manufacturer's minimum recommendation.

Inspection procedure. Examine visually for conditions specified.

§ 570.59 Service brake system.

(a) *Service brake performance.* Compliance with any one of the following performance cri-

teria will satisfy the requirements of this section. Verify that tire inflation pressure is within the limits recommended by the vehicle manufacturer before conducting either of the following tests.

(1) *Roller-type or drive-on platform tests.* The force applied by the brake on a front wheel or a rear wheel shall not differ by more than 25 percent from the force applied by the brake on the other front wheel or the other rear wheel respectively.

Inspection procedure. The vehicle shall be tested on a drive-on platform, or a roller-type brake analyzer with the capability of measuring equalization. The test shall be conducted in accordance with the test equipment manufacturer's specifications. Note the brake force variance.

(2) *Road test.* The service brake system shall stop single unit vehicles, except truck-tractors, in a distance of not more than 35 feet, or combination vehicles and truck-tractors in a distance of not more than 40 feet, from a speed of 20 mph, without leaving a 12-foot-wide lane.

Inspection procedure. The road test shall be conducted on a level (not to exceed plus or minus 1 percent grade), dry, smooth, hardsurfaced road that is free from loose material, oil or grease. The service brakes shall be applied at a vehicle speed of 20 mph and the vehicle shall be brought to a stop as specified. Measure the distance required to stop.

Note. Inspect for (b), (c), and (d) below on vehicles equipped with brake inspection ports or access openings, and when removal of wheel is not required.

(b) *Disc and drum condition.* If the drum is embossed with a maximum safe diameter dimension or the rotor is embossed with a minimum safe thickness dimension, the drum or disc shall be within the appropriate specifications. These dimensions will generally be found on motor vehicles manufactured since January 1, 1971, and may be found on vehicles manufactured for several years prior to that time. If the drums and discs are not embossed, they shall be within the manufacturer's specifications.

Inspection procedure. Examine visually for the condition indicated, measuring as necessary.

(c) *Friction materials.* On each brake, the thickness of the lining or pad shall not be less than one thirty-second of an inch over the fastener, or one-sixteenth of an inch over the brake shoe on bonded linings or pads. Brake linings and pads shall not have cracks or breaks that extend to rivet holes except minor cracks that do not impair attachment. The wire in wire-backed lining shall not be visible on the friction surface. Drum brake linings shall be securely attached to brake shoes. Disc brake pads shall be securely attached to shoe plates.

Inspection procedure. Examine visually for the conditions indicated, and measure the height of the rubbing surface of the lining over the fastener heads. Measure bonded lining thickness over the surface at the thinnest point on the lining or pad.

(d) *Structural and mechanical parts.* Backing plates, brake spiders and caliper assemblies shall not be deformed or cracked. System parts shall not be broken, misaligned, missing, binding, or show evidence of severe wear. Automatic adjusters and other parts shall be assembled and installed correctly.

Inspection procedure. Examine visually for conditions indicated.

§ 570.60 Steering system.

(a) *System play.* Lash or free play in the steering system shall not exceed the values shown in Table 3.

Inspection procedure. With the engine on and the steering axle wheels in the straight ahead position, turn the steering wheel in one direction until there is a perceptible movement of the wheel. If a point on the steering wheel rim moves more than the value shown in table 3 before perceptible return movement of the wheel under observation, there is excessive lash or free play in the steering system.

TABLE 3. STEERING WHEEL FREE PLAY VALUE

Steering Wheel Diameter (Inches)	*Lash (Inches)*
16 or less	2
18	2¼
20	2½
22	2¾

(b) *Linkage play.* Free play in the steering linkage shall not exceed the values shown in Table 4.

Inspection procedure. Elevate the front end of the vehicle to load the ball joints, if the vehicle is so equipped. Insure that wheel bearingings are correctly adjusted. Grasp the front and rear of a tire and attempt to turn the tire and wheel assemble left to right. If the free movement at the front or rear tread of the tire exceeds the applicable value shown in Table 4, there is excessive steering linkage play.

Table 4. Front Wheel Steering Linkage Free Play

Nominal bead diameter or rim size (inches)	*Play (inches)*
16 or less	1/4
16.01 through 18.00	3/8
18.01 or more	1/2

(c) *Free turning.* Steerings wheels shall turn freely through the limit of travel in both directions.

Inspection procedure. With the engine running on a vehicle with power steering, or the steerable wheels elevated on a vehicle without power steering, turn the steering wheel through the limit of travel in both directions. Feel for binding or jamming in the steering gear mechanism.

(d) *Alignment.* Toe-in or toe-out condition shall not be greater than 1.5 times the values listed in the vehicle manufacturer's service specification for alignment setting.

Inspection procedure. Drive the vehicle over a sideslip indicator or measure with a tread gauge, and verify that the toe-in or toe-out is not greater than 1.5 times the values listed in the vehicle manufacturer's service specification.

(e) *Power steering system.* The power steering system shall not have cracked, frayed or slipping belts, chafed or abrated hoses, show signs of leakage or have insufficient fluid in the reservoir.

Inspection procedure. Examine fluid reservoir, hoses and pump belts for the conditions indicated.

NOTE: Inspection of the suspension system must not recede the service brake performance test.

§ 570.61 Suspension system.

(a) *Suspension condition.* Ball joint seals shall not be cut or cracked, other than superficial surface cracks. Ball joints and kingpins shall not be bent or damaged. Stabilizer bars shall be connected. Springs shall not be broken and coil springs shall not be extended by spacers. Shock absorber mountings, shackles, and U-bolts shall be securely attached. Rubber bushings shall not be cracked, extruded out from or missing from suspension joints. Radius rods shall not be missing or damaged.

Inspection procedure. Examine front and rear end suspension parts for the conditions indicated.

(b) *Shock absorber condition.* There shall be no oil on the shock absorber housings attributable to leakage by the seal.

Inspection procedure. Examine shock absorbers for oil leakage from within.

§ 570.62 Tires.

(a) *Tread depth.* The tread shall be not less than four thirty-seconds of an inch deep on each front tire of any vehicle other than a trailer and not less than two thirty-seconds of an inch on all other tires.

Inspection procedure. For tires with treadwear indicators, check for indicators in any two adjacent major grooves at three locations spaced approximately 120° apart around the circumference of the tire. For tires without treadwear indicators, measure the tread depth with a suitable gauge or scale in two adjacent major grooves at 3 locations spaces approximately 120° apart around the circumference of the tire at the area of greatest wear.

(b) *Type.* Vehicles should be equipped with tires on the same axle that are matched in construction and tire size designation, and dual tires shall be matched for overall diameter within one-half inch.

Inspection procedure. Examine visually. A mismatch in size and construction between

tires on the same axle, or a major deviation from the size recommended by the vehicle or tire manufacturer, is a cause for rejection. On a dual-tire arrangement the diameter of one of the duals must be within one-half inch of the other as measured by a gauge block inserted between the tire and a caliper.

(c) *General condition.* Tires shall be free from chunking, bumps, knots, or bulges evidencing cord, ply or tread separation from the casing.

Inspection procedure. Examine visually for the conditions indicated.

(d) *Damage.* Tire cords or belting materials shall not be exposed, either to the naked eye or when cuts on the tire are probed. Reinforcement repairs to the cord body are allowable on tires other than front-mounted tires.

Inspection procedure. Examine visually for the conditions indicated, using a blunt instrument if necessary to probe cuts and abrasions.

(e) *Special purpose tires.* Tires marked "Not For Highway Use" or "Farm Use Only" or other such restrictions shall not be used on any motor vehicle operating on public highways.

Inspection procedure. Examine visually for tires labeled with specific restrictions.

§ 570.63 Wheel assemblies.

(a) *Wheel integrity.* A tire rim, wheel disc or spider shall have no visible cracks, elongated bolt holes, or indications of in-service repair by welding.

Inspection procedure. Examine visually for the conditions indicated.

(b) *Cast Wheels.* Cast wheels shall not be cracked or show evidence of excessive wear in the clamp area.

Inspection procedure. Examine visually for the conditions indicated.

(c) *Mounting.* All wheel nuts shall be in place and tight.

Inspection procedure. Check wheel retention for the conditions indicated.

39 F.R. 26026
July 16, 1974

Section Two—The Standards
Alphabetical Listing

Section Two—The Standards
Numerical Listing

Standard No.	Title
100	Controls and Displays
101	Controls and Displays
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103	Windshield Defrosting and Defogging Systems
104	Windshield Wiping and Washing Systems
105	Hydraulic Brake Systems
106	Brake Hoses
107	Reflecting Surfaces
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109	New Pneumatic Tires
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111	Rearview Mirrors
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113	Hood Latch System
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121	Air Brake Systems
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201	Occupant Protection in Interior Impact
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212	Windshield Mounting
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216	Roof Crush Resistance—Passenger Cars
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221	School Bus Body Joint Strength
222	School Bus Passenger Seating and Crash Protection
301	Fuel System Integrity
302	Flammability of Interior Materials

PREAMBLE TO PART 571

Initial Federal Motor Vehicle Safety Standards

(Docket No. 3)

This order establishes Initial Federal Motor Vehicle Safety Standards for new motor vehicles and equipment. A notice of rule making proposing the Initial Standards was issued on November 30, 1966 (31 F.R. 15212, corrected 31 F.R. 15600). All pertinent matter in the written and oral comments received has been fully considered. Considerations of time prevent discussion of comments on individual standards.

The motor vehicle safety standards are rules as that term is defined in 5 U.S.C. sec. 551(4). The established practice is that the public record of a rule-making procedure under 5 U.S.C. section 553 (former sec. 4 Administrative Procedure Act), involving a substantive rule and instituted upon an agency's own initiative, begins with the notice of rule making. An agency is under no legal duty to reveal the internal processes that shaped the project, and interested persons are not entitled to comment thereon, 5 U.S.C. section 533(b)(3). Where, as here, the addresses of a proposed rule are themselves actively engaged as experts on the subject matter, their understanding of the meaning and effect of a rule is certainly not impaired by the absence of such a disclosure. As a practical proposition, this Agency intends to adopt a policy of the greatest possible disclosure of underlying considerations in future substantive rule making when it will not operate under an unusually tight time schedule. In this instance, such disclosure was not possible, and administrative due process required no more than publication of the notice. The requirement that the standards be based on a record does not operate to require insertion in the record of matter not required as part of a rule-making notice.

The following findings are made with respect to all standards—

(1) Each standard is a minimum standard for motor vehicle or equipment performance which is practicable and meets the need for motor vehicle safety, and provides objective criteria;

(2) Each standard is reasonable, practicable, and appropriate for the particular class of motor vehicle or item of equipment for which it is prescribed;

(3) Each standard will contribute substantially to the purpose of reducing traffic accidents, and deaths and injuries to persons resulting therefrom, in the United States; and

(4) The matter incorporated by reference is reasonably available to the persons affected by this regulation.

In addition to the vehicle classes of passengers cars, motorcycles, trucks, buses, and trailers proposed in the Notice, the initial standards as herein established introduce the new class of "multipurpose passenger vehicles." Only standards proposed in the Notice for vehicles now in this class are made applicable to this class. Each standard applies only to the class of vehicles to which it is made applicable by its terms.

The initial standards may be amended from time to time. Each standard remains in effect until rescinded or superseded by a Revised Standard actually becoming effective.

The requirements of Standard No. 209 were originally published on August 31, 1966 (31 F.R. 11528), as a revision to the existing seat belt standard that had been promulgated by the Secretary of Commerce under the authority of Public Law 88–201. At that time, it was provided that the revised standards would become mandatory after February 28, 1967, and would be an optional alternative to the existing standard until that date. As a result seat belt manu-

facturers had already taken steps to meet the March 1, 1967 date before the Notice for the Initial Federal Motor Vehicle Safety Standards was issued on December 3, 1966. To preserve the continuity of this change to the new seat belt standard, the March 1, 1967 effective date was included in the proposed Initial Federal Motor Vehicle Safety Standards. This places no certification requirement on the vehicle manufacturer, however, until the effective date of the first Standard applicable to a motor vehicle rather than motor vehicle equipment.

In consideration of the foregoing, Chapter II of Title 23 [49] of the Code of Federal Regulations is amended by adding a new Subchapter C—Motor Vehicle Safety Regulations, effective January 1, 1968 except Motor Safety Standard No. 209, "Seat Belt Assemblies—Passenger Cars, Multipurpose Passenger Vehicles, Trucks, and Buses," which becomes effective March 1, 1967, to read as set forth below.

This regulation was proposed as Part 245 but will, for reasons of organization of subject matter, be issued as Part 371 [255].

This rule-making action is taken under the authority of sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. sec. 1392, 1407) and the delegations of authority of October 20, 1966 (31 F.R. 13952) and January 24, 1967 (32 F.R. 1005).

Issued in Washington, D.C., on January 31, 1967.

Lowell K. Bridwell,
Acting Under Secretary
of Commerce for Transportation

(SUBPART A—GENERAL)

SUBPART B—STANDARDS

AUTHORITY: The provisions of this part 371 issued under secs. 103, 119, 80 Stat. 719, 728; 15 U.S.C. 1392, 1407.

32 F.R. 2408
February 3, 1967

PREAMBLE TO AMENDMENTS TO SUBPART A § 571.3b AND § 571.7b

Federal Motor Vehicle Safety Standards Chassis-Cab

(Docket No. 21)

A proposal to amend Part 371, Initial Federal Motor Vehicle Safety Standards, by adding a definition of "incomplete motor vehicles" and specifying labeling requirements was published in the *Federal Register* on December 2, 1967 (32 F.R. 6534), inviting interested persons to comment.

The proposed amendment has been modified to take into account the numerous written and oral comments received. Under the proposed amendment an incomplete vehicle was considered a separable type of motor vehicle. Some of the comments noted that it was unrealistic to consider a bare chassis a motor vehicle since it was no more a motor vehicle and capable of being used on the public highways than many other parts which are incorporated into a completed vehicle. Comments also indicated that the overwhelming majority of what was called incomplete motor vehicles are in the form of a chassis with a cab attached. As such, chassis-cabs have the capability of conforming to the standards but the manufacturer of the chassis-cab cannot always tell what every end use will be.

Comments from body manufacturers and truck dealers indicated they did not have the expertise or the physical apparatus to independently test for all standards previously met by the manufacturer of the incomplete motor vehicle nor did they think they should have to certify that these standards have been met. The consensus of the comments indicated that a manufacturer or dealer should only be responsible for that which he manufactures or affects in assembling the completed vehicle.

On the basis of the comments it appears inappropriate to require persons who merely add to a chassis-cab a body or work-performing or load-carrying structure to certify and to accept legal responsibility for the chassis-cab's conformance with all motor vehicle safety standards. Additionally, it appears inappropriate to consider bare chassis and similar assemblages motor vehicles until they reach the chassis-cab stage at which they are capable of meeting standards applicable to their principal end use. Accordingly, the regulation defines a chassis-cab as a vehicle and imposes the obligation of conforming to all standards applicable to its principal end use upon the manufacturer of the chassis-cab with a limited exception for the lighting standard.

Chassis-cabs, manufactured on or after January 1, 1968, are required to meet all motor vehicle safety standards applicable to the principal end use intended by its manufacturer, except that where the chassis-cab is equipped with only part and not all of the items of lighting equipment referred to in Standard 108, it need not meet such standard. The chassis-cab is required to meet Standard No. 108 whenever all of the items of lighting equipment referred to in Standard 108 are installed on the chassis-cab. Frequently the manufacturer of the chassis-cab will install only a part of the lighting equipment because he either will not know what end use will be made of the vehicle or because the body or other structure to be added to the chassis-cab will be required to bear the balance of the lighting equipment referred to in Standard No. 108.

In order to provide a means of identifying the chassis-cab, its date of production, the Federal motor vehicle safety standards to which it conforms, and to insure that the person combining the chassis-cab with a body or other structure has adequate information with which to meet his statutory responsibilities, the regulation requires that chassis-cabs manufactured on or after

January 1, 1968, have a label affixed which supplies this information.

Concurrent with the issuance of this amendment the Federal Highway Administration has issued an interpretation (1) describing the responsibility under the National Traffic and Motor Vehicle Safety Act of 1966 of persons who combine bodies or other structures with chassis-cabs and sell the same. In brief, the interpretation requires that persons combining such a chassis-cab with a body or other like structure will be responsible for compliance with the lighting standard and for certification of such compliance under section 114 where such person sells the combined assemblage to another dealer. Additionally, under section 108(a)(1) the person combining the chassis-cab with a body or other like structure will be responsible for assuring that the completed assemblage complies with all applicable standards in effect on the date of manufacture of the chassis-cab, compliance with which has not been previously certified by the manufacturer of the chassis-cab and for assuring that compliance with standards previously met by the chassis-cab have not been adversely affected by reason of the addition of the body or like structure.

The interpretive ruling, however, does not require a truck, bus, or multipurpose vehicle consisting of a chassis-cab manufactured prior to January 1, 1968, and a body or like structure manufactured at any time, to meet any standard. For further details interested persons are referred to the text of the ruling.

It is recognized that the problems associated with the multistage manufacture of trucks, buses, and multipurpose passenger vehicles are various and complex. . . . Requests for interpretations or modifications will be given appropriate consideration.

Because the Motor Vehicle Safety Standards issued pursuant to the National Traffic and Motor Vehicle Safety Act of 1966 become effective January 1, 1968, it is found for good cause that this regulation becomes effective upon issuance.

(1) F.R. Doc. 67-15175, in Notices Section, infra.

(Secs. 103, 119, National Traffic and Motor Vehicle Safety Act of 1966; 15 U.S.C. 1392, 1407; delegation of authority of Mar. 31, 1967 (32 F.R. 5606), Apr. 6, 1967 (32 F.R. 6495), July 27, 1967 (32 F.R. 11276), and Oct. 13, 1967 (32 F.R. 14277)).

Issued in Washington, D.C., on December 29, 1967.

Lowell K. Bridwell,
Federal Highway Administrator

33 F.R. 18
January 3, 1968

PREAMBLE TO AMENDMENT TO PART 571

Subpart A—General

"Mobile Structure Trailer"

A mobile home for purposes of the Federal motor vehicle safety standards is considered a "trailer" which is defined in 49 CFR 571.3(b) as a "motor vehicle with or without motive power, designed for carrying persons or property and for being drawn by another motor vehicle." On August 15, 1968, a notice of request for comments was published (33 F.R. 11604) announcing that rulemaking was being considered "which would either exclude mobile homes, offices, classrooms, etc. from applicability of the Federal Motor Vehicle Safety Standards * * * or classify them as a separate category of vehicle subject to regulation." Comments were requested pertinent to these issues and Docket No. 26 was established to receive them.

The Federal Highway Administrator has evaluated these comments and is of the opinion thaat a mobile home towed on its own wheels is a "motor vehicle" within the meaning of section 102(3) of the National Traffic and Motor Vehicle Safety Act of 1966 (hereafter the Act), and is properly categorized as a trailer. However, differences between mobile homes and cargo and travel trailers are believed significant enough to warrant the creation of a subcategory of trailer covering mobile homes only. This new subcategory is designated "mobile structure trailer."

The mobile home industry has asserted that its products are not "motor vehicles" in view of the infrequent use of the average mobile home upon the public streets, roads, and highways. Comments to Docket No. 26 state that the average mobile home is moved once every 40 months, that it spends less than 12 hours on the public roads in 18 to 20 years, and that it only spends 0.055 percent of its useful life on the highway. Thus, it is contended that mobile homes are not "manufactured primarily for use on the public streets, roads, and highways" and hence are not "motor vehicles" for purposes of the Act.

The undisputed fact is that mobile homes as their name implies, are constructed with a view towards over-the-road operations; their capability for travel on public highways is their principal advantage over fixed-site structures. Further, no one denies that mobile homes can present a significant safety hazard when they perform that function.

The Administrator views his conclusion that a mobile home towed on its own wheels is a motor vehicle as being consistent with the criteria expressed in the opinion on mini-bikes published October 3, 1969 (34 F.R. 15416). It is noteworthy that many States in significant ways accord mobile homes the same treatment as conventional motor vehicles. Registration, licensing, or other permission for use on the public roads is generally required. A number of jurisdictions have standards for mobile home lighting, braking, hitching, tire loading, and axle number and location.

Not only is a mobile home towed on its own wheels operationally capable of being used on public thoroughfares, it is almost exclusively so used in traveling from plant to dealer to owner site. Even assuming an infrequent move for the average mobile home, mobile homes as a class are found with increasing frequency on the public roads; industry production in 1967 was 240,000 units and the estimate for 1969 production was 400,000 units. The demand for low-cost housing makes the industry optimistic that there will be similar increases in years to come.

Clearly, when on the public highways, a mobile home towed on its own wheels will present a hazard if its tires, brakes, connection to the towing vehicle, and other factors affecting roadworthiness and traffic safety do not meet minimum standards. While some States, in recognition of this problem, have adopted their own safety standards, the Administrator believes that the decision published today may result in eventual uniformity of safety standards for mobile homes, and for that reason should be welcomed both by the motoring public and by the industry.

The current definition of trailer in § 571.3(b) is sufficient to encompass mobile homes. Yet, because of its size (10 to 14 feet in overall width), construction (a walled and roofed structure), and purpose (general off-road dwelling or commercial use) a mobile home is different from a conventional cargo or travel trailer. Separation by subclassification will allow exclusion of mobile homes from future rulemaking actions relating to trailers which may be inappropriate for mobile homes.

The sole standard presently applicable to trailers (No. 108-Lamps, Reflective Devices, and Associated Equipment) continues to be considered appropriate for mobile homes. In recognition of the limited road use of mobile homes, manufacturers have been advised for some time that compliance may be achieved by use of a lighting harness removable upon completion of transit.

The Administrator believes that mobile homes, offices, classrooms, etc. or modular portions thereof, should be termed mobile structures. In consideration of the foregoing, 49 CFR 571.3(b) is hereby amended effective immediately to add the following:

"Mobile structure trailer" means a trailer that has a roof and walls, is at least 10 feet wide, and can be used offroad for dwelling or commercial purposes.

Since this amendment merely establishes a subcategory of trailer without imposing any additional burden on any person I find that notice and public procedure are unnecessary and that good cause exists for making it effective on less than 30 days notice.

Issued on March 20, 1970.

F. C. Turner,
Federal Highway Administrator.

35 F.R. 5333
March 31, 1970

PREAMBLE TO AMENDMENT TO PART 571

Subpart A—General

"Fixed Collision Barrier"

(Docket No. 69–26)

On December 24, 1969, a proposal to amend § 571.3, *Definitions*, of Title 49, Code of Federal Regulations, by adding a definition for "Fixed collision barrier" was published in the *Federal Register* (34 F.R. 20212). The proposed definition was intended to replace present references in the motor vehicle safety standards to SAE Recommended Practice J850, "Barrier Collision Tests," and to be used in future standards containing performance requirements tested by impacting a vehicle into a stationary barrier.

The intent of the definition is to establish a firm basis upon which performance characteristics of a vehicle may be measured and the requirements of the standards enforced. Such a definition allows manufacturers to have flexibility in constructing barriers and testing their vehicles, since the focus is on the vehicle requirements rather than on the test equipment.

The core of the definition is that the barrier absorbs "no significant portion of the vehicle's kinetic energy". It should be remembered that this is not intended to be a description of an actual test barrier. It is a device used in various standards to establish required quantitative performance levels of a vehicle in a crash situation, and means simply that the vehicle must meet the requirement no matter how small an amount of energy is absorbed by the barrier.

So viewed, the comment that the use of the word "significant" injects an element of subjectivity into the definition is without merit. The question whether an amount of energy absorbed by a barrier is significant is to be answered by comparing it with the extent to which the vehicle exceeds the performance requirement. A vehicle that exceeds the requirements by 50 percent, for example, when impacted into a barrier that absorbs less than 1 percent of its kinetic energy, will probably meet the requirements in any case. Obversely, if a vehicle exceeds the requirements by an amount on the order of only 1 percent when tested, energy absorption of the same order will cast doubt on the validity of the test or the conformity of the vehicle. Thus, it would be inconsistent with the purposes of the definition to follow the suggestion that was made of allowing a specified percentage of energy absorption such as 1 percent. Furthermore, it would be necessary for the Bureau to test vehicles against a barrier that absorbed at least 1 percent of the energy in each case, in order to conclusively establish nonconformity. Since the precise amounts of energy absorbed in an impact are virtually impossible to establish, this would be a serious hindrance to enforcement of the standards.

It was suggested that the definition allow a plywood facing material to be used on a barrier. It is not necessary, however, to make such a specification, since no construction method whatever is prescribed, and manufacturers may use such facings or other materials as they see fit. Their responsibility is simply to insure that their vehicles will meet the performance requirements when they are impacted into a barrier whose energy absorption approaches zero.

