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PREAMBLE TO PART 574—TIRE IDENTIFICATION AND RECORDKEEPING

(Docket No. 70-12; Notice No. 5)

On November 10, 1970, the National Highway Safety Bureau (now the National Highway Traffic Safety Administration, or NHTSA) published the Tire Identification and Recordkeeping Regulations (35 F.R. 18116). Thereafter, pursuant to § 553.35 of the rulemaking procedures (49 CFR Part 553, 35 F.R. 5119), petitions for reconsideration or petitions for rulemaking were filed by the American Retreaders' Association, Inc., the Armstrong Rubber Co., Bandag Inc., the National Tire Dealers & Retreaders Association, Inc., the Goodyear Tire & Rubber Co., the Lee Tire and Rubber Co., Chrysler Corp., the Rubber Manufacturers Association, Ford Motor Co., the Kelly-Springfield Tire Co., Pirelli Tire Corp., the B. F. Goodrich Co., Uniroyal Tire Co., Cooper Tire & Rubber Co., Michelin Tire Corp., the Firestone Tire & Rubber Co., White Motor Corp., Bert Schwarz-S&H Inc., and the Truck Trailer Manufacturers Association. Several petitioners requested the opportunity to demonstrate difficulties they were having meeting the regulation as issued, and as a result a public meeting was held December 21, 1970. Notice of the meeting was published in the *Federal Register* (35 F.R. 19036) and the transcript of the meeting is in the public docket. The substance of the petitions and comments made at the meeting have been considered. Certain parts of the Tire Identification and Recordkeeping Regulation are hereby amended.

The definition of "Tire brand name owner" in § 574.3(c) is changed to make it clear that a person manufacturing a brand name tire that he markets himself is not a brand name owner for the purposes of this regulation.

The regulation is amended to except from its requirements tires manufactured for pre-1948 vehicles. This exception is consistent with the

Federal Motor Vehicle Safety Standard for passenger car tires (Standard No. 109).

After consideration of the comments in the petitions concerning the tire identification number requirements, several changes have been made.

1. Section 574.5 is amended to specify the numbers and letters to be used in the identification number.

2. Figures 1 and 2 are modified to allow three-quarters of an inch, instead of one-half inch, between the DOT symbol and the identification number and between the second and third grouping. Tires with cross section width of 6 inches or less may use $\frac{5}{32}$ -inch letters. The DOT symbol may be located to the right of the identification number as well as above, below, or to the left of the identification number. Retreaders, as well as new tire manufacturers, may locate the DOT symbol above, below, to the left, or to the right of the identification number. The minimum depth of the identification number has been changed from 0.025 inch to 0.020 inch, measured from the surface immediately surrounding the characters.

3. The second grouping, identifying the tire size, has been changed with respect to retreaded tires to provide that if a matrix is used for processing the retreaded tire the code must identify the matrix used. The change requiring retreaded tire identification numbers to contain a matrix code rather than a size code was made because, in the event of a defect notification, the matrix would be a more meaningful method of identifying the suspect tires and it was considered impracticable to require retreaders to include the tire size in the tire-identification number.

4. The third grouping, for identifying the significant characteristics of the tire, has been changed to provide that if a tire is manufactured

Effective: May 22, 1971

for a brand name owner the code shall include symbols identifying the brand name owner, which shall be assigned by the manufacturer rather than by the NHTSA. Manufacturers are required to provide the NHTSA with the symbols assigned to brand name owners upon the NHTSA's request. This change should result in a shorter identification number and allow manufacturers greater flexibility in the use of the third grouping.

Standard No. 109 presently requires that passenger car tires contain a DOT symbol, or a statement that the tire complies with the standard, on both sidewalls of the tire between the section width and the bead. The requirement in Standard No. 109 is being changed by notice published in this issue (36 F.R. 1195) to provide that the DOT symbol may be on either sidewall, in the location specified by this regulation. The requested change that the DOT symbol be allowed on tires for which there is no applicable standard in effect is denied, since such use would tend to give consumers the impression those tires were covered by a Federal standard.

Several petitioners requested that other DOT symbols (located as required by the present Standard No. 109) be permitted to remain on the tire along with the three-digit manufacturer's code number assigned pursuant to that standard. The Tire Identification and Record-keeping regulation does not prohibit the continued use of the symbol and code number provided the numbers are not close enough to the identification number to be confused with it. In no event should the three-digit number, formerly required by Standard No. 109, immediately follow the tire identification number.

As a result of petitions by vehicle manufacturers the requirement in § 574.10 that vehicle manufacturers maintain the record of tires on each vehicle shipped has been changed to eliminate the requirement that this information be maintained by identification number. It would evidently be extremely difficult and expensive for the vehicle manufacturer to record each tire identification number. Vehicle manufacturers have stated that their present system provides records that enable them to notify the purchaser of a vehicle that may contain suspect tires.

Several petitioners requested that the effective date of the regulation be extended beyond May 1, 1971. The 1970 amendment to the National Traffic and Motor Vehicle Safety Act requires that the provisions relating to maintaining records of tire purchasers shall be effective not later than 1 year after the date of enactment of these amendments (May 22, 1971). It has been determined that in view of the complexities involved in establishing the recordkeeping system required and the effect of the same on existing processes, good cause exists for making the regulations effective on the latest date manufacturers are required by statute to maintain records. It is further determined that a May 22, 1971, effective date is in the public interest.

Effective date: May 22, 1971.

Issued on January 19, 1971.

Douglas W. Toms,
Acting Administrator, National
Highway Traffic Safety Administration.

36 F.R. 1196
January 26, 1971

**PREAMBLE TO AMENDMENT TO PART 574—TIRE IDENTIFICATION AND
RECORDKEEPING**

(Docket No. 70-12; Notice No. 9)

**Amendment to Figure 2 Concerning the Location of the Tire Identification Number
for Retreaded Tires**

The purpose of this amendment is to provide retreaders with an alternative location for the placement of the tire identification number.

On January 26, 1971, the National Highway Traffic Safety Administration published Docket No. 70-12, Notice No. 5, a revised version of the Tire Identification and Record Keeping Regulation, 49 CFR Part 574 (36 F.R. 1196). Section 574.5 requires retreaders to permanently mold or brand into or onto one sidewall a tire identification number in the manner specified in Figure 2 of the regulation. Figure 2 requires that the tire identification number be located in the area of the shoulder between the tread edge and the maximum section width of the tire. The regulation specified this location because, generally, it is the area upon which retreaders apply new retread material.

Bandag, Inc., has petitioned for rulemaking to allow the tire identification to be below the section width of the tire. The petition requests this relief because the Bandag process only affects the tread surface, a comparatively smooth surface is needed for application of the identification number, and many casings have no smooth area

between the tread edge and the maximum section width.

Therefore, in view of the above, Figure 2 of Part 574 (36 F.R. 1200) is hereby amended as set forth below to require that the tire identification number be on one sidewall of the tire, either on the upper segment between the maximum section width and the tread edge, or on the lower segment between the maximum section width and bead in a location such that the number will not be covered by the rim flange when the tire is inflated. In no event should the number be on the surface of the scuff rib or ribs.

Effective date: May 22, 1971.

Because this amendment relieves a restriction and does not impose any additional burden on any person it is found that notice and public procedure thereon are unnecessary and impracticable, and that, for good cause shown, an effective date less than 30 days after the date of issuance is in the public interest.

Issued on May 21, 1971.

Douglas W. Toms
Acting Administrator

PREAMBLE TO AMENDMENT TO PART 574—TIRE IDENTIFICATION AND RECORD KEEPING

(Docket No. 70-14; Notice 15)

The purpose of this amendment to Part 574 of Title 49, Code of Federal Regulations, is to provide that the second group of symbols within the tire identification number shall, in the case of new tires, be assigned at the option of the manufacturer rather than conforming to the tire size code presently found in Table I of the regulation.

Under the present system, even if the presently unassigned symbols "O" and "R" are used, a maximum of 900 tire size codes can be assigned. Due to the many new tire sizes being introduced, it is necessary to change the system to allow more flexibility. Therefore, Table I is herewith deleted, new tire manufacturers are allowed to assign their own two-digit code for the tire size, and retreaders are allowed to use either a self-assigned matrix code or a self-assigned tire size code. Each new tire manufacturer will still be required to use a two-symbol size code and to maintain a record of the coding system used, which shall be provided to the National Highway Traffic Safety Administration upon written request. It is recommended but not required that manufacturers use the code sizes previously assigned by this agency for active sizes, and reuse the codes for obsolete sizes when additional size codes are needed.

A notice of proposed rulemaking on this subject was published on June 16, 1972 (37 F.R. 11979). The comments received in response to the notice have been considered in the issuance of this final rule. The rule is issued as it appeared in the proposal including the letter "T" inadvertently omitted from the proposal.

Three of the tire manufacturers who commented favored the proposed change, and the National Tire Dealers and Retreaders Association, the Japan Automobile Manufacturers Association and The European Tyre and Rim

Technical Organisation commented without objection to the proposed change.

Bandag, Inc., a retreader of tires, objected to the proposed change on the grounds that allowing tire manufacturers to assign their own tire size code would remove one of the methods a retreader has to determine the tire size of a casing to be retreaded.

Mercedes-Benz of North America and Volkswagen of America did not favor the change because of the possibility of confusion for the vehicle manufacturer that equips its vehicle with several manufacturers' tires.

The principal objection raised by Bandag should be considerably alleviated by an amendment to Standard No. 109 (36 F.R. 24824) under consideration, which would require tire manufacturers to place the actual tire size, as well as other pertinent information, between the section width and the bead of the tire so that the information will be less susceptible to obliteration during use or removal during the retreading process.

With respect to the comment by Mercedes-Benz of North America and Volkswagen of America, it was concluded that because the existing system does not provide enough symbols to meet the anticipated introduction of new tire sizes, the proposed change is necessary. Mercedes' recommendation that "G", "Q", "S", and "Z" be added or that a three-digit size code be used was rejected, because the additional symbols suggested are difficult to apply to the tire, and the addition of a third symbol would, according to the tire manufacturers, be impractical and inefficient.

A list of the tire size codes assigned up to this time is published in the general notice section of this issue of the *Federal Register* (37 F.R. 23742). The NHTSA urges tire manufacturers to use

Effective: November 8, 1972

these existing codes for tire sizes presently being produced and to work within their tire and rim associations to make code assignments for new tire sizes on an industry-wide basis and reuse obsolete size codes wherever possible. In this way the usefulness of the tire size code to the vehicle manufacturer will be maintained.

In consideration of the foregoing, in Part 574 of Title 49, Code of Federal Regulations, Table I is deleted and § 574.5 is amended

Effective date: November 8, 1972.

Because this amendment relieves a restriction, and because of the immediate need for the introduction of new tire size codes, it is found for

good cause shown that an effective date less than 30 days from the date of issuance is in the public interest.

Issued under the authority of sections 103, 112, 113, 119 and 201 of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1392, 1401, 1402, 1407 and 1421, and the delegation of authority at 49 CFR 1.51.

Issued on October 31, 1972.

Charles H. Hartman
Acting Administrator

37 F.R. 23727
November 8, 1972

PREAMBLE TO AMENDMENT TO PART 574—TIRE IDENTIFICATION AND RECORD KEEPING

(Docket No. 71-18; Notice 7)

This notice amends Standard No. 119, *New pneumatic tires for vehicles other than passenger cars*, 49 CFR 571.119, to specify lettering sizes and modified treadwear indicator requirements for tires. In addition, it amends Part 574, *Tire Identification*, 49 CFR 574, to permit the labeling of certain tires with the symbol DOT prior to the effective date of the standard. This notice also responds to petitions for reconsideration of Standard 119's effective date by maintaining the present date of March 1, 1975.

To avoid a costly production shutdown on the effective date to engrave tire molds with the DOT compliance symbol required by the standard, the National Highway Traffic Safety Administration (NHTSA) proposed a modification of the Part 574 prohibition on the symbol's use prior to the effective date (39 F.R. 3967, January 31, 1974). The Rubber Manufacturers Association and five tire manufacturers agreed that the DOT should be engraved on tire molds prior to the effective date, but objected to the expense of covering the DOT with a label stating that "no Federal motor vehicle safety standard applies to this tire," when the DOT appears on tires which (presumably) satisfy Standard 119 requirements. Firestone pointed out that the large label size could obscure other label information. Goodrich noted that, as proposed, the DOT could be molded on tires which met no standard and could mislead a user if the label fell off.

The NHTSA will not permit the appearance of the DOT compliance symbol on any item of motor vehicle equipment to which no standard is applicable. The terms "applicability" and "applies" have only one meaning for Federal motor vehicle safety standards: that the vehicle or equipment concerned is subject to a safety standard. To permit use of the DOT symbol on

vehicles or items of motor vehicle equipment to which no standard applies would confuse the meaning of the symbol and the concept of compliance.

In response to Firestone and Goodrich, the NHTSA has modified the lettering size on the label and limited use of the DOT symbol to tires for which a standard has been issued. With the small lettering size, the rubber labels used on retread tires can be applied over the DOT symbol in fulfillment of the requirement. Another method which manufacturers did not mention but which would be permissible is the removal of the DOT at the same time imperfections are buffed off the tire.

All comments on the proposal objected to the specific location requirements for treadwear indicators based on the concept of even tread wear across the tread width. Goodyear demonstrated in a meeting with the NHTSA Tire Division on February 13, 1974, and detailed in its submission to the Docket, the difficulty in equating ideal tire wear with actual road experience. They recommended the simpler concept that a tire has worn out when any major tread groove has only $\frac{2}{32}$ in tread remaining. The NHTSA has concluded that treadwear indicators must be placed at the discretion of the manufacturer to give a person inspecting the tire visual indication of whether the tire has worn to a certain tread depth. Accordingly, the lateral location requirements for treadwear indicators have been deleted from the standard.

There was no discussion of the lettering size and depth proposal, and these proposals are adopted as proposed.

The comments requested reconsideration of the standard's March 1, 1975, effective date (published February 1, 1974, 39 F.R. 4087), asserting the need for 18 months of lead time following

Effective: April 3, 1974

publication of this notice to engrave tire molds as required by the standard. The NHTSA has found that 11 months is sufficient leadtime to accomplish these changes, and accordingly these petitions are denied.

To correct an inadvertent omission in the amendment of Standard No. 119 in response to petitions for reconsideration (39 F.R. 5190, February 11, 1974), superscripts are added to Table III entries for "All other, A, B, C, D range tires".

In consideration of the foregoing, Parts 571 and 574 of Title 49, Code of Federal Regulations, are amended. . . .

Effective date: Standard No. 119 amendments: March 1, 1975. Part 574 amendment: April 3,

1974. Because the Part 574 amendment creates no additional burden, and because modification of tire molds must begin immediately, it is found for good cause shown that an effective date less than 180 days after issuance is in the public interest.

(Secs. 103, 112, 119, 201, Pub. L. 89-563, 80 Stat. 718; 15 U.S.C. 1392, 1401, 1407, 1421; delegation of authority at 49 CFR 1.51.)

Issued on March 28, 1974.

James B. Gregory
Administrator

39 F.R. 12104
April 3, 1974

**PREAMBLE TO AMENDMENT TO PART 574—
TIRE IDENTIFICATION AND RECORDKEEPING**

(Docket No. 70-12; Notice 19)

This notice amends the Tire Identification and Recordkeeping regulation, 49 CFR Part 574, to establish an optional universal registration format for tire registration forms. It also requires manufacturers of new tires to redirect registration forms of other manufacturers of new tires which have been forwarded to them in error.

On March 9, 1973, the NHTSA issued a notice of proposed rulemaking (38 F.R. 6398) proposing a universal registration form for tire identification and record keeping. The notice was issued in response to requests from multi-brand tire dealers who were faced with a multiplicity of different forms and procedures for tire registration. Currently, the regulation merely requires manufacturers and retreaders to supply a "means" of registration. The proposed rule also envisioned that a copy of the form would be provided to the first purchaser and that manufacturers and retreaders would be required to redirect registration forms which had been forwarded to them in error.

All comments received in response to the notice were sympathetic to the problems faced by the multi-brand dealers, and the majority were willing to provide a "universal form" if requested by a dealer.

Most manufacturers, however, pointed out that their exclusive dealerships had received training in the use of the current form, as had their own personnel, and that a total change-over would work a hardship without a concomitant benefit for single-brand dealers. In view of these comments, NHTSA has decided to promulgate the universal registration format, which appears as Fig. 3, as an optional format to be followed if requested by a dealer and as a guide if a dealer prefers to supply his own forms.

The proposal to require tire manufacturers and retreaders to forward all misdirected registration forms within 30 days was universally opposed by new-tire manufacturers, who stated that they are currently participating in a voluntary but limited program for forwarding these misdirected forms. Furthermore, new-tire manufacturers believe they should not be responsible for misdirected retreaded tire registration forms, as there are over 5,000 tire retreaders in the country and such a task would be formidable. One new-tire manufacturer indicated that he had received over 15,000 misdirected retreaded tire registration forms during January 1973. The docket contained only one submission from the retreading industry, and it did not deal with the problem of misdirected forms.

It also appears from the comments received and other information available to NHTSA that new-tire manufacturers maintain a computer-based registration process, while only approximately 25% of the retreading industry utilizes computers for this purpose. Thus, the requirement for forwarding all misdirected forms would fall heavily on both segments of the industry, new-tire manufacturers in that most misdirected forms appear to be sent to them and retreaders in that a majority are ill-equipped to carry out the forwarding functions.

Therefore, rather than issue an all-inclusive forwarding requirement at this time, NHTSA has decided to require only that new-tire manufacturers redirect new tire registration forms erroneously forwarded to them. Further, the NHTSA has determined that a 90-day forwarding period will be sufficient, rather than the 30 days originally proposed. It is expected that the use of the manufacturer's logo on the universal registration format and increased vigilance

Effective: September 3, 1974

on the part of the industry will substantially curtail the number of misdirected forms. If it later appears that tire registrations are not being properly received, the NHTSA intends to take further action in this area.

The notice proposed that tire manufacturers furnish their dealers with duplicate copies of the registration form so that a copy could be given to consumers at the time of purchase. This provision was objected to by all new-tire manufacturers and the retreaders' association. In their view, the increased expense served no viable function as Part 574 currently requires all purchasers to be notified by certified mail of safety defects. They argued that the possession of a duplicate registration form would not aid the purchaser in the case of recall. The manufacturers also said that the completion of registration forms is often reserved until the end of the day or other slack time, and further that the

consumer automatically receives a copy of his tire identification number on the guarantee if one is given.

The NHTSA finds these arguments to have merit, and the requirement to give the purchaser a copy of the registration form is deleted from the final rule.

In consideration of the foregoing, 49 CFR 574.7 is amended....

Effective date: September 3, 1974.

(Secs. 103, 112, 113, 119, 201, Pub. L. 89-563, 80 Stat. 718, 15 U.S.C. 1392, 1401, 1402, 1407, 1421; delegation of authority at 49 CFR 1.51.)

Issued on May 28, 1974.

James B. Gregory
Administrator

39 F.R. 19482
June 3, 1974

PREAMBLE TO AMENDMENT TO PART 574—TIRE IDENTIFICATION AND RECORDKEEPING

(Docket No. 70-12; Notice 21)

This notice amends 49 CFR Part 574 to provide that the Universal Registration Forms supplied by dealers must conform in size and be similar in format to Figure 3 of the regulation.

On June 2, 1974, 49 CFR Part 574 was amended to require a Universal Registration Format when tire registration forms are supplied by manufacturers to dealers (39 F.R. 19482). Three petitions for reconsideration were received in response to this notice. All three, Michelin Tire Corporation, Rubber Manufacturers Association, and the Firestone Tire and Rubber Company, requested that the regulation be amended to require that dealer-supplied registration forms also conform in size and be similar in format to Figure 3 of the regulation. The petitioners pointed out that registration handling methodology has been standardized throughout the industry, and that the use of different sizes and formats would be costly and inefficient. The NHTSA concurs in this assessment, and therefore amends 49 CFR 574.7(a) to require that the dealer-supplied forms must conform in size and be similar in format to Figure 3.

In addition, Firestone petitioned to revise Figure 3 slightly and to extend the effective date of the amendment to 120 days after the response to the petitions for reconsideration. Since 49 CFR 574.7 currently requires only that the forms be "similar" to Figure 3, Firestone's proposed modification is authorized by the regulation and no amendment to the standard is needed. Firestone's request to extend the effective date of the standard is denied, as NHTSA has determined sufficient lead time was available from the date the amendment was issued to prepare forms.

In consideration of the foregoing, the last sentence of 49 CFR 574.7(a) is amended. . . .

Effective date: November 1, 1974.

(Secs. 103, 112, 113, 119, 201, Pub. L. 89-563, 80 Stat. 718, 15 U.S.C. 1392, 1401, 1402, 1407, 1421; delegation of authority at 49 CFR 1.51.)

Issued on October 29, 1974.

James B. Gregory
Administrator

39 F.R. 38658

November 1, 1974

**PREAMBLE TO AMENDMENT TO PART 574—TIRE IDENTIFICATION
AND RECORDKEEPING**

(Docket No. 70-12; Notice 22)

This notice corrects the authority citations to Part 574, *Tire Identification and Recordkeeping*, and makes other small corrections of citations in the text of the regulation to reflect statutory amendments. This correction is being made to conform the statutory authority citations to the existing statute.

Effective dates: Since these technical corrections do not affect the responsibilities under the regulation, they are made effective December 26, 1978.

For further information contact:

Roger Tilton, Office of Chief Counsel,
National Highway Traffic Safety Administration,
400 Seventh Street, S.W., Washington,
D.C. 20590 (202-426-2992).

Supplementary information: Since issuance of the Tire Identification and Recordkeeping regulation, several changes have been made to the agency's authorizing statute that require NHTSA to correct the authority citations of the regulation. While authority citations found in NHTSA's regulations and standards are not parts of the rules, they are useful to those who wish to review the legislative background of the rulemaking action. Therefore, NHTSA corrects the authority citations for clarity and to provide information to those who are interested.

The agency also corrects Part 574.2 and 574.8 by altering the existing reference to section 113. Section 113 was the safety defect and noncompliance notification section of the National Traffic

and Motor Vehicle Safety Act of 1966 (Pub. L. 89-563). Section 102 of the 1974 Motor Vehicle and Schoolbus Safety Amendments (Pub. L. 93-492) transferred the notification provisions from section 113 to section 151 and 152 of the Safety Act, as amended (15 U.S.C. 1411 and 1412). Since the regulation currently refers to the old Act rather than the Act as amended, the agency is correcting the affected provisions of the regulation to bring them up to date.

Since this notice simply corrects references in the regulation and its authority citations without altering any of its substantive provisions, the Administrator finds that notice is unnecessary and that an immediate effective date is in the public interest.

In consideration of the foregoing, Volume 49 of the Code of Federal Regulations, Part 574, *Tire Identification and Recordkeeping*, is amended. . . .

(Secs. 103, 108, 112, 119, 201, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1397, 1401, 1407, 1421); Secs. 102, 103, 104, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1397, 1401, 1411-1420); delegation of authority at 49 CFR 1.50).

Issued on December 18, 1978.

Joan Claybrook
Administrator

**43 F.R. 60171
December 26, 1978**

PREAMBLE TO AMENDMENT TO PART 574—TIRE IDENTIFICATION AND RECORDKEEPING

(Docket No. 70-12; Notice 23)

Action: Amendment of rule.

Summary: Congress has recently amended the National Traffic and Motor Vehicle Safety Act of 1966 (the Safety Act) to exempt manufacturers of retreaded tires from the registration requirements of the Act. This notice makes conforming amendments to the regulations implementing the tire registration requirements of the Act. The amendment is being published as a final rule without notice and opportunity for comment and is effective immediately, rather than 180 days after issuance, since the agency lacks discretion on the manner implementing this Congressional mandate.

Effective date: February 8, 1979.

For further information contact:

Arturo Casanova, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202) 426-1715.

Supplementary information: Congress has recently enacted the Surface Transportation Assistance Act of 1978, P.L. 95-599. Section 317 of that Act amends the Safety Act by exempting manufacturers of retreaded tires from the registration requirements of section 158(b) of the Safety Act.

This amendment modifies the requirements of Part 574 to specify that manufacturers of retreaded tires are not subject to the mandatory registration requirements set forth in that Part. Manufacturers of retreaded tires are free to continue voluntarily registering the tires, and the agency encourages these manufacturers to provide some means for notifying purchasers in the event of a recall of tires that do not comply with

federal safety standards or contain a safety-related defect. However, this choice will be left to the individual retreaders.