One comment requested that the first paragraph be changed to make it clear that the dimensions of the barrier need not be such as to prevent the passage of parts of the vehicle that become separated during impact. Presumably the passage of separated parts mentioned by the commenter would not affect the measured per-

formance (steering wheel displacement, windshield retention, etc.). If it would not affect the performance, then the vehicle would perform in the same way when it impacted an "infinitely large" barrier, and such a provision would be unnecessary. If it would affect performance, then the provision would be inappropriate, since the point of the definition is to eliminate ambiguity by requiring the vehicle to meet the requirements upon impact with a barrier large enough to intercept the entire vehicle. The suggestion has therefore not been adopted.

A comment questioned the phrase "level vehicle attitude" in the second paragraph of the proposal. The intent of this paragraph was not to impose requirements as to vehicle attitude on a horizontal surface, but to specify a horizontal approach surface large enough to allow complete damping of transient transverse or vertical vehicle motion. The paragraph has accordingly been reworded to specify that the approach surface be large enough for the vehicle to "attain a stable attitude" during the approach.

The third paragraph has been editorially reworded for clarification without change in its substance or intent.

Issued on July 8, 1970.

Douglas W. Toms,
Director,
National Highway Safety Bureau.

35 F.R. 11242
July 14, 1970

PREAMBLE TO AMENDMENT TO PART 571

Subpart A—General

"Definitions"

The purpose of this notice is to amend Subpart A, General, of Part 571, Federal Motor Vehicle Safety Standards, in Title 49, Code of Federal Regulations, by adding certain definitions and an explanatory section with respect to drafting usage in the standards and regulations issued under the National Traffic and Motor Vehicle Safety Act.

1. A problem that arises frequently in the drafting and interpretation of standards is expression of the concept that a vehicle or item of equipment must meet specified requirements within a range of values, or in connection with all the items in a set, not simultaneously, but at whatever point within the range or with whatever item in the set the Administration selects for testing. Normal English usage describes this concept by use of the word "any," as in the following examples: "The vehicle must meet the requirements of S4.1 when tested at any point between 18 and 22 inches above the ground." "Each tire shall be capable of meeting the requirements of this standard when mounted on any rim specified by the manufacturer as suitable for use with that tire."

The interpretive difficulty arises because, although the requirements of the standards are drafted as descriptions of the limits within which the Administration will test the vehicles and equipment to which the standards apply, some members of the public fail to recognize this, and tend to view the standards (erroneously) as descriptions of the tests that manufacturers must perform. Thus, in the above examples, persons may mistakenly consider the requirement as requiring only that the vehicle must meet the requirements at some one point between 18 and 22 inches from the ground, or that a tire need only meet the requirements when mounted on a particular one of the rims recommended by the manufacturer. To correct any such misconceptions, and to simplify the drafting and interpretation of standards and regulations, an explanatory section is hereby added to the "General" subpart of Part 571.

2. To simplify the drafting and organization of standards and regulations, definitions are hereby added to the list in 49 CFR 571.3 for the terms "longitudinal" or "longitudinally," gross vehicle weight rating" or "GVWR," "gross axle weight rating" or "GAWR," "gross combination weight rating" or "GCWR," and "unloaded vehicle weight."

Since these amendments are clarifying and interpretative in nature, notice and public procedure thereon are unnecessary, and they are effective upon publication in the *Federal Register* (2–5–71).

In consideration of the foregoing, Subpart A, General, of Part 571, Federal Motor Vehicle Safety Standards, in Title 49, Code of Federal Regulations, is amended. . . .

Issued on February 2, 1971.

Douglas W. Toms,
Acting Administrator.

36 F.R. 2511
February 5, 1971

PREAMBLE TO AMENDMENT TO PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

(Docket No. 71–8; Notice 2)

The purpose of this notice is to amend section 571.3(b) to add a definition of "firefighting vehicle," and to add new section 571.8 to provide for delayed effective dates of future standards to which firefighting vehicles must conform.

The notice of proposed amendment upon which this amendment is based was published in the *Federal Register* on April 16, 1971, (36 F.R. 7259). This amendment is responsive to the potential problems of manufacturers of firefighting vehicles that may be caused if Federal motor vehicle safety standards are issued after purchase contracts are signed, to be effective before the manufacture of the vehicles in question is completed. As noted in the prior notice, many of these vehicles are custom-built to the buyer's specifications and require up to 18 months or more to complete after the contract is signed, and the buyer, typically a unit of municipal government, is often not in a position to renegotiate the contract and appropriate additional funds. The amendment specifies that the effective date for any standard or amendment of a standard to which a firefighting vehicle must conform shall be 2 years after the date that notice of such standard or amendment is published in the *Federal Register*, or the effective date specified in the notice, whichever is later, unless such standard or amendment otherwise specifically provides with respect to firefighting vehicles. This will assure manufacturers and buyers that the vehicles for which contracts are signed need only conform to standards on which the final rules have been issued at the time the contract is signed, as long as the vehicles are completed within 2 years of the signing date.

No objections to the proposal were received.

In consideration of the foregoing, 49 CFR 571 is amended . . . .

Effective date: September 1, 1971.

Issued on July 21, 1971.

Douglas W. Toms
Acting Administrator

36 F.R. 13926
July 28, 1971

PREAMBLE TO AMENDMENT TO PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

This notice amends the definition of "Gross axle weight rating" to reflect more clearly the intended meaning of the phrase.

Gross axle weight rating is defined in 49 CFR 571.3 as follows:

> "Gross axle weight rating" or "GAWR: means the value specified by the vehicle manufacturer as the loaded weight on a single axle measured at the tire-ground interfaces.

GAWR, as it has been interpreted by this agency in response to questions from interested persons, is intended to reflect the load carrying capacity of the axle system, and not necessarily the actual load that they may be imposed on an axle system by a vehicle in use. The capacity should normally be at least equal to the imposed load, of course, but it may exceed the imposed load to any extent desired by the vehicle manufacturer.

In order to express this intent more clearly, the definition of "Gross axle weight rating" in 49 CFR § 571.3, Definitions, is hereby amended.

Effective date: February 12, 1972.

Since this amendment is interpretative in nature, and reflects current understanding and practice, it is found for good cause that notice and public procedure thereon are unnecessary, and that an immediate effective date is in the public interest.

This amendment is issued under the authority of sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1392, 1407, and the delegation of authority at 49 CFR 1.51.

Issued on February 8, 1972.

Douglas W. Toms
Administrator

37 F.R. 3185
February 12, 1972

PREAMBLE TO AMENDMENT TO PART 571

Subpart A—General

"Definitions"

This notice extends the applicability of the definitions used in the Federal Motor Vehicle Safety Standards to other regulations contained in Chapter V of Title 49, Code of Federal Regulations, and deletes the definitions of "Gross axle weight rating" and "Gross vehicle weight rating" from the regulations governing vehicles manufactured in two or more stages.

49 CFR 571.3(b) contains the definitions used in the Federal Motor Vehicle Safety Standards. Some of the regulations other than standards contain their own definition sections defining terms unique to the regulation, and otherwise incorporating by reference the definitions of Part 571. An example of this is the definition section in the Certification Regulation, 49 CFR 567.3: "All terms that are defined in the Act and the rules and standards issued under its authority are used as defined therein." However, there is no reverse applicability of 49 CFR 571.3(b), which applies only to terms "as used in this part." One result has been that duplicate definitions appear in certain regulations, specifically, the identical definitions of "Gross axle weight rating" and "Gross vehicle weight rating" found in both Part 571 and the regulation on Vehicles Manufactured in Two or More Stages, Part 568. To prevent unnecessary duplication and the possibility of confusion in the future, the Administration has determined that the definitions used in Part 571 should apply to all regulations in Chapter V, and also that Part 568 should be amended by deleting the definitions of "Gross axle weight rating" and "Gross vehicle weight rating." In consideration of the foregoing 49 CFR 571.3(b) is amended...

Effective date: June 1, 1972. Since this amendment is administrative and interpretive in nature and imposes no additional burden upon any person, notice and public procedure thereon is unnecessary and it may be made effective in less than 30 days after publication in the *Federal Register*.

This notice is issued under the authority of section 103 and 119 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1392, 1407), and the delegation of authority from the Secretary of Transportation to the National Highway Traffic Safety Administration 49 CFR 1.51.

Issued on May 9, 1972.

Douglas W. Toms
Administrator

37 F.R. 10938
June 1, 1972

PREAMBLE TO AMENDMENT TO PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Subpart A—General

This notice deletes the definition of "Occupant" from the general definitions applicable to the Federal motor vehicle standards.

At present, "Occupant" is defined in § 571.3 Definitions, (applicable to all standards) as "a person or manikin seated in the vehicle, and, unless otherwise specified in an individual standard, having the dimensions and weight of the 95th percentile adult male." However, where the word "occupant" is used in this chapter, the weight has generally been specified if it is a necessary part of the requirement. Thus, the definition is superfluous. Moreover, in instances where the use of a weight other than that of a 95th percentile male is assumed, the definition could be misleading.

Since this amendment is clarifying and interpretative in nature, and does not affect any requirements, notice and public procedure thereon are found to be unnecessary.

Accordingly, 49 CFR § 571.3(b) is hereby amended by deleting the definition of "occupant".

Effective date: April 1, 1973.

(Sec. 103, 119, Pub. L. 89–563, 80 Stat. 718, 15 U.S.C. 1392, 1407; delegation of authority at 49 CFR 1.51.)

Issued on February 23, 1973.

Douglas W. Toms
Administrator

38 F.R. 5636
March 2, 1973

PREAMBLE TO AMENDMENT TO PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Subpart A—General

This notice amends the Federal Motor Vehicle Safety Standards, 49 CFR Part 571, by removing the general provision excepting motor vehicles of 1,000 pounds or less curb weight other than trailers and motorcycles (hereafter referred to as "lightweight vehicles") from the applicability of the safety standards.

The NHTSA published a notice of proposed rule making on August 16, 1972 (37 F.R. 16553) proposing that the motor vehicle safety standards apply to all vehicles regardless of weight. Comments generally favored the proposal. Those who opposed the proposal expressed concern that standards compliance would hinder development of small urban vehicles. It was recommended that different performance requirements be adopted for lightweight passenger cars in some areas of the standards, such as those related to structural crashworthiness. One commenter requested that exemption not be discontinued, but be made available for vehicles with a curb weight of up to 1500 pounds.

The NHTSA has determined that the general exception of lightweight vehicles from conformity with the standards can no longer be justified, and is hereby amending 49 CFR § 571.7(a) to remove it. In so doing, it is mindful of the potential effect of this action upon the development of small, economical vehicles. As it observed in the notice:

> "It remains true that vehicles in this weight class have inherent disadvantages in meeting standards requiring, for example, structural strength or considerable crush distance. Many other important standards, on the other hand, such as those on lighting, braking, and glazing, should be attainable by lightweight vehicles virtually as easily as by heavier ones. It thus appears in the public interest to consider the needs and problems of lightweight vehicles on a standard-by-standard basis (as is presently done in the case of heavy vehicles, which receive differential treatment in several standards), rather than by an across-the-board exception."

A manufacturer has the option of petitioning for amendment of any standard it feels is impracticable or inappropriate for lightweight vehicles. Alternatively, it may be eligible to petition for temporary exemption from one or more standards upon one of the bases provided in Section 123 of the National Traffic and Motor Vehicle Safety Act (Pub. L. 92–548).

An additional comment concerned the inequity in treatment between three- and four-wheeled vehicles, the former categorized as "motorcycles" for purposes of the standards and required to comply with fewer standards. By a separate notice published today (38 F.R. 12818) the NHTSA is seeking to correct this inequity by proposing a redefinition of "motorcycle" which would exclude most three-wheeled vehicles.

In consideration of the foregoing, 49 CFR 571.7(a) is revised. . . .

Effective date: January 1, 1974.

(Sec. 103, 119, Pub. L. 89–563, 80 Stat. 718, 15 U.S.C. 1392, 1407; delegation of authority at 38 F.R. 12147).

Issued on May 10, 1973.

James E. Wilson
Associate Administrator
Traffic Safety Programs

38 F.R. 12808
May 16, 1973

PREAMBLE TO AMENDMENT TO PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Subpart A—General

(Docket No. 73-12; Notice 2)

This notice amends 49 CFR 571.3(b), Definitions, of the Federal motor vehicle safety standards, by revising the definition of "motorcycle".

The NHTSA proposed in the *Federal Register* on May 16, 1973 (38 F.R. 12818) that a "motorcycle" be defined as a "two-wheeled motor vehicle with motive power, or a three-wheeled motor vehicle with motive power and without a full or partial passenger enclosure".

Interested persons have been afforded an opportunity to participate in the making of this amendment and due consideration has been given to all comments received in response to the notice, insofar as they relate to matters within its scope.

The issue raised most frequently in the comments was the concern that the addition of a sidecar to a two-wheeled motorcycle would create a combination vehicle not classifiable as a "motorcycle". The NHTSA considers a sidecar to be an item of motor vehicle equipment which, when added to a two-wheeled vehicle, does not change that vehicle's original classification as a "motorcycle".

As the agency had anticipated, comments were submitted by manufacturers and potential manufacturers of three-wheeled vehicles that would be excluded from categorization as "motorcycles". These commenters generally objected to the imposition of passenger car and truck standards on their vehicles, on the grounds that these are inappropriate for low-speed lightweight vehicles. One manufacturer argued that it could not meet seating and restraint requirements. Others suggested that a special category be established for three-wheelers. To one commenter, the options of petitioning for amendment of "inappropriate" standards, or for temporary exemption from "appropriate" ones pending compliance did not appear to offer an adequate solution, arguing that it represented "a lengthy procedure with doubtful outcome".

Only one petition has been received for amendment of standards applicable to lightweight or three-wheeled vehicles, and pending its resolution no separate categories or special requirements for these vehicles have been established. Under the certification scheme imposed by the National Traffic and Motor Vehicle Safety Act, a manufacturer has the responsibility of determining whether his vehicle meets the Federal standards, and petitioning if an appropriate change appears necessary. The NHTSA believes that the goals of motor vehicle safety in this area are more likely to be realized by consideration of problems with the standards as they are raised by individual manufacturers, than by attempting to establish a comprehensive regulatory scheme for lightweight vehicles on the basis of the scanty data presently available.

The definition that NHTSA proposed was opposed on substantive grounds as well. Several commenters said the phrase "partial passenger enclosure" was ambiguous and would create problems of interpretation. It was suggested that reference be made to such characteristics of two-wheeled motorcycles as saddle seating and handlebars. The agency has decided that these comments have merit, and that a definition of "motorcycle" should emphasize features of three-wheeled vehicles to be included in the definition, rather than those to be excluded. Accordingly the definition is being adopted that three-wheeled motorcycles are those "utilizing a handlebar for steering and having a seat that is straddled by the driver".

The NHTSA considers the adoption of this amendment dispositive of recent petitions of the Motorcycle Industry Council and Cushman Motors for a redefinition of "motorcycle", and to the extent that those requests differ from the definition adopted today the petitions are denied.

In consideration of the foregoing the definition of "Motorcycle" in 49 CFR 571.3(b) is revised....

Effective date: September 1, 1974.

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718, 15 U.S.C. 1392, 1407; delegation of authority at 49 CFR 1.51)

Issued on November 19, 1973.

James B. Gregory
Administrator

38 F.R. 32580
November 27, 1973

PREAMBLE TO AMENDMENT TO PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Subpart A—General

(Docket No. 73-12; Notice 3)

This notice responds to petitions for reconsideration of the recent redefinition of "motorcycle" (38 F.R. 32580), and amends 49 CFR 571.3(b), Definitions, by revoking that redefinition. In a notice issued today, the NHTSA has proposed an amendment to 49 CFR 571.3(b) that would redefine the vehicle category "motorcycle."

In a notice published on May 16, 1973, (38 F.R. 12818) the NHTSA proposed that a "motorcycle" be defined as "a two-wheeled motor vehicle with motive power, or a three-wheeled motor vehicle with motive power and without a full or partial passenger enclosure." On the basis of comments received, on November 27, 1973, (38 F.R. 32580) 49 CFR 571.3(b) was amended, effective September 1, 1974, to define "motorcycle" as a "two-wheeled motor vehicle with motive power, a handlebar for steering, and a seat that is straddled by the driver." This definition is being revoked in light of the agency's decision to propose a new definition, leaving the original definition in force pending further rulemaking action.

Petitions for reconsideration were submitted by White Motor Corporation, EVI, Inc., Otis Elevator, and Cushman Motors, all of whom objected to the revised definition. Cushman Motors, Otis Elevator, and EVI, Inc. argued that the revised definition was inappropriate in that no safety need had been demonstrated to warrant its adoption. The NHTSA does not agree with this contention. Safety demands that the existing standards apply to vehicle types which have similar characteristics and end uses. For instance, vehicles that are used as passenger cars and whose configurations display basic passenger car characteristics should, in the interest of safety, be subject to passenger car standards.

Cushman Motors and Otis Elevator asserted that the effect of the revised definition, subjecting their three-wheeled vehicles to passenger car or truck standards, would be to force their vehicles out of production since it would be impossible for them to comply with the applicable safety standards. This issue was discussed in a notice published May 16, 1973, (38 F.R. 12808) removing the provision excepting motor vehicles of 1,000 pounds or less curb weight from the applicability of the safety standards. The NHTSA explained in that notice:

> A manufacturer has the option of petitioning for amendment of any standard it feels is impracticable or inappropriate for lightweight vehicles. Alternatively, it may be eligible to petition for temporary exemption from one or more standards upon one of the bases provided in section 123 of the National Traffic and Motor Vehicle Safety Act (Public Law 92-548).

Petitioners' most substantial objection was that the definition excluded certain vehicles whose overall configurations are closer to those of motorcycles than of passenger cars or trucks, while including others for which regulation as motorcycles appears inappropriate. Petitioners argued that the presence of a steering wheel and a bench seat would subject a lightweight, unenclosed three-wheeled vehicle to passenger car or truck requirements, regardless of other characteristics which might render it more suited to regulation as a motorcycle. They contended that the definition also had the effect of allowing fully enclosed vehicles, if equipped with handlebars and a straddle seat, to meet only the requirements applicable to motorcycles regardless of their overall similarity to a passenger car or truck.

The NHTSA has concluded that some of these arguments have merit. Three-wheeled vehicles, though low in volume of production, span a variety of types that range from vehicles virtually identical to motorcycles forward of their rear axles to those that have every characteristic of small passenger cars except for the number of wheels on the ground. The most reasonable and appropriate dividing line appears to be one based on a vehicle feature crucial to the application of conventional passenger car or truck standards—an enclosed passenger compartment. The petition from White Motor Corporation suggested a definition that would divide motorcycles from other vehicle types on the basis of a passenger enclosure above the level of the handlebars. The NHTSA has concluded that the suggestion is meritorious, and it forms the basis for the proposed redefinition published today.

Several commenters objected to the amendment on grounds that it differed from the proposal (38 F.R. 12818). In light of the fact that the redefinition is being revoked on the merits and a new definition is proposed, the NHTSA considers that issue moot.

In light of the foregoing, the definition of "motorcycle" in 49 CFR 571.3(b), *Definitions*, published November 27, 1973, (38 F.R. 32580), to be effective September 1, 1974, is hereby deleted.

Effective date: April 30, 1974. Since this action revokes an amendment that was not yet effective, it is found for good cause shown that an immediate effective date is in the public interest.

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.51.)

Issued on April 24, 1974.

James B. Gregory
Administrator

39 F.R. 15039
April 30, 1974

PREAMBLE TO AMENDMENT TO PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Subpart A—General

(Docket No. 74-27; Notice 1)

The purpose of this notice is to amend 49 CFR Part 571 by deleting § 571.11, Equivalent Demonstration Procedure, which refers to the substitution of test procedures by manufacturers for those prescribed in the safety standards.

Section 571.11, which was a part of the original procedural rules, provides that an "approved equivalent" demonstration procedure may be substituted for the testing procedure specified in a particular standard. The implication of this provision is that the manufacturer must obtain from the NHTSA approval of any testing procedures he intends to utilize that deviate from the procedures prescribed in the standards. This agency's interpretations of the National Traffic and Motor Vehicle Safety Act since the promulgation of § 571.11, however, are at variance with the requirement implied by that section.

The safety standards establish required performance levels for motor vehicles and motor vehicle equipment. The test procedures in the safety standards are simply objective ways of phrasing the performance requirements. Generally, they represent the procedures that will be followed by the agency in its compliance testing. The manufacturer is not legally obligated to follow these test procedures when determining the compliance of his products for the purposes of certification. The legal requirement is that he exercise due care in assuring himself that his product is capable of meeting the performance requirements of applicable standards when tested in the manner prescribed. He may do this by whatever means he determines to be reliable and necessary.

Accordingly, 49 CFR Part 571 is amended by deleting § 571.11, Equivalent Demonstration Procedure.

Effective date: August 7, 1974. This amendment is clarifying and interpretative in nature, and it is therefore found for good cause shown that notice and public procedure are unnecessary, and that an immediate effective date is in the public interest.

(Sec. 103, 119 Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.51.)

Issued on August 2, 1974.

James B. Gregory
Administrator

39 F.R. 28437
August 7, 1974

PREAMBLE TO AMENDMENT TO PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

(Docket No. 75–9; Notice 2)

This notice amends 49 CFR 571.7, *Applicability*, by the addition of a new paragraph to specify the conditions under which a truck assembled by combining major new components with some used components will be considered used for the purpose of the motor vehicle safety standards, associated regulations, and the National Traffic and Motor Vehicle Safety Act.

The NHTSA proposed a modification of its existing interpretation of what constitutes the manufacture of a new motor vehicle when used components from an existing vehicle are involved (40 F.R. 19485, May 5, 1975). Up to this time, the NHTSA has considered that the addition of new components (such as a truck body) to the chassis of a used vehicle does not constitute the manufacture of a new vehicle, but that the addition of used components to a new chassis which has never been certified in a vehicle constitutes the manufacture of a new vehicle, subject to the safety standards in effect for that vehicle class on the date of manufacture. This criterion has been relied on in the area of chassis-cab multistage manufacture.

Two truck manufacturers, the American Trucking Associations and the National Automobile Dealers Association, requested reconsideration of this criterion, because the high value of some components of a chassis makes their reuse feasible although the entire chassis may not be reusable. They stressed the savings to an owner in combining a "glider kit" (typically a cab, frame rails, and front suspension) and the used power train of a wrecked or badly worn vehicle instead of purchasing a complete new vehicle from a truck manufacturer. Standard No. 121, *Air Brake Systems*, has heightened the importance of the question of what constitutes a new vehicle, since bringing vehicles with pre-121 axles into conformity with the standard appears to be economically impracticable.

The NHTSA proposed a statement of what constitutes manufacture of a vehicle in these cases which agreed with the suggestions of the two petitioning manufacturers, International Harvester and White Motor Corporation. The agency considered it important that the retention of a minimum number of valuable used components be required as a justification in each case, and that retention of the identity of the used vehicle, with respect to model year and identification number, be required as evidence that the reassembly is a bona fide salvage operation, to avoid creating any undue economic incentives for evasion of Standard No. 121.

Manufacturers and users supported the clarification that permits the continued use of glider kits in combination with pre-121 rear axles, but International Harvester, Mack, PACCAR, Transpac, and the State of California objected to the second criterion that vehicles be identified as the old vehicle. The comments indicate that requiring the identity of the old vehicle to continue in the rebuilt vehicle would have real and unintended disadvantages in the area of vehicle registration by the States. As proposed by the NHTSA, the registration would reflect a vehicle identification number that would not appear on the new vehicle frame or in the new vehicle cab, with resulting difficulty in verifying the true identity of the vehicle. The external identification on the cab would, in many cases, also disagree with the vehicle identification documents. The NHTSA agrees that State registration practices to avoid this confusion should be supported

as long as the practice does not encourage the salvage of old vehicle components in order to avoid safety standards. Therefore, the NHTSA issues the provision in a form which includes only the requirement for at least two used drive train components.

Rockwell International cautioned the NHTSA against a decision that would encourage the reuse of unsafe components on the highway. The NHTSA always considers the possibility its regulations might encourage continued use of vehicles on the highway after they would normally be replaced. As in other cases, the NHTSA will monitor the effect of its decision on glider kits to ensure that their use without requiring compliance with all applicable standards does not result in a pattern of conscious avoidance of Standard No. 121 or other standards. In the event the agency should discover evidence of such abuse, it will move decisively to appropriately revise the new statement of applicability.

Oshkosh Truck Corporation and Mack Trucks, Inc., both suggested that the scope of the proposal be modified to broaden its coverage. Oshkosh concluded that because a new cab was mentioned, the provision would prohibit the use of used cabs in vehicle assembly operations. Mack believed that the term "glider kits" would better describe the rebuilding operations being described.

The NHTSA would like to make clear to Oshkosh and others that the proposed paragraph (e) is not intended to regulate all truck rebuilding operations, but only those in which so many major new components are utilized (such as a glider kit) that the vehicle is in many respects a newly-manufactured vehicle. This provision is intended to distinguish the legitimate rebuilding operation in which many new vehicle components are used from the typical assembly-line production of new vehicles. Oshkosh and other manufacturers may rebuild trucks with used components without falling under § 571.7(e).

In consideration of the foregoing, a new paragraph (e) is added to 49 CFR 571.7, *Applicability* . . . .

Effective date: October 22, 1975. Because this amendment has the effect of relaxing a requirement for the compliance of vehicles to applicable motor vehicle safety standards, it is found for good cause shown that an immediate effective date is in the public interest.

(Sec. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.51).

Issued on October 16, 1975.

Gene G. Mannella
Acting Administrator

40 F.R. 49340
October 22, 1975

PREAMBLE TO AMENDMENT TO PART 571— FEDERAL MOTOR VEHICLE SAFETY STANDARDS

(Docket No. 75–24; Notice 2)

This notice amends the definition of "school bus" that appears in 49 CFR 571.3, to conform to the mandate of the Motor Vehicle and Schoolbus Safety Amendments of 1974 (The Act), Pub. L. 93–492, by expanding the present definition used by the NHTSA in establishing safety requirements.

The NHTSA's present definition of "school bus" (49 CFR 571.3) is based on the design of the vehicle:

"School bus" means a bus designed primarily to carry children to and from school, but not including buses operated by common carriers in urban transportation of school children.

The Act included a definition of "school bus" based on its usage for transporting students, instead of its design:

(14) "schoolbus" means a passenger motor vehicle which is designed to carry more than 10 passengers in addition to the driver, and which the Secretary determines is likely to be significantly used for the purpose of transporting primary, pre-primary, or secondary school students to or from such schools or events related to such schools;

The legislative history of the Act specifically emphasizes Congress' view that the existing definition based on vehicle design is too narrow and should be expanded to include vehicles likely to be used for school student transportation. H.R. Rep. No. 93–1191, 93rd Cong., 2d Session 42 (1974):

Your Committee decided that safety regulation should reach the wide variety of passenger motor vehicles which are actually and significantly used to transport students, not merely those which are primarily designed for this purpose.

The Congressional definition directs the NHTSA (by reference to a Secretarial determination) to establish a regulatory definition that encompasses a described category of bus used for student transportation. The NHTSA subsequently proposed a definition that would accomplish the Congressional intent within the regulatory and enforcement framework of the Act (40 FR 40854, September 4, 1975):

"School bus" means a bus which is equipped to carry more than 10 passengers in addition to the driver and which is sold, or introduced, or delivered for introduction in interstate commerce, for purposes that include carrying students to and from school or related events, but does not include buses designed and sold for operation as a common carrier in urban transportation.

Comments were received from manufacturers and users of school buses (and their associations), the States of Wisconsin and Montana, the California Department of Highway Patrol (CHP), the Vehicle Equipment Safety Commission (VESC), and Mr. George Chambers. The major issue in these comments was the degree to which the proposed definition conformed to Congressional intent. The Motor Vehicle Manufacturers Association (MVMA), Chrysler Corporation, International Harvester (IH), General Motors, and the State of Montana argued that the Congressional expectation of regulating most student-carrying 11-or-more-passenger motor vehicles on the basis of anticipated use could not be reasonably effectuated under the authority of the Act.

The Act provides that "no person shall . . . manufacture for sale, sell, offer for sale, or introduce or deliver for introduction in interstate commerce . . . any motor vehicle . . . unless it is

in conformity with [applicable] standard[s]. . . ." (15 U.S.C. § 1397(a)(1)(A)). This provision authorizes placement of responsibility on a seller for compliance with standards that apply to school buses. The Congressional definition clearly directs that the likely use of the vehicle as well as its design be considered in the determination of its status as a school bus. The NHTSA remains convinced that, of all the persons in the chain of distribution who are subject to the Act, the seller is most likely to have knowledge of the likely use of the vehicle.

In essence, the NHTSA proposed that "school bus" be defined as a bus that is sold for purposes that include student transportation. Thus the determination of vehicle classification, in close cases, can be made on the basis of the sales transaction. It would not, however, be based solely on an event that occurs after sale, such as the actual use of the vehicle. The MVMA and others assumed from a reference in the proposal to the "intent" of either party that the seller would be held responsible for the unexpressed intent of the purchaser to use the vehicle for student transportation, although this purpose was unknown to the seller. This is not the case. The seller is not held responsible for more than its knowledge of the purpose of the sale. If the seller has reason to believe that a vehicle will be used for student transportation, it can easily ascertain intended use by requesting a written statement of purpose from the purchaser.

The MVMA suggested that "school bus" be defined as a bus that is equipped for the purpose of carrying primary, pre-primary, or secondary school students to or from schools or related events. This definition falls short of the Congressional mandate to cover vehicles that are "likely to be significantly used for the purpose of transporting . . . students". For example, all buses purchased for more than a single purpose (e.g., student and faculty transportation) would be excluded from the definition and from coverage by the standards. Also the criterion "equipped for the purpose" of student transportation does not make clear what equipment (e.g., warning lights, school bus seating) would be determinative of the purpose. General Motors' suggested "designed or equipped for the purpose" is also vague as to the meaning of what element of design or equipment would be determinative of the vehicle's classification.

General Motors and Wayne Corporation implied that it is unreasonable to hold manufacturers responsible for what happens to a vehicle in the hands of dealers. There is no intent to do this, however. A manufacturer or other entity in the chain of distribution is only to be held responsible for what it knows. If a vehicle is originally produced as a non-school vehicle (a van-type multipurpose passenger vehicle (MPV), for example), and subsequently is sold by a dealer for school transportation purposes, it is the dealer who will be held for any non-compliance with school bus standards, not the manufacturer. Actually, final-stage manufacturers (in some cases dealers) have always undertaken modification of tracks and MPV's that result in different requirements from the factory installation. This responsibility has not created an impossible burden on the original manufacturer.

Wayne suggested that "school bus" be defined to mean only those vehicles that a user or regulatory authority designates as a school bus by use of exterior identification such as a label or distinctive lighting or color. This criterion, like MVMA's, falls short of Congress' evident interest in any vehicle likely to be significantly used for student transportation. Evidently vehicles operated by private schools are not, in many cases, given the exterior identification markings suggested by Wayne.

In conforming its proposal to the Congressional definition, the NHTSA limited "school bus" to a bus that carries at least 11 passengers in addition to the driver. Based on comments received from Wayne and CHP, it appears that the definition should be expanded slightly to include buses that carry 10 passengers. This eliminates a departure from previous NHTSA vehicle categorization that classifies vehicles with 10 or fewer occupant seating positions as MPV's or passenger cars and vehicles with 11 or more seating positions as buses. To adhere strictly to the Congressional definition would leave the small group of vehicles that transport 10 students without coverage under either the school bus, the MPV, or the passenger car standards.

Some commenters incorrectly assumed that the Congressional definition of "school bus" established an outer limit on the NHTSA's authority to regulate vehicles that transport students as such. To the contrary, the Congressional definition is a direction to the NHTSA that the new standards in this area must not be applied to a narrower category of vehicle. As long as that direction of Congress is satisfied, the NHTSA is, however, authorized to decide the scope of its standards, and in this case to expand on the Congressional definition to implement the mandate effectively.

In response to Mr. George Chambers' concern that the NHTSA definition is too broad, the NHTSA considers it reasonable to regulate all buses significantly used for transportation of students to and from all schools and related events, not just pre-primary, primary, and secondary schools. The NHTSA concludes that its rewording of the Act's "schools or events related to such schools" as "schools or related events" does not contradict Congressional direction.

Wayne and the National School Transportation Association (NSTA) suggested that buses used in urban transportation must be included in the definition of "school bus" because they are used in some circumstances to transport students to and from school. It is true that the phrase "likely to be significantly used for the purpose of transporting . . . students to or from . . . schools" could arguably be considered to cover transit buses on regular common-carrier routes. Such buses have been explicitly excluded from the NHTSA's definition for several years, however. In light of the major standard-setting activity mandated by Congress in the Act, it is unlikely that such a broad change of regulatory direction would be contemplated by Congress without explicit discussion at some point in the legislative history. The legislative history contains no indication of such a Congressional intent, and this agency therefore concludes that such coverage was not intended. The boundaries of coverage are explicitly left by the statute to agency determination. In light of the purposes for which the school bus standards are being developed, their expected costs and benefits, and the modes of use of transit buses, the NHTSA has concluded that the continued exclusion of buses designed and sold for operation as common carriers in urban transportation is in the public interest.

Mr. George Chambers suggested that limiting the exclusion of transit-type buses to those in urban areas appeared to be illogical. The NHTSA has satisfactorily used this limit for several years, and no problems have developed. If difficulties should appear in the future, further modification of the definition will be considered.

The MVMA and General Motors suggested that the existing description of transit-type buses ("operated" as a common carrier) more simply describes the excluded class than NHTSA's proposed language ("designed and sold"). By limiting the exclusion to buses designed and sold for use as common carriers, the definition conforms to the areas (design and sale) over which the agency has jurisdiction under the statute.

Wayne and the States of Wisconsin and Montana questioned the wisdom of limiting the definition to buses (10 passengers or more), when some school vehicles for handicapped students are equipped for fewer than 10 passengers and would not be required to meet the standards. The NHTSA has carefully considered extension of school bus standards to vehicles other than buses, but concludes that the standards in question have been developed for vehicles with bus seating and loading characteristics. For example, the proposed bus passenger seating and crash protection standard is calculated for cab-chassis- and van-type vehicles with seating for 10 passengers or more.

The VESC asked that only buses primarily used for transportation of students be considered school buses, so that buses used primarily for other purposes would not be able to display the distinctive school bus markings or be used to transport students after their systems had deteriorated in some more abusive use. The agency views the Congressional emphasis on "significant" use of a vehicle as a direction to extend the school bus standards to all buses that transport students, whether or not it is their primary purpose. For the same reason, the NHTSA does not agree with Blue Bird Body Company's opinion that "activity" buses should be excluded from the Congressionally-mandated standards.

It appears that Congress intended all the school bus standards to apply to buses that carry students to or from events related to their schools.

The definition basically relies on the sales transaction for determination of a vehicle's status. In some cases vehicles are leased for the purpose of transporting students, and it is for this reason that the definition refers to "introduction in interstate commerce" as well as sale. The description of this "no-sale" event has been simplified somewhat in response to the comments.

The California Department of Highway Patrol asked whether motor vehicles with a capacity of less than 11 occupants (12 as proposed) that transport students are preempted from regulation by the States as school buses. The answer is no. Since motor vehicles with a capacity of fewer than 11 occupants are not regulated as school buses by the NHTSA, State school bus regulations, to the extent that they apply to such smaller vehicles, would not be preempted by the NHTSA school bus standards. For instance, brake systems of MPV's are not regulated by the NHTSA and may be governed by State regulations. Of course, State regulations may not conflict with standards applicable to these vehicles as passenger cars or MPV's.

The State of Montana believed that the definitions of Type I and Type II school buses would be affected by this redefinition. In fact neither the present definition nor the new definition conflict with State or Highway Safety Standard definitions (such as the Pupil Transportation Standard No. 17) that regulate the operation of the vehicle, so long as those operational regulations do not dictate the design and performance of the vehicle to the degree that it is subject to a safety standard.

In consideration of the foregoing, the definition of "school bus" in Title 49 of the Code of Federal Regulations (49 CFR § 571.3) is amended . . . .

Effective date: October 27, 1976.

(Sec. 102, 103, 119, Pub. L. 89–563, 80 Stat. 718, as amended by Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1391, 1392, 1407); delegation of authority at 49 CFR 1.50)

Issued on December 23, 1975.

James B. Gregory
Administrator

December 31, 1975
40 F.R. 60033

PREAMBLE TO AMENDMENT TO PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

(Docket No. 75–9; Notice 4)

This notice amends section 571.7 of Title 49 of the Code of Federal Regulations by adding a new paragraph that specifies the conditions under which a trailer assembled from new and used components will be considered used for the purposes of the motor vehicle safety standards, associated regulations, and the National Traffic and Motor Vehicle Safety Act.

The National Highway Traffic Safety Administration (NHTSA) proposed the new paragraph (40 F.R. 58154, December 15, 1975) in response to petitions from two trailer manufacturers to modify the existing NHTSA opinion of what constitutes the "manufacture" of a motor vehicle under the National Traffic and Motor Vehicle Safety Act (the Act) (15 U.S.C. § 1381, et seq.). The Act authorizes the issuance of motor vehicle safety standards and prohibits, among other things, the manufacture of a motor vehicle on or after the date any applicable standard takes effect unless the vehicle conforms to the standard, and is so certified (15 U.S.C. §§ 1397 (a) (1) (A), 1403). Until now, the agency generally has distinguished "manufacture" from rebuilding by requiring retention of at least the chassis to constitute a rebuilding operation. In the case of trailers, the chassis consists of the running gear and main frame members.

A running gear asembly is the axle or axles, wheels, suspension and related components that support the frame and upper portions of the trailer. Since implementation of Standard No. 121, *Air Brake Systems* (which applies to the manufacture of most air-braked trailers), it has been impractical to certify a trailer manufactured from new components and a used running gear, because the used running gear is not designed to satisfy the requirements of the standard. Because many trailers do not have distinct "main frame members," rebuilding without recertification also has been difficult. Recently the NHTSA eased the requirements for rebuilding trucks by an amendment that permits the use of "glider kits" in truck assembly without recertification under most circumstances.

With a view to further reducing the costs of Standard No. 121 without compromising safety, the agency tentatively concluded that reuse of trailer running gear assemblies was justified to the degree that they were reutilized in the past. To safeguard against evasion of the safety standards, the agency proposed an 8-year limit on the use of running gear assemblies for rebuilding operations. Additionally, it was proposed that a rebuilt trailer must be sold to the original owner under its original identity to prevent large-scale evasion of the standard by parties who might attempt to recycle old, unreliable equipment that would normally be junked.

The comments filed by trailer manufacturers and users uniformly supported the general nature of the revision. The Truck Trailer Manufacturers Association (TTMA) disagreed with the proposal, arguing that the agency's restriction on rebuilding should be somewhat stricter concerning increases in volumetric capacity (stretching) tank trailers. Fruehauf Corporation suggested a 4-year limit on rebuilding while others suggested a 10- or 12-year limit. Atlantic Container Line recommended a 15-year limit. The American Trucking Associations (ATA) considered the 8-year limit and the requirement for retained identity to be unworkable in view of current industry practices. Several commenters suggested a limit on rebuilding based on a percentage of the value of a comparable new trailer. Firestone stated that an 8-year limit on reuse of wheels and rims had no basis in safety. The

National Motor Vehicle Safety Advisory Council did not take a position on the proposal.

The Agency has considered each of the comments and concludes that trailer rebuilding can be somewhat expanded without interfering with the mandate of the Act that each vehicle "manufactured" on or after the effective date of an applicable standard must comply with it and be so certified. The cautionary approach of the TTMA appears to be limited to the potential hazards of increasing volumetric capacity of tank trailers, particularly those hauling hazardous materials. The NHTSA is not advocating unsafe rebuilding of truck trailers by this amendment, and relies on regulations of the Department of Transportation's Bureau of Motor Carrier Safety and Office of Hazardous Materials (49 CFR Parts 177, 178, 397) to specifically address safety of tank-type highway vehicles.

The agency proposed an 8-year limit on the rebuilding of trailers to prevent significant evasion of applicable safety standards by repeated reuse of a running gear assembly. The 8-year limit was suggested by the trailer manufacturer that petitioned for the proposed change. Comments generally stressed the difficulty in establishing a realistic approximation of trailer life, particularly in the case of "piggyback" or container chassis trailers where yearly highway mileage is low.

Practices for rebuilding trailers vary so significantly that the agency concludes that an age limit would not permit the legitimate reutilization of running gear assemblies that existed prior to the implementation of Standard 121. Therefore, the agency has withdrawn the age criterion for reuse of running gear assemblies.

The ATA along with a number of trucking companies such as Interway Corporation, Glendenning, and I&S McDaniel objected to the proposed requirement that the reassembled vehicle keep the identity of the vehicle from which the running gear was taken. Glendenning claims that such would restrict a user's flexibility to meet existing needs. I&S McDaniel said such a criterion would greatly reduce its flexibility in rebuilding trailers to different specifications. The Interway Corp. pointed out the warranty, parts replacement, and repair problems associated with maintaining a trailer rebuilt by one company but identified as being built by another company.

The agency has considered the problems of maintaining every aspect of vehicle identity in the process of rebuilding. It is concluded that the requirement for use of the identification number of the existing vehicle in the reassembled vehicle will alone serve adequately to prevent avoidance of manufacturing responsibilities for newly manufactured vehicles. Therefore, the requirement for retention of identity is withdrawn with the exception of a requirement for continued use of the trailer's Vehicle Identification Number.

The third proposed restriction on rebuilding would require that the owner or lessor of the existing trailer also be the owner or lessor of the rebuilt trailer. The owner or lessor of the trailer in this case is the party who utilizes the trailer in its own operations and not someone who has bought the trailer simply to have it rebuilt for sale. Little comment was received on this restriction, and it appears to accord with the economic considerations underlying trailer rebuilding. Therefore, the restriction is made final as proposed. The agency considers that this limit and the requirement to continue a vehicle's VIN should adequately discourage rebuilding simply to avoid safety standards. The NHTSA can monitor the amount of rebuilding by means of its investigative authority under § 112 of the Act (15 U.S.C. § 1401) and can take action if evasion of the standards occurs.

Firestone Corporation assumed that the effect of the change would be that trailer rims and wheels could only be used for the period of the proposed restriction, and that the agency might be advocating reuse of wheels and rims for 8 years whatever their condition. Actually, the agency in no way intends to modify safe maintenance and operation practices by its action. Substitution of new components or reuse of old components is not advocated or discouraged by this action. In response to several suggestions that "frame attachment components" should not be mentioned in the description of a running gear assembly for fear that persons might reuse damaged attachment hardware, the reference has been deleted.

In accordance with recently-enunciated Department of Transportation policy encouraging adequate analysis of the costs and other consequences of regulatory actions (41 F.R. 16201, April 16, 1976), the NHTSA herewith publishes its evaluation of the economic and other consequences of this proposal on the public and private sectors, including possible loss of safety benefits. In this case the change permits trailer users to continue their present practice of utilizing useable running gear in rebuilding of their trailers. It is therefore calculated that there are no new costs to the trucking industry associated with the change. It is anticipated that the benefits derived from the new braking systems will be delayed in the case of rebuilt trailers for a limited period.

In consideration of the foregoing, a new paragraph (f) is added to 49 CFR 571.7 *Applicability.*

Effective date: July 1, 1976. Because this amendment creates no additional requirement for any person, and to permit trailer rebuilding in cases where it has been impractical in the past, it is found that an immediate effective date is in the public interest.

(Sec. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50).

Issued on June 23, 1976.

Acting Administrator
Robert L. Carter

41 F.R. 27073
July 1, 1976

PREAMBLE TO AMENDMENT TO PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

This amendment updates the addresses given for the Society of Automotive Engineers, Inc., and the United States of America Standards Institute in § 571.5 of 49 CFR Part 571.

Since this amendment is for the purpose of correcting inaccurate addresses and does not affect any substantive rights, notice and public procedure are not required and the amendment is made effective upon issuance.

In consideration of the foregoing, § 571.5 of Title 49 of the Code of Federal Regulations (49 CFR 571) is amended in part. . . .

Effective date: December 2, 1976.

(Sec. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on November 24, 1976.

Robert L. Carter
Associate Administrator
Motor Vehicle Programs

41. F.R. 52880
December 2, 1976

PREAMBLE TO AMENDMENT TO PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

DEFINITIONS

(Docket No. 78–06; Notice 1)

This notice amends the general definitions section of Part 571 (49 CFR Part 571.3) by adding the definitions of "speed attainable in 1 mile" and "speed attainable in 2 miles." These definitions are currently contained in several motor vehicle safety standards. Since the terms are used in the requirements of more than one standard, it is appropriate to define them in the general definitional section which applies to all safety standards in Part 571.

Effective Date: March 9, 1978.

For further information contact:

Kathleen DeMeter, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington D.C. 20590 (202–426–1834).

Supplementary Information: Part 571.3 of Title 49, Code of Federal Regulations, contains definitions of terms used in the various motor vehicle safety standards. Many safety standards also contain their own definitional section which defines terms used only in the particular standard. When a term is used in more than a single standard, it is appropriate that its definition be relocated in the generally applicable Part 571.3 definitions section. This eliminates the need to republish the definition of a particular term in each standard in which the term is used.

The terms "speed attainable in 1 mile" and "speed attainable in 2 miles" are each defined in more than one safety standard. For the aforementioned reasons, this notice deletes the definitions of the terms from the standards in which they appear and adds them to 571.3. Accordingly, 49 CFR Part 571 is amended:

(Sec. 102, 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1391, 1392, 1407); delegation of authority at 49 CFR 1.50.)

Issued on February 28, 1978.

Joan Claybrook
Administrator

43 F.R. 9606
March 9, 1978

PREAMBLE TO AMENDMENT TO PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

DEFINITIONS

(Docket No. 78–02; Notice 1)

This notice is an interpretative amendment of the agency's definition of "unloaded vehicle weight." It grants petitions from several manufacturers asking the agency to amend the definition of this term to reflect an existing agency interpretation concerning the definition.

Effective Date: March 9, 1978.

For further information contact:

Mr. William Smith, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–426–2242).

Supplementary Information: This notice amends Title 49, Code of Federal Regulations, Part 571.3 by clarifying the meaning of "unloaded vehicle weight." "Unloaded vehicle weight" is currently defined as "the weight of a vehicle with maximum capacity of all fluids necessary for operation of the vehicle, but without cargo or occupants."

In July 1976, the NHTSA issued a letter of interpretation in response to a request from the Jeep Corporation concerning the definition of "unloaded vehicle weight." In that interpretation, the agency stated that the unloaded weight of a vehicle does not include the weight of those accessories that are ordinarily removed from a vehicle when they are not in use.

The Chrysler Corporation and the Truck Body and Equipment Association (TBEA) subsequently petitioned the NHTSA to amend the definition of "unloaded vehicle weight" to reflect the existing agency interpretation. Further, TBEA and Chrysler requested an even broader classification of the accessories whose weight would not be included in the computation of "unloaded vehicle weight." Chrysler and TBEA asked that the weight of accessories which are not normally removed from a vehicle when they are not in use also be excluded from the computation of "unloaded vehicle weight." The agency granted the petitions to amend the definition to reflect the existing agency interpretation but denied the portions of both petitions requesting an extension of that interpretation.

The agency has interpreted "unloaded vehicle weight" as excluding the weight of accessories ordinarily removed from a vehicle when they are not in use in order to approximate more closely the actual unloaded weight of a vehicle. The type of equipment or accessories not to be included in computing "unloaded vehicle weight" includes: snow plows, spreaders, and tow bars, among others.

To codify the existing agency interpretation, the definition of "unloaded vehicle weight" in 49 CFR Part 571.3, definitions is hereby amended. . . .

Since this amendment is interpretative in nature, and reflects current understanding and practice, it is found for good cause that notice and public procedures thereon are unnecessary, and that an immediate effective date is in the public interest.

The principle author of this notice is Roger Tilton of the Office of Chief Counsel.

(Secs. 103 and 109, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50.)

Issued on March 1, 1978.

Joan Claybrook
Administrator

43 F.R. 9605
March 9, 1978

PREAMBLE TO AMENDMENT TO PART 571
FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Subpart A—General

(Docket No. 78–13; Notice 2)

Action: Final rule.

Summary: The purpose of this notice is to amend the definition of "designated seating position" (49 CFR 571.3) to clarify that the term includes any position likely to be used for seating accommodation while the vehicle is in motion. This amendment is based on a notice of proposed rulemaking issued September 21, 1978 (43 FR 44556). Dimensional parameters are specified in the amended definition to ensure proper and consistent designations of seating positions. This clarification is intended to ensure that all positions likely to be used for seating accommodation will be equipped with occupant restraint systems for the protection of the persons using those positions and to ensure that vehicles are safely designed to accommodate their actual occupant capacity.

Effective date: September 1, 1980.

Addresses: Any petitions for reconsideration should refer to the docket number and notice number and be submitted to: Docket Section, Room 5108—Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

For further information contact:

Guy Hunter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202–426–2265).

Supplementary information: Safety Standard No. 208 (49 CFR 571.208) requires manufacturers to provide occupant crash protection for each "designated seating position" in motor vehicles. That term is defined in 49 CFR 571.3 as:

> "[A]ny plan view location intended by the manufacturer to provide seating accommodation while the vehicle is in motion, for a person at least as large as a fifth percentile adult female, except auxiliary seating accommodations such as temporary or folding jump seats."