The remaining obligations of retreaders under Part 574 are set forth in §§ 574.5 and 574.6, which provisions are not affected by this amendment. Those sections require that the retreader label contain certain information on its tires. These provisions allow a retreader who determines that some of its tires do not comply with a Federal safety standard or contain a safety-related defect to warn the public of that fact, and indicate the label numbers of the affected tires.

Since Congress has amended the Safety Act to exempt the manufacturers of retreaded tires from the registration requirements, this amendment of Part 574 is published without notice and opportunity for comment. The Administrator finds good cause for foregoing these procedures in this instance, because Congress has specifically mandated this action, and the agency has no authority to disregard a legislative mandate. For the same reason, this amendment is effective immediately, rather than 180 days after issuance.

The agency has reviewed the impacts of this amendment and determined that they will reduce costs to the manufacturers. Further, the agency has determined that the amendment is not a significant regulation within the meaning of Executive Order 12044.

The program official and attorney principally responsible for the development of this amendment are Arturo Casanova and Stephen Kratzke, respectively.

In consideration of the foregoing, 49 CFR Part 574, Tire Identification and Recordkeeping, is amended . . .

AUTHORITY: Sections 103, 108, 112, 119, 201, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1397, 1401, 1407, 1421); secs. 102, 103, 104, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1411-1420); Stat. 2689 (15 U.S.C. 1418); delegation of authority at 49 CFR 1.51.

Issued on January 31, 1979.

Joan Claybrook
Administrator

44 F.R. 7963
February 8, 1979

PREAMBLE TO AN AMENDMENT TO PART 574

Tire Identification and Recordkeeping; Interim Final Rule and Request for Comments

(Docket No. 70-12; Notice 24)

ACTION: Interim final rule and request for comments.

SUMMARY: In October 1982, Congress adopted an amendment to the National Traffic and Motor Vehicle Safety Act of 1966 (the Safety Act) regarding tire registration requirements of 49 CFR Part 574, *Tire identification and recordkeeping*. Those requirements are intended to provide tire manufacturers and brand name owners with the names of tire purchasers so that the purchasers can be notified in the event that their tires are determined to contain a safety defect or to fail to comply with a safety standard.

The amendment prohibits this agency from requiring independent tire dealers and distributors (i.e., those whose business is not owned or controlled by a tire manufacturer or brand name owner) to comply with the existing tire registration requirements in Part 574. All other tire dealers and distributors must continue to comply with those requirements.

The prohibition regarding independent dealers and distributors is self-executing and became effective on the date of enactment, October 15, 1982. In place of the existing requirements, the amendment directed the Secretary of Transportation to require each of those dealers and distributors to furnish a registration form to each tire purchaser after the dealer or distributor has first filled in the tire identification number(s) of the tire(s) sold on the form. Purchasers wishing to register their tires may then do so by filling in their name on the form and mailing the completed form to the tire manufacturer or brand name owner. Because the new

statutory requirements regarding registration of tires sold by independent dealers and distributors are not self-executing, they do not affect those dealers and distributors until this agency has issued and put into effect a rule adopting those requirements. This rule accomplishes that result.

The Safety Act amendment also requires that the agency specify the format and content of the forms to be used in complying with the new requirements. This rule sets forth those specifications.

DATES: This rule is effective beginning June 20, 1983.

SUPPLEMENTARY INFORMATION: Prior to the enactment of the Motor Vehicle Safety and Cost Savings Authorization Act of 1982 (hereinafter referred to as the Authorization Act) (Pub. L. 97-311), all tire dealers and distributors were required by 49 CFR Part 574, *Tire identification and recordkeeping*, to register all sales of new tires. Under that regulation, NHTSA required dealers and distributors to write specified information (i.e., the purchaser's name and address, the dealer's name and address, and the identification numbers of the tires) on a registration form and send the completed form to the tire manufacturer, brand name owner (hereinafter referred to as "tire manufacturer") or its designee.

Tire registration provisions of the Authorization Act. Compliance with the requirement for mandatory registration was uneven. While virtually all tires on new vehicles were registered, slightly less than half of all replacement tires were registered. In its report on the Authorization Act, the House Committee on Energy and Commerce found that

dealers and distributors whose business was owned or controlled by a tire manufacturer registered between 80 and 90 percent of the replacement tires they sold. However, dealers and distributors whose businesses were not owned or controlled by a tire manufacturer (hereinafter collectively referred to as "independent dealers") registered only 20 percent of the replacement tires that they sold (*Id.* at 8).

In an effort to improve the registration rate for the tires sold by independent dealers, Congress included a tire registration provision in the Authorization Act. That provision amended section 158(b) of the National Traffic and Motor Vehicle Safety Act of 1966 (hereinafter referred to as "Safety Act") (15 U.S.C. 1381 *et seq.*) to prohibit the Secretary of Transportation from requiring independent dealers to comply with the Part 574 requirements for mandatory registration. (The Secretary's authority under the Safety Act has been delegated to the NHTSA Administrator, 49 CFR 1.50.) Dealers and distributors other than independent dealers (hereinafter collectively referred to as "non-independent dealers") remain subject to these requirements.

The prohibition concerning independent dealers was self-executing (i.e., its effectiveness was not conditioned on prior action by this agency) and became effective on the date of enactment of the Authorization Act, October 15, 1982. Thus, even without any amendment by the agency to Part 574, its requirements for mandatory registration ceased on October 15 to have any effect insofar as they apply on their face to independent dealers.

In place of the mandatory registration process, Congress directed that a voluntary process be established for independent dealers. Section 158(b) (2) (B) provides

The Secretary shall require each dealer and distributor whose business is not owned or controlled by a manufacturer of tires to furnish the first purchaser of a tire with

a registration form (containing the tire identification number of the tire) which the purchaser may complete and return directly to the manufacturer of the tire. The contents and format of such forms shall be established by the Secretary and shall be standardized for all tires. Sufficient copies of such forms shall be furnished to such dealers and distributors by manufacturers of tires.

Under the voluntary process, the primary responsibility for registering tires sold by independent dealers is shifted from the dealer to the purchaser. NHTSA is mandated by section 158(b) (2) (B) to require the independent dealer to (1) fill in the identification number(s) of the tire(s) sold to a purchaser on a registration form and then (2) hand the form to the purchaser. If the purchaser wishes to register the tires, he or she may do so by filling in his or her name and address, adding postage and sending the completed form to the tire manufacturer or its designee.

In addition, NHTSA is required by section 158(b) (3) to evaluate the effect of the switch to voluntary tire registration on the registration rate for tires sold by independent dealers. That evaluation must be conducted at the end of the two year period following the effective date of the Authorization Act, i.e., October 15, 1984. In the evaluation, the agency is required to assess the efforts of the independent dealers to encourage consumers to register their tires and the extent of the dealers' compliance with the voluntary registration procedures established by this notice. NHTSA is required also to determine whether to impose any additional requirements on dealers for the purpose of promoting higher registration levels.

The agency has received several telephone inquiries from independent dealers as to whether, notwithstanding the amendments to section 158(b), they could elect to continue following the requirements for mandatory registration. It does not appear that the independent dealers have this option. Section 158(b) (2) (B) specifies that the agency "shall require *each* . . . (independent dealer) to furnish the first purchaser of a tire with a registration form (containing the tire identification number of the tire) which the purchaser may complete and return directly to the manufacturer of the tire." However, nothing in the section appears to preclude the purchaser from voluntarily giving the form back to the dealer for transmission to the manufacturer or his designee. Comments are requested on the issues raised by these inde-

¹ As explained in the House Report on the Authorization Act, "'company owned and controlled' means a significant component of direct equity ownership of the dealer or distributor which gives that party, as a factual matter, effective control of the business. Thus, it would not encompass buy-sell agreements, mortgages, notes, franchise agreements or similar financial arrangements which a tire company may have with a dealer or distributor." H.R. Rep No. 576, 97th Cong. 2d Sess. 8-9 (1982).

pendent dealers as well as on the reasons why some independent dealers desire the opportunity to continue mandatory registration.

Congress made no provision for immediate replacement of mandatory registration by voluntary registration. Unlike the amendment prohibiting the agency from requiring independent dealers to follow the mandatory registration process, the amendment concerning voluntary registration is not self-executing. Before voluntary registration can be initiated, the agency must first issue a rule requiring participation by the independent dealers in the voluntary registration process and put that rule into effect.

New standardized registration forms. In addition to setting forth such a requirement, this rule also specifies the content, format and size of the registration forms to be used by the independent dealers. This aspect of the rule responds to the directive in section 158(b) (2) (B) for the standardization of such forms. NHTSA wishes to emphasize that this rule does not require standardization of the forms used by nonindependent dealers. Tire manufacturers need not make any change in the forms which they have been providing those dealers.

In selecting interim requirements standardizing the content, format and size of registration forms to be provided to or used by independent dealers, NHTSA has made the minimum changes to Part 574 necessary to comply with section 158(b) (2). This approach will minimize both the burdens of this rulemaking and the period during which independent dealers are not subject to any registration requirements.

The new standardized forms would be very similar to the forms which the manufacturers have been providing dealers over the last eight years. Since 1974, Part 574 has specified the type of information for which blanks and titles are to appear on registration forms. (§ 574.7(a) (1)-(3)). This information includes the name and address of the tire purchaser, the tire identification number, and the name and address of the dealer or other means by which the manufacturer could identify the dealer. This rule would require the new registration forms for independent dealers to have blanks and titles for the same information.

This rule also adopts as mandatory the format specifications which have appeared as a suggested

guide in Part 574. Those specifications have been generally followed since 1974 without any complaints from either manufacturers or dealers.

In recognition of the shift of primary responsibility for registering tires from the independent dealer to the purchaser, this rule substitutes a new reminder on the form. The old reminder warned the dealer that registration of tires was required by Federal law. The new reminder informs the purchaser that completing and mailing the form will enable the tire manufacturer to contact him or her directly in the event that the tire is recalled for safety reasons, i.e., if the tire is determined to contain a safety defect or to fail to comply with an applicable safety standard.

Both a mailing address and a statement about appropriate postage must be printed on each form. The House report states that the form is to be presented to the purchaser in a manner suitable for mailing. (H.R. Rep. No. 576, 97th Cong. 2d Sess. 8 (1982)). Thus, the form itself must be mailable without the necessity of the purchasers providing an envelope. Forms provided by the manufacturers must be preaddressed to either the manufacturer or its designee. As to postage, the form must bear the statement that first class postage is required. This notation will ensure that the purchaser realizes that post card postage is not sufficient. If insufficient postage were placed on the form, it would not be delivered and the tire would not be registered. The need for first class postage is explained below.

This rule standardizes the size of the form so that all forms will be mailable using a single stamp of the same class of postage. The suggested guide in Part 574 specifies dimensions of 3¼ inches in width and 7³/₈ inches in length. This rule does not adopt those dimensions because, under existing postal regulations, a form 3¼ inches by 7³/₈ inches is too small to be mailed unless enclosed in an envelope. Since NHTSA does not wish to require manufacturers to provide self-addressed envelopes, the agency has adopted the dimensions in the postal regulations for cards mailable without envelopes under first class postage as the dimensions for the registration forms. Thus, the forms must be rectangular; not less than .007 inches thick; more than 3½ inches, but not more than 6¹/₈ inches wide; more than 5 inches, but not more than 11½ inches long. If any of those maxima were exceeded, a single, first class stamp would not be suf-

ficient postage. The agency has not adopted a post card-sized form due to uncertainty whether such a form would be large enough to permit the easy, legible recording of all of the necessary information.

Finally, the mandatory format requirements include a requirement that the form must show the manufacturer's name to prevent confusion of dealers and purchasers. This will enable the independent dealer to determine the brand of tire for which a particular form is to be used for registration purposes. This requirement is necessary since independent dealers often sell several different brands of tires. Since the dealer will have as many different types of registration forms as it has different brands of tires for sale, the dealer must have some way of identifying the appropriate form. The name may appear either in the mailing address or anywhere else on the form.

Continued use of old registration forms. During the limited period that this interim rule is in effect, the agency will provide the option of using existing forms instead of the new standardized ones. Election of that option is conditioned upon the tire purchaser's being provided not only with a form bearing the tire identification numbers and the dealer's name and address, but also with an envelope that is suitable for mailing the form, bears the same reminder to consumers required on the new forms, and is addressed to the tire manufacturer or its designee.

Source of registration forms. Under the requirements for mandatory registration requirements which previously applied to independent dealers, those dealers were permitted to use either the registration forms provided by the tire manufacturers or use forms obtained from other sources. The latter type of form was typically one purchased from a clearinghouse. The clearinghouse forms were not manufacturer specific (i.e., did not bear any mark or information identifying a particular tire manufacturer or brand name) and thus could be used to register any manufacturer's tires. When the forms of a clearinghouse were completed, they were returned to the clearinghouse. The clearinghouse would then forward them to appropriate manufacturers.

Except under the circumstances described above in the discussion of the temporary continued use of existing forms, the amendments to section 158(b)

and their legislative history compel an end to the practice of using forms which are not addressed to the manufacturer or its designee. Forms may continue to be addressed to an intermediary such as a clearinghouse if that intermediary has been designated by a tire manufacturer to serve as an initial recipient or as an ultimate repository for registration forms. Further, the amendments require standardization of the forms to be used by independent dealers. Hence, while independent dealers are still permitted to obtain registration forms from a source other than the tire manufacturers, those forms must comply with all of the requirements applicable to forms provided by manufacturers.

Responsibility for filling out and mailing registration form. The responsibility for completing the registration forms would be divided between independent tire dealers and purchasers. The tire dealer would be required to fill in the identification number of each tire sold and his name and address or some other unique identifier like a code number. The necessity for having the dealer's name and address arises from the statutorily-required evaluation of the voluntary registration requirements. In order to conduct that evaluation, the agency will need information on the registration rates for tires sold by individual independent dealers. This information will aid NHTSA in identifying different levels of registration among dealers and evaluate the reasons underlying those differences. The simplest and most effective way of ensuring the recording of the dealer's names and addresses is to require the recording of the information by the party who can most accurately provide it. A dealer's proper name and address are obviously better known to that dealer than to his customers. Further, through the use of an inexpensive rubber stamp, the dealer can record that information on a form much more easily and quickly than a tire purchaser can.

After the dealer has filled in this information and handed the card (and envelope under the option for using existing forms) to the tire purchaser, it is the purchaser's responsibility to complete the registration process. If a purchaser wishes to register his new tire, he must fill in his name and address, place the appropriate postage on the form (or envelope) and mail it.

Other issues. Any questions concerning the classification of a particular dealer as independent,

or otherwise should be addressed in writing to the Chief Counsel, NHTSA, at the street address given above. The legislative history cited early in this notice provides some guidance on this point. NHTSA notes that it is possible for motor vehicle dealers to be considered tire dealers in certain situations, as specified in 49 CFR 574.9. Whether a new motor vehicle dealer is required to follow the procedures for mandatory or voluntary registration depends on whether the dealer is owned or controlled by a tire manufacturer. The agency believes that most motor vehicle dealers would be considered independent dealers for the purposes of Part 574. These motor vehicle dealers are reminded that they should provide the motor vehicle purchaser with a voluntary tire registration form at the time they deliver the new vehicle to the purchaser, and with the identification number(s) of all of the vehicle's tires and the dealer's name and address entered on the form.

Enforcement of the new provisions of Part 574 would be carried out under sections 108-110 of the Safety Act. Failure to comply with the new provisions would be a violation of section 108(a) (2) (D) which prohibits failure to comply with any order or other requirement applicable to any manufacturer, distributor or dealer pursuant to Part B of the Safety Act. Section 109(a) provides that a civil penalty of \$1,000 may be assessed for each violation of section 108. Under section 110(a), the agency could seek an injunction against a violator of section 108 to prevent further violations.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for its approval, pursuant to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). A notice will be published in the *Federal Register* when OMB approves this information collection.

As noted above, this rule is being issued as an interim final rule, without prior notice and opportunity for comment. NHTSA believes that there is good cause for finding that notice and comment rulemaking is impracticable and contrary to the public interest in this instance. The absence of any tire registration requirements for independent dealers has created an emergency necessitating immediate action.

The agency is concerned that, until a rule regarding voluntary registration can be implemented, registration of tires sold by independent dealers may fall well below the 20 percent rate which existed prior to the enactment of the Authorization Act on October 15. As long as this situation lasts, substantial numbers of tire purchasers may be unable to register their tires. Although some efforts are being made by independent dealers to continue to follow the mandatory registration process, the agency does not have any indication how widespread or successful those efforts are. Purchasers whose tires are unregistered will not receive direct notification from the manufacturer of those tires in the event that the tires are found to contain a safety defect or to fail to comply with an applicable standard. Ignorant of the safety problem, the purchasers will continue to drive on tires presenting a threat to their safety and that of other motorists.

Providing opportunity for comment is also unnecessary to a substantial extent. Many of the new provisions of Part 574 were expressly mandated by Congress.

Nevertheless, this agency is providing an opportunity to comment on this notice during the 45 days following its publication in the *Federal Register*. Those comments will be carefully considered since the agency does not intend to maintain this rule as the permanent final rule on voluntary registration. A permanent final rule will be issued not later than October 14, 1983.

NHTSA seeks comments from all interested parties on what requirements should be included in the permanent final rule. Pursuant to a contract with the agency, American Institutes for Research in the Behavioral Sciences has explored ways of more effectively structuring and wording the voluntary registration forms to induce as many purchasers as possible to complete their forms and send them to the manufacturers. Copies of the results of the Institute's work have been placed in the docket. Comments are requested on that work. Comments are also requested on the feasibility of using post card sized forms. The agency is uncertain whether those forms would provide sufficient space to permit the easy, legible recording of the requisite information. If so, then this alternative appears attractive since the lower postal rate for such cards could induce a higher rate of registration by purchasers.

The results of the contract study on registration forms and all comments submitted in response to this notice will be considered by the agency in selecting the provisions to include in the permanent final rule. If, after examining the study, the agency determines that the registration forms for independent dealers should be significantly altered, a notice of proposed rulemaking will be issued to ensure full comment on those changes.

The requirements of this rule become effective 30 days after the date on which it is published in the *Federal Register*. The 30-day period provides adequate time for tire manufacturers to print and distribute the new voluntary registration forms (or envelopes, under the option for using existing forms) to the independent dealers. Since this rule requires no change to the forms provided to or used by nonindependent dealers, manufacturers and nonindependent dealers may continue to use their current forms.

NHTSA has analyzed the impacts of this action and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The requirements concerning the registration forms for independent dealers will impose minimally higher costs on tire manufacturers. Compared to the costs and administrative burdens to independent dealers of complying with the Part 574 requirements for mandatory registration, independent dealers should achieve slight savings under this rule. Requirements for nonindependent dealers are not changed by this rule. Consumers purchasing tires from independent dealers will now have to pay 20 cents for postage if they wish to register those tires. The bearing of this cost by consumers has been mandated by Congress. For these reasons, a full regulatory evaluation has not been prepared.

The agency has also considered the impacts of this action on small entities, and determined that this rule will not have a significant economic impact on a substantial number of those small entities. The agency believes that few if any of the tire manufacturers are small entities. Although many dealers are considered to be small entities, this rule will not have a significant impact on them. The requirements for tire manufacturers are unchanged except that the size, content and cost of

the registration forms they supply to independent dealers would be slightly different. No change at all is made in the requirements for nonindependent dealers. Independent dealers will realize minimal savings from this rule. Small organizations and governmental units which purchase tires from independent dealers will have to pay postage to register those tires. However, those costs will not be significant.

All interested persons are invited to comment on this interim final rule. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped post card. Upon

receiving the comments, the docket supervisor will return the post card by mail.

List of Subjects in 49 CFR 574

Consumers protection, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 574—(Amended)

In consideration of the foregoing, the following amendments are made to Part 574, Tire Identification and Recordkeeping, of Title 49 of the Code of Federal Regulations:

1. Section 574.1 is revised to read as follows:

§574.1 Scope.

This part sets forth the method by which new tire manufacturers and new tire brand name owners shall identify tires for use on motor vehicles and maintain records of tire purchasers, and the method by which retreaders and retreaded tire brand name owners shall identify tires for use on motor vehicles. This part also sets forth the methods by which independent tire dealers and distributors shall record, on registration forms, their names and addresses and the identification number of the tires sold to tire purchasers and provide the forms to the purchasers, so that the purchasers may report their names to the new tire manufacturers and new tire brand name owners, and by which other tire dealers and distributors shall record and report the names of tire purchasers to the new tire manufacturers and new tire brand name owners.

2. Section 574.3 is amended by adding a new paragraph (c) (1) immediately after “*Definitions used in this part.*” and redesignating existing paragraphs (c) (1) through (c) (4) as paragraphs (c) (2) through (c) (5):

§ 574.3 Definitions.

* * * * *

(c) * * *

(1) “Independent” means, with respect to a tire distributor or dealer, one whose business is not owned or controlled by a tire manufacturer or brand name owner.

* * * * *

3. Section 574.7 is revised to read as follows:

§ 574.7 Information requirements—new tire manufacturers, new tire brand name owners.

(a) (1) Each new tire manufacturer and each new tire brand name owner (hereinafter referred to in this section and § 574.8 as “tire manufacturer”) or its designee, shall provide tire registration forms to every distributor and dealer of its tires which offers new tires for sale or lease to tire purchasers.

(2) Each tire registration form provided to independent distributors and dealers pursuant to paragraph (a) (1) of this section shall comply with either paragraph (a) (2) (A) or (B) of this section.

(A) Each form shall contain space for recording the information specified in paragraphs (a) (5) (A) through (a) (5) (C) of this section and shall conform in content and format to Figures 3a and 3b. Each form shall be:

- (i) Rectangular;
- (ii) Not less than .007 inches thick;
- (iii) Greater than 3½ inches, but not greater than 6½ inches wide; and
- (iv) Greater than 5 inches, but not greater than 11½ inches long.

(B) Each form shall comply with the same requirements specified in paragraph (a) (4) of this section for forms provided to distributors and dealers other than independent distributors and dealers.

(3) Each tire manufacturer or designee which does not give an independent distributor or dealer forms complying with paragraph (a) (2) (A) of this section shall give that distributor or dealer envelopes for mailing forms complying with paragraph (a) (2) (B) of this section. Each envelope shall bear the name and address of the tire manufacturer or its designee and the reminder set forth in Figure 3a.

(4) Each tire registration form provided to distributors and dealers, other than independent distributors and dealers, pursuant to paragraph (a) (1) of this section shall be similar in format and size to Figure 4 and shall contain space for recording the information specified in paragraph (a) (5) (A) through (a) (5) (C) of this section.

(5) (A) Name and address of the tire purchaser.

(B) Tire identification number.

(C) Name and address of the tire seller or other means by which the tire manufacturer can identify the tire seller.

(b) Each tire manufacturer shall record and maintain, or have recorded and maintained for it by a designee, the information from registration forms which are submitted to it or its designee. No tire manufacturer shall use the information on the registration forms for any commercial purpose detrimental to tire distributors and dealers. Any tire manufacturer to which registration forms are mistakenly sent shall forward those registration forms to the proper tire manufacturer within 90 days of the receipt of the forms.

(c) Each tire manufacturer shall maintain, or have maintained for it by a designee, a record of each tire distributor and dealer that purchases tires directly from the manufacturer and sells them to tire purchasers, the number of tires purchased by each such distributor or dealer, the number of tires for which reports have been received from each such distributor or dealer other than an independent distributor or dealer, the number of tires for which reports have been received from each such independent distributor or dealer, the total number of tires for which registration forms have been submitted to the manufacturer or its designee, and the total number of tires sold by the manufacturer.

(d) The information that is specified in paragraph (a) (5) of this section and recorded on registration forms submitted to a tire manufacturer or its designee shall be maintained for a period of not less than three years from the date on which the information is recorded by the manufacturer or its designee.

4. Section 574.8 is revised to read as follows:

§ 574.8 Information requirements—tire distributors and dealers.

(a) *Independent distributors and dealers.* (1) Each independent distributor and each independent dealer selling or leasing new tires to tire purchasers or lessors (hereinafter referred to in this section as "tire purchasers") shall provide each tire purchaser at the time of sale or lease of the tire(s) with a tire registration form.

(2) The distributor or dealer may use either the registration forms provided by the tire manufacturers pursuant to § 574.7(a) or registration forms obtained from another source. Forms obtained from other sources shall

comply with the requirements specified in § 574.7(a) for forms provided by tire manufacturers to independent distributors and dealers.

(3) Before giving the registration form to the tire purchaser, the distributor or dealer shall record in the appropriate spaces provided on that form:

(A) The entire tire identification number of the tire(s) sold or leased to the tire purchaser; and

(B) The distributor's or dealer's name and address or other means of identification known to the tire manufacturer.

(4) Multiple tire purchases or leases by the same tire purchaser may be recorded on a single registration form.