(Note: "plan view" means an overhead view looking down)

Last year, the NHTSA published a notification to vehicle manufacturers concerning the agency's interpretation of the term "designated seating position", because of concern that certain recent vehicle models have improperly designated seating capacities (43 FR 21893, May 22, 1978). The front or rear seats in these models have been designated by their manufacturers as having only two seating positions even though the seats are clearly capable of accommodating three adult occupants and are being so used. This, of course, represents a safety threat to the center-seat passenger since no restraint system is provided. These designations are not only improper but also inconsistent with other designations because the manufacturers designate other models with equivalent seating space as having three positions and provide three sets of restraint systems.

The earlier notification emphasized that although it is the manufacturer which designates the number of seating positions under the current definition, the manufacturer's intent will be determined by the agency on the basis of all facts and his declarations of intent will not be accepted by the agency if they are inconsistent with the

actual vehicle design. NHTSA letters of interpretation have always emphasized that the manufacturer's designation must be made in good faith and must conform to the basic policies and tenor of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381, *et seq.*).

Manufacturers' comments to the notification led the agency to issue a proposal to amend the definition of "designated seating position" to provide an adequate number of occupant restraints, to secure greater consistency in the seating capacity designations by the manufacturers, and to assure consumers contemplating buying a new vehicle that comparable vehicle sizes are similarly designated (43 FR 44556, September 28, 1978). As pointed out in the proposal, an investigation of the criteria used by manufacturers to designate seating capacities of current models indicates that manufacturers' designations often involve many purely marketing considerations. The proposal cited the example of one manufacturer that stated to the agency it changed the front and rear seating configuration on one of its models from 3 front–2 back to 2 front/3 back (number of positions) because competitive cars with similar dimensions for front-seat shoulder and hip room were being designated with only two front seat positions. This designation change was made even though the front and rear seats remained virtually the same in terms of available seating space.

Manufacturers have pointed to seat width, hip room, shoulder room, leg room, seat trim and seat padding among other things to demonstrate their "intent" concerning the number of positions that should be used for seating accommodation. For example, even though a particular model might have sufficient hip room for three adult passengers, the manufacturer points to seat trim and lack of comparable padding in the center position as evidence that the manufacturer does not intend for that position to be used. As noted in the proposal, however, this reasoning does not take into account the realities of the vehicle's actual use and what the manufacturer can expect if he has provided sufficient room for a third passenger, even if the center position is not as comfortable as the two outside seat positions. If there is sufficient space on a bench or split bench seat for a center seat passenger, and no rigid obstruction such as a console, it must be said that the manufacturer "intended" that space to be used as a seating position, since the center position will likely be used by a substantial number of persons.

In order to clarify the existing definition of "designated seating position" and to codify the agency's interpretations of that definition, the previous notice proposed to amend the definition as follows to remove reference to the manufacturer's "intent" and to specify dimensional criteria to assure proper and consistent designations of seating capacity:

> " 'Designated seating position' means any plan view location capable of accommodating a person at least as large as a 5th percentile adult female, if the overall seat configuration and design and vehicle design is such that the position is likely to be used as a seating position while the vehicle is in motion, except for auxiliary seating accommodations such as temporary or folding jump seats. Any bench or split-bench seat in a passenger car, truck, or multipurpose passenger vehicle with a GVWR less than 10,000 pounds, having greater than 50 inches of hip space shall have not less than three designated seating positions."

The agency has analyzed and given due consideration to the twenty-one comments that were received from interested persons concerning the proposed amendment of "designated seating position". All comments have been considered. Several modifications of the amended definition have been made in response to those comments. The great majority of comments did not disagree with the intended purpose of the proposed amendment. For example, General Motors Corporation stated that it does not oppose the concept that a vehicle manufacturer should provide occupant restraint systems for persons who use the seating accommodations provided in the vehicle.

American Motors Corporation did question the need for a revision of the definition and stated that the proposal contained "only unsubstantiated allegations of improper designation of seating positions". In response to this comment, the agency is placing in the public docket a copy of the Motor Vehicle Manufacturers Association

specifications for various 1978 and 1979 model vehicles. These data list vehicle models and specify their hip-room and the number of positions currently designated by manufacturers. These specifications demonstrate the inconsistencies in many current designations and illustrate that bench and split-bench seats in some vehicle models have only two designated seating positions even though a similar vehicle model of the same make has three designated positions with less seating space.

Neither American Motors nor any other commenter refuted the fact that there are many vehicle models with usable center seats that are not designated as "seating positions". However, American Motors charged that the proposal only contained "baseless assertions of the NHTSA's perception of real-world uses of center front seating positions". It is the NHTSA's position that every center seating position that is likely to be used should be equipped with a restraint system regardless of the overall statistical rate of use of center positions, since every potential occupant should be afforded protection in the event of a vehicle crash. The existing definition of "designated seating position" is based on this premise. The agency is, however, placing copies of vehicle accident statistics in the docket which show that the number of center-seat passengers in motor vehicles and the number of center-seat fatalities and injuries is substantial. Data from the NHTSA's Fatal Accident Reporting System show that in 1977, 588 front center-seat passengers and 365 rear center-seat passengers were killed in vehicle accidents. Further, the use rate of center-seat positions will be affected by the future design of vehicles. Therefore, the clarified definition of "designated seating position" will ensure that future designs do not encourage center-seat use unless occupant crash protection is afforded those positions.

While the majority of comments agreed with the concept of the proposed change, there were numerous complaints about the language of the proposed definition. Several commenters objected to the phrase, "the position is likely to be used as a seating position", arguing that the word "likely" is subjective. Holiday Rambler Corporation stated that neither the manufacturer nor NHTSA can reasonably anticipate where occupants of a vehicle are likely to sit while the vehicle is in motion, as vehicles are often subject to misuse or abuse by their occupants. Other commenters stated that manufacturers would not be certain their determination of "likely use" would be the same as the agency's determination.

The agency does not agree that the definition is subjective, since the definition does not only provide that any position likely to be used is a designated seating position, it also provides the criteria for making that determination. Those criteria relate to vehicle design and the overall seat configuration. Further, the amended definition is more objective than the existing definition which is based on manufacturer's intent, which has not given rise to any complaints of subjectivity. NHTSA interpretations have emphasized that "intent" does not mean that manufacturers have "carte blanche" to designate seating capacities, but rather, that the manufacturer's intent is determined by the seat configuration and vehicle design.

International Harvester suggested that the word "likely" be dropped from the definition and that the phrase "*is* to be used as a seating position" be substituted. The agency does not believe this would be a meaningful change, however, since the manufacturer's determination would still be based on the particular vehicle design and seat configuration. Further, the word "likely" indicates that the use must be more than minimal or chance use. As noted by General Motors, Webster's New World Dictionary defines the word "likely" to mean probable or fairly certain. In response to Holiday Rambler's comment, the agency notes that the word "likely" relieves manufacturers of the responsibility of providing for abusive or unorthodox use of a particular position in a motor vehicle. For example, people would not "likely" sit on a rigid console even though a few individuals might misuse this position from time to time. Under the definition, a manufacturer would not be required to consider the console as a designated seating position.

General Motors suggested that the same phrase be changed to read, "Likely to be used by a substantial number of people". However, the agency believes that such a change is unnecessary for

the reasons set forth in the immediately preceding paragraph.

Rover Triumph recommended that the phrase be changed to read, "any plan view location provided with an upholstered seat and backrest capable of accommodating a person at least as large as a 5th percentile adult female". The agency believes that such a change would be unduly stringent, however, since the overall vehicle design would not be considered in determining designated seating capacity under such a definition. There may be some locations capable of accommodating a 5th percentile female that are not likely to be used because of the overall vehicle design (a protruding dash board at the center position, for example). The agency has concluded that any definition of "designated seating position" must necessarily be subjective to a certain extent, to avoid being too restrictive or harsh on manufacturers.

The proposed definition change of "designated seating position" included the following caveat to ensure proper and consistent designations of seating capacity:

> ". . . Any bench or split-bench seat in a passenger car, truck or multipurpose passenger vehicle with a GVWR less than 10,000 pounds, having greater than 50 inches of hip space shall have not less than three designated seating positions."

There were numerous comments concerning this caveat. Nissan, Toyota, Toyo Kogyo, and Mercedes-Benz pointed out that the caveat specifies no procedure for measuring hip room, and suggested that the SAE Standard J1100(a) procedure be used. The NHTSA agrees that a procedure should be specified and intended for the measurement to be according to the SAE Standard J1100(a). This is the same procedure used in the regulations of the Environmental Protection Agency for providing fuel economy information for comparable vehicles. Accordingly, that procedure is included in the caveat as set forth in this notice. Also, in response to a comment by General Motors the phrase "hip space" is changed to read "hip room", to correspond with the language of SAE Standard J1100(a).

Many commenters stated that "hip room" should not be the only determinative factor in the caveat. Commenters argued that shoulder room, leg room, head clearance, and other factors should also be considered in determining the number of designated seating positions on a bench or split-bench seat. Ford Motor Company stated that hip room is not as useful a decriptor as shoulder room in determining the number of positions that can be used. Ford stated that a hip room of 51.1 inches and a shoulder room of 53.8 inches are required to seat side-by-side three persons of randomly selected sizes at least 50 percent of the time. Volkswagen and Toyota also disagreed with the hip-room criteria and argued that the driver must be afforded more room for safe and comfortable operation of the vehicle than is provided if a 50-inch hip room criteria is used without also specifying shoulder room.

The NHTSA agrees that shoulder room, leg room, and head clearance are factors which may influence the number of persons who will use a bench or split-bench seat. However, the agency has concluded that hip room is the primary factor that determines the number of persons who will likely use a seat. Also, data obtained from the Motor Vehicle Manufacturers Association indicates that the vast majority of vehicles have more shoulder room than hip room. Thus, a vehicle that has 50 inches of hip room will nearly always have at least 50 inches of shoulder room and in all probability more than 50 inches of shoulder room. The shoulder width of a 5th percentile adult female is 15.7 inches. Therefore, three occupants of that size could easily sit abreast on a bench or split-bench seat having only 50 inches of shoulder room. In setting the hip-room criteria in the proposed definition, the agency used the dimension that is approximately three times the width of a 16.5-inch hip, 95th percentile adult male (a male weighing 215 pounds). As the agency pointed out in the proposal, this would be sufficient hip space for three large-size adults to sit side-by-side. In basing the 50-inch criteria on the 95th percentile male rather than on the hip width of 5th percentile females, the agency proposed a liberal limit on the manufacturer's designation of seating capacity. Fifty inches of hip space is not only adequate to sit three large-size adults side-by-side,

but more than adequate to sit random size riders side-by-side, particularly if one of the occupants is a child. If one of the occupants is smaller than a 95th percentile male, shoulder room would be more than ample if the hip room is greater than 50 inches. In either case, there would be more than ample room for the driver to comfortably and safely operate the vehicle.

The agency has concluded that manufacturers must assume that three persons will likely use a bench or split-bench seat if there is over 50 inches of usable hip room. The agency rejects Ford's recommendation that the criteria be 51.1 inches of hip room, since Ford offers no data to indicate 50 inches is an unrealistic limit. We do note, however, that one current Ford model has a front bench seat with 55.9 inches of hip room and yet only two designated seating positions.

The agency has concluded that the addition of a shoulder room or leg room specification in the caveat is an unnecessary complication of the criteria since the 50 inch hip room specification is a liberal limit on manufacturers' discretion in this area. The Australian Design Rule No. 5A is more stringent. It specifies that, in the case of bench seats, the number of seating positions shall be the number of complete multiples of 16 inches. Therefore, under the Australian rule three positions are required to be designated if a bench seat has only 48 inches of hip room.

Toyo Kogyo questioned whether, in the case of hip room less than 50 inches, designating only two seating positions is "unconditionally permitted." The notice proposing this amendment stated that the 50-inch specification does not mean that some vehicle seats with less than 50 inches of hip space should not also have more than two designated seating positions, if the vehicle and seat design is such that three positions would likely be used. It was pointed out that the specification is merely the amount of space the agency will consider as conclusive evidence that there should be at least three designated seating positions. These statements are not intended to imply that the agency would require seating position designations for each space capable of accommodating a 5th percentile female if the overall vehicle design and seat configuration is such that three positions would not likely be used. However, the seat design should be such that it is obviously to be used by only two persons if the manufacturer only designates two positions. For further guidance, see the discussion below of obstructions and impediments that will affect designations.

Several commenters requested other changes in the 50-inch hip room caveat of the proposed definition. American Motors stated that a specified hip room caveat is unnecessary due to the first part of the proposed definition: "Given the fact that unless the overall vehicle/seat configuration is such that a third dsp (designated seating position) is impracticable, any 50-inch-wide seat will have the capability of accommodating at least three 5th percentile adult females and be so designated. Therefore, a specified hip space criterion of 50 inches is redundant to the first part of the proposed definition." While the NHTSA acknowledges American Motors' statement that any 50-inch-wide seat will have the capability of accommodating at least three occupants, the agency does not agree that such a seat would always be designated as having three positions if the caveat were not present. Past industry practice in some cases supports this conclusion, as evidenced, for example, by American Motors' 1977 "Pacer" model vehicle, which has 55.8 inches of hip room in the front seat, yet only two designated seating positions. As the agency stated in the notice proposing this amendment, the caveat is intended to emphasize the amount of space the agency will consider as conclusive evidence that there should be at least three designated seating positions.

Ford Motor Company stated that the caveat, as proposed, implies that vehicles with bench or split-bench seats having over 50 inches of hip room must have three designated seating positions, "regardless of the existence of impediments such as consoles, shift levers, fixed arm rests, trays, integral occupant restraint mountings or hardware, hard unsprung or unupholstered surfaces, or center depressions or elevations." Ford suggested that any limiting caveat be accompanied with the provision that it is "applicable only to seating obviously designed for three or more occupants." The NHTSA, of course, did not intend for the definition to imply that a rigid console should be considered a seating position,

as the agency noted in the preamble of the proposal. Therefore, the space occupied by a rigid console or a fixed, stationary armrest, for example, would not be considered hip room and would not be included in the measurement of the 50-inch limitation. This does not mean, however, that small, upholstered elevations or depressions in a bench seat should not be included in the measurement since these designs do not impede the use of center positions. To be excepted from the measurement there would have to be an obvious obstruction or impediment to sitting in the position, such that the position is obviously not intended to be used as a seat. A movable armrest that can be raised to the seat back would not constitute an impediment to use of the position. Likewise, the presence of a floor gear-shift lever would not normally be sufficient to discourage or make use of a center position on a bench seat impossible, even if the bench seat has a slightly indented contour for the shift lever. However, there could conceivably be a vehicle design in which the lever would constitute an impediment to sitting (if the lever extends to within a few inches of the seat back, for example). Regarding "integral occupant restraint mountings or hardware", if there is greater than 50 inches of hip room on the bench or split-bench seat there generally must be three designated seating positions, and the hardware will be situated in a manner not to create an impediment to seating. If no padding or upholstery is provided on the seat and if no back rest is provided, it is not likely that the position would be used and the agency would not include the space in measurement of hip room. Also, if there is a movable armrest that can be lifted to substitute as a backrest that position on the bench seat would likely be used and the space would be included in the measurement of hip room.

Fiat and several other commenters requested that the meaning of bench seat and split-bench seat be defined, one requesting that a definition be included. Fiat requested, specifically, that the agency specify that if a central armrest is provided a seat should not be considered a "bench" seat. The agency does not believe it is necessary to add a definition of "bench" and "split-bench" seat to the definition of "designated seating position". Bench and split-bench seats are seats other than conventional bucket seats. Bucket seats are separated by a substantial amount of space and are two distinct seats. Split-bench seats are generally separated, if at all, only slightly to the extent necessary for independent movement of the separate portions. Therefore, any seat design having greater than 50 inches of continuous hip room, even if interrupted slightly to allow independent movement of separate portions, would be considered a bench or split-bench seat and would have to have three designated seating positions.

In order to respond to the concerns of Fiat, Ford, and other commenters, the agency has determined that the caveat should be changed to clarify that if rigid obstructions or other designs preclude the use of the center position, that position need not be designated as a seating position and, therefore, need not be equipped with restraints regardless of the overall width of the seat. Therefore, the caveat as issued in this notice includes the phrase, "unless the seat design or vehicle design is such that the center position cannot be used for seating." This exception to the caveat would include, for example, a bench seat having greater than 50 inches of actual hip space if the vehicle's design is such that the dash board at the center position, extends out to near the seat back, precluding use of the seat space. Likewise, the exception would include a *fixed* armrest or a rigid, *fixed* console located in the center of the bench or split-bench seat.

General Motors requested that the 50-inch caveat be modified to allow only two designated seating positions in vehicles having bench or split-bench seats equipped with passive seat belts at the outboard positions. General Motors stated that the proposed definition would preclude the use of passive belts in full-size cars equipped with bench seats, presumably because there are currently no designs for center-position passive belts. General Motors argued that bench seats are somewhat cheaper than bucket seats, and that passengers are not likely to crawl under the outside passive belt to occupy the center position. The agency does not agree that the center position of a bench seat equipped with passive belts would not be used. If there is sufficient space on a bench or split-bench for three passengers, a substantial number of persons are likely to use

the center position, even if the seat has passive belts. Passengers could move around the passive belt to gain access to the center position and parents could easily place children in such positions. Further, there is a good possibility that the exception requested by General Motors would lead to defeat of passive belts so that the center position could be used more conveniently. While the agency is sympathetic with the marketing and cost concerns of manufacturers, we believe there are alternatives which will ensure the safety of the motoring public. As General Motors stated in its comments, a vehicle's design can "make the two passenger designation more clear". For example, a manufacturer that wishes to use bench seats in vehicles equipped with passive belts can include a fixed armrest in the center position of the bench seat to emphasize that the location is not a seating position. As just noted, the definition set forth in this notice makes clear that such a center position need not be designated as a seating position. It could be argued that parents may also sit children on fixed consoles, but manufacturers will not be held responsible, with respect to designating a seating position, for abusive or unlikely use of their vehicles.

Nissan Motor Company requested that the NHTSA examine the "cost/benefit" concerns of requiring three seating positions for rear seats having greater than 50 inches of hip room. Nissan is currently designating only two seating positions in the rear seat of its Datsun models and is concerned that the new definition will require the addition of a third seat belt in the rear seat and an upgrading of the braking performance of those vehicles. Nissan stated that it assumes there is little possibility that three passengers occupy rear seats.

After considering Nissan's comments and reviewing data concerning the use of the center position in rear seats, the agency has concluded that rear seats should not be excluded from the 50-inch hip room caveat in the definition of "designated seating position". While it may be true that, statistically, fewer persons use the center rear seating position than use the center front seating position, there are substantial numbers who do use the rear position. As mentioned earlier, the agency believes that all passengers should be provided with a restraint system for occupant crash protection. If a rear seat has greater than 50 inches of unobstructed hip room, that seat is likely to be used by three passengers and the third passenger should be protected. If a manufacturer chooses to use a large rear seat and wishes to designate only two positions, it must design the seat for only two passengers. This too can be accomplished by the installation of a fixed armrest or other impediment to use of the center position.

General Motors, American Motors, and Aston Martin Lagonda challenged NHTSA's statement in the proposal preceding this amendment that the changed definition will have no inflationary impact. The manufacturers state that they will be forced to make changes in seat design, to install additional restraint systems, and to upgrade braking and other systems due to increased weight if the existing definition is altered. They charged that the cost of these changes will have a definite inflationary impact. The agency cannot agree with these statements. The amended definition is a clarification of the existing definition and a codification of its interpretation, and does not create a "demonstrably more stringent standard" as stated by General Motors. As pointed out by the agency in the earlier "Notification to Manufacturers", manufacturers have improperly and inconsistently designated seating capacity on some vehicles and failed to comply with the existing definition of "designated seating position" and its interpretations. Manufacturers have failed to designate positions in their vehicles that were obviously intended to be used for seating while the vehicle is in motion, as demonstrated by vehicle and seat design and by designations in comparable vehicle models. While the agency acknowledges that there will be costs associated with modifications that will have to be made on some vehicles, these costs will be the result of bringing vehicles into compliance with an existing standard. When the agency requires a recall campaign for noncompliance with a Federal safety standard there are, of course, often tremendous cost impacts on manufacturers. This does not mean, however, that the agency action is inflationary rulemaking. Further, the past failure of the NHTSA to adequately enforce

standards dependent on the definition of "designated seating position" does not preclude clarification of how that definition will effect enforcement of those standards in the future.

The amended definition issued today does not require manufacturers to use any particular vehicle design or seat configuration or, for example, to upgrade braking performance levels. Manufacturers are free to use any seat configuration they choose, just as they are free to build any size car they desire, with any materials they desire. The definition does not require the use of more costly bucket seats. The definition does provide, however, that if a manufacturer chooses to use a bench seat or a split-bench seat, it shall designate the number of seating positions that seat actually contains. This has been the requirement since the definition was first issued. If a manufacturer "intends" for a position to be used he should provide restraints and ensure that the other vehicle systems are safely constructed to accommodate the passenger weight capacity. The inclusion of the phrase "likely to be used" in the amended definition does not change the requirement or add subjectivity to the requirement. If a manufacturer does not intend for a position to be used, the design of the vehicle should be such that this is obvious to vehicle users. If the design of a seat position is such that it obviously was not intended for use, it will not "likely be used". Manufacturers can easily manifest their true intent by installing stationary or fixed armrests. Manufacturers should, therefore, have no problem unless they, in fact, want to market the vehicle with a bench seat capable of seating three persons, yet designate only two seating positions.

Ford Motor Company expressed concern about the application of the proposed new definition to vehicles exceeding 10,000 pounds GVWR. Ford stated that the definition appears to be based on 5th percentile adult female accommodation and that this could require four sets of belts in some of its large trucks having bench seats with over 58 inches of hip room. The new definition specifies that any plan view location capable of accommodating a person at least as large as a 5th percentile adult female will be considered a designated seating position if the overall seat configuration and design and *vehicle design* is such that the position is likely to be used as a seating position while the vehicle is in motion. In the case of large tractor-trailer type vehicles greatly over 10,000 pounds GVWR, the overall vehicle design is not such that four persons would likely use a bench seat. These large vehicles are primarily cargo-carrying vehicles, not passenger-carrying vehicles. Therefore, the agency would not consider the provision of four seating positions to be necessary or within the meaning of the phrase "likely to be used", found in the definition. It was for this reason that the definition's caveat requiring three seating positions for bench seats having over 50 inches of hip room was limited to vehicles under 10,000 pounds GVWR.

Holiday Rambler Corporation objected to the application of the proposed new definition of "designated seating position" to motor homes. Holiday pointed out that motor homes are designed to provide accommodations and accouterments for purposes other than transportation, such as sleeping. Holiday stated that the proposed definition would require many restraint systems in locations not required by the current definition. The agency finds no merit in Holiday's arguments since the effect of the amended definition as applied to motor homes is exactly the same as the existing definition. Motor home manufacturers are currently required to designate as a seating position any location intended by the manufacturer to provide seating accommodation while the vehicle is in motion. As has been repeatedly pointed out in past interpretations of this definition, a manufacturer's intent will be determined by the agency on the basis of all facts, and the manufacturer's declarations will not always be accepted by the agency if they are inconsistent with actual vehicle design. The amended definition clarifies and codifies this interpretation by removing reference to the manufacturer's intent and emphasizing that any position likely to be used while the vehicle is in motion will be considered a designated seating position. Whether a seat will "likely be used while the vehicle is in motion" will be determined by the seat configuration and design and by the vehicle design.

The agency is currently investigating noncompliance with the existing definition of "desig-

nated seating position" in certain motor homes. These motor homes have seating positions that were obviously intended for use while the vehicle is in motion, yet the seats are not equipped with restraint systems and do not comply with Safety Standard No. 207, *Seating Systems* (49 CFR 571.207). Manufacturers of these motor homes have abused the meaning of the phrase "intended by the manufacturer" and placed labels on the seats stating that they are not intended for use while the vehicle is in motion, even though the manufacturers know the seats will in fact be used. These abuses primarily involve seats at the front driving portion of the vehicles, not seats in the rear of the vehicle that are present for living accommodation when the vehicle is stationary. One model under investigation has four pedestal seats at the front driving portion of the vehicle, yet only the front two seats are designated as seating positions. It is the agency's position that a manufacturer must provide designated seating positions for the number of persons it advertises its vehicle will accommodate. In the case of a motor home, this means that if such a vehicle is advertised to "sleep six," the manufacturer must assume that the six persons will ride in the vehicle to their sleeping destination and thus must designate six seating positions. These persons should have the benefit of occupant restraint systems and seats that meet the crashworthiness performance requirements of Safety Standard No. 207. It is the agency's position further that generally all seats in the front driving area of a motor home must be among the designated seating positions since those seats are the ones most likely to be occupied while the vehicle is in motion. For example, if a motor home is advertised as sleeping six persons and has four pedestal seats in the front driving area and several additional seats in the rear living accommodation area, the four pedestal seats and two of the seats in the rear area must be designated as seating positions.

The notice proposing this amendment of the definition of "designated seating position" specified an effective date for the proposed change of September 1, 1979. Nearly all commenters requested that the effective date of any amendment of the definition be delayed until September 1, 1980, or one year after the issuance of a final rule and coincident with the beginning of a model year. Manufacturers stated that this time would be necessary to make modifications to some of their models and would reduce the cost of these modifications. The agency has determined that these requests have merit since many manufacturers have already completed vehicle designs for their 1980 models, and since the additional period would minimize the cost of bringing their vehicles into compliance with the existing and amended definition of "designated seating position". Accordingly, the agency will not enforce the 50-inch hip room caveat of the new definition until September 1, 1980. This grace period prior to enforcement of the caveat does not mean, however, that the agency will not enforce the general provisions of the definition prior to that date, in cases in which a manufacturer has failed to designate a seat that was obviously intended for use while the vehicle is in motion and will likely be so used. General Motors' request that the effective date of any amendment be phased-in with the upcoming passive restraint requirements is hereby denied. The additional one year period specified in this notice should be ample to allow manufacturers to make any necessary modifications.

The agency has determined that this rulemaking has no significant economic or environmental impacts, since it clarifies the existing definition and its interpretations. However, the agency is placing in the public docket an evaluation discussing the vehicles that are currently not in compliance with the existing definition and discussing the costs manufacturers might have to incur to bring all of their vehicle models into compliance with the existing and clarified definition of "designated seating position".

The engineer and lawyer primarily responsible for the development of this notice are Guy Hunter and Hugh Oates.

In consideration of the foregoing, the definition of "designated seating position" as specified in 49 CFR 571.3 is amended to read as follows:

> "Designated seating position means any plan view location capable of accommodating a person at least as large as a 5th percentile adult female, if the overall seat configura-

tion and design and vehicle design is such that the position is likely to be used as a seating position while the vehicle is in motion, except for auxiliary seating accommodations such as temporary or folding jump seats. Any bench or split-bench seat in a passenger car, truck or multipurpose passenger vehicle with a GVWR less than 10,000 pounds, having greater than 50 inches of hip room (measured in accordance with SAE Standard J1100(a)) shall have not less than three designated seating positions, unless the seat design or vehicle design is such that the center position cannot be used for seating."

(Sec. 103, 119, Pub. L. 89–563, 80 Stat. 708 (15 U.S.C. 1392, 1407), delegation of authority at 49 CFR 1.50.)

Issued on April 12, 1979.

Joan Claybrook
Administrator

44 F.R. 23229
April 19, 1979

PREAMBLE TO AN AMENDMENT TO PART 571— FEDERAL MOTOR VEHICLE SAFETY STANDARD

Matter Incorporated by Reference (Docket No. 81-14; Notice 1)

ACTION: Final rule.

SUMMARY: The Federal Motor Vehicle Safety Standards issued by NHTSA incorporate by reference a number of standards and test procedures adopted by voluntary standards associations, such as the American Society for Testing and Materials. Part 571.5 of the agency's regulations is the procedural rule that incorporates all of the materials found in the agency's safety standards. This notice amends the regulation to specify that the Director of the *Federal Register* has approved the agency's incorporations by reference and to announce that all the materials are available for inspection and copying at both the agency and the Office of the *Federal Register*.

EFFECTIVE DATE: This amendment is effective March 22, 1982.

SUPPLEMENTARY INFORMATION: The Federal Motor Vehicle Safety Standards issued by the agency incorporate by reference a number of standards and test procedures adopted by voluntary standards associations, such as the American Society for Testing and Materials and the Society of Automotive Engineers. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the *Federal Register* and thus has the force and effect of law. The agency only uses incorporation by reference when the referenced material is of a detailed, technical nature and would unnecessarily add to the volume of matter printed in the *Federal Register*. In all instances, the material incorporated by reference is easily available to the public for inspection and copying.

In accordance with section 552(a) of the Administrative Procedure Act (5 U.S.C. 552(a)) and 1 CFR Part 51, the Director of the *Federal Register* must review and approve all incorporations by reference before they are effective. On March 28, 1979 (44 F.R. 18630), the Office of the *Federal Register* (OFR) established new procedures that agencies must follow to maintain approval from the Director of the *Federal Register* for the incorporation of materials by reference in the Code of Federal Regulations (CFR). Each agency is required to submit annually to the Director of the *Federal Register* a list identifying all material which the agency has incorporated by reference in the CFR. Part of the OFR's review of the list is a check of the incorporating language in the regulatory text to confirm that it meets OFR's drafting requirements (1 CFR Part 571.5). NHTSA is making several editorial changes in 49 CFR Part 571.5 of its regulations, which is the provision that incorporates by reference all of the material cited in the agency's safety standards, to conform to OFR's drafting requirements.

This notice amends Part 571.5 to add language stating that the Director of the *Federal Register* has approved all of the incorporations by reference. In addition, the agency is amending Part 571.5 to state that any proposed changes to material incorporated by reference will be published in the *Federal Register*. When the agency has incorporated material by reference, it has always specified the precise version (i.e., date, edition, etc.) of the material being incorporate by reference. Subsequent versions of material incorporated by reference are not automatically adopted. The agency has always proposed any change to any incorporated material in the *Federal Register*. Part 571.5 also is amended to state that all of the materials incorporated by reference are available for inspection and copying both at the agency and at the *Federal Register*.

The agency has determined that this procedural amendment is not a major rule within the meaning of Executive Order 12291. Likewise, it is not a significant rule within the meaning of the Department of Transportation's regulatory policies and procedures. The amendments made by this notice do not impose any substantive requirements or restrictions on the public. They merely make minor modifications in the agency's incorporation by reference procedure. Since the amendments concern a procedural matter, the agency is not required by the Administrative Procedure Act to provide notice and opportunity to comment on them. Because of this, the amendments are also not covered by the requirements of the Regulatory Flexibility Act. Since these procedural amendments are so minor and technical, the agency does not believe that any useful purpose would be served by voluntarily providing any opportunity to comment on them.

Issued on February 11, 1982.

Raymond A. Peck, Jr.
Administrator

47 F.R. 7253
February 18, 1982

PREAMBLE TO AN AMENDMENT TO PART 571—MATTER INCORPORATED BY REFERENCE

(Docket number not published in *Federal Register*)

ACTION: Final rule.

SUMMARY: The purpose of this notice is to add the Illuminating Engineering Society of North America to the other standards-setting organizations whose materials have been approved for incorporation by reference into the Federal motor vehicle safety standards.

EFFECTIVE DATE: The effective date of this amendment is June 8, 1989.

SUPPLEMENTARY INFORMATION: Section 571.5 of Title 49 of the Code of Federal Regulations establishes the procedural requirements for incorporation by reference into the Federal motor vehicle safety standards of materials not set forth in full in the standards. These materials are generally standards, test methods, and data that do not appear elsewhere in the *Federal Register* or Acts of Congress. The primary examples of this type of material are standards of the Society of Automotive Engineers (SAE).

This notice amends paragraph (b) *Availability* of § 571.5 to add the Illuminating Engineering Society of North America ("IES") to the other organizations listed in that paragraph, and to provide the address of that organization to interested persons. One of the test methods of the IES is used in Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, to measure the luminous flux of light sources used in replaceable bulb headlamps.

Because this amendment is technical in nature and neither establishes nor relieves a Federal regulatory requirement, it is hereby found pursuant to 5 U.S.C. 553(b) that notice and public comment upon the amendment is unnecessary. For the same reason, the amendment is neither major nor significant under Departmental guidelines, and has no environmental or federalism impacts, or effect under the Regulatory Flexibility Act.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

In § 571.5, paragraph (b)(6) is redesignated as (b)(7).

In § 571.5 a new paragraph (b)(6) is added to read as follows:

§ 571.5 Matter incorporated by reference.

* * * * *

(b) * * *

(6) *Test methods of the Illuminating Engineering Society of North America (IES).* They are published by the Illuminating Engineering Society of North America. Copies can be obtained by writing to: Illuminating Engineering Society of North America, 345 East 47th St., New York, NY 10017.

* * * * *

Issued on: April 28, 1989.

Jeffrey R. Miller,
Deputy Administrator

54 F.R. 20082
May 9, 1989

PREAMBLE TO AN AMENDMENT TO MOTOR VEHICLE SAFETY STANDARD NO. 571

Seating Reference Point

(Docket No. 82-05; Notice 4)
RIN: 2127-AD46

ACTION: Final rule.

SUMMARY: This rule amends the definition of "seating reference point," a term used in this agency's safety standards. "Seating reference point" identifies a single adjustment point for each seating position. That point is used in determining if the vehicle complies with requirements set forth in several of the safety standards.

This rule amends the definition of "seating reference point" to clarify that it is not necessarily the absolute rearmost point to which a seat can be adjusted. This rule also amends the definition to provide that the "seating reference point" is established using 95th percentile adult male leg segments, instead of the smaller 90th percentile adult male leg segments specified in the current definition.

DATES: The amendment to the definition of "seating reference point" made in this rule is effective as of September 1, 1992. At their option, manufacturers may begin using the post September 1992 definition, in place of the current one, after September 11, 1997.

SUPPLEMENTARY INFORMATION:

Seating Reference Point

For the purposes of the Federal Motor Vehicle Safety Standards, the term "seating reference point" is currently defined in 49 CFR §571.3 as:

The manufacturer's design reference point which—

(a) Establishes the rearmost normal design driving or riding position of each designated seating position in a vehicle;

(b) Has coordinates established relative to the designed vehicle structure;

(c) Simulates the position of the pivot center of the human torso and thigh; and

(d) Is the reference point employed to position the two dimensional templates described in SAE Recommended Practice J826, "Manikins for Use in Defining Vehicle Seating Accommodations," November 1962.

The four conditions set forth in the definition of "seating reference point" are intended to ensure that only one point will be the "seating reference point" for any seating position in a motor vehicle, and to ensure that all parties can agree where that one point is located for a particular seating position. The "seating reference point" is used, either directly or indirectly, as a reference point in determining compliance with several of the agency's safety standards. Standards No. 103 and 104 each use the "seating reference point" as a reference point to define a field of view or certain areas of the windshield that must comply with specified requirements. Standards No. 201, 202, 207, and 210 each use the "seating reference point" as a reference point for determining the components that are subject to the requirements of the standard or for positioning the seats to determine compliance with the requirements of the standard.

Rulemaking History

In 1980, Mercedes-Benz of North America, Inc. (Mercedes) petitioned the agency to amend the definition of "seating reference point" to specify 95th percentile thigh and lower leg segments in determining the location of the "seating reference point." In 1982, in response to the Mercedes petition, the agency published an advance notice of proposed rulemaking (ANPRM) stating that the "seating reference point" is not necessarily the absolute rearmost position to which a seat can be adjusted and that the agency intended to issue a notice of proposed rulemaking (NPRM) to change the definition of "seating reference point" (47 FR 9865; March 8, 1982). The purpose of the ANPRM was to allow interested parties an opportunity to raise issues and provide information that the agency should consider when formulating its proposal.

After evaluating the comments received on the ANPRM, the agency published an NPRM which differed substantially from the ANPRM (51 FR 20536; June 5, 1986). The NPRM stated that the interpretation in the ANPRM that "seating reference point" was not necessarily the absolute rearmost position of the seat was incorrect. The new interpretation was based on two circumstances. First, Standard No. 210 used the SRP as its reference point and required the seat

to be in its rearmost position. Thus, the location dictated by Standard No. 210 would prevent a manufacturer from establishing a seating position rearward of the SRP. Second, the agency surveyed the location of the SRP in vehicles in the most recent compliance testing program and discovered that all manufacturers had determined the SRP with the seat in its rearmost position. In addition, the agency was concerned that the ANPRM interpretation could lead a manufacturer to conclude that a seating position rearward of the SRP could be occupied while the vehicle was in motion. This could result in an upper anchorage location being forward of the occupant's shoulder, resulting in increased head movement and potentially increasing the risk of head injury.

Because the agency had determined that the location of the SRP should always be determined with the seat in its rearmost position, the agency proposed to delete the reference to leg segment length in the definition. Leg segment length was used in the current definition to determine the seat adjustment position used to locate the SRP. Since the NPRM proposed to specify the seat adjustment position at which the SRP was located as the rearmost position, there was no longer any need to refer to a particular leg segment length.

After further consideration, the agency tentatively concluded that the NPRM approach was not the best approach for this rulemaking. The agency decided that there were simpler, but equally effective, ways of ensuring that seats are positioned in the rearmost position for determining the upper anchorage locations in Standard No. 210. In April 1990, the agency published a final rule amending Standard No. 210 so that it no longer referred to "seating reference point" (55 FR 17970). In September 1990, the agency published a supplementary notice of proposed rulemaking (SNPRM) on the definition of "seating reference point," proposing to return to the approach originally discussed in the ANPRM (55 FR 37719). The definition proposed in the SNPRM was based upon the recommended practice of the Society of Automotive Engineers (SAE). (For interested parties, the history of this rulemaking is explained in greater detail in the SNPRM.)

NHTSA received 10 comments in response to the SNPRM. Eight of the nine automotive manufacturers who commented on the SNPRM unanimously supported adopting the proposed definition. Mercedes supported "the Agency's approach to clarifying the inconsistencies related to the definition of the seating reference point," but recommended the adoption of the wording they suggested in their comments on the NPRM. The only other commenter, the Automotive Occupants Restraints Council, deferred to the responses of the vehicle manufacturers. Commenters also raised six other issues relevant to this rulemaking, which are discussed below.

Comments

1. Adopt Mercedes definition for the "seating reference point."

Although Mercedes supported "the Agency's approach to clarifying the inconsistencies related to the definition of the seating reference point," they recommended adoption of their wording of paragraph (a), as suggested in their comments of May 5, 1983, to Docket 82-05, Notice 2:

"(a) Establishes the rearmost normal design driving or riding position as stipulated by the manufacturer, which accounts for all modes of cushion adjustment—including horizontal, vertical, and tilt—that are available in the seat, but not to include seat track travel used for purposes other than normal driving and riding positions."

The language preferred by Mercedes attempts to further clarify that the "seating reference point" is established by the manufacturer and is not the absolute rearmost point to which a seat can be adjusted.

Paragraphs (a), (b), (c), and (d)(1) of NHTSA's proposed definition are nearly identical with the SAE definition. In addition, all of the commenters except Mercedes supported the definition as proposed. Mercedes' recommendation that the agency adopt their unique language appears based upon preference only, and does not appear to significantly improve or clarify the proposed definition. Therefore, the agency is adopting the definition of "seating reference point" as proposed.

2. Adoption of "(SqRP)" in the definition of "seating reference point."

General Motors (GM) recommended that the agency adopt the phrase "(SgRP)" that is found after the wording "seating reference point" in SAE J1100 Jun84. GM stated that this would further clarify the meaning of the wording used in the standard and parallel current industry practice. GM stated that the "SRP" acronym used by NHTSA when referring to "seating reference point" may create confusion in some situations because GM and others in the industry use the "SRP" acronym to refer to the absolute rearmost position for the seat.

In the SNPRM, the agency stated that the proposed "definition of SRP is similar to the SgRP concept used by the SAE." In fact, the two definitions are virtually identical. Since the inclusion of the phrase "(SgRP)" in the definition would not change its meaning or require any additional modifications to any safety standards, the agency has decided to include the phrase to avoid any possible confusion. Hereinafter, the phrase "SgRP" will be used for the term "seating reference point" in this notice.

3. Allow use of either the present or proposed definition of "seating/reference point."

In its comments, Volvo requested that manufacturers be allowed to choose between either the present or

proposed definition in the future. Volkswagen stated that the final rule should allow immediate optional compliance with either the present or proposed definition.

The only reason offered by Volvo to support its suggestion was that manufacturers would not have to recertify their vehicles. The agency does not find this to be a compelling argument. Any rulemaking may require that manufacturers recertify their vehicles. In addition, four of the commenters (Chrysler, Ford, Volkswagen, and Freightliner) indicated that this rulemaking would have little or no effect on their current practices.

Volkswagen requested that the Final Rule allow optional use of either definition from publication of the final rule until the September 1, 1992 effective date. This would allow manufacturers who can comply with the 95th percentile location without product design changes to harmonize with European requirements as soon as possible. The agency finds this request to be reasonable.

Since no commenter suggested that the proposed September 1, 1992 effective date was not reasonable, it has been adopted. In addition, optional use of the new definition is permissible effective September 11, 1991.

4. Revision of other safetv standards.

The SNPRM requested comments on whether adoption of the proposed The SNPRM requeste change to the SgRP definition would create a need to amend safety standards which currently use the seating reference point or similar terminology. Commenters raised issues involving several standards.

GM recommended modifications of Standard No. 104, Windshield Hiping and Washing Systems. GM stated:

> "FMVSS No. 104 and, by reference, FMVSS No. 103 substitute the term "seating reference point" for the terms "manikin H point" and "H point" wherever either of those terms appears in any SAE Standard or Recommended Practice referred to in the standard. This substitution of terms results in references to "seating reference point with seat in rearmost position" (SAE Recommended Practice J903a, Figure 1). This terminology is potentially internally contradictory when the "seating reference point" is defined to permit a location at some point other than the rearmost position of the seat."

NHTSA agrees with GM that the amended definition of SgRP will create potentially contradictory references in Standard No. 104. Elsewhere in today's edition of the Federal Register, the agency has published an NPRM proposing to amend S3 of Standard No. 104.

In its comments, Mercedes requested revisions of Standards No. 103, 104, 107, and 111 "to permit the use of the "Eyellipse and Head Contour Locator Line—Adjustable Seats" as described in the newest version of SAE J941, October 1985." These standards all use SAE J941, November 1965 to determine the location for either the 95th or 99th percentile eye range contour (eyellipse). This SAE Recommended Practice requires the seat to be in its rearmost position. Since "seating reference point" is not referenced, NHTSA does not believe that it would be appropriate to address amendment of any of these standards in the rulemaking to amend Standard No. 104.

5. Reference uodated version of SAE J1100.

Volkswagen commented that SAE J1100 JUN84 was presently being updated by the SAE, and recommended that the updated version be substituted if available. NHTSA has contacted the SAE and been informed that the June 1984 version of SAE J1100 is the most recently approved version.

6. Correction of Typographical Error.

Volkswagen pointed out that paragraph (b)(4) of the proposed definition inaccurately references "SAE J826" as "SEA J826." This typographical error has been rectified in the final rule.

7. Seat location of Standard No. 210 upper anchorage requirements.

Mercedes also submitted comments concerning the April 30, 1990 amendment of Standard No. 210 (Docket 87-02; Notice 2). These comments were also submitted by Mercedes during the Standard No. 210 rulemaking and were addressed in the preamble to the Final Rule (55 FR 17970; April 30, 1990).

In consideration of the foregoing, NHTSA Part 571 of Title 49 of the Code of Federal Regulations is amended as follows:

Section 571.3 is amended by revising the definition of "seating reference point" in paragraph (b). The amendment is effective on and after September 1, 1992 and may be used at the manufacturer's option on or after September 11, 1991. As amended, the definition reads as follows:

§571.3 Definitions.

* * * * * *

(b) *Other definitions.*

* * * * * *

Seating reference point (SgRP) means the unique design H-point, as defined in SAE J1100 (June 1984), which:

(a) Establishes the rearmost normal design driving or riding position of each designated seating position, which includes consideration of all modes of adjustment, horizontal, vertical, and tilt, in a vehicle;

(b) Has X, Y, and Z coordinates, as defined in SAE J1100 (June 1984), established relative to the designed vehicle structure;

(c) Simulates the position of the pivot center of the human torso and thigh; and

(d) Is the reference point employed to position the two-dimensional drafting template with the 95th percentile leg described in SAE J826 (May 1987), or, if the drafting template with the 95th percentile leg cannot be positioned in the seating position, is located with the seat in its most rearward adjustment position

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Issued on August 6, 1991

56 F.R. 38084
August 12, 1991

PREAMBLE TO AN AMENDMENT TO MOTOR VEHICLE SAFETY STANDARD NO. 571

Seating Reference Point

(Docket No. 87-02; Notice 4)
RIN: 2127-AA43

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In April 1990, this agency published a final rule making several amendments to the safety standard regulating seat belt assembly anchorages. NHTSA received 7 petitions for reconsideration of this rule. In response to these petitions, the agency is making several changes to the final rule published in April 1990. Specifically, this rule:

1. Excludes the attachment hardware for automatic belts and for those dynamically tested manual belts that are the only restraint at a seating position from the Standard No. 210 strength test;

2. Modifies the regulatory language to specify that the geometry of the webbing is to be duplicated "at the initiation of the test."

3. Extends the effective date of the increased lap belt minimum angle requirement one year for rear seats;

4. Removes all redundant anchorage requirements;

5. Amends the simultaneous testing requirement; and

6. Substitutes the term "hip point" for the term "seating reference point" in the definition of "outboard designated seating position".

DATES: The amendments made in this rule are effective September 1, 1992.

Any petitions for reconsideration of this rule must be received by NHTSA no later than September 1, 1992.

SUPPLEMENTARY INFORMATION:

Background

On April 30, 1990 (55 FR 17970), NHTSA published a final rule amending Standard No. 210, *Seat Belt Assembly Anchorages* (49 CFR 571.210). The rule made several amendments to the safety standard, specifically:

1. Increasing the minimum lap belt angle to reduce the likelihood of occupant submarining in a crash;

2. Excluding front outboard designated seating positions equipped with automatic safety belts from the requirement that those positions also be equipped with anchorages for manual shoulder belts;

3. Permitting the optional use of some new test equipment for compliance testing to make the compliance tests simpler and less costly to perform; and

4. Removing some ambiguities in the current compliance testing procedures so that all parties would know precisely how compliance testing will be conducted by the agency.

The agency received 7 petitions for reconsideration of this rule. This notice responds to those petitions. In addition. General Motors' [GM] petition included five requests for interpretation of the final rule which will also be discussed in this notice.

Petition Issues

I. *Attachment Hardware Definition and Testing*

A. Exclude Attachment Hardware

The final rule extended the applicability of Standard No. 210 to the attachment hardware of a safety belt system. Navistar International attachment hardware Transportation Corporation (Navistarl, Ford Motor Company [Ford], and the Motor Vehicle Manufacturers Association of the United States Incorporated [MVMA] submitted petitions opposing this amendment. All three petitioners stated that this amendment was unnecessary because Standard No. 209, *Seat Belt Assemblies,* already specifies performance requirements for the strength of attachment hardware. All three petitioners argued that the Standard No. 208 dynamic test and the Standard No. 209 static test are reasonable and sufficient tests, by themselves, to test the performance of the attachment hardware of safety belt systems. In addition, MVMA argued that the inclusion of attachment hardware in Standard No. 210 was in conflict with Standard No. 208, *Occupant Crash Protection.* Section S4.5.3.4 of Standard No. 208 excludes automatic safety belt systems, including the attachment hardware, from the performance requirements of Standard No. 209. Thus, MVMA argued that the

amendment to Standard No. 210 effectively reinstated a static test performance requirement for the attachment hardware of an automatic safety belt system.

After the April 30, 1990 final rule, the attachment hardware for different belt systems were subject to different testing requirements. The attachment hardware for automatic belts that were tested during the Standard No. 208 crash test, were excluded from Standard No. 209's static tests, but were subject to Standard No. 210's static tests. The attachment hardware for dynamically tested manual belts were tested during the Standard No. 208 crash test and the Standards No. 209 and 210 static tests. The attachment hardware for other manual belts were not crash tested under Standard No. 208, but were subject to the static tests of Standards No. 209 and 210.

On April 16, 1991, NHTSA published a final rule making the requirements of Standard No. 209 identical for automatic belts and those dynamically tested manual belts that are the only occupant restraint at a seating position (56 FR 15295). As a result of this rulemaking action, the attachment hardware for both automatic and dynamically tested manual belts are now excluded from Standard No. 209's static tests. The agency explained that Standard No. 209's static test procedures were a surrogate for Standard No. 208's crash test and that the surrogate was unnecessary for attachment hardware that have been crash tested. NHTSA has determined that this reasoning is equally persuasive for attachment hardware under the Standard No. 210 static tests. Therefore, this rule excludes the attachment hardware for seat belt assemblies that meet the frontal crash protection requirements of S5.1 of Standard No. 208. It should be noted, as explained in the April 16, 1991 notice, the agency does not consider a manual belt installed at a seating position that is also equipped with an air bag to be dynamically tested, and, therefore, the attachment hardware for these belts would be subjected to the Standard No. 210 strength tests.