(b) *Other distributors and dealers.* (1) Each distributor and each dealer, other than an independent distributor or dealer, selling new tires to tire purchasers shall submit the information specified in § 574.7(a) (5) to the manufacturer of the tires sold, or to its designee.

(2) Each tire distributor and each dealer, other than an independent distributor or dealer, shall submit registration forms containing the information specified in § 574.7(a) (5) to the tire manufacturer, or person maintaining the information, not less often than every 30 days. However, a distributor or dealer which sells less than 40 tires, of all makes, types and sizes during a 30-day period may wait until he or she sells a total of 40 new tires, but in no event longer than six months, before forwarding the tire information to the respective tire manufacturers or their designees.

(c) Each distributor and each dealer selling new tires to other tire distributors or dealers shall supply to the distributor or dealer a means to record the information specified in § 574.7(a) (5), unless such a means has been provided to that distributor or dealer by another person or by a manufacturer.

(d) Each distributor and each dealer shall immediately stop selling any group of tires when so directed by a notification issued pursuant to sections 151 and 152 of the Act (15 U.S.C. 1411 and 1412).

Issued on April 21, 1983.

Raymond A. Peck, Jr.,
Administrator
48 F.R. 22572
May 19, 1983

PREAMBLE TO AN AMENDMENT TO PART 574

Tire Code Marks Assigned to New Tire Manufacturers

ACTION: Publication of tire code marks assigned to new tire manufacturers.

SUMMARY: The NHTSA last published a complete listing of the tire code marks assigned to new tire manufacturers in 1972. Since that time, there have been several additions and changes in names and addresses for the assigned code marks. This publication will inform the public of those additions and changes.

SUPPLEMENTARY INFORMATION: Section 574.5 of the Title 49, Code of Federal Regulations, requires tire manufacturers to mold a tire identification number onto or into the sidewall of each tire they manufacture. In the case of new tires, the first two digits of the tire identification number are the code mark assigned to the manufacturer. This code mark identifies the manufacturer and the plant where the tire was manufactured.

The NHTSA published a complete listing of the tire codes at 37 FR 342, January 11, 1972. This list

enables interested members of the public to identify the manufacturer and place of manufacture of any new tire.

Since 1972, there have been several changes in the names of the manufacturers and the plant addresses for the assigned code marks. Further, there have been some 150 additional code marks assigned for new tires since the 1972 publication. Accordingly, this updated listing of the assigned code marks for new tires is being published to bring the public up-to-date with the revisions and new code numbers which have been assigned since the publication of the 1972 list.

Issued on June 8, 1983.

Kennerly H. Digges,
*Acting Associate Administrator
for Rulemaking*
48 F.R. 27635
June 16, 1983

PREAMBLE TO AN AMENDMENT TO PART 574

Tire Identification and Recordkeeping

[Docket No. 70-12; Notice 25]

ACTION: Final rule.

SUMMARY: This final rule sets forth the requirements relating to the registration of new tires sold by independent dealers and distributors. Recording the names and addresses of the first purchasers and transmitting this information to the manufacturers will make it possible for those purchasers to be contacted in the event that the tires are recalled by the manufacturers for safety reasons. These requirements supersede those contained in the interim final rule on this subject published in the May 19, 1983, edition of the Federal Register.

This rule primarily clarifies some aspects of the provisions of the interim final rule concerning the tire registration form to be provided by the tire manufacturers to the independent dealers. These changes, which were made to maximize the registration of tires sold through independent dealers, are as follows:

(1) The size of the registration form to be given to the consumer by independent dealers has been reduced, so that only a 13-cent postcard stamp need be affixed to the registration form. The interim final rule had specified that a first-class-mail-sized card be used for the registration form. This change was made to minimize the costs for consumers to register their tires.

(2) The statement in the upper left corner of that registration form, informing the tire purchaser of the importance of completing and returning the form, has been modified so as to be more comprehensible and more effective at motivating the purchaser to register his or her tires.

(3) Instructions to the tire purchaser have been added, so that the purchaser will print instead of write his or her name on the registration form.

(4) That portion of the registration form which

is to be filled in by the independent dealer (i.e., the portion for filling in suitable identification of the dealer and the tire identification number(s) of the tire(s) sold) must be shaded with a 10-percent screen tint. This change was made to emphasize to the tire purchaser the limited amount of information which the purchaser must fill in to register his or her tires.

EFFECTIVE DATE: The changes made by this notice become effective March 25, 1984. As of that date, the tire manufacturers will be required to provide registration forms in compliance with this rule, and they must cease their distribution of the forms specified by the interim final rule. Independent dealers may continue to use the forms specified by that rule until their existing supplies of that form are exhausted or until April 1, 1984, whichever comes first.

SUPPLEMENTARY INFORMATION

Background

Motor Vehicle Safety and Cost Savings Authorization Act of 1982

The Motor Vehicle Safety and Cost Savings Authorization Act of 1982 (hereinafter referred to as "the Authorization Act") amended the National Traffic and Motor Vehicle Safety Act of 1966 (hereinafter referred to as "the Safety Act") by requiring this agency to change its tire registration requirements insofar as they applied to independent tire dealers and distributors. (This class of dealers and distributors is defined below.) These requirements are set forth in 49 CFR Part 574, *Tire Identification and Recordkeeping*. Before the Authorization Act became effective, Part 574 required all tire dealers and distributors

to comply with the mandatory registration system. Under the system, dealers and distributors were required to record certain information (i.e., the tire purchaser's name and address, seller's name and address, and the identification number(s) of the tire(s) sold) on a registration form and send the completed form to the tire manufacturer or the brand-name owner (hereinafter collectively referred to as "tire manufacturers") or a designee of the tire manufacturer.

The tire registration requirements were adopted pursuant to requirements in the Safety Act intended to insure that tire purchasers could be notified if their tires are recalled for safety reasons, either because they contain a safety-related defect or because they do not comply with an applicable safety standard. The purchasers of unregistered tires would not be directly notified in those instances and would instead unknowingly continue to drive on unsafe tires.

On examining the rate of tire registration, Congress found a substantial difference between the rates for tires sold by independent dealers (dealers and distributors whose business is not owned or controlled by a tire manufacturer) and those sold by nonindependent dealers (dealers and distributors whose business is owned or controlled by a tire manufacturer). Independent dealers, who handle slightly less than half of the replacement tires sold annually, registered about 20 percent of the tires they sold. Nonindependent dealers, whose sales account for the balance of annual replacement tire sales, registered between 80 and 90 percent of their tires.

Given the importance of tire registration to safety, Congress determined that an alternative method of registration should be instituted for tires sold by independent dealers. Accordingly, it included provisions in the Authorization Act prohibiting the Secretary of Transportation from requiring independent dealers to comply with the mandatory registration requirements. (In view of the high rate of registration of tires sold by non-independent dealers, Congress did not mandate any change in the application of the mandatory registration requirements to those dealers.) The prohibition regarding independent dealers was self-executing (i.e., its effectiveness was not conditioned on any prior rulemaking or other implementing action by this agency) and became effective on the date that the Authorization Act became law, October 15, 1982.

In lieu of requiring independent dealers to comply with the mandatory registration process, Congress directed that they comply with a voluntary registration process to be established by the Secretary. Under the voluntary process, the primary responsibility for registering tires sold by independent dealers is borne by the purchaser instead of the dealer. NHSTA is mandated by the Safety Act, as amended by the Authorization Act, to require that independent dealers (1) fill in the tire identification number(s) of the tire(s) sold to a purchaser on a registration form and then (2) give the form to the purchaser. If the purchaser wishes to register the tires, he or she may do so by filling in his or her name and address, adding postage, and sending the form to the tire manufacturer or its designee.

To ascertain whether the changes mandated by the Authorization Act have the desired effect of increasing the registration rate of tires sold by independent dealers, Congress directed NHTSA to conduct an evaluation covering the 2-year period ending October 14, 1984. Upon completion of the evaluation, NHTSA must determine the extent to which independent dealers have encouraged purchasers to register their tires and the extent to which those dealers have complied with the voluntary tire registration procedures. Further, the agency is required to determine whether to impose any additional requirements on the independent dealers or the manufacturers for the purpose of promoting higher levels of tire registration.

The provision in the Authorization Act mandating a voluntary registration system for independent dealers was not self-executing. Thus, the voluntary system could not become effective until NHTSA issued a rule establishing that system. An interim final rule doing so was published at 48 Fed. Reg. 22572, May 19, 1983, and became effective June 20, 1983.

Interim Final Rule

The interim final rule imposed the following requirements on the various parties:

Tire manufacturers. Except as noted, new registration forms had to be provided for independent dealers. All of those forms were required to be identical in format and content and within the size range specified in the interim final rule. Alternatively, the manufacturer could provide independent dealers with preaddressed

envelopes in which tire purchasers could mail the mandatory registration forms. In either case, the manufacturer would have to maintain a record of all returned registration forms for at least 3 years after receipt.

No change was made in the requirements regarding forms provided to nonindependent dealers.

Tire dealers and distributors which sell tires to other dealers and distributors. These parties are required to give the purchasing dealer or distributor the registration forms provided by the tire manufacturers so that that dealer or distributor can comply with the applicable tire registration requirements. The new forms must be provided to independent dealers.

Nonindependent dealers. No changes were made to the tire registration requirements applicable to these parties. They are still required to follow the mandatory tire registration system formerly applicable to all tire dealers. Thus, the nonindependent dealers must record the purchaser's name and address, the tire identification number(s) of the tire(s) sold, and a suitable identification of themselves as the selling dealer on a tire registration form, and return the completed forms to the tire manufacturers or their designees.

Independent dealers. These dealers were required by the interim final rule to record the tire identification number(s) of the tire(s) sold, along with their name and address, on a registration form and give the form to the tire purchaser.

The interim final rule sought comments on the issues raised by the requirements specified therein, and specifically asked commenters to address the issue of adopting the registration form devised by the American Institute for Research in the Behavioral Sciences pursuant to a contract with the agency.

Final Rule

After considering the comments on the interim final rule, NHTSA has decided to retain most of the requirements in that rule. Several changes have been made to the requirements regarding the forms to be provided to independent dealers. These changes are relatively minimal and do not disturb the essential continuity of the voluntary registration requirements. Accordingly, both the tire manufacturers and the independent dealers should be able to implement the voluntary

registration system as amended by this rule with minimal disruption to the practices they have been following since the interim final rule became effective.

Voluntary Tire Registration Procedures

Several commenters stated that independent dealers that wish to continue following the mandatory tire registration requirements should be permitted to do so. The premise underlying these comments is that mandatory registration, when properly implemented, is the most effective means of insuring that virtually all replacement tires are registered.

While NHTSA does not disagree with the premise of these commenters, the agency is not free to adopt their suggestion. Section 158(b)(2)(B) of the Safety Act specifies that this agency

... shall require *each* . . . (independent dealer) to furnish the first purchaser with a registration form (containing the tire identification number of the tire) which the purchaser may complete and return directly to the manufacturer of the tire. (Emphasis added.)

This mandate to the agency is completely inclusive, directing the agency to make the voluntary registration procedures applicable not simply to independent dealers in general, but to "each" independent dealer. Further, this mandate is not offset by any express authority to make exceptions.

As a practical as well as a legal matter, independent dealers may nevertheless register the tires they sell if they first comply with the voluntary registration procedures. Independent dealers are not prohibited from filling in the information required by the voluntary procedures on the forms specified by those procedures, furnished the forms to tire purchasers, and then offering to fill in the balance of the information and mail the form to the manufacturer.

Based on the comments, it appears that some commenters are confused about the status of motor vehicle dealers under the mandatory and voluntary registration procedures. The preamble to the interim final rule mentioned motor vehicle dealers only very briefly because they are minimally affected by the voluntary registration procedures. The preamble stated that there are two situations in which motor vehicle dealers are considered to be tire dealers and are required to register the tires on the vehicles as specified in

section 574.9. In these situations, the preamble noted that whether the motor vehicle dealer would be required to follow the mandatory or voluntary registration procedures would depend on whether the motor vehicle dealer's business was owned or controlled by a tire manufacturer. Since such ownership or control seems highly improbable, the preamble stated that the motor vehicle dealer would in all likelihood have to follow the voluntary registration procedures.

The discussion in that notice left some commenters uncertain whether the original equipment tires on new vehicles were subject to mandatory or voluntary registration procedures. This uncertainty apparently arose because the interim final rule made no mention of the mandatory tire registration requirements that have been applicable to original-equipment tires since 1971. No mention of these requirements was made, since the notice did not propose to amend section 574.10, which specifies the actions to be taken by motor vehicle manufacturers to register their original-equipment tires.

The two situations to which the interim final rule's preamble referred are those situations in which the motor vehicle dealer, as opposed to the motor vehicle manufacturer, is responsible for registering tires. These situations, which are relatively infrequent, are set forth in section 574.9. First, if a motor vehicle dealer sells a used vehicle or leases a vehicle for more than 60 days, and the vehicle is equipped with new tires, the dealer must register the tires on the vehicle. Second, if a motor vehicle dealer sells a new vehicle and the vehicle is equipped with tires other than those shipped with the vehicle by the motor vehicle manufacturer, the motor vehicle dealer must register the tires on the vehicle. The interim final rule was intended to make clear that motor vehicle dealers whose business is not owned or controlled by a tire manufacturer should follow the voluntary registration procedures in those two rare types of situations, when the vehicle dealer is responsible for registering the tires on the vehicle.

One commenter urged that NHTSA delete the requirement that independent dealers record their name and address on the registration form before giving that form to the tire purchaser. This commenter noted that Congress stated the Authorization Act's voluntary registration provisions had been adopted partially for the purpose

of reducing the burdens which mandatory registration procedures placed on independent dealers. Further, the commenter asserted that the Authorization Act requires only that the independent dealers record the tire identification number on the registration form, and that the absence of any mention of further specific information to be filled in by independent dealers is evidence that Congress did not intend those dealers to have to fill in any information other than the identification number. Finally, this commenter noted that NHTSA had indicated in the preamble to the interim final rule that the dealer's name and address was needed on the registration form to aid the agency in evaluating the voluntary registration process. This commenter stated that it would be sufficient for evaluation purposes for the registration forms used by independent dealers to show simply that they came from that class of dealers, instead of identifying a specific independent dealer. It was further suggested that this information would be all that was needed for the agency to determine the extent to which voluntary registration had been successful at increasing the rate of tire registration for tires sold by independent dealers.

Similarly, two tire manufacturers commented that a manufacturer should not be required any longer to maintain records which show, for each of its tires sold by an independent dealer, the identity of that particular dealer. They argued that manufacturers should only be required to maintain registration for independent dealers as a group. These commenters also asserted that this information was all that the agency needed to determine whether or not voluntary registration had successfully increased the registration rate for tires sold by independent dealers.

The preamble to the interim final rule may not have adequately explained the full breadth of the evaluative task which Congress instructed the agency to perform. In order to conduct a proper evaluation which not only reports the aggregate results of the voluntary registration program but also attempts to explain those results, the agency will need to be able to determine registration rates for individual dealers. With that ability, the agency can differentiate dealers with high rates from dealers with low ones and then proceed to attempt to assess the reasons for those differences. Having performed that analysis, the agency would be in a position to provide Congress

with insight about the impact of the voluntary registration program. It would also enable the agency to determine what additional requirements, if any, should be adopted to improve the registration program. NHTSA may find that those improvements can be more effectively obtained by enforcing the requirements established by this notice than by imposing additional requirements on all independent dealers.

NHTSA believes that it has authority under the Authorization Act to require independent dealers to record not only the tire identification numbers but also their names and addresses on registration forms. There is no express prohibition against the agency's requiring dealers to fill in more than the tire identification numbers. While the Authorization Act makes no mention of requiring dealers to fill in their names and addresses, the agency does not regard that fact as dispositive. The Authorization Act does not, in fact, specify that the dealer's name and address is to be filled in by either the dealer or the purchaser. Since there isn't any clear indication that it was Congress' intent that this information no longer be required, the agency will not infer such intent from Congress' decision not to assign that task expressly to any particular party. It appears that Congress has left the question of that assignment to NHTSA's discretion. Since the names and addresses of dealers have long been recorded on registration forms and since that information is needed to enable the agency to conduct an effective evaluation, this agency believes that it should continue to be recorded. In view of the fact that dealers are more likely than purchasers to provide this information accurately, and since dealers can easily resort to the expediency of a stamp bearing their name and address, NHTSA reaffirms its decision to assign the task of filling in that information to the dealers.

As to the tire manufacturers, the burden on them regarding the identity of specific independent dealers is simply to continue doing what they have been doing since 1971, i.e., maintaining registration records for each dealer. The agency believes that continued maintenance of these records is warranted by the value of dealer-specific information to the evaluation and to tire recall campaigns. In fact, the agency recently issued a special order to nine tire manufacturers to obtain information on the registration rates for individual independent dealers. The agency will

continue to monitor those rates.

Several commenters suggested that the agency, when conducting its evaluation of the effect of the voluntary registration program on the registration rate, determine its own baseline for registration of tires sold by independent dealers before that program began. The commenters urged that the agency not adopt the 20-percent rate mentioned in the legislative history of the Authorization Act. In lieu of that figure, the commenters offered several lower ones, including a figure of 7 percent. The agency intends to determine its own baseline. The special order mentioned above will provide the information necessary for that determination.

Registration Forms

In selecting the registration form to be used by independent dealers under the interim final rule, the agency consciously sought to find a form that would satisfy all of the statutory requirements for the voluntary registration system, while making as few changes as possible to existing forms being used under the mandatory registration system. This conservative approach was necessary because the amendments to the Vehicle Safety Act did not provide adequate time to follow normal rulemaking procedures and seek comments on more far-reaching changes.

To determine outside the strictures of a rigid time schedule what type of form would be most effective in inducing tire purchasers to register their tires, NHTSA contracted with American Institute for Research in the Behavioral Sciences (AIRBS) to conduct a study. AIRBS designed a postcard-size registration form separated into two parts by a line of perforation. The top part, which would be detached and retained by the purchaser, would contain a message explaining the importance of tire registration to the purchaser and motivating the purchaser to register the tires by sending the form to the manufacturer. On the reverse of the top side, there would be a space where the purchaser could record the registration information and save it for his or her personal records.

The bottom part of the AIRBS registration form would be the part that would be sent to the tire manufacturer. On one side would be the manufacturer's preprinted address. On the other would be space for filling in the tire registration information.

The agency placed the AIRBS study and form in the public docket and requested in the interim final rule that interested persons comment on the contractor's recommendations. Several commenters addressed the desirability of adopting the AIRBS form as the registration form to be used by independent dealers. Many commenters stated that a postcard-sized form was too small to allow the necessary information to be legibly recorded. One commenter argued that the AIRBS form would not be any more effective at encouraging consumers to register their tires than the simple one-part card mandated in the interim final rule, and that the AIRBS form might actually be more confusing. Another commenter objected to the AIRBS form because the perforated edge of the portion of the form to be returned to the manufacturer could not be automatically fed through a microfilming machine. The same commenter also argued that the printing costs for the AIRBS form would be about 12 percent higher than those for the form mandated in the interim final rule.

After considering these comments, NHTSA has decided not to adopt the AIRBS form. That form poses a number of potential problems which neither AIRBS nor the agency foresaw. Further, NHTSA does not believe that use of a two-part form is necessary. AIRBS stated in its study that the reason for its recommending a two-part form was its belief that the space available on a single-part form was insufficient to allow the printing of the motivational message to the consumer, the instructions, and the necessary registration information with type and spacing large enough to permit easy reading. In the agency's own judgment, the single-part form mandated by this final rule will not be overly crowded, will avoid the potential problems which commenters attributed to the two-part form, and will be almost as successful in motivating consumers to register their tires as would the two-part form.

However, the agency has adopted the AIRBS recommendation that the registration forms provided to consumers be postcard size. It will be less expensive for tire purchasers to use 13-cent postcard stamps to mail registration forms of that size, and this low cost might motivate some purchasers who would not otherwise do so to register their tires. The maximum dimensions permitted by the U.S. Postal Service for a postcard are 4¼ by 6 inches. This area is, in NHTSA's judgment, sufficient to permit the motivational message and

the space for recording the required information to appear on the same size of the card, without being overly crowded or difficult to read. Given the importance of encouraging consumers to return the completed tire registration forms, and the likely effectiveness of lower postage costs at encouraging consumers to return the forms, this rule specifies that the registration forms be of the dimensions permitted for using postcard stamps.

Some other minor changes are made in this notice to the registration form required by the interim final rule. First, the motivational message has been changed so that it is now identical to that recommended by AIRBS. The AIRBS message provided stronger encouragement to send the form to the manufacturer and will be readily understood by consumers.

Second, the agency has decided to require the form to include instructions to the tire purchaser to print his or her name and address on the form. Those instructions were inadvertently omitted from the interim final rule. They have now been added at the urging of several of the commenters.

One commenter requested that tire manufacturers be allowed to divide the spaces for recording the purchaser's name and address into little boxes so that each letter or number would be printed in a separate box. According to this commenter, this approach would help insure accurate transcription by the manufacturer of the information on the registration forms. Based on its assessment of the AIRBS study, the agency has decided not to adopt this change. AIRBS indicated to this agency that the use of boxes discourages people from filling in information on forms and that the return rate for the registration forms would therefore be higher if boxes were not used.

Third, NHTSA is adopting a requirement that contrasting shading be used for the area of the form containing the blanks to be completed by the independent dealer and that a white background be used for the areas to be completed by the tire purchasers. AIRBS recommended this requirement in its study as a means of emphasizing to the tire purchaser the minimal quantity of information which he or she must record in order to register his or her tires. AIRBS indicated that the shading could be achieved by using a 10-percent screen tint. The tinted forms would be inexpensive to produce and still easily readable by data processors.

One manufacturer commented that independent dealers should be required to enter both their name and address and their dealer identification number assigned by the manufacturer on the registration form. The dealer identification number is a unique identifier assigned by a tire manufacturer to each dealer selling that manufacturer's tires. This commenter asserted that requiring the dealer identification number to be placed on the registration forms would greatly simplify the data-processing task for the manufacturer as it recorded the information from the registration forms sent in by tire purchasers.

NHTSA agrees that such a requirement would simplify the manufacturers' task, but only at the cost of significantly complicating the registration responsibilities of the independent dealers. The dealer identification numbers assigned to a particular dealer are not coordinated among the various tire manufacturers. Thus, an independent dealer which sells tires produced by seven different manufacturers would have seven different dealer identification numbers assigned to it. The interim final rule required independent dealers to record their name and address on the registration form. This could be done simply by purchasing and using a rubber stamp with the dealer's name and address on it. If the final rule were amended to require the dealer to also record its dealer identification number, and the independent dealer sold seven different manufacturers' tires (as in the example above), the dealer would either have to fill in its name, address, and identification number by hand on each registration form or buy seven different rubber stamps. If it chose to purchase seven different rubber stamps, the dealer would also have to be certain that it used the appropriate stamp for each manufacturer's registration form. If the dealer used the wrong dealer identification number on a manufacturer's registration form, it would complicate the manufacturer's data-processing task. After considering these facts, NHTSA has decided not to adopt this comment, and the independent dealers remain subject to the requirement that they record their name and address on the registration form before giving the form to the tire purchaser.

Other Issues

Several commenters objected to the language in the interim final rule stating that enforcement of this regulation would be under the authority of

sections 108-110 of the Safety Act (15 U.S.C. 1397-99) and that each violation could subject the violator to a penalty of \$1,000. These commenters noted that the Committee report on the Authorization Act stated an expectation that independent dealers which failed to comply with the voluntary registration requirements would not have to pay the maximum penalty unless there was a clear, continuous pattern of violations.

The statutory provisions recited in the interim final rule are consistent with the committee report. Section 109 of the Safety Act provides that the amount of any penalty imposed by the agency should reflect consideration of the size of the business which committed the violation and of the gravity of the violation. As a matter of practice, the agency makes a distinction in its enforcement activities between isolated violations and continuous patterns of violations. The agency will continue to make this distinction and thus will be following the guidance in the committee report.

Some commenters urged that the agency permit continued use of registration forms addressed to clearinghouses. These forms, which were permitted under mandatory registration, were generic instead of manufacturer-specific (i.e., they did not bear any mark or information identifying them for use in registering a particular manufacturer's tires) and thus could be used to register any manufacturer's tires. The tire dealer would fill in the manufacturer or brand-name owner identified on the tire to be registered, and send the forms to a clearinghouse. The clearinghouse would then forward the information to the appropriate manufacturer or brand-name owner.

As explained in the preamble to the interim final rule, the amendments to section 158(b) of the Safety Act and their legislative history compel an end to the practice of using forms which are not addressed to a specific manufacturer or its designee. Section 158(b) requires that the purchaser be able to send the form directly to the manufacturer of the tire, and that the forms used by independent dealers be standardized for all tires. Hence, the agency cannot permit continued use of forms which are not manufacturer-specific and which are not addressed to a particular manufacturer or its designee.