The requirement to test attachment hardware under Standard No. 210 is not redundant or unnecessary for manual safety belt systems that are not dynamically tested. Attachment hardware is an integral part of the transfer of safety belt loads to the vehicle structure. The strength conditions in Standard No. 210 are intended to subject the vehicle anchorage to force levels that are sufficiently high than one can be reasonably certain that the safety belt will remain attached to the vehicle structure, even when exposed to severe crash conditions. If the attachment hardware were not subjected to those same force levels, during the Standard No. 210 test, the test would be less useful. A belted occupant will not be well protected in a crash if the attachment hardware breaks, but the rest of the anchorage withstands the crash loading. To minimize the chances of the attachment hardware breaking during a crash, the agency is not rescinding the requirement to test attachment hardware for non-dynamically tested safety belts.

In addition, the agency continues to believe that the attachment hardware originally installed at a seating position should be used during Standard No. 210 compliance tests for the anchorages for all safety belt systems, including those whose attachment hardware is excluded from the requirements of S4.1.1 and S4.1.2. in order to ensure that the load application onto the anchorage is as realistic as possible. The agency has considered conducting the compliance tests using replacement fixtures which duplicate the geometry. However, the agency is concerned that developing a fixture which would accurately simulate every attachment would be very difficult. The agency cannot justify devoting the time necessary to solve this difficult problem, because such a fixture would be less representative of the particular attachment hardware in the vehicle being tested. However, for safety belts excluded from the requirements of S4.1.1 and S4.1.2. failure of the attachment hardware will be considered an incomplete test, not an apparent non-compliance.

B. Develop a More Objective Test Procedure

Ford's and MVMA's petitions for reconsideration stated that the final rule did not establish an objective test procedure for testing attachment hardware. Some of the issues that Ford indicated needed to be resolved include: adjusted position of adjustable attachment hardware for D-rings and automatic belts, status of adjustment mechanisms, amount of webbing on the retractor spools, retractor locking mechanism status, door latch and lock status, and convertible top and movable window status. As explained below, the agency does not agree that further clarification of these issues is necessary, and therefore, denies these aspects of these petitions.

As a general matter, when a standard does not specify a particular test condition, there is a presumption that the requirements of the standard must be met at all such test conditions. This presumption that the standard must be met at all positions of unspecified test conditions may be rebutted if the language of the standard as a whole or its purposes indicate an intention to limit unspecified test conditions to a particular condition or conditions.

In the case of the strength requirements in Standard No. 210, nothing in the language of the standard suggests that the strength requirements were only to be measured with the safety belt or other vehicle features at certain adjustment positions. Indeed, the purpose of the standard is to reduce the likelihood that an anchorage will fail in a crash. To serve this purpose, the anchorage must be capable of meeting the strength requirements with the safety belt and other vehicle features at any adjustment, since those features could be at any adjustment position during a crash.

C. Rescind the Requirement to "Duplicate the Geometry"

In the final rule, Standard No. 210 was amended to require that the test setup "duplicate the geometry" of the original equipment webbing at that seating position. In its petition for reconsideration. GM requested that the agency reconsider this test requirement. GM stated that the agency has not provided any information regarding the connection of the cables, chains or webbing to the attachment hardware to allow vehicle manufacturers to determine objectively that their compliance test "duplicates the geometry" of the original equipment webbing. Specifically, they stated that the agency has provided no clarification regarding what geometry a manufacturer is to simulate for compliance testing. Therefore, GM concludes, the manufacturer must either test with the seat belt assembly installed as original equipment or risk that its own interpretation of "duplicate the geometry" will agree with NHTSA's interpretation should a question of Standard No. 210 compliance arise.

The agency continues to believe that the phrase "duplicate the geometry" is necessary for the enforcement of this standard. The phrase simply means that the direction of loading and the orientation of the attachment hardware should be the same as it would be for the original equipment webbing. The phrase was included in conjunction with the use of substitute webbing material to protect vehicle manufacturers from the agency identifying apparent noncompliances based upon test conditions with unrealistic loading. However, as evidenced by GM's concern about what geometry must be simulated, the agency recognizes that the direction of loading and the orientation of the attachment hardware may change during the course Of the test. Therefore, to provide clarification, the agency has modified the regulatory language to specify that the geometry is to be duplicated "at the initiation of the test."

II. *Lap Belt Minimum Angle*

A. Reduce Lap Belt Angle Back to 20 Degrees

In the final rule, based on test data that showed that the occurrence of occupant submarining is diminished as the lap belt angle is increased, the agency increased the minimum lap belt angle from 20 degrees to 30 degrees above the horizontal, measured from the seating reference point [SgRP] to either the anchorage or the point where the safety belt contacts the seat frame. In its petition for reconsideration, GM requested that the agency rescind this change. While agreeing with the agency that increasing the lap belt angle will decrease the possibility of submarining. GM argued that increasing the lap belt angle from 20 to 30 degrees cannot be objectively quantified as an enhancement of motor vehicle safety. In its petition for reconsideration, Jaguar Cars, Incorporated [Jaguar] also asked the agency to reconsider this amendment and reduce the rear lap belt angle back to 20 degrees to harmonize this requirement with Economic Commission for Europe [ECE] Regulation No. 14.

Neither petitioner submitted any information to persuade the agency that its initial conclusion was incorrect. While GM is correct that the agency cannot precisely quantify the safety benefit of increasing the minimum lap belt angle 10 degrees, GM did not dispute the agency conclusion that this 10 degree increase will enhance safety by reducing the likelihood of submarining. Additionally, Jaguar did not submit any information indicating that the likelihood of submarining caused by a shallow belt angle is any less for rear seat occupants, nor is the agency aware of any such information. Therefore, until a test is available to specifically evaluate submarining, the agency will continue to rely on a minimum lap belt angle requirement in Standard No. 210 to prevent submarining.

B. Extend the Effective Date

In addition to asking the agency to reconsider the increased lap belt minimum angle requirement, both GM and Jaguar objected to this amendment on the grounds that more time is needed for implementation. GM asserted that, although some seat belt anchorages may be moved with minimal vehicle modification, other anchorages cannot be relocated without first addressing the overall performance of the seat/restraint system at that location. GM also stated that the increased lap belt angle requirement would significantly affect rear seating positions in several GM vehicles and provided a list of 9 body component changes and assembly component changes affected by this amendment. GM did not suggest a possible date that this requirement should be effective.

Jaguar stated that a one year extension to September 1, 1993 was necessary to meet the new requirements, including design and development, compliance testing, and introduction into production. Like GM, Jaguar stated that relocation of the safety belt anchorages in the rear seats would involve the hardest and most time intensive design changes.

The agency recognized that the final rule would require relocation of the safety belt anchorages, and for this reason provided two and one half years lead time to implement these changes. However, the agency finds GM's and Jaguar's explanation of the special difficulties in relocation of the rear seat anchorages persuasive. To allow manufacturers sufficient time to implement the necessary design changes in rear seats. the agency is extending the effective date one year for rear seats. The agency believes that the September 1, 1992 effective date should continue to apply for all front outboard seating positions.

III. *Seating Reference Point*

In the final rule, NHTSA revised S4.3.2 to require the seat to be adjusted so that the "H" point of the drafting template is located at "the design "H" point of the seat for its full rearward and full downward position," rather than at the seating reference point (SgRP), when determining if the shoulder belt for that seat complies with the location requirements of Standard No. 210. The agency did not reexamine the seat adjustment specification that is the basis for determining whether a lap belt or the lap belt portion of a lap/shoulder belt meets the minimum and maximum mounting angle requirements in Standard No. 210. The agency stated that it would continue to use the existing SgRP, even though the seating adjustment position for the SgRP "may not be the rearmost position."

In its petition. Volkswagen requested an amendment to Standard No. 210 "to provide that the seating reference point for determining the minimum and maximum lap belt angles be based on the seating reference point located with the 95th percentile male dummy leg length." On August 12th, the agency published a final rule amending the definition of SgRP (56 FR 38084). The amended definition establishes that the SgRP is located using the 95th percentile male dummy leg length.

In reviewing this petition, however, the agency has tentatively determined that use of the SgRP may not be an appropriate means of determining lap belt angle for rear adjustable seats. Elsewhere in today's edition of the Federal Register, the agency has published an NPRM proposing to measure the lap belt angle from the rearmost seating position for rear adjustable seats.

IV. *Redundant Anchorages*

Prior to the April 30, 1990 final rule, S4.1.1 of Standard No. 210 required anchorages for manual lap/shoulder belts to be installed for all front outboard seating positions in passenger cars. Section S4.1.4 of Standard No. 208 requires that front outboard seating positions in passenger cars manufactured on or after September 1, 1989 be equipped with automatic crash protection. As discussed previously, NHTSA has expressly excluded the anchorages for automatic or dynamically tested manual safety belts from the anchorage location requirements in Standard No. 210. Thus, the anchorages to which automatic or dynamically tested manual safety belts originally installed in a vehicle are attached are not required to comply with the location requirements of Standard No. 210.

However, if the anchorages for any automatic or dynamically tested manual safety belts originally installed at a front outboard seating position in a passenger car do not comply with the location requirements of Standard No. 210, the standard provided (prior to the April 30, 1990 final rule) that anchorages for a manual lap/shoulder belt that comply with the anchorage location requirements must also be installed at that seating position. This redundant anchorage requirement was partially rescinded by the final rule by the addition of section S4.1.3(b) which stated that redundant upper anchorages for manual safety belts were not required in the front outboard seats of passenger cars equipped with dynamically tested or automatic safety belts.

On November 23, 1987, the agency amended Standard No. 208 to require dynamic testing of manual lap/shoulder belts installed in the front outboard seating positions of trucks and multipurpose passenger vehicles with a gross vehicle weight rating [GVWR] of 8,500 pounds or less [LTV's] manufactured on and after September 1, 1991. On March 12, 1986, the agency excluded the anchorages for dynamically tested manual belts from the anchorage location requirements in Standard No. 210 (55 FR 9813). However, as explained for automatic belts, while the anchorages for these belts are not required to comply with the location requirements of Standard No. 210, if the anchorages do not comply with the location requirements additional anchorages which do comply with the location requirements must be installed in these vehicles.

Volkswagen of America, Incorporated's [Volkswagen] and MVMA's petitions for reconsideration requested that the agency extend the deletion of redundant upper anchorages to all vehicles equipped with dynamically tested or automatic safety belts. In addition, Volkswagen noted that S4.1.2 of Standard No. 210 still requires a redundant or unused (for manufacturers who have chosen to comply with Standard No. 208 using a shoulder belt and a knee bolster) Type 1 safety belt anchorage

The notice of proposed rulemaking (NPRMl for this rulemaking requested comments about a proposal "to delete the requirement for providing separate Type 2 safety belt anchorages at designated seating positions equipped with automatic and dynamically tested manual belts which meet the occupant crash protection requirements of Standard No. 208." See, 52 FR 3293 at 3296; February 3, 1987. As stated previously. the final rule deleted only the requirement for redundant upper anchorages in passenger cars' even though the discussion in the preamble mentioned anchorages for lap/shoulder belts. See, 55 FR 17970 at 17978. April 30, 1990. The agency also believes that the reasons the redundant anchorage requirement was deleted for passenger cars are equally applicable to LTV's.

As stated in the final rule, the agency believes that all redundant anchorages for manual lap or lap/shoulder belts are unnecessary, unless they are needed to secure a child safety seat. Therefore, the agency is amending S4.1.3(b) to remove all redundant anchorage requirements, including the manual shoulder belt anchorage in light trucks (S4.1.1) and the manual lap belt anchorage in S4.1.2.

The agency notes that S4.1.3 still requires anchorages for a Type 1 or a Type 2 safety belt anchorage at the right front seat of an automobile or light truck if the restraint at that seat cannot secure a child safety seat. The agency intends to leave this requirement in place.

V. *Reduce Test Loads on School Buses*

In its petition for reconsideration. Thomas Built Buses, Incorporated (Thomasl asked the agency to reconsider a portion of the final rule pertaining to the anchorage strength requirements on small school buses (GVWR of 10,000 pounds or less). The final rule required simultaneous testing of the anchorages on a small school bus seat, thus requiring the application of 10,000 or 15,000 pounds of force during the test. Thomas is concerned that it would not be practicable to design floors to withstand these loads, and asked the agency to base the new requirement on either 2,500 pounds per seating position or a 30 mph barrier crash Thomas believes that the 5,000 pound requirement for each belt's anchorage system is not warranted, because they have never observed an anchorage failure and because their testing indicates low crash test loads.

While Thomas did not comment on the NPRM, another manufacturer of small school buses, Blue Bird Body Company [Blue Bird] submitted similar comments to the NPRM. The agency considered the issue of lowering the anchorage test load requirement for small school buses in the analysis for the final rule, and determined that this change would degrade the level of safety of the school bus. Thomas has not provided any data that has persuaded the agency to alter this position.

First, Thomas' petition asserted that the floor strength will be required to support a load of 30,000 pounds. The agency disagrees with this assertion. The highest load any floor would be subject to during testing would be 15,000 pounds. This would be during the anchorage test for a 3-passenger bench seat. Thomas' assertion appears to be based on an incorrect interpretation that the standard requires simultaneous testing of the entire row, i.e., two laterally adjacent 3-passenger bench seats.

Second, the agency has seen evidence from two manufacturers of small school buses, Lewis Manufacturing and Blue Bird, that the floors on two different takes of small school buses can comply with the 15.000 pound load on existing flooring, with only minor reinforcement of the bolt holes. The floor structure itself, even when not the original flooring from the first stage manufacturer, did not have to be reinforced.

Finally, the agency would like to emphasize that, during an actual crash, the floor will be subject to loads at least this high, if not higher, due to the loading of all safety belts and seat backs. In the absence of a dynamic test, the agency feels that the 5,000 pound requirement is warranted. The agency is not convinced by Thomas, assertions of no known failures or upon measures of low crash test loads on individual safety belts.

VI. *Simultaneous Testing*

Prior to the final rule, Standard No. 210 required all floor-mounted anchorages for adjacent designated seating positions to be tested simultaneously for anchorage strength. ECE Regulation No. 14 requires all anchorages common to a single seat assembly, whether floor-mounted or mounted on a seat frame, to be tested simultaneously. In the NPRM, the agency proposed:

> "Except for seat belt anchorages common to forward-facing and rearward-facing seats, all floor-mounted and seat-mounted seat belt anchorages for a set of laterally adjacent designated seating positions shall be tested by simultaneously loading..."

The agency was attempting to clarify the existing requirement. The agency was concerned that the term "adjacent" in the existing regulation was imprecise and could be misinterpreted as specifying simultaneous testing for front and rear outboard seating positions on the same side of a vehicle, or for buckat seats in the front separated by a console or some other structure. In addition, the agency was proposing to extend the simultaneous testing requirement to seat-mounted seat belt anchorages.

In the final rule, the reference to "adjacent designated seating positions" was deleted and a requirement for simultaneous testing of all designated seating positions that face in the same direction and are common to the same occupant seat was substituted. Thus, the final rule deleted the requirement to test adjacent bucket seats.

Ford petitioned the agency to reconsider this final rule for bucket seats. It pointed out that the amendment of S4.2.4 would specify non-simultaneous loading of anchorages for three separate but immediately adjacent bucket seats, even if those seats used common floor-mounted anchorages and/or Common attachment hardware. Ford stated that these seating arrangements are becoming more common in multipurpose passenger vehicles, and that S4.2.4 is inadequate to meet the need for motor vehicle safety for vehicles using such a seat design.

The agency agrees with Ford that the anchorages for such seating arrangements should be simultaneously tested. The intent of S4.2.4 is to require simultaneous testing for safety belt anchorages that are likely to significantly affect the strength of each other. During this rulemaking, the agency expressly considered the bucket seats in the front of passenger vehicles. These seats are usually separated by either the transmission

tunnel or an instrument console and, therefore, are unlikely to significantly affect each other. The agency also expressly considered the extremely high test loads that might be required for the floors of small school buses if an entire row had to be tested simultaneously. The agency did not see a need to test two bench seats in a small school bus simultaneously as these are separated by an aisle and are, therefore, unlikely to significantly affect each other. The agency did not expressly consider seating positions that are not on the same seat, but are not separated by an aisle, transmission tunnel, or the like. Examples of these types of seats would include the split bench seats in the front seats of passenger vehicles and the adjacent bucket seats in the rear of vans and multipurpose passenger vehicles.

Therefore, the agency is amending S4 2.4 to require simultaneous testing of anchorages for designated seating positions which are either common to the same occupant seat or, although not common to the same occupant seat, are laterally adjacent and have anchorages that are within 12 inches of each other. The agency believes the 12 inch measurement is a practical means of identifying anchorages whose performance is likely to significantly affect the performance of other anchorages. The agency believes that front bucket seats are not likely to be affected by this requirement because they are separated by a transmission tunnel or console and therefore the distance between the anchorages usually exceeds 12 inches. Similarly, laterally adjacent bench seats in a small school bus would be unaffected as the anchorages are mounted on the seat and the aisle is required to be at least 12 inches.

VII. *Upper Anchorage Zone*

In the final rule, the agency redefined the method for locating the upper anchorage zone. Specifically, the point of reference was redefined as the H-point rather than the SgRP. In its petition, Ford stated its belief "that the only anchorages affected by this amendment are those in front seats of trucks and MPVs with either a GVWR of more than B500 pounds but not greater than 10.000 pounds or with an unloaded vehicle weight greater than 5500 pounds and an GVWR of 10,000 pounds or less, as well as convertible trucks, walk-in vans. Postal Service vehicles, motor homes, etc." Ford requested that the agency rescind this amendment because "Ford believes that it was not the agency's intent to apply new anchorage location requirements solely to this low volume, complex, and diverse group of vehicles."

The agency believes that Ford's request is based upon two misconceptions. First, the agency does not perceive the redefinition as having changed the location requirements. Prior to the final rule, S4.3.2 of Standard No. 210 stated that the seat must be in the rearmost position with the template's "H" point at the SgRP. The agency has always interpreted this to require the template to be positioned fully rearward in the seat. While the SgRP is usually located with the seat in its rearmost position, the agency substituted a requirement that the template's "H" point be located at the design "H" point of the seat, rather than at the SgRP because of confusion which arose when the SgRP is not the rearmost position as required by the standard, for example, if the seat has "extended travel." Therefore, while the names changed, the positions of the seat and the template for determining compliance with the anchorage location requirements did not change.

Second, Ford apparently overlooked the rear seats in automobiles, light trucks and MPV's that still must comply with the upper anchorage zone requirement. S4.3 of Standard No. 210 states that all anchorages for automatic seat belt assemblies and for dynamically tested seat belt assemblies that meet the frontal crash protection requirements of S5.1 of Standard No. 208 are excluded from the location requirements of Standard No. 210.

Notwithstanding this exclusion, anchorages at each of the following outboard seats must comply with the upper anchorage location requirements:

—the seats behind the first row of seats on automobiles, MPV's and light trucks;

—trucks with a GVWR above 8,500 pounds but under 10,000 pounds;

—trucks with an unloaded weight above 5,500 pounds but a GVWR under 10,000 pounds,

—convertibles, open-body type vehicles, walk-in van-type trucks, motor homes, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles carrying chassis-mounted campers.

Ford did not provide any data to show that there was no degradation of safety when upper anchorages of non-dynamically tested safety belts are allowed to be placed outside the specified zone. The agency has clearly stated its concern with permitting anchorages forward of the occupant. See, 55 FR 17970, 17975, April 30, 1990. Since the agency believes that there would be a negative safety effect as a result of deleting this upper anchorage zone requirement, Ford's petition is denied.

VIII. *Technical Errors*

In its petition for rulemaking, Ford pointed out three errors in the final rule. First, Ford noted that, in S5.2, the reference to the upper body block, and references to the published Figure 3 were omitted. Second, Ford noted that the onset rate and test time is repeated in S5.2. These errors were corrected in a June 15, 1990 technical amendment (55 FR 24240).

Third, Ford pointed out that the definition of "outboard designated seating position" at 49 CFR 571.3 references the SgRP and the shoulder reference point

"as shown in Figure 1 of Standard No. 210." However, SgRP is no longer shown in Figure 1. In the final rule, Figure 1, used to locate the upper anchorage zone, was amended to substitute the Hip-Point (H-Point) with the seat in its full rearward and full downward position for the SgRP. According to Ford, this substitution also changed the location of the shoulder reference point in Figure 1.

The agency contacted Ford to determine what change it saw in the location of the shoulder reference point. Ford stated that by substituting the H-point for the SgRP, both the hips and the shoulders of the template were moved back in movable seats, to the rearmost position. In a Ford vehicle, this would typically be about one inch backwards and one-tenth of an inch down.

As discussed previously, the agency does not agree with the Ford's belief that this new Figure 1 changed the position of the template rearward. However, the agency agrees it is appropriate to substitute the term H-point for SgRP in the definition of "outboard designated seating position" in §571.3.

Finally, in reviewing the Ford petition, the agency discovered an inadvertent error in S5.2. The end of the second sentence currently reads, "with an initial force application angle of not less than 5 degrees more than 15 degrees above the horizontal." The sentence should have included the word "nor", as follows: "with an initial force application of not less than 5 degrees nor more than 15 degrees above the horizontal."

Requests for Interpretation

I. *Which seats must comply with the 5,000 oound test and which must comply with the 3,000 pound test?*

At the outset, the test requirement for the safety belt anchorages at any seat is either 5,000 pounds or 6,000 pounds. A technical error in the final rule deleted mention of the upper shoulder restraint body block, creating the impression of a 3,000 pound test. This error was corrected in the June 15, 1990 technical amendment. Thus, there is a 3,000 pound test load on the pelvic body block, and a 3,000 pound test load on the upper torso body block.

The final rule specifies which load shall be applied in S4.2.1 and S4.2.2, S4.2.1 requires a minimum load of 5,000 pounds on the pelvic body block for the anchorages for seating positions which may not have a shoulder belt, or for seating positions whose shoulder belt anchorages are not required to be tested. This includes the anchorages for: (1) a Type 1 safety belt. (2) a shoulder belt which is not required by Standard No. 208 (a "voluntarily installed" shoulder belt) and therefore is not subject to Standard No. 210, and (3) a detachable shoulder belt (permitted for automatic belts under S4.5.3.2 of Standard No. 208). For other anchorages, S4.2.2 requires a test load of 3,000 pounds on the lap belt body block and 3,000 pounds on the shoulder belt body block.

II. *Clarification of the definition of attachment hardware.*

GM requested an interpretation of the term "attachment hardware" for Standard No. 210. Specifically, GM was concerned with certain Type 2 seat belt assembly designs that incorporate a buckle and latchplate near the seat belt anchorage. GM stated that, although these designs meet the requirements of Standard No. 209, it is unclear whether they would be considered "attachment hardware" and therefore subject to the performance requirements of Standard No. 210. Elsewhere in today's edition of the Federal Register, the agency has published a final rule amending the definition of "seat belt anchorage." In that final rule, the agency stated that the definition did not include the webbing, straps or similar device, or the buckles which comprise the seat belt itself.

III. *What is the meaning of "duplicate the geometry?"*

For an explanation of this term, see section IC of the discussion on petition issues.

IV. *Define "voluntarily installed."*

The agency considers a "voluntarily installed" safety belt system to be a system which is neither required by Standard No. 208 nor necessary to pass the dynamic test in Standard No. 208. Requests for interpretation regarding specific safety belt systems should be directed to the Office of Chief Counsel, NHTSA, 400 Seventh Street S.W., Washington, D.C. 20590.

V. *Is a manual 3-point belt installed at a seating position equipped with a supplemental inflatable restraint (SIR) system regarded as a synamically tested belt?*

As discussed in the recent rulemaking to exclude dynamically tested safety belts from static testing requirements, the agency does not consider a manual 3-point belt installed at a seating position equipped with an SIR system to be a dynamically tested belt. See, 56 FR 15295, 15297; April 16, 1991. However, since a March 14, 1988 interpretation letter to Mr. Karl-Heinz Faber of Mercedes Benz, the agency has considered a manual 3-point belt installed at a seating position equipped with an SIR system to be exempt from the location requirements, of Standard No. 210. Because of the confusion associated with the phrase "dynamically tested" the agency is amending S4.3 to clarify, consistent with agency interpretation of this section, that the anchorages for all seat belt assemblies that meet the frontal crash protection requirements of S5.1 of Standard No. 208 are exempt from the location requirements

In reviewing this request for interpretation, the agency noted that the final sentence of the introductory text in S4.3 exempts anchorages for the upper torso portion of a Type 2 seat belt assembly installed at a forward facing rear outboard seating position of a passenger car manufactured on or after December 11, 1989, and before September 1, 1990, from the requirements of S4.3.2. Since this exemption no longer has any substantive effect, this sentence has been deleted.