One commenter asked that dealers be allowed to continue to use the forms mandated by the interim final rule until the supply was exhausted. The interim final rule permitted the continued

use of the forms used under mandatory registration as long as the manufacturers provided pre-addressed envelopes in which to enclose those forms. To minimize the expenses and disruption associated with the transition from the interim final rule to this final rule, independent dealers will be permitted to continue using the forms specified by the interim final rule until their existing supplies are exhausted, or until April 1, 1984, whichever comes first. As of the effective date of this rule, the manufacturers will be required to provide registration forms in compliance with this rule, and distribution of the forms specified under the interim final rule must be ended.

A related issue was raised in a petition which Cooper Tire & Rubber Company ("Cooper") submitted for reconsideration of the interim final rule. Cooper currently has a no-charge warranty program for two tire lines. As part of that program, Cooper has printed a booklet and registration form. The form, which was developed and printed before the interim final rule was issued, contains a different motivational statement than was mandated by the interim final rule. Further, it does not contain a notation to affix first-class postage on the reverse side. Cooper reported that it had achieved a 66-percent registration rate for the two tire lines, using its own registration forms.

After considering these minor variations, the agency has decided that this Cooper registration form can be considered as complying with the requirements of the interim final rule. It is significant that Cooper prepared and began distributing these forms in December 1982, before the interim final rule had been published. From the interval of January 1, 1983, to June 20, 1983, Cooper achieved a 66-percent registration rate for tires sold by independent dealers, when there were no registration requirements applicable to independent dealers. This suggests that the Cooper form has been effective at motivating consumers to return that form, and achieving higher tire registration rates is the goal of the change in tire registration procedures.

NHTSA wishes to emphasize that Cooper was in a unique position, and that permitting the variations in the Cooper form from that mandated by the interim final rule does not mean that the agency will countenance variations from the form prescribed by this final rule. This form has been

developed after considering the AIRBS study, and it is important that it be used in connection with tire registration, to insure that the NHTSA evaluation of the voluntary tire registration system is conducted with an effective standardized registration form.

One commenter suggested that there would be a stronger incentive for consumers to register their tires if the agency were to require the manufacturers to prepay the postage for the registration forms. Adopting such a requirement was one of the actions which the House committee report indicated could be adopted after the 2-year evaluation period if the agency determined that further steps were necessary to achieve adequate registration rates. The implication of this discussion in the report is that the requirement may not be adopted at an earlier time. Accordingly, the agency is not adopting a requirement for prepaid postage.

Several commenters stated that the 30-day period between the publication of the interim final rule and its effective date was inadequate to allow the necessary registration forms to be printed and distributed to all of the manufacturer's independent dealers. Accordingly, they asked that a longer leadtime period be established for this final rule. The agency understands that it is asking the manufacturers to move very expeditiously to print and distribute the voluntary registration forms. NHTSA believes that short leadtime periods are necessary due to the importance of registration and to the requirement to conduct an evaluation of voluntary registration 2 years after passage of the Authorization Act. At the same time, the agency wishes to make some accommodation of the request for additional leadtime. Accordingly, the agency is specifying an effective date of 45 days after publication of this notice. This date will still require expeditious action by the manufacturers, but does provide 2 more weeks than were allowed for the interim final rule.

The information-collection requirements contained in this rule have been submitted to and approved by the Office of Management and Budget (OMB), pursuant to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Those requirements have been approved through May 31, 1985 (OMB #2127-0050). All printed registration forms must display this OMB clearance number and expiration date in the up-

per right-hand corner of the form.

NHTSA has analyzed the impacts of this rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The changes in the requirements for the registration forms to be provided by tire manufacturers to independent dealers will impose minimally higher costs on those manufacturers. Compared to the costs and administrative burdens imposed on independent dealers under mandatory registration, those dealers should achieve a slight savings under this rule. Consumers purchasing tires from independent dealers will now have to pay for postage if they wish to register their new tires. The assumption of that cost by consumers was mandated by Congress. For this reason, a full regulatory evaluation has not been prepared.

The agency has also considered the impacts of this rule on small entities, as required by the Regulatory Flexibility Act. NHTSA believes that few, if any, of the tire manufacturers are small businesses. Although many of the dealers could be considered small businesses, this rule will not have a significant impact on them. As noted above, they may experience a slight savings as compared to the mandatory registration requirements. The requirements for tire manufacturers are unchanged, except for some minor changes which they must make to the registration forms to be provided to independent dealers. Small organizations and governmental units will have to bear the minor expense of paying postage for any new tires they register. Based on the foregoing, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing, the following amendments are made to Part 574, Tire Identification and Recordkeeping, of Title 49 of the Code of Federal Regulations.

1. Section 574.3 is amended by adding a new paragraph (c)(1) immediately after "Definitions used in this part." and redesignating existing paragraphs (c)(1) through (c)(4) as paragraphs (c)(2) through (c)(5):

§ 574.3 Definitions.
* * * * *
(c) * * *

(1) "Independent" means, with respect to a tire distributor or dealer, one whose business is not owned or controlled by a tire manufacturer or brand name owner.

* * * * *

3. Section 574.7 is revised to read as follows:

§ 574.7 Information requirements—new tire manufacturers, new tire brand name owners.

(a)(1) Each new tire manufacturer and each new tire brand name owner (hereinafter referred to in this section and § 574.8 as "tire manufacturer") or its designee, shall provide tire registration forms to every distributor and dealer of its tires which offers new tires for sale or lease to tire purchasers.

(2) Each tire registration form provided to independent distributors and dealers pursuant to paragraph (a)(1) of this section shall contain space for recording the information specified in paragraphs (a)(4)(A) through (a)(4)(C) of this section and shall conform in content and format to Figures 3a and 3b. Each form shall be:

- (A) Rectangular;
- (B) Not less than .007 inches thick;
- (C) Greater than 3 1/2 inches, but not greater than 6 5/8 inches wide; and
- (D) Greater than 5 inches, but not greater than 6 inches long.

(3) Each tire registration form provided to distributors and dealers, other than independent distributors and dealers, pursuant to paragraph (a)(1) of this section shall be similar in format and size to Figure 4 and shall contain space for recording the information specified in paragraphs (a)(4)(A) through (a)(4)(C) of this section.

(4)(A) Name and address of the tire purchaser.

(d) The information that is specified in paragraph (a)(4) of this section and recorded on registration forms submitted to a tire manufacturer or its designee shall be maintained for a period of not less than three years from the date on which the information is recorded by the manufacturer or its designee.

4. Section 574.8 is revised to read as follows:

§ 574.8 Information requirements—tire distributors and dealers.

(b) *Other distributors and dealers.* (1) Each distributor and each dealer, other than an independent distributor or dealer, selling new tires to tire purchasers shall submit the information

specified in § 574.7(a)(4) to the manufacturer of the tires sold, or to its designee.

(2) Each tire distributor and each dealer, other than an independent distributor or dealer, shall submit registration forms containing the information specified in § 574.7(a)(4) to the tire manufacturer, or person maintaining the information, not less often than every 30 days. However, a distributor or dealer which sells less than 40 tires, of all makes, types and sizes during a 30-day period may wait until he or she sells a total of 40 new tires, but in no event longer than six months, before forwarding the tire information to the respective tire manufacturers or their designees.

(c) Each distributor and each dealer selling

new tires to other tire distributors or dealers shall supply to the distributor or dealer a means to record the information specified in § 574.7(a)(4), unless such a means has been provided to that distributor or dealer by another person or by a manufacturer.

Issued on February 3, 1984.

Diane K. Steed
Administrator

49 FR 4755
February 8, 1984

PREAMBLE TO AN AMENDMENT TO PART 574

Tire Identification and Recordkeeping

[Docket No. 84-07; Notice 2]

ACTION: Final rule.

SUMMARY: This rule amends Part 574 to give retreaders of tires for motor vehicles other than passenger cars an option during the retreading process of either removing the original manufacturer's DOT symbol from the sidewall of the finished retread or leaving that symbol on the tire. This action is taken because NHTSA has determined that no significant safety interest is served by requiring that retreaders remove the original manufacturer's DOT symbol as part of the retreading process. That requirement, which did not expressly appear in Part 574, resulted from unforeseen events and from unexpected effects of the language in Part 574. This rule avoids imposing unnecessary costs on these retreaders without degrading the safety of the tires or the safety value of the information available to consumers.

EFFECTIVE DATE: February 15, 1985.

SUPPLEMENTARY INFORMATION: The Federal Motor Vehicle Safety Standards require that a DOT symbol appear on the sidewall of most new and retreaded tires as a means of certifying compliance with the performance requirements of the applicable safety standard. Thus, the DOT symbol must appear on new tires for use on passenger cars which are subject to Standard No. 109, new tires for use on vehicles other than passenger cars which are subject to Standard No. 119, and retreaded passenger-car tires which are subject to Standard No. 117. (For the sake of easy reference, tires for use on motor vehicles other than passenger cars will be referred to as "non-car tires"

throughout the rest of this preamble.)

Regulations issued under the National Traffic and Motor Vehicle Safety Act expressly prohibit the presence of the DOT symbol on tires not subject to a Federal safety standard. 49 CFR Part 574, *Tire Identification and Recordkeeping*, provides, in pertinent part: "The DOT symbol shall not appear on tires to which no Federal Motor Vehicle Safety Standard is applicable..." (574.5). Since retreaded non-car tires are the only new or retreaded tires not subject to a Federal safety standard, they are the only tires subject to that prohibition.

NHTSA adopted the language in § 574.5 because of its concern that the appearance of the DOT symbol on tires to which no safety standard was applicable would confuse consumers. That is, NHTSA believed that consumers could mistakenly conclude that the tires in question met some applicable Federal requirements, when, in fact, there were no such requirements.

However, although the agency's concern in adopting the prohibition in § 574.5 was with the addition of a DOT symbol to a tire that was not subject to any Federal safety standard, the language of the prohibition was broader. It did not simply state that manufacturers cannot add the DOT symbol to tires to which no Federal safety standard is applicable. It stated that the DOT symbol "shall not appear" on such tires. The breadth of that language gave rise to a duty not only to refrain from adding a DOT symbol to tires to which no safety standard was applicable, but also to remove an original manufacturer's symbol when, as in the case of retreaded non-car tires, the tires were subject to a safety standard when new but are not subject to any standard when retreaded.

In no other circumstances under the Safety Act, such as in the remanufacturing of a vehicle, is a person required to remove a previous manufacturer's certification. Additionally, the agency learned that most non-car tire retreaders had not been removing the original manufacturer's DOT symbol.

NHTSA tentatively concluded that there was no safety or informational value associated with the requirement that non-car tire retreaders remove the original manufacturer's DOT symbol. Accordingly, the agency published a notice of proposed rulemaking on this subject at 49 FR 20880, May 17, 1984. That notice explained in detail the origins of the prohibition in § 574.5, and the bases for the agency's tentative conclusions that no safety or informational purposes were served by the requirement that retreaders of non-car tires remove the original manufacturer's DOT symbol from the sidewall of the tire. Further, the notice noted that although NHTSA had received over 10,000 consumer complaints regarding non-car tires since 1976, not one of those complaints related to the presence or absence of the DOT symbol on a retreaded non-car tire. The hypothetical consumer confusion which NHTSA thought might occur has in fact *not* occurred with respect to retreaded non-car tires. Accordingly, NHTSA proposed that the prohibition in § 574.5 be replaced by language which would give non-car tire retreaders the option of removing the original manufacturer's DOT symbol or leaving it on the finished retread, while emphasizing the those retreaders were still prohibited from adding a new DOT symbol to the sidewall of retreaded non-car tires.

Three commenters responded to the notice of proposed rulemaking. All three supported the agency's proposal to eliminate the requirement that non-car tire retreaders remove the original manufacturer's DOT symbol. One of the commenters suggested that the agency move beyond its proposed option for these retreaders to remove or not remove the original manufacturer's DOT symbol, and instead require that any non-car tires with a DOT symbol on the sidewall retain that DOT symbol after the retreading is completed.

The agency has not been persuaded by this comment, for the reasons expressed in the proposal. To repeat, the value of the DOT symbol on a worn tire carcass in assessing the probable performance capabilities of a retreaded tire is not very significant. Intervening factors, such as latent problems

with the carcass, inadvertent damage to the carcass during the retreading process, the amount of old tread not buffed off during the retreading, and the application and design of the new tread are of far greater significance in determining the performance of the retread than is the condition of the carcass when the tire was new. Those retreaders which choose to retain the original manufacturer's DOT symbol on the sidewall are free to do so, and those retreaders which choose to remove the original manufacturer's DOT symbol are also free to do so, since NHTSA has concluded that the symbol has so little significance for purchasers of retreaded non-car tires. Hence, the proposed change to the language in § 574.5 is hereby adopted, for the reasons set forth in the proposal.

NHTSA has analyzed this rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The impact of this rule is simply to authorize a practice which has been followed by most non-car tire retreaders for the last 7 years (i.e., not removing the original manufacturer's DOT symbol). No additional paperwork or costs will be imposed as a result of this rule. No cost savings are expected, either, since this rule merely authorizes existing practices. Since the impacts associated with the rule are so minimal, a full regulatory evaluation has not been prepared.

NHTSA has also analyzed this rule in accordance with the Regulatory Flexibility Act. Based on that analysis, I certify that this amendment will not have a significant economic impact on a substantial number of small entities. This rule does not impose any additional burden on tire retreaders, because it merely authorizes a practice most of them have followed, i.e., leaving the original manufacturer's DOT symbol on the sidewall of the finished retread. Those retreaders which have not followed that practice will be able to reduce their costs slightly by leaving that symbol on the sidewall, if they choose. Small organizations and small governmental jurisdictions which purchase retreaded non-car tires will not be affected by this rule. To the extent that this rule might produce some cost savings for the retreaders by allowing them not to buff off the original manufacturer's DOT symbol, those savings are already reflected in the prices charged for most retreaded non-car tires. Hence, no significant

savings are expected for small entities as a result of this rule. A full Regulatory Flexibility Analysis has not been prepared for this rule.

Finally, the agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act and determined that this rule will have no effect on the human environment.

LIST OF SUBJECTS IN 49 CFR PART 574: Labeling, motor-vehicle safety, motor vehicles, reporting and recordkeeping requirements, rubber and rubber products, tires.

In consideration of the foregoing, 49 CFR § 574.5 is amended by revising the introductory text to read as follows:

574.5 Tire identification requirements.

Each tire manufacturer shall conspicuously label on one sidewall of each tire it manufactures, except tires manufactured exclusively for mileage-contract purchasers, by permanently molding into or onto the sidewall, in the manner and location specified in Figure 1, a tire identification number containing the information set forth in paragraphs (a) through (d) of this section. Each tire retreader, except tire readers who retread tires solely for their own use, shall conspicuously label one sidewall of each tire it retreads by permanently molding or branding into or onto the sidewall, in the manner and location specified in Figure 2, a tire identification number containing the informa-

tion set forth in paragraphs (a) through (d) of this section. In addition, the DOT symbol required by Federal Motor Vehicle Safety Standards shall be located as shown in Figures 1 and 2. The DOT symbol shall not appear on tires to which no Federal Motor Vehicle Safety Standard is applicable, except that the DOT symbol on tires for use on motor vehicles other than passenger cars may, prior to retreading, be removed from the sidewall or allowed to remain on the sidewall, at the retreader's option. The symbols to be used in the tire identification number for tire manufacturers and retreaders are; "A, B, C, D, E, F, H, J, K, L, M, N, P, R, T, U, V, W, X, Y, 1, 2, 3, 4, 5, 6, 7, 8, 9, 0." Tires manufactured or retreaded exclusively for mileage-contract purchasers are not required to contain a tire identification number if the tire contains the phrase "for mileage contract use only" permanently molded into or onto the tire sidewall in lettering at least 1/4 inch high.

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Issued on January 10, 1985.

Diane K. Steed
Administrator
50 FR 2287
January 16, 1985

PREAMBLE TO AN AMENDMENT TO PART 574

Tire Code Marks Assigned to New Tire Manufacturers

ACTION: Publication of tire code marks assigned to new tire manufacturers.

SUMMARY: The agency first published a complete listing of the tire code marks assigned to new tire manufacturers in 1972. The second publication of this listing in June 1983 added an additional 150 code marks. Since that last publication, there have been several additions and changes in names and addresses for the assigned code marks. This publication will inform the public of those additions and changes as reported to the agency.

SUPPLEMENTARY INFORMATION: Section 574.5 of Title 49, Code of Federal Regulations, requires tire manufacturers to mold a tire identification number into or onto the sidewall of each tire they manufacture. In the case of new tires, the first two digits of the tire identification number are the code mark assigned to the manufacturer. This code mark identifies the tire manufacturer and the plant where the tire was manufactured.

The NHTSA first published a complete listing of the tire codes at 37 FR 342, January 11, 1972. This list enables interested members of the public to identify the manufacturer and place of manufacture of any new tire. The NHTSA published an updating of the tire codes at 48 FR 27635, June 16, 1983, adding some 150 additional code marks assigned to new tire manufacturers since the 1972 publication.

This update listing of the assigned code marks for new tire manufacturers is being published to bring the public up to date with the revisions and new code numbers which have been assigned since the publication of the 1983 list.

Issued on March 11, 1985.

Barry Felrice
Associate Administrator
for Rulemaking

50 FR 10880
March 18, 1985

**ADDITIONAL TIRE CODES ASSIGNED
New Tire Manufacturers**

- M8 Premier Tyres Limited, Kalamassery, Kerala State, India
- Y8 Bombay Tyres International Limited, Hay Bunder Road, Bombay, Maharashtra, India 400 033
- C9 Seven Star Rubber Company, Ltd., 2-1 Chang-Swei Road, Pin-Tou Hsiang, Chang-Hua, Taiwan, R.O.C.
- F9 Dunlop New Zealand, Limited, P.O. Box 40343, Upper Hutt, New Zealand
- H9 Reifen-Berg, 5000 Koln 80 (Mulheim), Clevischer Ring 134, West Germany
- J9 P.T. Intirub, 454 Cililitan, P.O. Box 2626, Besar, Jakarta, Indonesia
- K9 Natier Tire & Rubber Co., Ltd., 557, Shan Chiao Road, Sec. 1, Shetou, Changhua, Taiwan, R.O.C. 511
- M9 Uniroyal Tire Corporation, Uniroyal Research Center, Middlebury, CT 06749
- N9 Cia Pneus Tropical, Km105/BR, 324, Centro Industrial Desubae 44100, Feira de Santana, Bahia, Brazil
- P9 MRF, Ltd., P.B. No. 1 Ponda, Goa 403 401, India
- T9 MRF, Ltd., Thiruthani Road, Ichiputhur 631 060, Arkonam, India
- U9 Cooper Tire & Rubber Company, 1689 South Green Street, Tupelo, MS 38801
- V9 M & R Tire Co., 309 Main Street, Watertown, MA 02172

**Reported Name Change
New Tire Manufacturers**

<i>Code</i>	<i>Old Name</i>	<i>New Name</i>
AA	General Tire & Rubber Co. One General Street Akron, Ohio 44329	GenCorp Inc. One General Street Akron, OH 44329
BB	B.F. Goodrich Tire Company 5400 E. Olympic Blvd. Los Angeles, CA 90022	B.F. Goodrich Tire Company Department 6517 P.O. Box 31 Miami, OK 74354
LK	Uniroyal Croyden, S.A. Carrera 7A, No. 22-1 Cali, Colombia	Productora Nacional de Llantas, S.A. Carrera 7A, No. 22-1 Cali, Colombia
WT	Madras Rubber Factory, Ltd. 175/1 Mount Road Madras, India	Madras Rubber Factory, Ltd. Tiruvottiyur High Road Madras 600 019 India
H2	Sam Yang Tire Mfg. Co., Ltd. Song Jung Eup Junnam, Korea	Kumho & Co., Inc. 555 Sochon-Ri Songjung-Eup Kwangsang-Kun Chonnam, Korea

MISCELLANEOUS NEW TIRE MANUFACTURERS TRANSACTIONS
As Reported to NHTSA

<i>Manufacturer</i>	<i>Code</i>	<i>Remark</i>
Armstrong Rubber Company	CE	Plant closed 4/3/81
Bridgestone Tire Company	LH	Purchased from UNIROYAL as of 6/13/82
Ceat. S.p.A.	HU	Sold to Pirelli Tire Corp. in May 1984
Cooper Tire & Rubber Company	U9	Purchased from Pennsylvania Tire & Rubber on 1/25/84
Dayton Tire & Rubber Company	DC	Purchased from Dunlop on 11/1/75
Dunlop Olympic Tyres	DT,DU,WM,W4	Merger of Dunlop and Olympic on 4/29/81
Dunlop Tire & Rubber Corp.	DF, DH, DJ, DP, WN	Plants closed
ditto	DT, DU, WM W4	Plants sold to Dunlop Olympic on 4/29/81
ditto	DC	Plant sold to Firestone T&R on 11/1/75
Firestone Tire & Rubber	DC	Purchased from Dunlop T&R on 11/1/75
ditto	VV	Plant sold to Viskafors Gummifabrik in April 1980
General Tire & Rubber Company	LV	Purchased from Mansfield-Denman on 11/30/78
B.F. Goodrich Company	BJ	Plant sold 12/79
ditto	BK	Plant sold 1/80
ditto	BM	Plant sold to Olympic in 7/75
ditto	BN	Plant sold 8/81
ditto	BP	Plant sold 5/78
Nitto Tire Company, Ltd.	N3	Plant sold to Ryoto Tire Co., Ltd., on 1/23/80
Olympic Tire & Rubber Co., Pty., Ltd.	WM, W4	Sold to Dunlop Olympic on 4/29/81
ditto	WN	Plant closed in 1978

MISCELLANEOUS NEW TIRE MANUFACTURERS TRANSACTIONS
As Reported to NHTSA
(Continued)

<i>Manufacturer</i>	<i>Code</i>	<i>Remark</i>
Pennsylvania Tire & Rubber of Mississippi	WK	Plant sold to Cooper T&R on 1/24/84
Pirelli Tire Corporation	HU	Plant purchased from Ceat, S.p.A. in May 1984
Ryoto Tire Company	N3	Plant purchased from Nitto Tire Company on 1/23/80
SAMYAND Tire, Inc.	XU	Plant closed in 1976
UNIROYAL, Inc.	LH	Plant sold to Bridgestone Tire Company on 6/13/82
Viskafors Gummifabrik AB	VV	Plant purchased from Firestone T&R in April 1980

**PREAMBLE TO AN AMENDMENT TO PART 574
Tire Identification and Record Keeping**

**(Docket No. 87-12; Notice 3)
RIN 2127-AC18**

ACTION: Final rule.

SUMMARY: This notice amends Standard No. 110, *Tire Selection and Rims*, and Standard No. 120, *Tire Selection and Rims for Vehicles Other Than Passenger Cars*, to permit new passenger cars, multipurpose passenger vehicles, and light trucks equipped with passenger car tires to be equipped with a non-pneumatic spare tire. These standards had required all new vehicles to be equipped with pneumatic tires. The notice also establishes requirements requiring non-pneumatic tires to bear a label stating that the tires are to be used only as a temporary spare tire and only at limited speeds. It requires the manufacturer to place a placard in the vehicle and information in the owner's manual explaining the proper use of these tires. In addition, the notice establishes Standard No. 129, *New Non-Pneumatic Tires for Passenger Cars*, which includes definitions relevant to non-pneumatic tires and specifies performance, testing, and additional labeling requirements for these tires. In particular, the new standard contains performance requirements related to physical dimensions, lateral strength, strength (in vertical loading), tire endurance, and high speed performance. The agency has determined that these requirements provide the basic tests to ensure the structural integrity of non-pneumatic tires. To ensure an even higher degree of safety, a non-pneumatic tire must be labeled for use only as a temporary spare tire at limited speeds. NHTSA believes that these performance requirements together with these labels ensure the safety of non-pneumatic tires.

EFFECTIVE DATE: The rule is effective on August 20, 1990.

SUPPLEMENTARY INFORMATION:

I. General Information

Federal Motor Vehicle Safety Standard No. 110, *Tire Selection and Rims* (49 CFR §571.110), specifies requirements for the selection of tires to be used on passenger cars. Standard No. 120, *Tire Selection and*

Rims for Vehicles Other Than Passenger Cars (49 CFR §571.120), specifies similar requirements for the selection of tires to be used on vehicles other than passenger cars. The purpose of these standards is to prevent tire overloading and to facilitate the proper matching of a tire and rim to a vehicle. They also require a vehicle manufacturer to place in each new vehicle a placard bearing information to ensure use at the proper inflation.

Section S4.1 of Standard No. 110 requires passenger cars to be equipped with tires that meet the requirements of §571.109, "New Pneumatic Tires—Passenger Cars" (49 CFR §571.109). Section S5.1.1 of Standard No. 120 similarly requires vehicles other than passenger cars to be equipped with pneumatic tires that meet the requirements of Standard No. 109 or Standard No. 119 "New Pneumatic Tires for Vehicles Other Than Passenger Cars" (49 CFR §571.119).

Standard No. 109 expressly applies only to new pneumatic tires which it defines as "mechanical device(s) . . . (that) contain the *gas* or fluid that sustains the load" (emphasis added). The standard specifies tire dimensions and laboratory test requirements for bead unseating resistance, tire strength (in vertical loading), tire endurance, and high speed performance; defines tire load ratings; and specifies labeling requirements for new pneumatic tires used on passenger cars.

The practical effect of Standard No. 109's applicability to only pneumatic tires, together with Standard No. 110's requirement that passenger cars must be equipped with tires that meet Standard No. 109's requirements, is to prohibit any new passenger car from being equipped with non-pneumatic tires. Similarly, Standard Nos. 109, 119 and 120 together prohibit any vehicle subject to Standard No. 120 from being equipped with non-pneumatic tires.

A non-pneumatic tire is a mechanical device which serves the same function as a pneumatic tire. That is, it transmits the vertical load and tractive forces from the roadway to the vehicle and generates the tractive forces that provide the directional con-

trol of the vehicle. However, the non-pneumatic tire differs from the pneumatic tire in that the former does not rely on air pressure or the containment of any gas or fluid for providing those functions. A non-pneumatic tire may be designed in many different ways. For instance, it may be solid rubber to which tread is attached; it may be part of an assembly in which the wheel is attached to the tire and tread; or it may contain the tread, tire, rim, and wheel. Further, many different materials may be used in constructing the tire assembly. Because non-pneumatic tires present an emerging technology, it is likely that tire manufacturers may develop new designs and use materials that are currently not known or contemplated.

In view of Standard No. 109's and Standard No. 110's prohibition of tires other than pneumatic tires on motor vehicles, General Motors (GM) petitioned the agency to amend Standard No. 109 to allow non-pneumatic spare tire assemblies for temporary use on passenger cars. The petitioner suggested performance requirements and test conditions for non-pneumatic tires that would address characteristics such as the endurance, high speed performance, strength (in vertical loading), and lateral strength of the non-pneumatic tire. In large part, GM used the existing requirements in Standard No. 109 as a guide for selecting the performance requirements and test conditions for the requested amendment. It changed the requirement and test related to the bead unseating resistance, which specifically relates to pneumatic tires, and also changed the test procedure and strength requirements for the tire's ability to withstand concentrated vertical loads. In addition, GM suggested certain labeling requirements including a warning that the tires would be for temporary use.

GM submitted its petition in connection with its work with Uniroyal Goodrich Co. (Uniroyal) to develop a spare non-pneumatic tire which it intends for only temporary use. The petitioner believes that the agency's adoption of its requested amendment would reduce the weight and size of the spare tires used in passenger cars, resulting in reduced costs, improved reliability and servicability, and minor improvements in fuel economy. Because a non-pneumatic tire is not dependent on air pressure, it would not be subject to problems associated with low inflation pressure such as a blow out or bead unseating during hard cornering.

On September 23, 1987, NHTSA issued a notice announcing the grant of GM's petition and requesting comments about non-pneumatic tires (52 FR 35740). The notice invited comment about what requirements would be necessary to ensure the safe use of a non-pneumatic tire. In response to that notice, NHTSA received comments from various mo-

tor vehicle and tire manufacturers as well as the Rubber Manufacturers Association. NHTSA considered each of these comments in developing a notice of proposed rulemaking (NPRM) which it published on April 7, 1989 (54 FR 14109).

II. Notice of Proposed Rulemaking

In the NPRM, NHTSA proposed to amend Standard No. 110 to permit the use of non-pneumatic tires on passenger cars, but only as a temporary spare and to establish a new standard for non-pneumatic tires. The notice requested comments concerning whether Standard No. 129 should permit the use of a non-pneumatic spare tire on light trucks currently equipped with compact temporary spare tires subject to Standard No. 109. As a general proposition, the NPRM explained that in developing the new safety standard, the agency desired to formulate a generic one that would be applicable to as many potential designs of non-pneumatic tires as possible rather than one that was based on a specific design, which might inadvertently restrict future developments and skew innovations toward the initial design.

More specifically, the notice proposed three amendments to Standard No. 110. First, it proposed that section S4.1 be amended to allow passenger cars to be equipped with a non-pneumatic spare tire. Second, the notice proposed that Standard No. 110 contain additional labeling requirements and vehicle placarding requirements explaining that such tires should be used only as a spare tire on a temporary basis at speeds not to exceed 50 m.p.h. Third, the notice proposed that safety information about the use of a non-pneumatic tire be included in the owner's manual of the passenger car.

The proposed new safety standard was Standard No. 129, *New Non-Pneumatic Tires for Passenger Cars*. According to the proposal, the new standard, which was patterned after Standard No. 109, would include definitions relevant to non-pneumatic tires and specify performance requirements, testing procedures, and labeling requirements for these tires. To regulate performance, the new standard would contain performance requirements and tests related to physical dimensions, lateral strength, strength (in vertical loading), tire endurance, and high speed performance. While the agency considered proposing requirements related to additional factors such as handling and braking, it tentatively determined that the proposed requirements would adequately ensure motor vehicle safety by providing the basic tests necessary to ensure the structural integrity and durability of non-pneumatic tires.

The NPRM also proposed to supplement the labeling requirements in Standard No. 110 by including in Standard No. 129 labeling requirements similar

to those set forth in section S4.3 of Standard No. 109 for size designation, load rating, rim size and type designation, manufacturer or brand name, certification, and the tire identification number. The notice proposed to allow methods of marking other than "molding," provided the marking was permanent because the agency tentatively concluded that it might be difficult to mold the required information on some types of anticipated non-pneumatic tire designs. The agency also tentatively concluded that the temporary use and maximum speed labeling requirements would provide an extra margin of safety related to handling and braking. In addition, the agency noted that compact pneumatic T-type tires that are currently used as temporary spare tires have been shown to be safe, even though they are not subject to performance requirements beyond those applicable to full size tires in Standard No. 109. The agency believed that in some respects this comparison was relevant since, like the compact T-type pneumatic tires, the non-pneumatic tires allowed by these amendments would be limited to use as temporary spare tires.

The agency tentatively concluded that the proposed performance requirements, together with the proposed labeling requirements, would remove a restriction in the existing standards on technological innovation while still ensuring that the new non-pneumatic tires met the need for safety.

III. The Comments and the Agency Response

NHTSA received 13 comments in response to the NPRM. In general, all commenters supported the proposal to permit a vehicle to be equipped with a non-pneumatic spare tire. The agency has considered the points in the comments in developing this final rule. The commenters' significant points are addressed below, along with the agency's response to the comments. For the convenience of the reader, this notice follows the regulatory text's order.

A. Proposal to Amend Standard No. 110

Definitions

The NPRM proposed to add definitions to paragraph S3 for "non-pneumatic spare tire assembly," "non-pneumatic tire," "non-pneumatic tire assembly," "rim," and "wheel center member." The agency intended these definitions to be general in order to better ensure a generic standard appropriate to any type of non-pneumatic tire. These definitions were patterned after analogous definitions in NHTSA's safety standard for pneumatic tires and SAE Recommended Practice J328a, "Wheels—Passenger Cars—Performance Requirements and Test Procedures."

The agency received two comments about the proposed definitions. Michelin requested that the

definition of a "non-pneumatic spare tire assembly", which was defined as a device "intended for temporary use in place of one of the pneumatic tires and rims that are fitted to a passenger car . . .", be revised to state that the NPSTA be "in support of" as well as "in place of." According to the commenter, this modification would allow future NPSTAs to be fitted on tire and wheel assemblies without removing the deflated pneumatic tire. The agency has decided not to adopt Michelin's suggestion which is beyond the scope of the current proposal and its test procedures. Further, the agency needs more information about devices used "in support of" a deflated pneumatic tire, especially about the procedures for testing them while they are mounted on a deflated pneumatic tire. Therefore, NHTSA has decided not to expand the definition as requested by Michelin.

Uniroyal suggested that the agency move the definition of "rim" from the definition section (S3) to the requirements section (S4.4). The agency has decided not to adopt this suggestion which is unnecessary and contrary to standard regulatory drafting. The agency notes that it is modifying the definition of "rim" to "non-pneumatic rim" and "test rim" to "non-pneumatic test rim." This change will help to distinguish between conventional rims for pneumatic tires and rims for non-pneumatic tires. The notice adopts this distinction throughout Standards 110, 120, and 129.

Labeling Requirements

The NPRM proposed labeling requirements for non-pneumatic spare tires and tire assemblies in section S6 of Standard No. 110. The proposal specified that the information had to be "permanently molded, stamped, or otherwise permanently marked into or onto both sides" and not be smaller than a given size. The proposal explained that it was proposing to allow different methods of permanent marking in addition to molding, the labeling method required in Standard No. 109, because it might be difficult to mold the required information into or onto some non-pneumatic tire and assembly designs. It also proposed that the labeling on each non-pneumatic spare tire would state "FOR TEMPORARY USE ONLY," "MAXIMUM 50 M.P.H.," and the size designation(s) of the pneumatic tire(s) that the non-pneumatic tire was intended to replace. This notice will respond separately to each of the commenters concerns.

Uniroyal requested the agency to modify the requirement that non-pneumatic spare tires be "permanently molded, stamped, or otherwise permanently marked into or onto both sides" to allow a permanently affixed label to contain the required information. It specifically stated that paper or plastic labels should be allowed as an alternative

technique to comply with S6. NHTSA notes that the key criteria related to informational marking requirements is that the message be useful and understandable for the lifetime of the tire. Thus, a message must be permanent, legible, and conspicuous. After reviewing Uniroyal's request, the agency believes that affixing a permanent label on a non-pneumatic tire would not meet these ends. The agency is concerned that a paper label would not be permanent given that it would be exposed to environmental factors such as rain, snow, road salt, car wash brushes and detergents. The agency is especially concerned that there is nothing to prevent a paper label from disintegrating when exposed to the elements or being rubbed off by a curb. Similarly, there is nothing to prevent the printing on the label from becoming illegible. The agency therefore has decided not to permit a label as an alternative technique to comply with S6.

Section S6(a) contained a proposal that each non-pneumatic spare tire be labeled "FOR TEMPORARY USE ONLY." The NPRM explained that this mandatory warning would be in the interest of motor vehicle safety by encouraging the limited use of non-pneumatic tires as a replacement for T-type temporary spare tires. The agency further believed such labeling would provide consumers with valuable guidance about this new type of tire. All commenters mentioning the proposal to require temporary use labeling agreed that it had merit given the current level of technology and agreed that the extended use of a non-pneumatic tire would be inappropriate.

Section S6(b) contained a proposal that each non-pneumatic spare tire be labeled "MAXIMUM 50 M.P.H." The NPRM stated that this maximum speed warning, like the temporary use warning, would be in the interest of safety. The notice further explained that the Economic Commission for Europe (ECE) Regulation 64 contains a maximum speed warning of 80 kilometers per hour (49.7 m.p.h.) in response to concerns over the potential for some degradations in the braking and handling performance of a vehicle fitted with a temporary spare tire. The notice continued that even though these concerns did not directly relate to a tire's structural failure, the agency believed that a maximum speed warning would improve the total safety of the vehicle because any potential problems associated with handling, control, stability, and braking are typically exacerbated at faster speeds. It also stated that a maximum speed warning would serve to deter some motorists from driving with a non-pneumatic tire on an extended basis.

NHTSA received four comments on the proposal to require a maximum speed warning of 50 m.p.h. While Goodyear and Firestone supported the pro-

posal, Uniroyal and General Motors opposed it, stating that it should be at the discretion of the vehicle manufacturer, the entity responsible for the vehicle's braking, handling, and other performance characteristics. Uniroyal stated that such a requirement is unnecessary since T-type pneumatic spares are not required to have such labeling. It also commented that the maximum speed labeling in ECE Regulation 64 is inapplicable to the non-pneumatic spare, since the non-pneumatic tire would be subject to more stringent performance requirements. GM commented that a maximum speed labeling requirement was not warranted, stating that "there is no generic technical or safety reason for it," a non-pneumatic spare tire is not different from current temporary compact spare tires, the maximum recommended speed of 50 m.p.h. might unduly alarm some drivers, and consumers might misinterpret the "50 m.p.h. speed" label as a "50 mile use" restriction.

After reviewing the maximum speed labeling requirement in light of these comments, NHTSA continues to believe that such a requirement would be in the interest of safety. The agency notes that according to information provided by Uniroyal, there are some differences in performance characteristics between non-pneumatic spare tires and pneumatic spares. For instance, the non-pneumatic tire tends to "nibble," i.e., generate lateral forces when crossing a longitudinal road irregularity. While differences with conventional pneumatic spare tires are not significant enough to justify a prohibition of non-pneumatic tires, these relative shortcomings, which might alarm a driver unfamiliar with them, appear to be exacerbated at greater speeds. Until more experience is gained with non-pneumatic tires, the agency believes that GM's claim that there is no safety reason to justify maximum speed labeling is premature. The agency notes that GM included a 50 m.p.h. maximum speed marking on its pneumatic temporary spare tire for the first five years after its introduction, suggesting that a newly introduced temporary tire design should contain such a maximum speed warning. Based on the above considerations, the agency concludes that to satisfy the Vehicle Safety Act's mandate, the 50 m.p.h. maximum speed marking must be a mandatory requirement and not be left to the manufacturers' discretion.

Section S6(c) of Standard No. 110 contained a proposal that the non-pneumatic tire be labeled with the "size designation(s) of the pneumatic tires that this non-pneumatic tire spare assembly is intended to replace or, at the manufacturer's option, is capable of replacing." All those who commented on this provision opposed it, stating that the requirement could result in lengthy information that might confuse consumers. For instance, a consumer might mistakenly conclude that a 15 inch non-pneumatic

tire could replace any 15 inch pneumatic tire. They claimed that this incorrect assumption could be dangerous given the potential for many vehicle specific non-pneumatic tire and tire assembly designs. In place of this proposal, Uniroyal, Firestone, and GM suggested that the tires be labeled with a vehicle manufacturer's part number, with GM recommending a "non-pneumatic spare tire identifying code" (e.g., "ABC") as an alternative. The State of Connecticut recommended that the non-pneumatic spare tire be labeled to indicate specifically the vehicle(s) on which it is intended to be used. In contrast, Goodyear and Uniroyal criticized requiring vehicle specific marking, stating that the labeling on a tire with multiple vehicle applications could be lengthy, confusing, and thus possibly dangerous.

After reviewing these comments, NHTSA has determined that instead of designations of the pneumatic tires replaced, a "non-pneumatic tire identifying code (NPTIC)" should be required to identify a non-pneumatic tire. Like the tire size designation of a pneumatic tire, the NPTIC's purpose is to provide consumers information about the proper application of a non-pneumatic tire. The agency believes that this method of identification is superior to requiring a non-pneumatic tire to be labeled with the pneumatic tire size or the non-pneumatic spare tire's specific vehicle application(s) given the potential for many different non-pneumatic tire designs. A manufacturer may still mark specific vehicle application(s) on the tire provided that the additional information did not obscure or confuse the required information. Manufacturers are urged, therefore, to avoid unnecessarily long vehicle application information or unnecessarily long identifying codes. Based on the above considerations, the manufacturer will be required to label a non-pneumatic spare tire or spare tire assembly with a "non-pneumatic tire identification code," (NPTIC), which is defined in section S3 of Standard 129. A manufacturer also is required to place the NPTIC on the vehicle placard and in the owner's manual. In addition, the NPTIC will replace any reference in the regulatory text to the "non-pneumatic tire size designation."

Vehicle Placarding

Section S7 of the Standard No. 110 contained proposed requirements for vehicle placards. Under the proposal, the placard would state, in letters not less than 1.0 inch high, "CAUTION—USE AS SPARE TIRE;" and in letters not less than 0.5 inches high, "FOR TEMPORARY USE ONLY," "MAXIMUM 50 M.P.H.," and the size designation of the pneumatic tire to be replaced. The agency believed that this information would help explain that a non-pneumatic tire

should be used only as a spare tire at limited speeds for a limited period of time.

Volkswagen commented that the size of the lettering proposed in S7.1 would result in a placard that was too large to easily fit in the trunk. Thus, it requested that the standard require the words to be "legible and conspicuous," or in the alternative, to change the 1.0 inch requirement to $\frac{3}{8}$ inch and the $\frac{1}{2}$ inch requirement to $\frac{1}{4}$ inch. NHTSA rejects the first suggestion because the Vehicle Safety Act requires its requirements to be stated in objective terms. However, it has decided to adopt the requested size reductions which the agency believes will be less intrusive but still conspicuous.

GM and Uniroyal opposed the vehicle placarding requirements as being unnecessary and costly. GM based its opposition to these requirements on its earlier arguments against the labeling requirements. NHTSA believes that the placarding requirements are necessary for the reasons provided in support of the labeling requirements in S6. The agency also disagrees that placarding would be unreasonably costly, especially since most vehicle trunks currently contain a placard explaining the use of jacks and spare tires. The information required by this provision could be easily added to that placard. Even for a vehicle without such a placard, the cost of adding a placard would be minimal.

Uniroyal claimed that the words "Danger" and "Caution" might unduly alarm consumers. NHTSA notes that the placard's purpose is to ensure that a person installing a non-pneumatic spare tire on a vehicle is made aware of its proper use and that it should be used only as a spare tire, even if he or she fails to notice the labeling on the tire itself. Because the word "caution" is not essential to this purpose and some consumers might be unduly alarmed by this word, the agency is modifying the placard to state "IMPORTANT—USE OF SPARE TIRE" rather than "CAUTION—USE OF SPARE TIRE."

Supplementary Information

Section S7.2 of Standard No. 110 proposed that the owner's manual of a passenger car equipped with a non-pneumatic spare tire contain information explaining its proper use. This information, which was patterned after ECE Regulation 64, included instructions that a non-pneumatic tire should be used only as a spare tire at limited speeds for a limited period of time, that the driver should drive with caution when using a non-pneumatic tire, that he or she should replace it with a pneumatic tire and rim as soon as possible, and that a vehicle should not be operated with more than one non-pneumatic tire at one time.

Uniroyal and GM objected to the proposal to require an owner's manual to contain information

about a non-pneumatic tire's use. Uniroyal restated its view that non-pneumatic tires should not be singled out for informational requirements with which pneumatic spare tires are not required to comply. GM stated that requiring warnings on the tire, on a placard, and in the owner's manual was a "costly redundancy" that would discourage the use of such tires.

NHTSA continues to believe that the requirements in S7.2 provide valuable safety information about non-pneumatic tires, a new type of tire design with which consumers will be less familiar than temporary pneumatic tires. As for GM's criticism that this requirement would result in a "costly redundancy," the agency believes that requiring the safety information to appear in each of the proposed locations provides a safety benefit. It is reasonable to label the tire since a motorist must handle the tire itself before installing it on the vehicle. It is also reasonable to require the information on a placard in the trunk near where the spare tire is stored, because a motorist may not notice the information on the tire, especially at night or during inclement weather. Similarly, it is reasonable to supplement these brief messages with more detailed information in the owner's manual, since a motorist typically consults his or her owner's manual when seeking detailed information about vehicle usage.

In response to GM's concern that these warnings might discourage motorists from using non-pneumatic tires, the agency has modified some of the wording. As with the placard's wording, the agency has substituted the word "IMPORTANT" for "CAUTION" to make the label less threatening. It has also changed S7.2(b) to state "An instruction to drive carefully when the non-pneumatic tire is in use, and to install the proper pneumatic tire and rim at the first reasonable opportunity." The agency believes that this wording will continue to convey guidance concerning the proper use of non-pneumatic tires while helping to avoid arousing "undue concern."

B. Standard No 129

Application

The agency proposed in section S2 of Standard No. 129 that the new standard apply to "new temporary spare non-pneumatic tires for use on passenger cars." In other words, the proposal, in conjunction with the proposed amendment to Standard No. 110, would permit a non-pneumatic tire to be used as a spare tire on passenger cars. The NPRM explained that the petitioner only sought to allow non-pneumatic tires as a replacement for T-type pneumatic temporary tires on passenger cars. It further noted that 95 percent of T-type tires were used on

passenger cars with the remaining 5 percent on light trucks. The agency requested comments concerning whether Standard No. 129 should permit the use of a non-pneumatic spare tire on light trucks currently equipped with compact temporary spare tires subject to Standard No. 109.

No commenter supported limiting the use of non-pneumatic tires to passenger cars. Instead, Chrysler, Goodyear, Uniroyal, RMA, Firestone, and GM commented that the agency should extend the applicability of Standard No. 129 to permit use of non-pneumatic spare tires on light trucks and similar vehicles that use passenger car temporary tires. For instance, Uniroyal stated that the agency should not restrict the non-pneumatic spare tire to passenger cars given that many new light trucks and vans are equipped with passenger car tires.

NHTSA agrees with the comments and has decided to permit the use of a non-pneumatic spare tire on any vehicle that is equipped with passenger car tires. Accordingly, the agency is revising section S5.1.1 to permit the use of a non-pneumatic temporary spare tire assembly on vehicles subject to Standard No. 120 such as light trucks provided that the vehicle is equipped with passenger car tires. In addition, amendments, like those to Standard No. 110, are made to Standard No. 120 to include new informational requirements for tire labeling, vehicle placarding, and the owner's manual.

Definitions

Commenters made suggestions to modify certain proposed definitions. Firestone recommended that the portion of the definition for "non-pneumatic tire" stating that the tire "does not rely on the containment of any gas or fluid" be changed to state that the tire "does not *primarily*" rely on such containment (emphasis added). NHTSA has decided to reject Firestone's suggestion and adopt the definition as proposed because the suggested change would inject uncertainty about whether a tire should be classified as pneumatic or non-pneumatic. For instance, it might be ambiguous whether a pneumatic tire with "run-flat" capability is a non-pneumatic tire under Firestone's suggested definition.

Goodyear, Uniroyal, and RMA suggested that the definition for "tread" be changed by deleting reference to the tread's being "intended to wear away during normal use of the tire." NHTSA agrees with this suggestion which will make the definition for "tread" in Standard No. 129 consistent with the one in Standard No. 109.

Uniroyal suggested that the definition for "maximum tire width," should be changed so that it uses the phrase "exterior edges" in place of "outer and inner surfaces" which appears in reference to

“carcass” and “tread.” The agency has decided to adopt the suggested wording which it believes provides a more generic and thus more appropriate definition.

The agency is introducing a definition for “Non-pneumatic tire identification code” (i.e., “NPTIC”) in response to comments that a non-pneumatic tire should not be labeled with the size of the pneumatic tire it is intended to replace, but should be labeled with other identifying information. In the section above about labeling requirements, the notice explains that the agency agrees with the commenters that the NPTIC would be in the interests of safety. The reader should refer to that section for a more extensive discussion of this issue.

As discussed earlier, the terms “rim” and “test rim” have been changed to “non-pneumatic rim” and “non-pneumatic test rim.” This will help distinguish between rims used with pneumatic tires and those used with non-pneumatic tires. Corresponding changes have been made throughout the regulatory text.

Performance Requirements and Testing Procedures in Standard No. 129

General Considerations

The NPRM proposed certain performance requirements and testing procedures for non-pneumatic tires. In developing a proposed standard for non-pneumatic tires, the agency reviewed the petition, the docket comments responding to the agency’s request for comments, and the purpose for and mechanics of the requirements and tests for pneumatic tires in Standard No. 109. As a result of this analysis, the agency proposed the following requirements which it believed would ensure the safety of non-pneumatic tires. These included a lateral strength requirement instead of Standard No. 109’s bead unseating requirement; and requirements for strength (in vertical loading), tire endurance, and high speed performance with modifications to take into account a non-pneumatic tire’s lack of air pressure. The agency also proposed requirements related to the non-pneumatic tire assembly’s size and construction, load rating, and a tread wear indicator. NHTSA tentatively concluded that the lateral strength, strength (in vertical loading), endurance, and high speed requirements would assure the structural integrity and durability of a non-pneumatic tire. The agency further believed that these performance requirements together with the proposed labeling requirements explaining that a non-pneumatic tire should be used only as a temporary spare tire and at limited speeds would assure their safety. Therefore, it decided not to propose additional tests beyond those equivalent to the ones in Stan-

dard No. 109. The agency’s consideration of comments addressing these factors will be discussed separately.