In consideration of the foregoing, 49 CFR 571 is amended as follows:

2. Section 571.3 is amended by revising the definition of "outboard designated seating position" in paragraph (b), to read as follows:

(b) Other definitions.

* * * * * *

"Outboard designated seating position" means a designated seating position where a longitudinal vertical plane tangent to the outboard side of the seat cushion is less than 12 inches from the innermost point on the inside surface of the vehicle at a height between the design H-point and the shoulder reference point (as shown in fig. 1 of Federal Motor Vehicle Safety Standard No. 210) and longitudinally between the front and rear edges of the seat cushion.

* * * * * *

571.210 [Amended]

3. S4.1.3 of Standard No. 210 is revised to read as follows:

S4.1 Type.

* * * * * *

S4.1.3 (a)

* * * * * *

(b) The requirement in S4.1.1 and S4.1.2 of this standard that seat belt anchorages for a Type 1 or a Type 2 seat belt assembly shall be installed for certain designated seating positions does not apply to any such seating positions that are equipped with a seat belt assembly that meets the frontal crash protection requirements of S5.1 of Standard No 208 (49 CFR 571.208).

4. S4.2 of Standard No. 210 is amended by revising S4.2.1, S4.2.2. and S4.2.4 to read as follows:

S4.2 Strength.

S4.2.1 Except as provided in S4.2.5, and except for side-facing seats. the anchorages, attachment hardware, and attachment bolts for any of the following seat belt assemblies shall withstand a 5,000-pound force when tested in accordance with S5.1 of this standard:

(a) Type 1 seat belt assembly;

(b) Lap belt portion of either a Type 2 or automatic seat belt assembly, if such seat belt assembly is voluntarily installed at a seating position; and

(c) Lap belt portion of either a Type 2 or automatic seat belt assembly, if such seat belt assembly is equipped with a detachable upper torso belt.

S4.2.2 Except as provided in S4 2.5. the anchorages, attachment hardware, and attachment bolts for all Type 2 and automatic seat belt assemblies that are installed to comply with Standard No. 208 (49 CFR 571.208) shall withstand 3,000-pound forces when tested in accordance with S5.2.

* * * * * *

S4.2.4 Anchorages, attachment hardware, and attachment bolts shall be tested by simultaneously loading them in accordance with the applicable procedures set forth in S5 of this standard if the anchorages are either:

(a) for designated seating positions that are common to the same occupant seat and that face in the same direction, or

(b) for laterally adjacent designated seating positions that are not common to the same occupant seat, but that face in the same direction, if the vertical centerline of the bolt hole for at least one of the anchorages for one of those designated seating positions is within 12 inches of the vertical centerline of the bolt hole for an anchorage for one of the adjacent seating positions.

S4.2.5 The attachment hardware of a seat belt assembly, which is subject to the requirements of S5.1 of Standard No. 208 (49 CFR 571.208) by virtue of any provision of Standard No. 208 other than S4.1.2.1(c)(2) of that standard, does not have to meet the requirements of S4.2.1 and S4.2.2 of this standard.

5. S4.3 of Standard No. 210 is amended by revising the introductory text of S4.3 and by adding a new section S4.3.1.5, to read as follows:

S4.3 Location. As used in this section, "forward" means the direction in which the seat faces, and other directional references are to be interpreted accordingly. Anchorages for seat belt assemblies that meet the frontal crash protection requirements of S5.1 of Standard No. 208 (49 CFR 571.208) are exempt from the location requirements of this section.

* * * * * *

S4.3.1.5 Notwithstanding the provisions of S4.3.1.1 through S4.3.1.4, the lap belt angle for seats behind the front row of seats shall be between 20 degrees and 75 degrees for vehicles manufactured between September 1, 1992 and September 1, 1993.

6. S5 of Standard No. 210 is revised to read as follows:

S5 Test procedures. Each vehicle shall meet the requirements of S4.2 of this standard when tested according to the following procedures. Where a range of values is specified. the vehicle shall be able to meet the

requirements at all points within the range. For the testing specified in these procedures, the anchorage shall be connected to material whose breaking strength is equal to or greater than the breaking strength of the webbing for the seat belt assembly installed as original equipment at that seating position. The geometry of the attachment duplicates the geometry, at the initiation of the test, of the attachment of the originally installed seat belt assembly.

S5.1 Seats with Type 1 or Type 2 seat belt anchorages. With the seat in its rearmost position, apply a force of 5,000 pounds in the direction in which the seat faces to a pelvic body block as described in Figure 2A, in a plane parallel to the longitudinal centerline of the vehicle, with an initial force application angle of not less than 5 degrees nor more than 15 degrees above the horizontal. Apply the force at the onset rate of not more than 50,000 pounds per second. Attain the 5,000 pound force in not more than 30 seconds and maintain it for 10 seconds. At the manufacturer's option. the pelvic body block described in Figure 2B may be substituted for the pelvic body block described in Figure 2A to apply the specified force to the center set(s) of anchorages for any group of three or more sets of anchorages that are simultaneously loaded in accordance with S4.2.4 of this standard.

S5.2 Seats with Type 2 or automatic seat belt anchorages. With the seat in its rearmost position, apply forces of 3,000 pounds in the direction in which the seat faces simultaneously to a pelvic body block, as described in Figure 2A, and an upper torso body block, as described in Figure 3, in a plane parallel to the longitudinal centerline of the vehicle, with an initial force application angle of not less than 5 degrees nor more than 15 degrees above the horizontal. Apply the forces at the onset rate of not more than 30,000 pounds per second. Attain the 3,000 pound forces in not more than 30 seconds and maintain it for 10 seconds. At the manufacturer's option, the pelvic body block described in Figure 28 may be substituted for the pelvic body block described in Figure 2A to apply the specified force to the center set(s) of anchorages for any group of three or more sets of anchorages that are simultaneously loaded in accordance with S4.2.4 of this standard.

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PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

SUBPART A—GENERAL

§ 571.1 Scope.

This part contains the Federal Motor Vehicle Safety Standards for motor vehicles and motor vehicle equipment established under section 103 of the National Traffic and Motor Vehicle Safety Act of 1966 (80 Stat. 718).

§ 571.3 Definitions.

(a) *Statutory definitions.* All terms defined in section 102 of the Act are used in their statutory meaning.

(b) *Other definitions.* As used in this chapter *Act* means the National Traffic and Motor Vehicle Safety Act of 1966 (80 Stat. 718).

Approved, unless used with reference to another person, means approved by the Secretary.

Boat trailer means a trailer designed with cradle-type mountings to transport a boat and configured to permit launching of the boat from the rear of the trailer.

Bus means a motor vehicle with motive power, except a trailer designed for carrying more than 10 persons.

Curb weight means the weight of a motor vehicle with standard equipment: maximum capacity of engine fuel, oil, and coolant; and, if so equipped, air conditioning and additional weight optional engine.

Designated seating capacity means the number of designated seating positions provided.

Designated seating position means any plan view location capable of accommodating a person at least as large as a 5th percentile adult female, if the overall seat configuration and design and vehicle design is such that the position is likely to be used as a seating position while the vehicle is in motion, except for auxiliary seating accommodations such as temporary or folding jump seats. Any bench or split-bench seat in a passenger car, truck or multipurpose passenger vehicle with a GVWR less than 10,000 pounds, having greater than 50 inches of hip room (measured in accordance with SAE Standard J1100 (a)) shall have not less than three designated seating positions, unless the seat design or vehicle design is such that the center position cannot be used for seating.

Driver means the occupant of a motor vehicle seated immediately behind the steering control system.

Emergency brake means a mechanism designed to stop a motor vehicle after a failure of the service brake.

5th percentile adult female means a person possessing the dimensions and weight of the 5th percentile adult female specified for the total age group in Public Health Service Publication No. 1000, Series 11, No. 8, "Weight, Height, and Selected Body Dimensions of Adults."

Fixed collision barrier means a flat, vertical, unyielding surface with the following characteristics:

(1) The surface is sufficiently large that when struck by a tested vehicle, no portion of the vehicle projects or passes beyond the surface.

(2) The approach is a horizontal surface that is large enough for the vehicle to attain a stable attitude during its approach to the barrier, and that does not restrict vehicle motion during impact.

(3) When struck by a vehicle, the surface and its supporting structure absorb no significant portion of the vehicle's kinetic energy, so that a performance requirement described in terms of impact with a fixed collision barrier must be met no matter how small an amount of energy is absorbed by the barrier.

Firefighting vehicle means a vehicle designed exclusively for the purpose of fighting fires.

Forward control means a configuration in which more than half of the engine length is rearward of the foremost point of the windshield base and the steering wheel hub is in the forward quarter of the vehicle length.

Gross axle weight rating or *GAWR* means the value specified by the vehicle manufacturer as the load-carrying capacity of a single axle system, as measured at the tire-ground interfaces.

Gross combination weight rating or *GCWR* means the value specified by the manufacturer as the loaded weight of a combination vehicle.

Gross vehicle weight rating or *GVWR* means the value specified by the manufacturer as the loaded weight of a single vehicle.

H point means the mechanically hinged hip point of a manikin which simulates the actual pivot center of the human torso and thigh, described in SAE Recommended Practice J826. "Manikin for Use in Defining Vehicle Seating Accommodations," November 1962.

Head impact area means all non-glazed surfaces of the interior of a vehicle that are statically contactable by a 6.5-inch diameter spherical head form of a measuring device having a pivot point to "top-of-head" dimension infinitely adjustable from 29 to 33 inches in accordance with the following procedure, or its graphic equivalent:

(a) At each designated seating position, place the pivot point of the measuring device—

(1) For seats that are adjustable fore and aft, at—

(i) The seating reference point; and

(ii) A point 5 inches horizontally forward of the seating reference point and vertically above the seating reference point an amount equal to the rise which results from a 5-inch forward adjustment of the seat or 0.75 inches; and

(2) For seats that are not adjustable fore and aft, at the seating reference point.

(b) With the pivot point to "top-of-head" dimensions at each value allowed by the device and the interior dimensions of the vehicle, determine all contact points above the lower windshield glass line and forward of the seating reference point.

(c) With the head form at each contact point, and with the device in a vertical position if no contact point exists for a particular adjusted length, pivot the measuring device forward and downward through all arcs in vertical planes to 90° each side of the vertical longitudinal plane through the seating reference point, until the head form contacts an interior surface or until it is tangent to a horizontal point 1 inch above the seating reference point, whichever occurs first.

Includes means includes but is not limited to.

Interior compartment door means any door in the interior of the vehicle installed by the manufacturer as a cover for storage space normally used for personal effects.

Longitudinal or *longitudinally* means parallel to the longitudinal centerline of the vehicle.

Motorcycle means a motor vehicle with motive power having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

Motor-driven cycle means a motorcycle with a motor that produces 5-brake horsepower or less.

Multipurpose passenger vehicle means a motor vehicle with motive power, except a trailer, designed to carry 10 persons or less which is constructed either on a truck chassis or with special features for occasional off-road operation.

Open-body type vehicle means a vehicle having no occupant compartment top or an occupant compartment top that can be installed or removed by the user at his convenience.

Outboard designated seating position means a designated seating position where a longitudinal vertical plane tangent to the outboard side of the seat cushion is less than 12 inches from the innermost point on the inside surface of the vehicle at a height between **[**the design H-point and the shoulder reference point and the shoulder reference point (as shown in Fig. 1 of Federal Motor Vehicle Safety Standard No. 210) and longitudinally between the front and rear edges of the seat cushion. **(56 F.R. 63676—December 5, 1991. Effective: September 1, 1992.)]**

Overall vehicle width means the nominal design dimension of the widest part of the vehicle, exclusive of signal lamps, marker lamps, outside rearview mirrors, flexible fender extensions, and mud flaps, determined with doors and windows closed and the wheels in the straight-ahead position.

Parking brake means a mechanism designed to prevent the movement of a stationary motor vehicle.

Passenger car means a motor vehicle with motive power, except a multipurpose passenger vehicle, motorcycle, or trailer designed for carrying 10 persons or less.

Pelvic impact area means that area of the door or body side panel adjacent to any outboard designated seating position which is bounded by horizontal planes 7 inches above and 4 inches below the seating reference point and vertical transverse planes 8 inches forward and 2 inches rearward of the seating reference point.

Pole trailer means a motor vehicle without motive power designed to be drawn by another motor vehicle and attached to the towing vehicle by means of a reach or pole, or by being boomed or otherwise secured to the towing vehicle, for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.

School bus means a bus that is sold, or introduced in interstate commerce, for purposes that include carrying students to and from school or related events, but does not include a bus designed and sold for operation as a common carrier in urban transportation.

[*Seating reference point* (SgRP) means the unique design H-point, as defined in SAE J1100 (June 1984), which:

(a) Establishes the rearmost normal design driving or riding position of each designated seating position, which includes consideration of all modes of adjustment, horizontal, vertical, and tilt, in a vehicle;

(b) Has X, Y, and Z coordinates, as defined in SAE J1100 (June 1984), established relative to the designed vehicle structure;

(c) Simulates the position of the pivot center of the human torso and thigh; and

(d) Is the reference point employed to position the two dimensional drafting templates with the 95th percentile leg described in SAE J826 (May 1987), or, if the drafting template with the 95th percentile leg cannot be positioned in the seating position, is located with the seat in its most rearward adjustment position. **(56 F.R. 38084—August 12, 1991. Effective: September 1, 1992)**]

Semitrailer means a trailer, except a pole trailer, so constructed that a substantial part of its weight rests upon or is carried by another motor vehicle.

Service brake means the primary mechanism designed to stop a motor vehicle.

Speed attainable in 1 mile means the speed attainable by accelerating at maximum rate from a standing start for 1 mile, on a level surface.

Speed attainable in 2 miles means the speed attainable by accelerating at a maximum rate from a standing start for 2 miles, on a level surface.

Torso line means the line connecting the "H" point and the shoulder reference point as defined in SAE Recommended Practice J787b, "Motor Vehicle Seat Belt Anchorage," September 1966.

Trailer means a motor vehicle with or without motive power, designed for carrying persons or property and for being drawn by another motor vehicle.

Trailer converter dolly means a trailer chassis equipped with one or more axles, a lower half of a fifth wheel and a drawbar.

Truck means a motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment.

Truck tractor means a truck designed primarily for drawing other motor vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and the load so drawn.

Unloaded vehicle weight means the weight of a vehicle with maximum capacity of all fluids necessary for operation of the vehicle, but without cargo, occupants, or accessories that are ordinarily removed from the vehicle when they are not in use.

95th percentile adult male means a person possessing the dimensions and weight of the 95th percentile adult male specified in Public Health Service Publication No. 1000, Series 11, No. 8, "Weight, Height, and Selected Body Dimensions of Adults."

Vehicle fuel tank capacity means the tank's unusable capacity (i.e., the volume of fuel left at the bottom of the tank when the vehicle's fuel pump can no longer draw fuel from the tank) plus its usable capacity (i.e., the volume of fuel that can be pumped into the tank through the filler pipe with the vehicle on a level surface and with the unusable capacity already in the tank). The term does not include the vapor volume of the tank (i.e., the space above the fuel tank filler neck) nor the volume of the fuel tank filler neck.

§ 571.4 Explanation of usage.

The word "any," used in connection with a range of values or set of items in the requirements, conditions, and procedures of the standards or regulations in this chapter, means generally the totality of the items or values, any one of which may be selected by the Administration for testing, except where clearly specified otherwise.

Examples: "The vehicle shall meet the requirements of S4.1 when tested at any point between 18 and 22 inches above the ground." This means that the vehicle must be capable of meeting the specified requirements at every point between 18 and 22 inches above the ground. The test in

question for a given vehicle may call for a single test (a single impact, for example), but the vehicle must meet the requirement at whatever point the Administration selects, within the specified range.

"Each tire shall be capable of meeting the requirements of this standard when mounted on any rim specified by the manufacturer as suitable for use with that tire." This means that, where the manufacturer specifies more than one rim as suitable for use with a tire, the tire must meet the requirements with whatever rim the Administration selects from the specified group.

"Any one of the items listed below may, at the option of the manufacturer, be substituted for the hardware specified in S4.1." Here the wording clearly indicates that the selection of items is at the manufacturer's option.

§ 571.5 Matter incorporated by reference.

(a) *Incorporation.* There are hereby incorporated, by reference, into this part, all materials referred to in any standard in Subpart B of this part that are not set forth in full in the standard. These materials are thereby made part of this regulation. The Director of the *Federal Register* has approved the materials incorporated by reference. For materials subject to change, only the specific version approved by the Director of the Federal Register and specified in the standard are incorporated. A notice of any change in these materials will be published in the *Federal Register.* As a convenience to the reader, the materials incorporated by reference are listed in the Finding Aid Table found at the end of this volume of the *Code of Federal Regulations.*

(b) *Availability.* The materials incorporated by reference, other than acts of Congress and matter published elsewhere in the *Federal Register,* are available as follows:

(1) *Standards of the Society of Automotive Engineers (SAE).* They are published by the Society of Automotive Engineers, Inc. Information and copies may be obtained by writing to: Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, Pennsylvania 15096.

(2) *Standards of the American Society for Testing and Materials.* They are published by the American Society for Testing and Materials. Information on copies may be obtained by writing to the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania, 19103.

(3) *Standards of the American National Standards Institute.* They are published by the American National Standards Institute. Information and copies may be obtained by writing to: American National Standards Institute, 1430 Broadway, New York, New York 10018.

(4) *Data from the National Health Survey, Public Health Publication No. 1000, Series 11, No. 8.* This is published by the U.S. Department of Health, Education, and Welfare. Copies may be obtained for a price of 35 cents from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402.

(5) *Test methods of the American Association of Textile Chemists and Colorists.* They are published by the American Association of Textile Chemists and Colorists. Information and copies can be obtained by writing to: American Association of Textile Chemists and Colorist, Post Office Box 886, Durham, NC.

[(6) *Test methods of the Illuminating Engineering Society of North America (IES).* They are published by the Illuminating Engineering Society of North America, 345 East 47th St., New York, N.Y. 10017. **(54 F.R. 20082—May 9, 1989. Effective: May 9, 1989)**]

§ 571.7 Applicability.

(a) *General.* Except as provided in paragraphs (c) and (d) of this section, each standard set forth in Subpart B of this part applies according to its terms to all motor vehicles or items of motor vehicle equipment the manufacture of which is completed on or after the effective date of the standard.

(b) *Chassis-cabs.* Chassis-cabs, as defined in 371.3(b), manufactured on or after January 1, 1968, shall meet all standards in effect on the date of manufacture of the chassis-cab as are applicable to the principal end use intended by its manufacturer except that where the chassis-cab is equipped with only part and not all of the items of lighting equipment referred to in standard No. 108, it need not meet such standards.

(REVOKED 36 F.R. 7055. EFFECTIVE: 4/14/71)

(c) *Military vehicles.* No standard applies to a vehicle or item of equipment manufactured for, and sold directly to, the Armed Forces of the United States in conformity with contractural specifications.

(d) *Export.* No standard applies to a vehicle or item of equipment in the circumstances provided in section 108(b) (5) of the Act (15 U.S.C. 1397 (b) (5)).

(e) *Combining and new used components.* When a new cab is used in the assembly of a truck, the

truck will be considered newly manufactured for purposes of paragraph (a) of this section, the application of the requirements of this chapter, and the Act, unless the engine, transmission, and drive axle(s) (as a minimum) of the assembled vehicle are not new, and at least two of these components were taken from the same vehicle.

(f) *Combining new and used components in trailer manufacture.* When new materials are used in the assembly of a trailer, the trailer will be considered newly manufactured for purposes of paragraph (a) of this section, the application of the requirements of this chapter, and the Act, unless, at a minimum, the trailer running gear assembly (axle(s), wheels, braking and suspension) is not new, and was taken from an existing trailer—

(1) Whose identity is continued in the reassembled vehicle with respect to the Vehicle Identification Number; and

(2) That is owned or leased by the user of the reassembled vehicle.

§ 571.8 Effective date.

Notwithstanding the effective date provisions of the motor vehicle safety standards in this part, the effective date of any standard or amendment of a standard issued after September 1, 1971, to which firefighting vehicles must conform shall be, with respect to such vehicles, either 2 years after the date on which such standard or amendment is published in the Rules and Regulations section of the *Federal Register*, or the effective date specified in the notice, whichever is later, except as such standard or amendment may otherwise specifically provide with respect to firefighting vehicles.

§ 571.9 Separability.

If any standard established in this part or its application to any person or circumstance is held invalid, the remainder of the part and the application of that standard to other persons or circumstances is not affected thereby.

Interpretations

General. Compliance with Initial Federal Motor Vehicle Safety Standards is determined by actual date of manufacture, rather than model year designation.

Mini-bikes.

A number of persons have asked the Federal Highway Administrator to reconsider his February 4, 1969 interpretation of the National Traffic and Motor Vehicle Safety Act of 1966 concerning mini-bikes. In that interpretation, the Administrator concluded that mini-bikes are "motor vehicles" within the meaning of section 102(3) of the Act, and are regarded as "motorcycles" or "motor-driven cycles" under the Federal Highway Administration regulations. Under those regulations, motorcycles and motor-driven cycles must conform to Motor Vehicle Safety Standard No. 108, which imposes performance requirements relating to lamps, reflective devices, and associated equipment.

The primary basis for the conclusion of the February 4 interpretation, as stated therein, was that "[i]n the absence of clear evidence that as a practical matter a vehicle is not being, or will not be, used on the public streets, roads, or highways the operating capability of a vehicle is the most relevant fact in determining whether or not that vehicle is a motor vehicle under the Act . . ." It was stated that if examination of a vehicle's operating capability revealed that the vehicle is "physically capable (either as offered for sale or without major additions or modifications) of being operated on the public streets, roads, or highways, the vehicle will be considered as having been 'manufactured primarily for use on the public streets, roads, and highways'." It was also stated that a manufacturer would need to show substantially more than that it has advertised a vehicle as a recreational or private property vehicle or that use of the vehicle on a public roadway, as manufactured and sold, would be illegal in order to overcome a conclusion based on examination of the vehicle's operating capability.

Petitioners have urged the Administrator to abandon the operating capability test. They have argued that many vehicular types, such as self-propelled riding mowers, have an "operating capability" for use on the public roads and yet are obviously outside the class of vehicles which Congress subjected to safety regulation. True as that may be, the Administrator has decided to adhere to the view that the operating capability of a vehicle is an important criterion in determining whether it is a "motor vehicle" within the meaning of the statute. As the above-quoted portion of the February 4, 1969 interpretation states, however,

the operating capability test is not reached if there is "clear evidence that as a practical matter the vehicle is not being used on the public streets, roads, or highways. In the case of self-propelled riding mowers, golf carts, and many other similar self-propelled vehicles, such clear evidence exists.

It is clear from the definition of "motor vehicle" in section 102(3) of the Act* that the purpose for which a vehicle is manufactured is a basic factor in determining whether it was "manufactured primarily for use on the public streets, roads, and highways." However, this does not mean that the proper classification of a particular vehicle is wholly dependent on the manufacturer's subjective state of mind. Instead, the Administrator intends to invoke the familiar principle that the purpose for which an act, such as the production of a vehicle, is undertaken may be discerned from the actor's conduct in the light of the surrounding circumstances. Thus, if a vehicle is operationally capable of being used on public thoroughfares and if in fact a substantial proportion of the consuming public actually uses it that way, it is a "motor vehicle" without regard to the manufacturer's intent, however manifested. In such a case, it would be incumbent upon a manufacturer of such a vehicle either to alter the vehicle's design, configuration, and equipment to render it unsuitable for on-road use or, by compliance with applicable motor vehicle safety standards, to render the vehicle safe for use on public streets, roads, and highways.

In borderline cases, other factors must also be considered. Perhaps the most important of these is whether state and local laws permit the vehicle in question to be used and registered for use on public highways. The nature of the manufacturer's promotional and marketing activities is also evidence of the use for which the vehicle is manufactured. Some relevant aspects of those activities are: (1) whether the vehicle is advertised for on-road use or whether the manufacturer represents to the public that the vehicle is not for use on public roads; (2) whether the vehicle is sold through retail outlets that also deal in conventional motor vehicles; and (3) whether the manufacturer affixes a label warning owners of the vehicle not to use it for travel over public roads.

In the first instance, each manufacturer must decide whether his vehicles are manufactured primarily for use on the public streets, roads, and highways. His decision cannot be conclusive, however. Under the law, the authority to determine whether vehicles are subject to the provisions of the National Traffic and Motor Vehicle Safety Act is vested in the Secretary. As delegee of the Secretary, the Administrator will exercise that power in the light of all of the relevant facts and circumstances (including the manufacturer's declaration of his intent) with the objective of reducing the toll of injuries and deaths on the public highways.