Lateral Strength Performance Requirements

Section S4.2.2.3 of Standard No. 129 proposed requirements related to the lateral strength of a non-pneumatic tire. Such a tire would be required to show no visual evidence of tread or carcass separation, cracking, or chunking at forces comparable to those specified in Standard No. 109’s bead unseating test for compact temporary pneumatic tires. The agency explained that the bead unseating test is intended, in part, to evaluate the loss of air of a tubeless pneumatic tire. In that regard, it would not be helpful in evaluating the lateral strength of a non-pneumatic tire. Nevertheless, because the bead unseating test also evaluates a pneumatic tire’s resistance to lateral forces, the agency believed that a comparable test for non-pneumatic tires would be beneficial in determining their structural integrity.

The NPRM explained that GM, in its petition, recommended adopting the same test device used in the bead unseating test of pneumatic tires in Standard No. 109. The agency rejected this recommended test fixture because the unseating “blocks” might be inappropriate for other non-pneumatic tire designs and thus would be too specific to be included in a generic standard. Instead, the agency proposed a lateral strength test device that it believed was generic and appropriate for any anticipated non-pneumatic tire design. The proposed test block was patterned after a standard barrier type curb defined by the American Association of State Highway and Transportation Officials (AASHTO) in its publication, “A Policy on Geometric Design of Highways and Streets—1984.” The proposed test was intended to evaluate the strength of a non-pneumatic tire in response to loads that would result from contact with a curb or similar road feature. The agency sought comments concerning the design of the proposed test device, test procedure, and performance requirements intended to evaluate the lateral strength of non-pneumatic tires.

Goodyear requested that the non-pneumatic tires not be subject to a lateral strength test, claiming that such a test was unnecessary and inappropriate. It also claimed that the intent of Standard No. 109’s bead unseating test is solely “air retention,” as evidenced by its application to tubeless but not tubed pneumatic tires.

NHTSA disagrees with Goodyear’s comments and believes that the lateral strength requirement will effectively measure a non-pneumatic tire’s resistance to lateral loads. The agency believes that this test will also help evaluate the possibility of the tire’s separation from the rim or wheel center mem-

ber or the tire's "cracking," "chunking," or similar damage. The agency notes that the reason that Standard No. 109's bead unseating test is applied to tubeless tires only is because that failure mode is unique to tubeless pneumatic tires. Thus, its application to tubed pneumatic tires would be unnecessary and inappropriate.

Uniroyal, RMA, and Firestone each recommended that the lateral test force block be made lighter and smaller to make testing easier and safer. The lateral force test block shown in Figure 2 and referenced in S5.2, would have weighed 120 pounds and have been 6.5 inches in height, 14 inches in depth and 18 inches in width. Uniroyal commented that the block's depth could be reduced by 7 inches which would reduce the block's weight by over 50 percent. Firestone stated that the width should be retained to ensure that the test block would envelop the side wall of each tire.

After reviewing these comments, NHTSA believes that the test block size can be reduced to facilitate testing without adversely affecting the test procedure's effectiveness. In particular, the agency is adopting Uniroyal's recommendation to reduce the depth by 7 inches by removing 3½ inches from each end of the block and to reduce the height by removing one inch from the bottom of the block. After reviewing Firestone's concerns about the block's "envelopment" of a non-pneumatic spare tire, the agency concludes that it is necessary to widen the test block to 23 inches. The agency calculates that these changes will reduce the test block's weight to approximately 55 pounds, a 53 percent reduction.

Section S5.2 of the NPRM also proposed test requirements related to a non-pneumatic tire's lateral strength. Section S5.2.2.1 specified distances between the test block and the tire being tested. Uniroyal recommended that the agency add another distance expressed as "B = A - 1," explaining that without this modification certain tires would not pass the proposed requirement due to immediate contact with the wheel rim or other member. Thus, in anticipation of future non-pneumatic tire designs with a section height of less than 2 inches above the wheel rim or center member, the agency is including the additional distance requested by Uniroyal.

Vertical Strength Requirements

NHTSA proposed a strength test in S5.3 of Standard No. 129 that was intended to measure the tire's ability to resist concentrated vertical loads. The proposed test would have required a cylindrical steel plunger to be forced into the non-pneumatic tire at a rate of two inches per minute. The tester would then have evaluated the breaking energy for each test point in terms of inch pounds.

In the NPRM, the agency considered also propos-

ing a "cleat" test, like the one suggested in GM's petition, which would have required a non-pneumatic tire to withstand a load exerted by a "cleat." This "cleat" would be ½ inch thick with the edge, that is forced against the tread of the non-pneumatic tire, rounded with ¼ inch radius, and the "cleat" would be one inch wider than the non-pneumatic tire's tread width. The agency tentatively rejected the cleat device because it believed that the plunger test would better simulate real world hazards and because the petitioner did not provide sufficient documentation in support of its test device. The agency expressly requested comments on both the plunger test and the cleat test.

Goodyear provided extensive comments in opposition to any vertical strength test requirement. It argued that the main concern addressed by the "tire strength" requirement in Standard No. 109 is puncture resistance (i.e., the integrity of the air chamber in resistance to vertical forces exerted by nails and similar penetrating objects). It believed that such a concern was not applicable to a non-pneumatic tire. Alternatively, Goodyear stated that if a strength test were deemed necessary, then GM's cleat test would be more appropriate because it evaluates a non-pneumatic tire's capability to withstand loading from curbs, potholes, or railroad tracks. While Uniroyal, RMA, Firestone, and GM also stated that the cleat test would be superior to a plunger test, no commenter supported the plunger test.

NHTSA continues to believe that a vertical strength test is necessary to evaluate a non-pneumatic tire's structural integrity. However, after reevaluating the proposal in light of the comments, the agency agrees that a cleat test, similar to the one requested in GM's petition, would better evaluate the real world problems that will most likely cause a non-pneumatic tire to experience a structural failure.

The agency notes that the plunger test used in Standard No. 109 is well suited for evaluating the energy absorbing capability and structural integrity of a pneumatic tire under conditions of maximum deformation. The plunger pushing against the center of the pneumatic tire's tread will deflect the tire to the maximum extent possible before forcing the tire against the rim. However, the cleat test would be inapplicable for a pneumatic tire which would experience a "pneumatic" failure when the tire's sidewall would be pinched against the rim flanges, long before the energy absorbing capability or structural integrity of the tire could be tested adequately.

In contrast, the situation is reversed for non-pneumatic tires. The "concentrated" type of load used in the plunger test could lead to a "puncture" (i.e., penetration by the plunger) of a non-pneumatic tire, but would not lead to a "pneumatic" failure. For

instance, Uniroyal, stated that its non-pneumatic tire continued to perform without any problems after it was "punctured" by several nails. The agency further notes that there is nothing inherent in a non-pneumatic tire's design that would be expected to lead to failure as the result of a particular type of impact. Based on these considerations, the agency believes that a cleat test that places stress on the entire cross section of a non-pneumatic tire appears to better address real world hazards to which such tires would be vulnerable than would a plunger type test.

As for the measurement of a non-pneumatic tire's strength, NHTSA believes that such a tire should be capable of absorbing energy at a level comparable to the pneumatic temporary tires that it is intended to replace. The NPRM proposed in S4.2.2.4 that the appropriate minimum breaking energy would be 1,950 inch pounds for tires with load ratings below 880 pounds and 2,600 inch pounds for tires with load ratings 880 pounds or above.

Uniroyal recommended that S4.2.2.4 be amended so that the minimum breaking energy would be 525 inch pounds for tires with load ratings below 880 pounds and 700 inch pounds for load ratings of 880 pounds or above. After reviewing Uniroyal's extensive comments in support of the reduced energy levels, NHTSA still believes that the proposed levels are appropriate to ensure a non-pneumatic tire's ability to withstand road hazards. The agency notes that the proposed energy levels are more comparable to the energy levels that a pneumatic temporary spare tire is required to withstand. Given the agency's belief that it is appropriate to require the non-pneumatic tires to be capable of absorbing energy at a level comparable to the pneumatic temporary spare tires that they are intended to replace, the agency has decided to adopt the energy levels as proposed rather than to adopt Uniroyal's suggested energy levels. The agency's review of Uniroyal's data further indicates that the higher energy levels will better protect against real world hazards.

After reviewing S4.2.2.4, NHTSA has decided to modify its language related to a non-pneumatic tire's failure. As proposed, this section stated "Each tire shall meet the requirements for minimum breaking energy when tested in accordance with S5.3 to the strength requirements . . ." Because a non-pneumatic tire is unlikely to "break," the agency has decided to adopt the statement in the petition and express the requirement in terms of "no visual evidence of tread or carcass separation, cracking or chunking." The agency notes that this will be consistent with the requirements for lateral strength, tire endurance, and high speed performance, which are all expressed in this manner. As a result, the

title of the table "Breaking Energy" will be changed to "Minimum Energy Level."

Other Performance Requirements

The NPRM proposed requirements for tire endurance in section S4.2.2.5 and high speed performance in Section S4.2.2.6. The proposals, which were patterned after the requirements in Standard No. 109, were intended to determine the structural integrity and durability of the tire under accelerated laboratory conditions. The agency received no comments about these tests and has decided to adopt them as proposed.

In the NPRM, the agency decided not to propose additional performance requirements explaining its tentative conclusion that the proposed requirements together with the labeling requirements would be adequate to ensure motor vehicle safety. In response to the 1987 request for comments, commenters who expressed an opinion on the matter all stated that no additional performance requirements were necessary. Similarly, in response to the NPRM, no commenter recommended requiring additional performance requirements. After reviewing the matter, the agency is reaffirming its tentative conclusion that the performance requirements, as proposed, together with the labeling requirements, will ensure safety and thus is not requiring any additional performance requirements.

Labeling Requirements in Standard 129

As explained earlier in this notice, the agency is adopting new labeling requirements in S6 of Standard No. 110 and S8 of Standard No. 120. The reader should refer to the discussions in earlier sections of this notice about such issues as a label's permanency, information to be provided about the tire's temporary use and maximum speed, and the tire size labeling/non-pneumatic tire identification code.

In addition to those requirements, the NPRM proposed certain other labeling requirements for non-pneumatic tires. Most of these proposed requirements were patterned after the labeling requirements set forth in section S4.3 of Standard No. 109 for size designation, load rating, rim size and type designation, manufacturer or brand name, certification, and tire identification number.

GM requested that a load rating not be required on a non-pneumatic tire, claiming this information might cause a motorist to use a non-pneumatic spare tire that would be inappropriate for a vehicle. The agency disagrees with the comment, noting that a tire's load rating is a straightforward item of information that has been required on pneumatic tires without confusing consumers. The agency believes this information is necessary for safety because some vehicle owners have been known to increase a

vehicle's load capacity by the addition of "helper springs" or "air shocks" to permit the towing of a trailer. Thus, by not requiring load rating information, the agency would increase the potential for a motorist to unknowingly use a vehicle equipped with the non-pneumatic tire in an unsafe manner.

Uniroyal commented that S4.3(f), which proposed requiring labeling with Part 574's tire identification number, should be amended given that that number refers, in part, to tire size. As the agency noted above in its discussion of tire size designations and the NPTIC, it believes that use of the NPTIC is preferable to use of tire size. While the agency agrees that a change is therefore necessary to reflect the NPTIC, it has decided to accomplish this by amending Part 574 to apply to non-pneumatic spare tire assemblies and by amending 574.5(b) to expressly refer to the NPTIC. Section 574.4, "applicability," and 574.6, "identification mark," are also revised to expressly refer to non-pneumatic tires and tire assemblies.

Tire and Rim/Wheel Center Member Matching Information

Section S4.4 proposed that each manufacturer list information about the rim or wheel center member expected to be used with a non-pneumatic tire. The information would be provided to either NHTSA or a tire and rim standardization organization such as The Tire and Rim Association. The proposal, which was patterned after section S4.4 of Standard No. 109 for pneumatic tires, is intended to ensure the dissemination of information about the proper use of non-pneumatic tires with rims.

Uniroyal recommended changing the first sentence of S4.4 to exempt from the section's requirements, a non-pneumatic spare tire that is an integral part of a non-pneumatic spare tire assembly. The agency agrees that such an exemption is appropriate given that the section's purpose is to provide information about the matching of non-integral tires and rims.

GM suggested adding a provision which would allow the required information to be disseminated by inclusion in the "vehicle manufacturer's service parts publications for the vehicle on which it is to be used." The commenter believed this change would help prevent the agency and manufacturers from being "deluged" with descriptions of non-pneumatic rims and wheel center members. Based on its experience with pneumatic tires, NHTSA has decided to reject GM's suggestion because the proposed requirement, i.e., the submission of this information to the agency or through the industry's standardization organizations, will be a more effective way to disseminate this information.

After reviewing this provision, NHTSA has decided to modify S4.4. to require the submission to

include the NPTIC. This modification to require the inclusion of the NPTIC rather than the tire size is a conforming change made to reflect another change addressed earlier in the notice. In addition, the agency notes that it proposed in the definition of "test rim" in S3 to require each tire and rim matching information listing to include the load rating. After further review, the agency has determined that it more appropriate to include this requirement in section S4.4.

IV. Effective Date

The NPRM stated that the proposal would become effective 180 days after publication of a final rule in the *Federal Register*. Uniroyal commented that such advance notification is associated with revisions of regulations that affect products already in the marketplace to afford manufacturers time to comply with the changes. Uniroyal then requested that the 180 day period be eliminated or substantially reduced.

NHTSA notes that section 103(c) of the Vehicle Safety Act requires that each order shall take effect no sooner than 180 days from the date the order is issued unless "good cause" is shown that an earlier effective date is in the public interest. After reviewing the request, NHTSA agrees that there is "good cause" not to require the full 180 day leadin period given that this amendment will facilitate the introduction of certain tires without imposing any mandatory requirement on manufacturers and that the public interest will be served by not delaying the introduction of these alternative tire designs. Therefore, the agency has determined that there is good cause to set an effective date 30 days after publication of the final rule.

In consideration of the foregoing, the agency is amending Standard No. 110, *Tire Selection and Rims*, and Standard No. 120, *Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars*, and is establishing Standard No. 129, *New Non-Pneumatic Tires for Passenger Cars*, in Title 49 of the Code of Federal Regulations at Part 571 as follows:

§571.110 [Amended]

1. Paragraph S2 of Standard 110 is revised to read as follows:

S2 Application. This standard applies to passenger cars and to non-pneumatic spare tire assemblies for use on passenger cars.

2. Paragraph S3 of Standard No. 110 is amended by adding the following definitions in the proper alphabetical location:

"Non-pneumatic rim" is used as defined in §571.129.

"Non-pneumatic spare tire assembly" means a

non-pneumatic tire assembly intended for temporary use in place of one of the pneumatic tires and rims that are fitted to a passenger car in compliance with the requirements of this standard.

“Non-pneumatic tire” and “non-pneumatic tire assembly” are used as defined in §571.129.

“Rim” is used as defined in §571.109.

“Wheel center member” is used as defined in §571.129.

* * * * *

3. Paragraph S4.1 of Standard No. 110 is revised to read as follows:

S4.1 *General*. Passenger cars shall be equipped with tires that meet the requirements of §571.109, *New Pneumatic Tires—Passenger Cars*, except that passenger cars may be equipped with a non-pneumatic spare tire assembly that meets the requirements of §571.129, *New Non-Pneumatic Tires for Passenger Cars* and S6 and S8 of this standard. Passenger cars equipped with such an assembly shall meet the requirements of S4.3(e), S5, and S7 of this standard.

* * * * *

4. Paragraph S4.3(c), (d), and (e) is revised to read as follows:

* * * * *

(c) Vehicle manufacturer’s recommended cold tire inflation pressure for maximum loaded vehicle weight and, subject to the limitations of S4.3.1, for any other manufacturer-specified vehicle loading condition;

(d) Vehicle manufacturer’s recommended tire size designation; and

(e) For a vehicle equipped with a non-pneumatic spare tire assembly, the non-pneumatic tire identification code with which that assembly is labeled pursuant to the requirements of S4.3(a) of §571.129, *New Non-Pneumatic Tires for Passenger Cars*.

* * * * *

5. Standard No. 110 is amended by adding paragraphs S5, S6, S7 and S8 to read as follows:

S5 *Load Limits for Non-Pneumatic Spare Tires*. The highest vehicle maximum load on the tire for the vehicle shall not be greater than the load rating for the non-pneumatic spare tire.

S6 *Labeling Requirements for Non-Pneumatic Spare Tires or Tire Assemblies*.

Each non-pneumatic tire or, in the case of a non-pneumatic tire assembly in which the non-pneumatic tire is an integral part of the assembly, each non-pneumatic tire assembly shall be permanently molded, stamped, or otherwise permanently marked into or onto both sides in letters or numerals not less than 0.156 inches high, the information specified in paragraphs S6.(a) through (b). Except, in

the case of a non-pneumatic tire assembly which has a particular side that must always face outward when mounted on a vehicle, the information shown in paragraphs S6(a) through (b) shall only be required on the outward facing side. The information shall be positioned on the tire or tire assembly such that it is not placed on the tread or the outermost edge of the tire and is not obstructed by any portion of any non-pneumatic rim or wheel center member designated for use with that tire in this standard or in Standard No. 129.

(a) FOR TEMPORARY USE ONLY; and

(b) MAXIMUM 50 M.P.H.

S7 *Requirements for Passenger Cars Equipped with Non-Pneumatic Spare Tire Assemblies*.

S7.1 *Vehicle Placarding Requirements*. A placard, permanently affixed to the inside of the vehicle trunk lid or an equally accessible location adjacent to the non-pneumatic spare tire assembly, shall display the information set forth in S6 in block capitals and numerals not less than 0.25 inches high preceded by the words “IMPORTANT—USE OF SPARE TIRE” in letters not less than 0.375 inches high.

S7.2 *Supplementary Information*. The owner’s manual of the passenger car shall contain, in writing in the English language and in not less than 10 point type, the following information under the heading “IMPORTANT—USE OF SPARE TIRE”:

(a) A statement indicating the labeling related to appropriate use for the non-pneumatic spare tire including at a minimum the information set forth in S6(a) and (b) and in S4.3(e);

(b) An instruction to drive carefully when the non-pneumatic spare tire is in use, and to install the proper pneumatic tire and rim at the first reasonable opportunity; and

(c) A statement that operation of the passenger car is not recommended with more than one non-pneumatic spare tire in use at the same time.

S8 *Non-Pneumatic Rims and Wheel Center Members*

S8.1 *Non-Pneumatic Rim Requirements*. Each non-pneumatic rim that is part of a separable non-pneumatic spare tire assembly shall be constructed to the dimensions of a non-pneumatic rim that is listed pursuant to S4.4 of §571.129 for use with the non-pneumatic tire, designated by its non-pneumatic tire identification code, with which the vehicle is equipped.

S8.2 *Wheel Center Member Requirements*. Each wheel center member that is part of a separable non-pneumatic spare tire assembly shall be constructed to the dimensions of a wheel center member that is listed pursuant S4.4 of §571.129 for use with the non-pneumatic tire, designated by its non-

pneumatic tire identification code, with which the vehicle is equipped.

* * * * *

§571.120 [Amended]

6. Paragraph S3 of Standard 120 is revised to read as follows:

S3 *Application.* This standard applies to multipurpose passenger vehicles, trucks, buses, trailers, and motorcycles, to rims for use on those vehicles, and to non-pneumatic spare tire assemblies for use on those vehicles.

* * * * *

7. Paragraph S5.1.1 of Standard No. 120 is revised to read as follows:

S5.1.1 Except as specified in S5.1.3, each vehicle equipped with pneumatic tires for highway service shall be equipped with tires that meet the requirements of §571.109, *New Pneumatic Tires—Passenger Cars*, or §571.119, *New Pneumatic Tires for Vehicles Other than Passenger Cars*, and rims that are listed by the manufacturer of the tires as suitable for use with those tires, in accordance with S4.4 with §571.109, or S5.1 of §571.119, as applicable, except that vehicles may be equipped with a non-pneumatic spare tire assembly that meets the requirements of §571.129, *New Non-Pneumatic Tires for Passenger Cars*, and S8 and S10 of this standard. Vehicles equipped with such an assembly shall meet the requirements of S5.3.6, S7, and S9 of this standard.

8. The introductory text of paragraph S5.3.2 of Standard No. 120 is revised to read as follows:

S5.3.2 *Vehicles Manufactured on or after December 1, 1984.* Each vehicle manufactured on or after December 1, 1984, shall show the information specified in S5.3.3 through S5.3.5, and in the case of a vehicle equipped with a non-pneumatic spare tire, also that specified in S5.3.6, in the English language, lettered in block capitals and numerals not less than three thirty-seconds of an inch high and in the format set forth following this section. This information shall appear either—

* * * * *

9. Paragraph S5.3.6 is added to Standard No. 120 to read as follows:

S5.3.6 The non-pneumatic tire identification code, with which that assembly is labeled pursuant to S4.3(a) of §571.129.

10. Standard 120 is amended by adding paragraphs S7, S8, S9, and S10.

S7 *Load Limits for Non-Pneumatic Spare Tires.* The highest vehicle maximum load on the tire for the vehicle shall not be greater than the load rating for the non-pneumatic spare tire.

S8 *Labeling Requirements for Non-Pneumatic*

Spare Tires or Tire Assemblies. Each non-pneumatic tire or, in the case of a non-pneumatic tire assembly in which the non-pneumatic tire is an integral part of the assembly, each non-pneumatic tire assembly shall be permanently molded, stamped, or otherwise permanently marked into or onto both sides in letters or numerals not less than 0.156 inches high, the information specified in paragraphs S6.(a) through (b). Except, in the case of a non-pneumatic tire assembly which has a particular side that must always face outward when mounted on a vehicle, the information shown in paragraphs S6(a) through (b) shall only be required on the outward facing side. The information shall be positioned on the tire or tire assembly such that it is not placed on the tread or the outermost edge of the tire and is not obstructed by any portion of any non-pneumatic rim or wheel center member designated for use with that tire in this standard or in Standard No. 129.

- (a) FOR TEMPORARY USE ONLY; and
- (b) MAXIMUM 50 M.P.H.

S9 *Requirements for Vehicles Equipped with Non-Pneumatic Spare Tire Assemblies*

S9.1 *Vehicle Placarding Requirements.* A placard, permanently affixed to the inside of the spare tire stowage area or equally accessible location adjacent to the non-pneumatic spare tire assembly, shall display the information set forth in S8 in block capitals and numerals not less than 0.25 inches high preceded by the words “IMPORTANT—USE OF SPARE TIRE” in letters not less than 0.375 inches high.

S9.2 *Supplementary Information.* The owner’s manual of the vehicle shall contain, in writing in the English language and in not less than 10 point type, the following information under the heading “IMPORTANT—USE OF SPARE TIRE”:

(a) A statement indicating the labeling related to appropriate use for the non-pneumatic spare tire including at a minimum the information set forth in S8(a) and (b) and in S5.3.6;

(b) An instruction to drive carefully when the non-pneumatic spare tire is in use, and to install the proper pneumatic tire and rim at the first reasonable opportunity; and

(c) A statement that operation of the vehicle is not recommended with more than one non-pneumatic spare tire in use at the same time.

S10 *Non-Pneumatic Rims and Wheel Center Members*

S10.1 *Non-Pneumatic Rim Requirements.* Each non-pneumatic rim that is part of a separable non-pneumatic spare tire assembly shall be constructed to the dimensions of a non-pneumatic rim that is listed pursuant to S4.4 of §571.129 for use with the non-pneumatic tire, designated by its non-

pneumatic tire identification code, with which the vehicle is equipped.

S10.2 Wheel Center Member Requirements. Each wheel center member that is part of a separable non-pneumatic spare tire assembly shall be constructed to the dimensions of a wheel center member that is listed pursuant to S4.4 of §571.129 for use with the non-pneumatic tire, designated by its non-pneumatic tire identification code, with which the vehicle is equipped.

* * * * *

11. Part 571 is amended by the addition of 49 CFR §571.129 which would read as follows:

§571.129 Standard No. 129; *New Non-Pneumatic Tires for Passenger Cars.*

S1 Scope. This standard specifies tire dimensions and laboratory test requirements for lateral strength, strength, endurance, and high speed performance; defines the tire load rating; and specifies labeling requirements for non-pneumatic spare tires.

S2 Application. This standard applies to new temporary spare non-pneumatic tires for use on passenger cars.

S3 Definitions.

“Carcass” means the tire structure except for the tread which provides the major portion of the tire’s capability to deflect in response to the vertical loads and tractive forces that the tire transmits from the roadway to the non-pneumatic rim, the wheel center member, or the vehicle and which attaches to the vehicle or attaches, either integrally or separably, to the wheel center member or non-pneumatic rim.