Analysis of the available data about mini-bikes, including the contents of petitions for reconsideration of the February 4, 1969 interpretation, has convinced the Administrator that, for the most part, mini-bikes should not be considered motor vehicles under the above criteria. Mini-bikes do have an operating capability for use on public roads. It now appears that incidents of their actual operation on public streets, roads, and highways, while undoubtably extant, are comparatively rare. What is more important, their use and registration for use on public thoroughfares is precluded by the laws of virtually every jurisdiction, unless the mini-bike is equipped with lamps, reflective devices, and associated equipment of the sort that Safety Standard No. 108 requires. Most manufacturers of mini-bikes do not advertise or otherwise promote them as being suitable for use on public roads, and some actually attach a label to their vehicles, warning against on-road use. Those manufacturers do not furnish retail purchasers with the documentation needed to register, title, and license the vehicles for use on public roads under the relevant State laws. Finally, mini-bikes are commonly sold to the public through retail outlets that are not licensed dealers in motor vehicles.

Accordingly, so long as the great majority of the States do not permit the registration of mini-bikes for use on the public highways and streets, and until such time as there is clear evidence that mini-bikes are being used on public streets to a significant extent, the Administrator is of the view that, at a minimum, persons who manufacture mini-bikes are not manufacturers of "motor vehicles" within the meaning of the National Traffic and Motor Vehicle Safety Act of 1966 if they (1) do not

*" 'Motor vehicle' means any vehicle driven or drawn by mechanical power manufactured primarily for use on the public streets, roads, and highways, except any vehicle operated exclusively on a rail or rails." 15 U.S.C. 1391(3).

equip them with devices and accessories that render them lawful for use and registration for use on public highways under state and local laws; (2) do not otherwise participate or assist in making the vehicles lawful for operation on public roads (as by furnishing certificates of origin or other title documents, unless those documents contain a statement that the vehicles were not manufactured for use on public streets, roads, or highways); (3) do not advertise or promote them as vehicles suitable for use on public roads; (4) do not generally market them through retail dealers on motor vehicles; and (5) affix to the mini-bikes a notice stating in substance that the vehicles were not manufactured for use on public streets, roads, or highways and warning operators against such use. Cases of manufacturers who fulfill some, but not all, of the above criteria will be dealt with individually under those criteria and such others as may be relevant.

A manufacturer of mini-bikes is, of course, at liberty to design and construct his products so that they conform to the provisions of the motor vehicle safety standards that are applicable to motorcycles and thereby to manufacture motor vehicles within the meaning of the National Traffic and Motor Vehicle Safety Act.

In consideration of the foregoing, the petitions for reconsideration of the February 4, 1969 interpretation relating to mini-bikes are granted to the extent set forth above, and that interpretation is withdrawn.

Issued on Sept. 30, 1969.

Limits on State Enforcement Procedures

The Japan Automobile Manufacturers Association has brought to the attention of the NHTSA, in a petition for reconsideration of Standard No. 209, some leadtime problems that may be caused by the safety standard enforcement practices of some of the States. These States require manufacturers to submit samples of motor vehicle equipment covered by one of the standards, such as seat belt assemblies, to a State-authorized test laboratory. The test reports from the laboratory are then submitted to a State agency or an outside agency such as the American Association of Motor Vehicle Administrators, which issues an "approval" to the manufacturer. The problem arises in cases where the State does not permit the manufacturer to sell the equipment in that State until the approval is received. If the leadtime between the issuance of a fairly short, the manufacturer may not have time to prepare and submit samples and to obtain the State-required approval before the effective date of the standard. Thus, the manufacturer may be prohibited from selling his product in the State on and after the effective date, even though it fully complies with all applicable Federal standards and regulations.

The substantive relationship between Federal and State safety standards was established by Congress in section 103(d) of the National Traffic and Motor Vehicle Safety Act, which provides:

> "Whenever a Federal motor vehicle safety standard established under this title is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal Standard."

Although this section makes it clear that State standards must be "identical" to the Federal standards to the extent of the latter's coverage, the procedural relationship between State and Federal enforcement of the standard is not explicitly stated in the Act. It has been the position of this agency that the Act permits the States to enforce the standards, independently of the Federal enforcement effort, since otherwise there would have been no reason for the Act to allow the States to have even "identical" standards. The question raised by the JAMA petition is to what extent the States may utilize an enforcement scheme that differs from the Federal one established by the Act.

The basic structure of the Act places the burden of conformity to the standards on the manufacturers, who must exercise due care to determine that all their products comply with applicable standards (§§ 103, 108, 15 U.S.C. 1392, 1397). They must certify each vehicle and item of covered equipment as conforming to the standards (§ 114, 15 U.S.C. 1403). No prior approval of a manufacturer's products is provided for or contemplated by the Act. The NHTSA does not issue such approvals, but tests the products after they come onto the market to determine whether they conform. Thus, the effective date of a standard is established on the basis of the agency's judgment

as to the length of time it will take manufacturers to design and prepare to produce a vehicle or item of equipment, and is not intended to allow time for obtaining governmental approval after production begins.

In this light, a State requirement of obtaining prior approval before a product may be sold conflicts with the Federal regulatory scheme. The legislative history does not offer specific guidance on the question, except for general statements such as the following by Senator Magnuson:

> "Some States have more stringent laws than others, but concerning the car itself we must have uniformity. That is why the bill suggests to States that if we set a minimum standard, *a car complying with such standard should be admitted to all States.*" 112 Cong. Rec. 13585, June 24, 1966.

> "[W]e have provided in the bill for foreign cars, that they must comply with the standards: and *we have even allowed them to come in under a free-port arrangement,* where, if they are not in compliance, dealers can bring them up to the standard." 12 Cong. Rec. 13587, June 24, 1966. (Emphasis supplied.)

It is true that Senator Magnuson in the above statements was not directly considering the question of State enforcement. But Congress does not appear to have contemplated the existence of State procedures that would restrict the free movement of vehicles and equipment, or place significant burdens on the manufacturers, in areas covered by the Federal standards, beyond those imposed by the standards themselves.

It is the position of this agency, therefore, that under the Act and the regulatory scheme that has been established by its authority a State may not regulate motor vehicles or motor vehicle equipment, with respect to aspects of performance covered by Federal standards, by requiring prior State approval before sale or otherwise restricting the manufacture, sale, or movement within the State of products that conform to the standards. This interpretation does not preclude State enforcement of standards by other reasonable procedures that do not impose undue burdens on the manufacturers, including submission of products for approval within reasonable time limits, as long as manufacturers are free to market their products while the procedures are being followed, as they are under the Federal scheme.

Issued on May 13, 1971.

PREAMBLE TO MOTOR VEHICLE SAFETY STANDARD NO. 100

Controls and Displays
[Docket No. 1-18; Notice 31]

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In a final rule published in the *Federal Register* on February 3, 1987, NHTSA amended a number of the requirements of Standard No. 101, *Controls and Displays.* In response to petitions for reconsideration, this notice amends Part 571 to permit compliance with either the earlier version of the standard or the amended standard until September 1, 1989. The agency will address other issues raised by petitioners in a separate notice.

EFFECTIVE DATE: The amendments made by this rule are effective March 9, 1987.

SUPPLEMENTARY INFORMATION: In a final rule published in the *Federal Register* (52 FR 3244) on February 3, 1987, NHTSA amended a number of the requirements of Standard No. 101, *Controls and Displays.* The agency received several timely petitions for reconsideration. The petitioners expressed particular concern about the March 5, 1987, effective date for certain of the amendments.

While the primary purpose of the amendments was to permit greater flexibility in the illumination and identification of controls and displays, NHTSA recognized that some of the amendments could result in the need for manufacturers to modify existing designs. The agency adopted an effective date of September 1, 1989, for these amendments in order to provide adequate leadtime for such modifications.

Other amendments relieved restrictions and were not believed to result in the need for design modifications. The agency concluded that an effective date of 30 days after publication in the *Federal Register,* i.e., March 5, 1987, was in the public interest for these amendments. However, several petitioners stated that some of these latter amendments also result in the need for design modifications and requested that the effective date for these amendments be extended to September 1, 1989.

As is clear from the preamble to the February 1987 final rule, it was not NHTSA's intent to require manufacturers to make design modifications within 30 days. While the agency is still analyzing some of the arguments made by petitioners, it has determined that one or more of the amendments effective March 5, 1987, will require some design changes. Accordingly, NHTSA has decided to permit compliance with either the earlier version of the standard or the amended standard until September 1, 1989.

NHTSA is reissuing the earlier version of Standard No. 101, redesignated as Standard No. 100, to apply to vehicles manufactured before September 1, 1989. The application section of the standard makes it clear that manufacturers have the option of meeting the requirements of Standard No. 101 for any control or display as an alternative to Standard No. 100's requirements. Conforming amendments are made to the application section of Standard No. 101.

While the petitioners were particularly concerned about the March 5, 1987, effective date for some amendments, they also raised several other issues. Those issues will be addressed in a separate notice.

NHTSA notes that the notice number of the February 1987 final rule, Docket No. 1-18, Notice 28, had already been used on two occasions. The number of this notice is therefore 31.

The effect of the amendments made by this notice is to delay the effective date for the new requirements established by the February 1987 final rule until September 1, 1989. NHTSA finds, for good cause, it is in the public interest to provide immediately for optional compliance with the new requirements and to make those requirements mandatory on September 1, 1989. In the absence of an immediate effective date, manufacturers would be unable to certify that some of their vehicles currently being produced comply with Standard No. 101. The amendments impose no new requirements but instead increase manufacturer flexibility by extending the effective date for

certain requirements. The September 1, 1989, effective date will give sufficient time for manufacturers to redesign their vehicles to meet the new requirements.

The agency has analyzed these amendments and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of the amendments are so minimal that a full regulatory evaluation is not required. Since the amendments impose no new requirements but simply add compliance alternatives until September 1, 1989, any cost impacts would be in the nature of slight, nonquantifiable cost savings.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

1. Section 571.100 is added to read:

§ *571.100 Standard No. 100. Controls and displays.*

S1. *Scope.* This standard specifies requirements for the location, identification, and illumination of motor vehicle controls and displays.

S2. *Purpose.* The purpose of this standard is to ensure the accessibility and visibility of motor vehicle controls and displays and to facilitate their selection under daylight and nighttime conditions, in order to reduce the safety hazards caused by the diversion of the driver's attention from the driving task, and by mistakes in selecting controls.

S3. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses, manufactured before September 1, 1989. At the option of the manufacturer, motor vehicles may comply with the requirements of Federal Motor Vehicle Safety Standard No. 101, *Controls and Displays,* instead of the requirements of this standard, for any control, display, or illumination.

S4. *Definitions.*

"Telltale" means a display that indicates, by means of a light-emitting signal, the actuation of a device, a correct or defective functioning or condition, or a failure to function.

"Gauge" means a display that is listed in S5.1 or in Table 2 and is not a telltale.

"Informational readout display" means a display using light-emitting diodes, liquid crystals, or other electro illuminating devices where one or more than one type of information or message may be displayed.

S5. *Requirements.* (a) Except as provided in paragraph (b) of this section, each passenger car, multipurpose passenger vehicle, truck and bus manufactured with any control listed in S5.1 or in column 1 of Table 1, and each passenger car, multipurpose passenger vehicle and truck or bus less that 10,000 pounds GVWR with any display listed in S5.1 or in column 1 of Table 2, shall meet the requirements of this standard for the location, identification, and illumination of such control or display.

(b) For vehicles manufactured before September 1, 1987, a manufacturer may, at its option—

(1) Meet the requirements in this standard to use identifying words or abbreviation or identifying symbol for a control by using those specified in Table 1(a) instead of Table 1. If none are specified in Table 1(a), none need be used for the control.

(2) Meet the requirements in this standard to use identifying words or abbreviation or identifying symbol for a control by using those specified in Table 2(a) instead of Table 2. If none are specified in Table 2(a), none need be used for the display.

S5.1 *Location.* Under the conditions of S6, each of the following controls that is furnished shall be operable by the driver and each of the following displays that is furnished shall be visible to the driver. Under conditions of S6, telltales and informational readout displays are considered visible when activated.

HAND-OPERATED CONTROLS

(a) Steering wheel.
(b) Horn.
(c) Ignition.
(d) Headlamp.
(e) Taillamp.
(f) Turn signal.
(g) Illumination intensity.
(h) Windshield wiper.
(i) Windshield washer.
(j) Manual transmission shift lever, except transfer case.
(k) Windshield defrosting and defogging system.
(l) Rear window defrosting and defogging system.
(m) Manual choke.
(n) Driver's sun visor.
(o) Automatic vehicle speed system.
(p) Highbeam.
(q) Hazard warning signal.
(r) Clearance lamps.
(s) Hand throttle.
(t) Identification lamps.

FOOT-OPERATED CONTROLS

(a) Service brake.
(b) Accelerator.
(c) Clutch.
(d) Highbeam.
(e) Windshield washer.
(f) Windshield wiper.

DISPLAYS

(a) Speedometer.
(b) Turn signal.
(c) Gear position.
(d) Brake failure warning.
(e) Fuel.
(f) Engine coolant temperature.
(g) Oil.
(h) Highbeam.
(i) Electrical charge.

S5.2 *Identification.*

S5.2.1 Vehicle controls shall be identified as follows:

(a) Except as specified in S5.2.1(b), any hand-operated control listed in column 1 of Table 1 that has a symbol designated in column 3 shall be identified by that symbol. Any such control for which no symbol is shown in Table 1 shall be identified by the word or abbreviation shown in column 2, if such word or abbreviation is shown. Words or symbols in addition to the required symbol, word or abbreviation may be used at the manufacturer's discretion for the purpose of clarity. Any such control for which column 2 of Table 1 and/or column 3 of Table 1 specifies "Mfr. Option" shall be identified by the manufacturer's choice of a symbol, word or abbreviation, as indicated by that specification in column 2 and/or column 3. The identification shall be placed on or adjacent to the control. The identification shall, under the conditions of S6, be visible to the driver and, except as provided in S5.2.1.1 and S5.2.1.2, appear to the driver perceptually upright.

(b) S5.2.1(a) does not apply to a turn signal control which is operated in a plane essentially parallel to the face plane of the steering wheel in its normal driving position and which is located on the left side of the steering column so that it is the control on that side of the column nearest to the steering wheel face plane.

S5.2.1.1 The identification of the following need not appear to the driver perceptually upright:

(a) A master lighting switch or headlamp and tail lamp control that adjusts control and display illumination by means of rotation, or any other rotating control that does not have an off position.

(b) A horn control.

S.5.2.1.2 The identification of a rotating control other than one described by S5.2.1.1 shall appear to the driver perceptually upright when the control is in the off position.

S.5.2.2 Identification shall be provided for each function of any automatic vehicle speed system control and any heating and air conditioning system control, and for the extreme positions of any such control that regulates a function over a quantitative range. If this identification is not specified in Table 1 or 2, it shall be in word or symbol form unless color coding is used. If color coding is used to identify the extreme positions of a temperature control, the hot extreme shall be identified by the color red and the cold extreme by the color blue.

Example 1. A slide lever controls the temperature of the air in the vehicle heating system over a continuous range, from no heat to maximum heat. Since the control regulates a single function over a quantitative range, only the extreme positions require identification.

Example 2. A switch has three positions, for heat, defrost, and air conditioning. Since each position regulates a different function, each position must be identified.

S5.2.3 Except for informational readout displays, any display located within the passenger compartment and listed in column 1 of Table 2 that has a symbol designated in column 4, shall be identified by that symbol. Such display may, in addition be identified by the word or abbreviation shown in column 3. Any such display for which no symbol is provided in Table 2 shall be identified by the word or abbreviation shown in column 3. Informational readout displays may be identified by the symbol designated in column 4 of Table 2 or by 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. 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.

S5.3 *Illumination.*

S5.3.1 Except for foot-operated controls or hand-operated controls mounted upon the floor, floor console, or steering column, or in the windshield header area, the identification required by S5.2.1 or S5.2.2 of any control listed in column 1 of Table 1 and accompanied by the word "yes" in the corresponding space in column 4 shall be capable of being illuminated whenever the headlights are activated. However, control identification for a heating and air-conditioning system need not be illuminated if the system does not direct air directly upon windshield. If a gauge is listed in column 1 of Table 2 and accompanied by the word "yes" in column 5, then the gauge and its identification required by S5.2.3 shall be illuminated whenever the ignition switch and/or the headlamps are activated. Controls, gauges, and their identifications need not be illuminated when the

Table 1
Identification and Illumination of Controls

Column 1	Column 2	Column 3	Column 4
Hand Operated Controls	Identifying Words or Abbreviation	Identifying Symbol	Illumination
Master Lighting Switch	—	[5]	—
Headlamps and Tail lamps	(Mfr. Option)[2]	(Mfr. Option)[2]	—
Horn	—	[4]	—
Turn Signal	—	[3] [5]	—
Hazard Warning Signal	—	[5]	Yes
Windshield Wiping System	—		Yes
Windshield Washing System	—		Yes
Windshield Washing and Wiping Combined	—		Yes
Heating and or Air Conditioning Fan	—	or	Yes
Windshield Defrosting and Defogging System	—		Yes
Rear Window Defrosting and Defogging System	—		Yes
Identification, Side Marker and or Clearance Lamps	—	[2] [5]	Yes
Manual Choke	Choke	—	—
Engine Start	Engine Start[1]	—	—
Engine Stop	Engine Stop[1]	—	Yes
Hand Throttle	Throttle	—	—
Automatic Vehicle Speed	(Mfr. Option)	—	Yes
Heating and Air Conditioning System	(Mfr. Option)	(Mfr. Option)	Yes

[1] Use when engine control is separate from the key locking system
[2] Separate identification not required if controlled by master lighting switch.
[3] The pair of arrows is a single symbol. When the controls for left and right turn operate independently, however, the two arrows may be considered separate symbols and may be spaced accordingly.
[4] Identification not required for vehicles with a GVWR greater than 10,000 lbs., or for narrow ring-type controls.
[5] Framed areas may be filled.

TABLE 1(a)
Identification and Illumination of Controls

Column 1	Column 2	Col. 3	Col. 4
Hand Operated Controls	Identifying Words or Abbreviation	Identifying Symbol	Illumination
Headlamps and Tail Lamps	Lights	[2] [4]	—
Turn Signal	—		—
Hazard Warning Signal	Hazard	[4]	Yes
Clearance Lamps System	Clearance Lamps or Cl Lps	[3] [4]	Yes
Windshield Wiping System	Wiper or Wipe		Yes
Windshield Washing System	Washer or Wash		Yes
Windshield Washing and Wiping Combined	Wash-Wipe		Yes
Heating and/or Air Conditioning Fan	Fan		Yes
Windshield Defrosting and Defogging System	Defrost, Defog or Def		Yes
Rear Window Defrosting and Defogging System	Rear Defrost, Rear Defog or Rear Def		Yes
Engine Start	Engine Start[1]	—	—
Engine Stop	Engine Stop[1]	—	Yes
Manual Choke	Choke	—	—
Hand Throttle	Throttle	—	—
Automatic Vehicle Speed	(Mfr. Option)	—	Yes
Identification Lamps	Identification Lamps or Id Lps	—	Yes
Heating and Air Conditioning System	(Mfr. Option)	—	Yes

[1] Use when engine control is separate from the key locking system.
[2] Use also when clearance, identification, parking and/or side marker lamps are controlled with the headlamp switch.
[3] Use also when clearance lamps, identification lamps and/or side marker are controlled with one switch other than the headlamp switch
[4] Framed areas may be filled.

Table 2
Identification and Illumination of Displays

Column 1	Column 2	Column 3	Column 4	Column 5
Display	Telltale Color	Identifying Words or Abbreviation	Identifying Symbol	Illumination
Turn Signal Telltale	Green	Also see FMVSS 108	[1] [6]	—
Hazard Warning Telltale	Red[4]	Also see FMVSS 108	[2] [6]	—
Seat Belt Telltale	Red[4]	Fasten Belts or Fasten Seat Belts. Also see FMVSS 208.	or	—
Fuel Level Telltale	Yellow	Fuel	or	—
Gauge	—			Yes
Oil Pressure Telltale	Red[4]	Oil		—
Gauge	—			Yes
Coolant Temperature Telltale	Red[4]	Temp		—
Gauge	—			Yes
Electrical Charge Telltale	Red[4]	Volts, Charge or Amp		—
Gauge	—			Yes
Highbeam Telltale	Blue or Green[4]	Also see FMVSS 108	[6]	—
Malfunction in Anti-Lock or	Yellow	Antilock or Anti-lock Also see FMVSS 105	—	—
Brake System	Red[4]	Brake. Also see FMVSS 105	—	—
Brake Air Pressure Position Telltale	Red[4]	Brake Air Also see FMVSS 121	—	—
Speedometer	—	MPH[5]		Yes
Odometer	—	— [3]	—	—
Automatic Gear Position	—	Also see FMVSS 102	—	Yes

[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 telltales that otherwise operate independently flash simultaneously as hazard warning telltale
[3] If the odometer indicates kilometers then "KILOMETERS" or "km" shall appear, otherwise, no identification is required.
[4] Red can be red-orange. Blue can be blue green.
[5] 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.
[6] Framed areas may be filled.

Table 2 (a)
Identification and Illumination of Internal Displays

Column 1	Col. 2	Column 3	Column 4	Column 5
Display	Telltale Color	Identifying Words or Abbreviation	Identifying Symbol	Illuminate
Turn Signal Telltale	Green	Also see FMVSS 108	[1] [6]	—
Hazard Warning Telltale	Red[4]	Also see FMVSS 108		—
Seat Belt Telltale	Red[4]	Fasten Belts or Fasten Seat Belts. Also see FMVSS 208.		—
Fuel Level Telltale	Yellow	Fuel		—
Gauge		Fuel		Yes
Oil Pressure Telltale	Red[4]	Oil		—
Gauge		Oil		Yes
Coolant Temperature Telltale	Red[4]	Temp		—
Gauge		Temp		Yes
Electrical Charge Telltale	Red[4]	Volts, Charge or Amp		—
Gauge	—	Volts, Charge or Amp		Yes
Speedometer	—	MPH[6]	—	Yes
Odometer	—	—	—	—
Automatic Gear Position	—	Also see FMVSS 102	—	Yes
High Beam Telltale	Blue[4] or Green	Also see FMVSS 108		—
Brake Air Pressure Position Telltale	Red[4]	Brake Air Also See FMVSS 121	—	—
Malfunction in Anti-Lock or	Yellow	Anti-Lock Also see FMVSS 105 75	—	—
Brake System	Red[4]	Brake Also see FMVSS 105 75	—	—

[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 telltales that otherwise operate independently flash simultaneously as hazard warning telltale
[3] If the odometer indicates kilometers, then "KILOMETERS" or "km" shall appear; otherwise no identification is required.
[4] Red can be red orange. Blue can be blue green.
[5] Framed arrows may be filled.
[6] 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.

headlamps are being flashed. A telltale shall not emit light except when identifying the malfunction or vehicle condition for whose indication it is designed or during a bulb check upon vehicle starting.

S5.3.2 Except for informational readout displays, each discrete and distinct telltale shall be of the color shown in column 2 of Table 2. The identification of each telltale shall be in a color that contrasts with the lens, if a telltale with a lens is used. Any telltale used in conjunction with a gauge need not be identified. The color of informational readout displays will be at the option of the manufacturer.

S5.3.3 Light intensities for controls, gauges, and their identification shall be continuously variable from: (a) A position at which either there is no light emitted or the light is barely discernible to a driver who has adapted to dark ambient roadway conditions to (b) a position providing illumination sufficient for the driver to identify the control or display readily under conditions of reduced visibility. Light intensities for informational readout systems shall have at least two values, a higher one for day, and a lower one for nighttime conditions. The intensity of any illumination that is provided in the passenger compartment when and only when the headlights are activated shall also be variable in a manner that complies with this paragraph. The light intensity of each telltale shall not be variable and shall be such that, when activated, that telltale and its identification are visible to the driver under all daytime and nighttime conditions.

S6. *Conditions.* The driver is restrained by the crash protection equipment installed in accordance with the requirements of §571.208 of this part (Standard No. 208), adjusted in accordance with the manufacturer's instructions. * * *

3. Section 571.101 is amended by revising S3 to read:

S3. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses. At the option of the manufacturer, motor vehicles manufactured before September 1, 1989, may comply with the requirements of Federal Motor Vehicle Safety Standard No. 100, *Controls and Displays,* instead of the requirements of this standard, for any control, display, or illumination. If no requirements are specified in Standard No. 100 for a control, display, or illumination, none need be met as a result of this standard for motor vehicles manufactured before September 1, 1989.

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Diane K. Steed
Administrator

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