“Carcass separation” means the pulling away of the carcass from the non-pneumatic rim or wheel center member.

“Chunking” means the breaking away of pieces of the carcass or tread.

“Cracking” means any parting within the carcass, tread, or any components that connect the tire to the non-pneumatic rim or wheel center member and, if the non-pneumatic tire is integral with the non-pneumatic rim or wheel center member, any parting within the non-pneumatic rim, or wheel center member.

“Load rating” means the maximum load a tire is rated to carry.

“Maximum tire width” means the greater of either the linear distance between the exterior edges of the carcass or the linear distance between the exterior edges of the tread, both being measured parallel to the rolling axis of the tire.

“Non-pneumatic rim” means a mechanical device which, when a non-pneumatic tire assembly incorporates a wheel, supports the tire, and attaches,

either integrally or separably, to the wheel center member and upon which the tire is attached.

“Non-pneumatic test rim” means, with reference to a tire to be tested, any non-pneumatic rim that is listed as appropriate for use with that tire in accordance with S4.4.

“Non-pneumatic tire” means a mechanical device which transmits, either directly or through a wheel or wheel center member, the vertical load and tractive forces from the roadway to the vehicle, generates the tractive forces that provide the directional control of the vehicle, and does not rely on the containment of any gas or fluid for providing those functions.

“Non-pneumatic tire assembly” means a non-pneumatic tire, alone or in combination with a wheel or wheel center member, which can be mounted on a vehicle.

“Non-pneumatic tire identification code” means an alphanumeric code that is assigned by the manufacturer to identify the tire with regard to its size, application to a specific non-pneumatic rim or wheel center member, or application to a specific vehicle.

“Test wheel center member” means, with reference to a tire to be tested, any wheel center member that is listed as appropriate for use with that tire in accordance with S4.4.

“Tread” means that portion of the tire that comes in contact with the road.

“Tread separation” means the pulling away of the tread from the carcass.

“Wheel” means a mechanical device which consists of a non-pneumatic rim and wheel center member and which, in the case of a non-pneumatic tire assembly incorporating a wheel, provides the connection between the tire and the vehicle.

“Wheel center member” means, in the case of a non-pneumatic tire assembly incorporating a wheel, a mechanical device which attaches, either integrally or separably, to the non-pneumatic rim and provides the connection between the non-pneumatic rim and the vehicle.

S4 Requirements.

S4.1 Size and Construction. Each tire shall be designed to fit each non-pneumatic rim or wheel center member specified for its non-pneumatic tire identification code designation in a listing in accordance with section S4.4.

S4.2 Performance Requirements

S4.2.1 General. Each tire shall conform to the following:

(a) Its load rating shall be that specified in a submission made by a manufacturer, pursuant to S4.4(a), or in one of the publications described in S4.4(b) for its non-pneumatic tire identification code designation.

(b) It shall incorporate a tread wear indicator that

will provide a visual indication that the tire has worn to a tread depth of $\frac{1}{16}$ inch.

(c) It shall, before being subjected to either the endurance test procedure specified in S5.4 or the high speed performance procedure specified in S5.5, exhibit no visual evidence of tread or carcass separation, chunking or cracking.

(d) It shall meet the requirements of S4.2.2.5 and S4.2.2.6 when tested on a test wheel described in S5.4.2.1 either alone or simultaneously with up to 5 tires.

S4.2.2 *Test Requirements.*

S4.2.2.1 *Test Sample.* For each test sample use:

(a) One tire for physical dimensions, lateral strength, and strength in sequence;

(b) A second tire for tire endurance; and

(c) A third tire for high speed performance.

S4.2.2.2 *Physical Dimensions.* For a non-pneumatic tire assembly in which the tire is separable from the non-pneumatic rim or wheel center member, the dimensions, measured in accordance with S5.1, for that portion of the tire that attaches to that non-pneumatic rim or wheel center member shall satisfy the dimensional specifications contained in the submission made by an individual manufacturer, pursuant to S4.4(a), or in one of the publications described in S4.4(b) for that tire's non-pneumatic tire identification code designation.

S4.2.2.3. *Lateral Strength.* There shall be no visual evidence of tread or carcass separation, cracking or chunking, when a tire is tested in accordance with S5.2 to a load of:

(a) 1,500 pounds for tires with a load rating less than 880 pounds;

(b) 2,000 pounds for tires with a load rating of 880 pounds or more but less than 1,400 pounds.

(c) 2,500 pounds for tires with a load rating of 1,400 pounds or more, using the load rating marked on the tire or tire assembly.

S4.2.2.4 *Tire Strength.* There shall be no visual evidence of tread carcass separation, cracking or chunking, when a tire is tested in accordance with S5.3 to a minimum energy level of:

<i>Load Rating</i>	<i>Minimum Energy Level</i>
Below 880 pounds	1,950 inch pounds
880 pounds and above	2,600 inch pounds

S4.2.2.5 *Tire Endurance.* When the tire has been subjected to the laboratory endurance test specified in S5.4, using, if applicable, a non-pneumatic test rim or test wheel center member that undergoes no permanent deformation, there shall be no visual evidence of tread or carcass separation, cracking or chunking. In the case of a non-pneumatic tire assembly in which the non-pneumatic tire is an integral part of the assembly, the assembly shall undergo no

permanent deformation with the exception of wear of the tread.

S4.2.2.6 *High Speed Performance.* When the tire has been subjected to the laboratory high speed performance test specified in S5.5, using if applicable, a non-pneumatic test rim or test wheel center member that undergoes no permanent deformation, there shall be no visual evidence of tread or carcass separation, cracking or chunking. In the case of a non-pneumatic tire assembly in which the non-pneumatic tire is an integral part of the assembly, the assembly shall undergo no permanent deformation with the exception of wear of the tread.

S4.3 *Labeling Requirements.* Each non-pneumatic tire or, in the case of a non-pneumatic tire assembly in which the non-pneumatic tire is an integral part of the assembly, each non-pneumatic tire assembly shall be permanently molded, stamped, or otherwise permanently marked into or onto both sides of the tire or tire assembly in letters or numerals not less than 0.078 inches high, the information shown in paragraphs S4.3(a) through (f). Except, in the case of a non-pneumatic tire assembly of which one side always must face outward when mounted on a vehicle, the information shown in paragraphs S4.3(a) through (f) shall only be required on the outward facing side. The information shall be positioned on the tire or tire assembly such that it is not placed on the tread or the outermost edge of the tire and is not obstructed by any portion of any non-pneumatic rim or wheel center member designated for use with that tire in S4.4 of this standard or in 49 CFR §571.110 or 49 CFR §571.120.

(a) The non-pneumatic tire identification code.

(b) Load rating, which, if expressed in kilograms, shall be followed in parentheses by the equivalent load rating in pounds, rounded to the nearest whole pound;

(c) For a non-pneumatic tire that is not an integral part of a non-pneumatic tire assembly, the size and type designation of the non-pneumatic rim or wheel tire assembly that is contained in the submission made by a manufacturer, pursuant to S4.4(a), or in one of the publications described in S4.4(b) for that tire's non-pneumatic tire identification code designation;

(d) The name of the manufacturer or brand name;

(e) The symbol DOT in the manner specified in Part 574 of this chapter, which shall constitute a certification that the tire conforms to applicable Federal motor vehicle safety standards;

(f) The tire identification number required by §574.5 of this chapter;

(g) The labeling requirements set forth in S6 of Standard No. 110 (§571.110), or S8 of Standard No. 120 (§571.120).

S4.4 Non-Pneumatic Tire Identification Code and Non-Pneumatic Rim/Wheel Center Member Matching Information. For purposes of this standard, S8 of 49 CFR 571.110 and S10 of 49 CFR 571.120, each manufacturer of a non-pneumatic tire that is not an integral part of a non-pneumatic tire assembly shall ensure that it provides a listing to the public for each non-pneumatic tire that it produces. The listing shall include the non-pneumatic tire identification code, tire load rating, dimensional specifications and a diagram of the portion of the tire that attaches to the non-pneumatic rim or wheel center member, and a list of the non-pneumatic rims or wheel center members that may be used with that tire. For each non-pneumatic rim or wheel center member included in such a listing, the information provided shall include a size and type designation for the non-pneumatic rim or wheel center member, and dimensional specifications and a diagram of the non-pneumatic rim or portion of the wheel center member that attaches to the tire. A listing compiled in accordance with paragraph (a) of this section need not include dimensional specifications or a diagram of the non-pneumatic rim or portion of the wheel center member that attaches to the tire if the non-pneumatic rim's or portion of the wheel center member's dimensional specifications and diagram are contained in each listing published in accordance with paragraph (b) of this section. The listing shall be in one of the following forms:

(a) Listed by manufacturer name or brand name in a document furnished to dealers of the manufacturer's tires or, in the case of non-pneumatic tires supplied only as a temporary spare tire on a vehicle, in a document furnished to dealers of vehicles equipped with the tires, to any person upon request, and in duplicate to the Office of Vehicle Safety Standards, Crash Avoidance Division, National Highway Traffic Safety Administration, U.S. Department of Transportation, Washington, D.C. 20590; or

(b) Contained in publications, current at the date of manufacture of the tire or any later date, or at least one of the following organizations:

The Tire and Rim Association

The European Tire and Rim Technical Organization

Japan Automobile Tire Manufacturers' Association, Inc.

Deutsche Industrie Norm

British Standards Institute

Scandinavian Tire and Rim Organization

Tyre and Rim Association of Australia

S5 Test Procedures.

S5.1 Physical Dimensions. After conditioning the tire at room temperature for at least 24 hours, using equipment with minimum measurement capabilities

of one-half the smallest tolerance specified in the listing contained in the submission made by a manufacturer pursuant to S4.4(a), or in one of the publications described in S4.4(b) for that tire's non-pneumatic tire identification code designation, measure the portion of the tire that attaches to the non-pneumatic rim or the wheel center member. For any inner diameter dimensional specifications, or other dimensional specifications that are uniform or uniformly spaced around some circumference of the tire, these measurements shall be taken at least six points around the tire, or if specified, at the points specified in the listing contained in the submission made by an individual manufacturer, pursuant to S4.4(a), or in one of the publications described in S4.4(b) for that tire's non-pneumatic tire identification code designation.

S5.2 Lateral Strength.

S5.2.1 Preparation of the tire.

S5.2.1.1 If applicable, mount a new tire on a non-pneumatic test rim or test wheel center member.

S5.2.1.2 Mount the tire assembly in a fixture as shown in Figure 1 with the surface of the tire assembly that would face outward when mounted on a vehicle facing toward the lateral strength test block shown in Figure 2 and force the lateral strength test block against the tire.

S5.2.2 Test Procedure.

S5.2.2.1 Apply a load through the block to the tire at a rate of 2 inches per minute, with the load arm parallel to the tire assembly at the time of engagement and the first point of contact with the test block being the test block centerline shown in Figure 2, at the following distances, B, in sequence, as shown in Figure 1:

B = A - 1 inch

B = A - 2 inches

B = A - 3 inches

B = A - 4 inches

B = A - 5 inches, and

B = A - 6 inches

However, if at any time during the conduct of the test, the test block comes in contact with the non-pneumatic test rim or test wheel center member, the test shall be suspended and no further testing at smaller values of the distance B shall be conducted. When tested to the above procedure, satisfying the requirements of S4.2.2.3 for all values of B greater than that for which contact between the non-pneumatic test rim or test wheel center member and the test block is made, shall constitute compliance to the requirements set forth in S4.2.2.3.

S5.3 Tire Strength.

S5.3.1 Preparation of the Tire.

S5.3.1.1 If applicable, mount the tire on a non-pneumatic test rim or test wheel center member.

S5.3.1.2 Condition the tire assembly at room temperature for at least three hours.

S5.3.2 Test Procedures.

S5.3.2.1 Force the test cleat, as defined in S5.3.2.2, with its length axis (see S5.3.2.2(a)) parallel to the rolling axis of the non-pneumatic tire assembly, and its height axis (see S5.3.2.2(c)), coinciding with a radius of the non-pneumatic tire assembly, into the tread of the tire at five test points equally spaced around the circumference of the tire. At each test point, the test cleat is forced into the tire at a rate of two inches per minute until the applicable minimum energy level, as shown in S4.2.2.4, calculated using the formula contained in S5.3.2.3, is reached.

S5.3.2.2 The test cleat is made of steel and has the following dimensions:

(a) Length of one inch greater than the maximum tire width of the tire.

(b) Width of one-half inch with the surface which contacts the tire's tread having one-quarter inch radius.

(c) Height of one inch greater than the difference between the unloaded radius of the non-pneumatic tire assembly and the minimum radius of the non-pneumatic rim or wheel center member, if used with the non-pneumatic tire assembly being tested.

S5.3.2.3 The energy level is calculated by the following formula:

$$E = \frac{F \times P}{2}$$

where

E = Energy level, inch-pounds;

F = Force, pounds; and

P = Penetration, inches

S5.4 Tire Endurance.

S5.4.1 Preparation of the tire.

S5.4.1.1 If applicable, mount a new tire on a non-pneumatic test rim or test wheel center member.

S5.4.1.2 Condition the tire assembly to 100 ± 5° F. for at least three hours.

S5.4.2 Test Procedure.

S5.4.2.1 Mount the tire assembly on a test axle and press it against a flat-faced steel test wheel 67.23 inches in diameter and at least as wide as the maximum tire width of the tire to be tested or an approved equivalent test wheel, with the applicable test load specified in the table in S5.4.2.3 for the tire's non-pneumatic tire identification code designation.

S5.4.2.2 During the test, the air surrounding the test area shall be 100 ± 5° F.

S5.4.2.3 Conduct the test at 50 miles per hour (m.p.h.) in accordance with the following schedule without interruption (the loads for the following periods are the specified percentage of the load rating marked on the tire or tire assembly):

	Percent
4 hours	85
6 hours	90
24 hours	100

S5.4.2.4 Immediately after running the tire the required time, allow the tire to cool for one hour, then, if applicable, detach it from the non-pneumatic test rim or test wheel center member, and inspect it for the conditions specified in S4.2.2.5.

S5.5 High Speed Endurance.

S5.5.1 After preparing the tire in accordance with S5.4.1, if applicable, mount the tire assembly in accordance with S5.4.2.1, and press it against the test wheel with a load of 88 percent of the tire's load rating as marked on the tire or tire assembly.

S5.5.2 Break in the tire by running it for 2 hours at 50 m.p.h.

S5.5.3 Allow to cool to 100 ± 5° F.

S5.5.4 Test at 75 m.p.h. for 30 minutes, 80 m.p.h. for 30 minutes, and 85 m.p.h. for 30 minutes.

S5.5.5 Immediately after running the tire for the required time, allow the tire to cool for one hour, then, if applicable, detach it from the non-pneumatic test rim or test wheel center member, and inspect it for the conditions specified in S4.2.2.6.

S6 Nonconforming tires. Any non-pneumatic tire that is designed for use on passenger cars that does not conform to all the requirements of this standard, shall not be sold, offered for sale, introduced or delivered for introduction into interstate commerce, or imported into the United States, for any purpose.

* * * * *

12. Figures 1 and 2 are added following the text of Standard No. 129, appearing as follows:

Part 574 [Amended]

13. The first sentence of 574.4 *Applicability* is revised to read as follows:

This part applies to manufacturers, brand name owners, retreaders, distributors, and dealers of new and retreaded tires, and new non-pneumatic tires and non-pneumatic tire assemblies for use on motor vehicles manufactured after 1948 and to manufacturers and dealers of motor vehicles manufactured after 1948.

* * * * *

14. The first sentence of 574.5 *Tire identification requirements* is revised to read as follows:

Each tire manufacturer shall conspicuously label on one sidewall of each tire it manufactures, except tires manufactured exclusively for mileage-contract purchasers, or non-pneumatic tires or non-pneumatic tire assemblies, by permanently molding into or onto the sidewall, in the manner and location specified in Figure 1, a tire identification number

containing the information set forth in paragraphs (a) through (d) of this section.

* * * * *

15. Section 574.5 is amended by adding the following to the end of the opening paragraph:

* * * * *

Each manufacturer of a non-pneumatic tire or a non-pneumatic tire assembly shall permanently mold, stamp, or otherwise permanently mark into or onto one side of the non-pneumatic tire or non-pneumatic tire assembly a tire identification number containing the information set forth in paragraphs (a) through (d) of this section. In addition, the DOT symbol required by the Federal motor vehicle safety standards shall be positioned relative to the tire identification number as shown in Figure 1, and the symbols to be used for the other information are those listed above. The labeling for a non-pneumatic tire or a non-pneumatic tire assembly shall be in the manner specified in Figure 1 and positioned on the non-pneumatic tire or non-pneumatic tire assembly such that it is not placed on the tread or the outermost edge of the tire and is not obstructed by any portion of the non-pneumatic rim or wheel center member designated for use with that non-pneumatic tire in S4.4 of Standard No. 129 (49 CFR 571.129).

16. Section 574.5(b) is amended by adding the following after the opening sentence:

* * * * *

For a new non-pneumatic tire of a non-pneumatic tire assembly, the second group, of not more than two

symbols, shall be used to identify the non-pneumatic tire identification code.

* * * * *

17. Section 574.6, *Identification Mark*, is revised to read as follows:

* * * * *

To obtain the identification mark required by 574.5(a), each manufacturer of new or retreaded pneumatic tires, non-pneumatic tires, or non-pneumatic tire assemblies shall apply in writing to "Tire Identification and Recordkeeping," National Highway Traffic Safety Administration, Department of Transportation, Washington, DC 20590, identify itself as a tire manufacturer or retreader and furnish the following information:

- (a) The name, or other designation identifying the applicant, and its main office address.
- (b) The name, or other identifying designation, of each individual plant operated by the manufacturer and the address of each plant, if applicable.
- (c) The type of tires manufactured at each plant, e.g., pneumatic tires for passenger cars, buses, trucks, or motorcycles; pneumatic retreaded tires; or non-pneumatic tires or non-pneumatic tire assemblies.

Issued on July 12, 1990.

Jeffrey R. Miller
Deputy Administrator

55 FR 29581
July 20, 1990

PREAMBLE TO TIRE CODE MARKS ASSIGNED TO NEW TIRE MANUFACTURERS

The purpose of this notice is to publish the code numbers assigned to new-tire manufacturers under the Tire Identification and Recordkeeping Regulation, 49 CFR Part 574 (36 F.R. 1196).

The Tire Identification and Recordkeeping Regulation (hereafter Part 574) requires that new tires manufactured after May 22, 1971, be marked with a two-symbol manufacturer's code, and that retreaded tires be marked with a three-symbol manufacturer's code. The manufacturer's code is the first grouping within the tire identification number (after the symbol "DOT" or "R" where required).

Under Part 574 a separate code number is assigned to each manufacturer's plant. Table 1 of the notice lists the code numbers assigned and the manufacturer that received each code number. Table 2 lists the same information by

manufacturer. Codes assigned to retreaders will be available for inspection in the Docket Section, Room 5217, 400 Seventh Street SW., Washington, D.C. 20590.

The codes assigned to new-tire manufacturers replace the three-digit code numbers required on new brand-name passenger car tires manufactured prior to May 22, 1971, under Standard No. 109. (The list of numbers assigned under Standard No. 109 was published in the *Federal Register* of July 2, 1968, 34 F.R. 11158.)

Issued on April 14, 1971.

Rodolfo A. Diaz,
Acting Associate Administrator,
Motor Vehicle Programs.

36 F.R. 7539
April 21, 1971



PREAMBLE TO TIRE SIZE CODES

The purpose of this notice is to publish an updated list of tire size codes assigned by the National Highway Traffic Safety Administration in accordance with the Tire Identification and Record Keeping regulation, 49 CFR Part 574 (36 F.R. 1196).

The Tire Identification and Record Keeping regulation requires that a tire identification number be placed on new and retreaded tires, and that the second grouping of the number be a code that identifies the tire size or, in the case of a retreaded tire, the tire matrix. New tire manufacturers have up to now been required to use a specific tire size code assigned to the tire size by the NHTSA. Because of the number of new tire sizes being introduced into the market, the possible combinations of letters and numbers have been virtually exhausted.

In order to accommodate new tire sizes the regulation is being amended by notice published elsewhere in this issue (37 F.R. 23727), to allow each tire manufacturer to assign a two-symbol

size code of his own choice, rather than having the number assigned by the agency. However, it is urged that manufacturers maintain the assigned tire size code for existing tire sizes, and that they reuse obsolete tire size codes for new sizes wherever possible.

For convenience of reference, an updated list of the tire size codes assigned by the NHTSA is published below for the information and guidance of tire manufacturers.

This notice is issued under the authority of sections 103, 113, 119, 201 and 1402, 1407, 1421 and 1426; and the delegations of authority at 49 CFR 1.51 and 49 CFR 501.8.

Issued on October 26, 1972.

Robert L. Carter
Associate Administrator
Motor Vehicle Programs

38 F.R. 23742
November 8, 1972

PART 574—TIRE IDENTIFICATION AND RECORDKEEPING

(Docket No. 70-12; Notice No. 5)

S574.1 Scope.

This part sets forth the method by which new tire manufacturers and new tire brand name owners shall identify tires for use on motor vehicles and maintain records of tire purchasers, and the method by which retreaders and retreaded tire brand name owners shall identify tires for use on motor vehicles. This part also sets forth the methods by which independent tire dealers and distributors shall record, on registration forms, their names and addresses and the identification number of the tires sold to tire purchasers and provide the forms to the purchasers, so that the purchasers may report their names to the new tire manufacturers and new tire brand name owners, and by which other tire dealers and distributors shall record and report the names of tire purchasers of the new tire manufacturers and new tire brand name owners.

S574.2 Purpose.

The purpose of this part is to facilitate notification to purchasers of defective or nonconforming tires, pursuant to sections 151 and 152 of the Nation Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1411 and 1412) (hereafter the Act), so that they may take appropriate action in the interest of motor vehicle safety.

S574.3 Definitions.

(a) *Statutory definitions.* All terms in this part that are defined in section 102 of the Act are used as defined therein.

(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 571 of this subchapter (hereinafter the Standards), are used as defined therein.

(c) *Definitions use in this part.* (1) "Mileage contract purchaser" means a person who purchases or leases tire use on a mileage basis.

(2) "Independent" means, with respect to a tire distributor or dealer, one whose business is not owned or controlled by a tire manufacturer or brand name owner.

(3) "New tire brand name owner" means a person, other than a new tire manufacturer, who owns or has the right to control the brand name of a new tire or a person who licenses another to purchase new tires from a new manufacturer bearing the licensor's brand name.

(4) "Retreaded tire brand name owner" means a person, other than a retreader, who owns or has the right to control the brand name of a retreaded tire or a person who licenses another to purchase retreaded tires from a retreader bearing the licensor's brand name.

(5) "Tire purchaser" means a person who buys or leases a new tire, or who buys or leases for 60 days or more a motor vehicle containing a new tire for purposes other than resale.

S574.4. Applicability.

【This part applies to manufacturers, brand name owners, retreaders, distributors, and dealers of new and retreaded tires, and new non-pneumatic tires and non-pneumatic tire assemblies for use on motor vehicles manufactured after 1948 and to manufacturers and dealers of motor vehicles manufactured after 1948. (55 F.R. 29581—July 20, 1990. Effective: August 20, 1990)】

However, it does not apply to persons who retread tires solely for their own use.

S574.5 Tire identification requirements.

Each tire manufacturer shall conspicuously label on one sidewall of each tire it manufactures, except tires manufactured exclusively for mileage-contract purchasers, [or non-pneumatic tires on non-pneumatic tire assemblies] by permanently molding into or onto the sidewall, in the manner and location specified in Figure 1, a tire identification number containing the information set forth in paragraphs (a) through (d) of this section. Each tire retreader, except tire retreaders who retread tires solely for their own use, shall conspicuously label one sidewall of each tire it retreads by permanently molding or branding into or onto the sidewall, in the manner and location specified in Figure 2, a tire identification number containing the information set forth in paragraph (a) through (d) of this section.

In addition, the DOT symbol required by Federal Motor Vehicle Safety Standards shall be located as shown in Figures 1 and 2. The DOT symbol shall not appear on tires to which no Federal Motor Vehicle Safety Standard is applicable, except that the DOT symbol on tires for use on motor vehicles other than passenger cars may, prior to retreading, be removed from the sidewall or allowed to remain on the sidewall, at the retreader's option. The symbols to be used in the tire identification number for tire manufacturers and retreaders, are: "A, B, C, D, E, F, H, J, K, L, M, N, P, R, T, U, V, W, X, Y, 1, 2, 3, 4, 5, 6, 7, 8, 9, 0." Tires manufactured or retreaded exclusively for mileage-contract purchasers are not required to contain a tire identification number if the tire contains the phrase "for mileage contract use only" permanently molded into or onto the tire sidewall in lettering at least one-quarter inch high.

【Each manufacturer of a non-pneumatic tire or a non-pneumatic tire assembly shall permanently mold, stamp or otherwise permanently mark into or onto one side of the non-pneumatic tire or non-pneumatic tire assembly a tire identification number containing the information set forth in paragraphs (a) through (d) of this section. In addition, the DOT symbol required by the Federal motor vehicle safety standards shall be positioned relative to the tire identification number as shown in Figure 1, and the symbols to be used for the other information are those listed above. The labeling for a non-pneumatic tire or a non-pneumatic tire assembly shall be in the manner specified in Figure 1 and positioned on the non-pneumatic tire or non-pneumatic tire assembly such that it is not placed on the tread or the outermost edge of the tire and is not obstructed by any portion of the non-pneumatic rim or wheel center member designated for use with that non-pneumatic tire in S4.4 of Standard No. 129 (49 CFR 571.129). (55 F.R. 29581—July 20, 1990. Effective: August 20, 1990)】

(a) *First grouping.* The first group, of two or three symbols, depending on whether the tire is new or retreaded, shall represent the manufacturer's assigned identification mark (see §574.6).

(b) *Second grouping.* For new tires, the second group, of no more than two symbols, shall be used to identify the tire size. 【For a new non-pneumatic tire of a non-pneumatic tire assembly, the second group, of not more than two symbols, shall be used to identify the non-pneumatic tire identification code.】 For retreaded tires, the second group, of no more than two symbols, shall identify the retread matrix in which the tire was processed or a tire size code if a matrix was not used to process the retreaded tire. Each new tire manufacturer and retreaded shall maintain a record of

each symbol used, with the corresponding matrix or tire size and shall provide such record to NHTSA upon written request. (55 F.R. 29581—July 20, 1990. Effective: August 20, 1990)】

(c) *Third grouping.* The third group, consisting of no more than four symbols, may be used at the option of the manufacturer or retreader as a descriptive code for the purpose of identifying significant characteristics of the tire. However, if the tire is manufactured for a brand name owner, one of the functions of the third grouping shall be to identify the brand name owner. Each manufacturer or retreader who uses the third grouping shall maintain a detailed record of any descriptive or brand name owner code used, which shall be provided to the Bureau upon written request.

(d) *Fourth grouping.* The fourth group, of three symbols, shall identify the week and year of manufacture. The first two symbols shall identify the week of the year using "01" for the first full calendar week in each year. The final week of each year may include not more than 6 days of the following year. The third symbol shall identify the year. (Example: 311 means the 31st week of 1971, or Aug. 1 through 7, 1971; 012 means the first week of 1972, or Jan. 2 through 8, 1972.) The symbols signifying the date of manufacture shall immediately follow the optional descriptive code (paragraph (c) of this section). If no optional descriptive code is used the symbols signifying the date of manufacture shall be placed in the area shown in Figures 1 and 2 for the optional description code.

S574.6 Identification mark.

【To obtain the identification mark required by 574.5(a), each manufacturer of new or retreaded pneumatic tires, non-pneumatic tires or non-pneumatic tire assemblies shall apply in writing to "Tire Identification and Recordkeeping," National Highway Traffic Safety Administration, Department of Transportation, Washington, DC 20590, identify itself as a tire manufacturer or retreader and furnish the following information:

(a) The name, or other designation identifying the applicant, and its main office address.

(b) The name, or other identifying designation, of each individual plant operated by the manufacturer and the address of each plant, if applicable.

(c) The type of tires manufactured at each plant, e.g., pneumatic tire for passenger cars, buses, trucks or motorcycles; pneumatic retreaded tires; or non-pneumatic tires or non-pneumatic tire assemblies. (55 F.R. 29581—July 20, 1990. Effective: August 20, 1990)】

§574.7 Information requirements—new tire manufacturers, new tire brand name owners.

(a)(1) Each new tire manufacturer and each new tire brand name owner (hereinafter referred to in this section and §574.8 as "tire manufacturer") or its designee, shall provide tire registration forms to every distributor and dealer of its tire which offers new tires for sale or lease to tire purchasers.

(2) Each tire registration form provided to independent distributors and dealers pursuant to paragraph (a)(1) of this section shall contain space for recording the information specified in paragraphs (a)(4)(i) through (a)(4)(iii) of this section and shall conform in content and format to Figures 3a and 3b. Each form shall be:

- (i) Rectangular;
- (ii) Not less than .007 inches thick;

(iii) Greater than 3½ inches, but not greater than 4¼ inches wide; and

(iv) Greater than 5 inches, but not greater than 6 inches long.

(3) Each tire registration form provided to distributors and dealers, that are not independent distributors or dealers, pursuant to paragraph (a)(1) of this section shall be similar in format and size to Figure 4 and shall contain space for recording the information specified in paragraphs (a)(4)(i) through (a)(4)(iii) of this section.

- (4)(i) Name and address of the tire purchaser.
- (ii) Tire identification number.
- (iii) Name and address of the tire seller or other means by which the tire manufacturer can identify the tire seller.

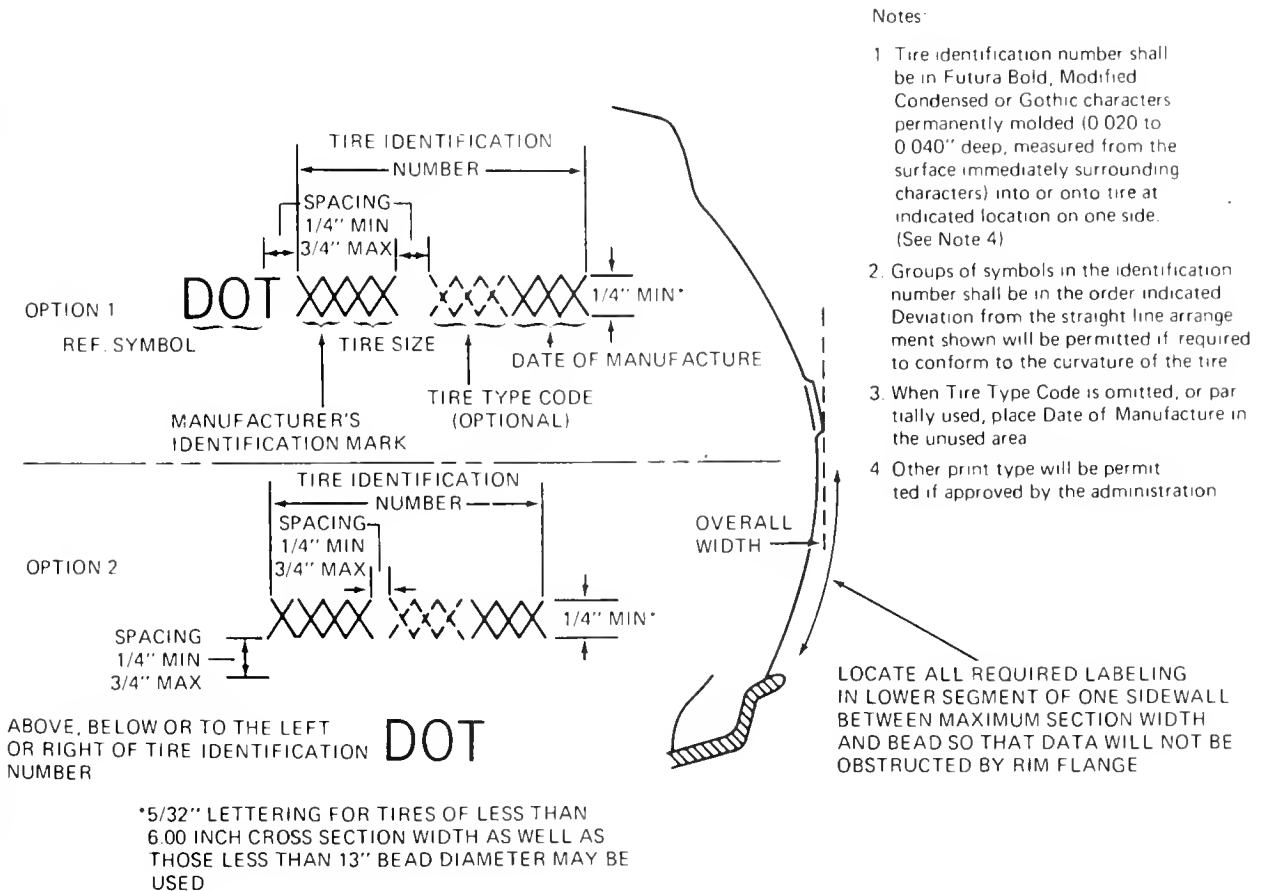
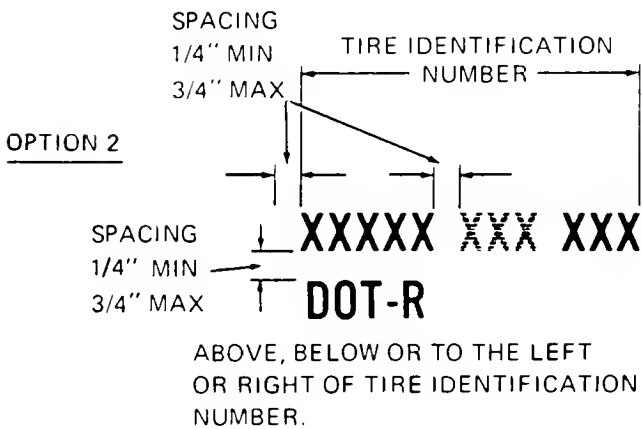
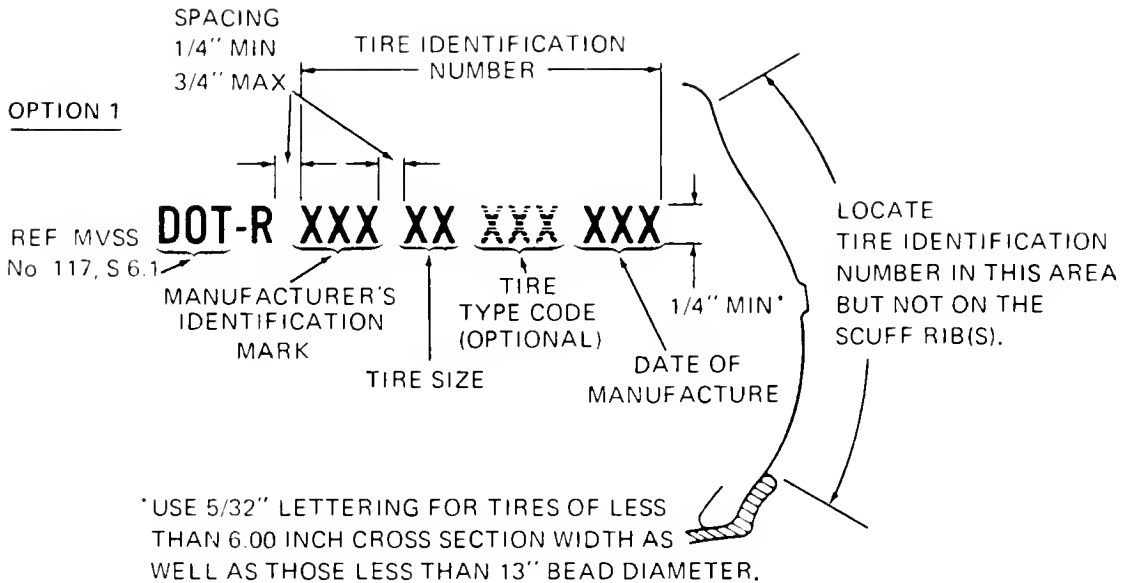


FIGURE 1—IDENTIFICATION NUMBER FOR NEW TIRES



NOTES:

1. Tire identification number shall be in "Futura Bold, Modified, Condensed or Gothic" characters permanently molded (0.020 to 0.040" deep, measured from the surface immediately surrounding characters) into or onto tire at indicated location on one side. (See Note 4)
2. Groups of symbols in the identification number shall be in the order indicated. Deviation from the straight line arrangement shown will be permitted if required to conform to the curvature of the tire.
3. When Tire Type Code is omitted, or partially used, place Date of Manufacture in the unused area.
4. Other print type will be permitted if approved by the Administration.

FIGURE 2—IDENTIFICATION NUMBER FOR RETREADED TIRES

IMPORTANT

A

In case of a recall, we can reach you only if we have your name and address. You MUST send in this card to be on our recall list.

SHADED AREAS MUST BE FILLED IN BY SELLER

Do it today.

		TIRE IDENTIFICATION NUMBERS										
QTY		1	2	3	4	5	6	7	8	9	10	11
CUSTOMER'S NAME (Please Print)												
CUSTOMER'S ADDRESS												
CITY	STATE	ZIP CODE										
NAME OF DEALER WHICH SOLD TIRE												
DEALER'S ADDRESS												
CITY	STATE	ZIP CODE										

A Preprinted tire manufacturer's name—unless the manufacturer's name appears on reverse side of the form.

FIGURE 3a—REGISTRATION FORM FOR INDEPENDENT DISTRIBUTORS AND DEALERS—TIRE IDENTIFICATION NUMBER SIDE

Affix a
postcard
stamp

Name and address of
tire manufacturer or
its designee
(Preprinted)

FIGURE 3b—REGISTRATION FORM FOR INDEPENDENT DISTRIBUTORS AND DEALERS—ADDRESS SIDE

7 3/8" ± 1/8"

IMPORANT FEDERAL LAW REQUIRES
TIRE IDENTIFICATION NUMBERS MUST
BE REGISTERED
(PLEASE PRINT)

(A) (B)

CUSTOMER'S NAME _____ RETURN TO _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

DATE [][] [][] _____ FLEET VEHICLE No (OPTIONAL) _____

SELLER'S NAME AND/OR MANUFACTURER SELLER NUMBER _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

QTY	TIRE IDENTIFICATION NUMBERS										
	1	2	3	4	5	6	7	8	9	10	11

3 1/4" ± 1/8"

(A) PREPRINTED TIRE MANUFACTURERS' LOGO OR OTHER IDENTIFICATION AND MAILING ADDRESS

(B) MICROFILM NUMBER LOCATION IF NECESSARY

A-B AREAS TO SUIT TIRE MANUFACTURERS REQUIREMENTS

FIGURE 4a—UNIVERSAL FORMAT

(b) Each tire manufacturer shall record and maintain, or have recorded and maintained for it by a designee, the information from registration forms which are submitted to its or its designee. No tire manufacturer shall use the information on the registration forms for any commercial purpose detrimental to tire distributors and dealers. Any tire manufacturer to which registration forms are mistakenly sent shall forward those registration forms to the proper tire manufacturer within 90 days of the receipt of the forms.

(c) Each tire manufacturer shall maintain, or have maintained for it by a designee, a record of each tire distributor and dealer that purchases tires directly from the manufacturer and sells them to tire purchasers, the number of tires purchased by each such distributor or dealer, the number of tires for which reports have been received from each such distributor or dealer other than an independent distributor or dealer, the number of tires for which reports have been received from each such independent distributor or dealer, the total number of tires for which registration forms have been submitted to the manufacturer of its designee, and the total number of tires sold by the manufacturer.

(d) The information that is specified in paragraph (a)(4) of this section and recorded on registration forms submitted to a tire manufacturer or its designee shall be maintained for a period of not less than three years from the date on which the information is recorded by the manufacturer or its designee.

§574.8 Information requirements—tire distributors and dealers.

(a) *Independent distributors and dealers.* (1) Each independent distributor and each independent dealer selling or leasing new tire to tire purchasers or lessors (hereinafter referred to in this section as "tire purchasers") shall provide each tire purchaser at the time of sale or lease of the tire(s) with a tire registration form.

(2) The distributor or dealer may use either the registration forms provided by the tire manufacturers pursuant to §574.7(a) for forms provided by tire manufacturers to independent distributors and dealers.

(3) Before giving the registration form to the tire purchaser, the distributor or dealer shall record in the appropriate spaces provided on that form:

- (i) The entire tire identification number of the tire(s) sold or leased to the tire purchaser; and
- (ii) The distributor's or dealer's name and address or other means of identification known to the tire manufacturer.

(4) Multiple tire purchases or leases by the same tire purchaser may be recorded on a single registration form.

(b) *Other distributors and dealers.* (1) Each distributor and each dealer, other than an independent distributor or dealer, selling new tires to tire purchasers

shall submit the information specified in §574.7(a) (4) to the manufacturer of the tires sold, or to its designee.

(2) Each tire distributor and each dealer, shall submit registration forms containing the information specified in §574.7(a)(4) to the tire manufacturer, or person maintaining the information, not less often than every 30 days. However, a distributor or dealer which sells less than 40 tires, of all makes, types and sizes during a 30-day period may wait until he or she sells a total of 40 new tires, but in not event longer than six months, before forwarding the tire information to the respective tire manufacturers or their designees.

(c) Each distributor and each dealer selling new tires to other tire distributors or dealers shall supply to the distributor or dealer a means to record the information specified in §574.7(a)(4), less such a means has been provided to that distributor or dealer by another person or by a manufacturer.

(d) Each distributor and each dealer shall immediately stop selling any group of tires when so directed by a notification issued pursuant to sections 151 and 152 of the Act (15 U.S.C. 1411 and 1412).

§574.9 Requirements for motor vehicle dealers.

(a) Each motor vehicle dealer who sells a used motor vehicle for purposes other than resale, or who leases a motor vehicle for more than 60 days, that is equipped with new tires or newly retreaded tires is considered, for purposes of this part, to be a tire dealer and shall meet the requirements specified in §574.8.

(b) Each person selling a new motor vehicle to first purchasers for purposes other than resale, that is equipped with tires that were not on the motor vehicle when shipped by the vehicle manufacturer is considered a tire dealer for purposes of this and shall meet the requirements specified in §574.8.

§574.10 Requirements for motor vehicle manufacturers.

Each motor vehicle manufacturer, or his designee, shall maintain a record of tires on or in each vehicle shipped by him to a motor vehicle distributor or dealer, and shall maintain a record of the name and address of the first purchaser for purposes other than resale of each vehicle equipped with such tires. These records shall be maintained for a period of not less than three years from the date of sale of the vehicle to the first purchaser for purposes other than resale.

Interpretation

Under section 113(f) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1402(f) and Part 574, it is the tire manufacturer who has the ultimate responsibility for maintaining the records of first purchasers. Therefore, it is the tire manufacturer or his designee who must maintain these records. The term "designee," as used in the regulation, was not intended to preclude multiple designees; if the tire manufacturer desires, he may designate more than one person to maintain the required information. Furthermore, neither the Act nor the regulation prohibits the distributor or dealer from being the manufacturer's designee, nor do they prohibit a distributor or dealer from selecting someone to be the manufacturer's designee provided the manufacturer approves of the selection.

With respect to the possibility of manufacturers using the maintained information to the detriment of a distributor or dealer, NHTSA will of course investigate claims by distributors or dealers of alleged misconduct and, if the maintained information is being misused, take appropriate action.

**36 F.R. 4783
March 12, 1971**

**36 F.R. 13757
July 24, 1971**

**36 F.R. 16510
August 21, 1971**

**Table 1. List of Alpha-Numeric Code Assignments to New Tire Manufacturers
(Based on the following Alpha-numeric code with letters: ABCDEFHJKLMNPTUVWXY
and Nos. 123456789)**

<i>Code No.</i>	<i>New Tire Manufacturers</i>	<i>Code No.</i>	<i>New Tire Manufacturers</i>
AA	The General Tire Co.	B7	Michelin Tire Corp., 2306 Industrial Road, Dothan, Alabama 36301.
AB	The General Tire Co.	B8	Cia Brasileira de Pneumaticos Michelin Ind., Estrada Da Cachamorra 5000, 23000 Campo Grande, Rio De Janeiro, Brazil.
AC	The General Tire Co.	B9	Michelin Tire Corp., 2520 Two Notch Road, P.O. Box 579, Lexington, S. Carolina 29072.
AD	The General Tire Co.	CA	The Mohawk Rubber Co.
AE	The General Tire Co. (Spain).	CB	The Mohawk Rubber Co.
AF	The General Tire Co. (Portugal).	CC	The Mohawk Rubber Co.
AH	The General Tire Co. (Mexico).	CD	Alliance Tire & Rubber Co., Ltd. (Israel).
AJ	Uniroyal, Inc.	CE	The Armstrong Rubber Co.
AK	Uniroyal, Inc.	CF	The Armstrong Rubber Co.
AL	Uniroyal, Inc.	CH	The Armstrong Rubber Co.
AM	Uniroyal, Inc.	CJ	Inoue Rubber Co., Ltd. (Japan).
AN	Uniroyal, Inc.	CK	Not assigned.
AP	Uniroyal, Inc.	CL	Not assigned.
AT	Avon Rubber Co. (England).	CM	Continental Gummiwerke A.G. (Germany).
AU	Uniroyal, Ltd. (Canada).	CN	Continental Gummiwerke A.G. (France).
AV	The Sieberling Tire & Rubber Co.	CP	Continental Gummiwerke A.G. (Germany).
AW	Samson Tire & Rubber Co., Ltd. (Israel).	CT	Continental Gummiwerke A.G. (Germany).
AX	Phoenix Gummiwerke A.G. (Germany).	CU	Continental Gummiwerke A.G. (Germany).
AY	Phoenix Gummiwerke A.G. (Germany).	CV	The Armstrong Rubber Co.
A1	Manufacture Francaise Pneumatiques Michelin, Poitiers, France.	CW	The Toyo Rubber Industry Co., Ltd. (Japan).
A2	Lee Tire & Rubber Co., Anhanguera Highway, Kilometer 128, Sao Paulo, Brasil.	CX	The Toyo Rubber Industry Co., Ltd. (Japan).
A3	General Tire & Rubber Co., Mount Vernon, Illinois 62864.	CY	McCreary Tire & Rubber Co.
A4	Hung-A Industrial Co., Ltd., 42 JyonPo-Dong Pusanjin-Ku, Pusan, Korea.	C1	Michelin (Nigeria) Ltd., Port Harcourt, Nigeria.
A5	Debickie Zaklady Opon Samochodowych "Stomil," A1.1 Maja 1, 39-200 Debica, Poland.	C2	Kelly Springfield Companhia Goodyear Do Brasil, Km-128 Americana, Sao Paulo, Brazil.
A6	Apollo Tires Ltd., Jos. Anne M.C.Road, Cochin 682016, Kerala, India.	C3	McCreary Tire & Rubber Co., 3901 Clipper Road, Baltimore, Maryland 21211.
A7	Thai Bridgestone Tire Co. Ltd., Tambol Klong-1, Amphur Klong Luang, Changwad Patoom, Thani, Thailand.	C4	Armstrong Rubber Co., Eagle Bend Industrial Park, Clinton, Tennessee.
A8	P.T. Bridgestone Tire Co. Ltd., Desa Harapan Jaya-Bekasi, Km27-Jawa Barat, Indonesia.	C5	Poznanskie Zaklady Opon Samochodowych "STOMIL," ul. Starolecka 18, Poznan, Poland.
A9	General Tire & Rubber Co., 927 S. Union, St., Bryan, Ohio 44350.	C6	Mitas NP Praha 10-Zahradni Mesto, Komarovo 1900, Praque, Czechoslovakia.
BA	The B. F. Goodrich Co.	C7	Ironsides Tire & Rubber Co., 2500 Grassland Drive, Louisville, Ky 40299.
BB	The B. F. Goodrich Co.	C8	Bridgestone Hsin Chu Plant, Chung Yi Rubber In- dustrial Co. Ltd., No. 1 Chuang Ching Road, Taiwan.
BC	The B. F. Goodrich Co.	【C9	Seven Star Rubber Company, Ltd, 2-1 Chang- Swei Road, Pin-Tou Hsiang, Chang-Hua, Taiwan, R.O.C.】
BD	The B. F. Goodrich Co.	DA	The Dunlop Tire & Rubber Corp.
BE	The B. F. Goodrich Co.	DB	The Dunlop Tire & Rubber Corp.
BF	The B. F. Goodrich Co.	DC	The Dunlop Tire & Rubber Corp. (Canada).
BH	The B. F. Goodrich Co. (Canada).	DD	The Dunlop Tire & Rubber Corp. (England).
BJ	The B. F. Goodrich Co. (Germany).	DE	The Dunlop Tire & Rubber Corp. (England).
BK	The B. F. Goodrich Co. (Brazil).	DF	The Dunlop Tire & Rubber Corp. (England).
BL	The B. F. Goodrich Co. (Colombia).	DH	The Dunlop Tire & Rubber Corp. (Scotland).
BM	The B. F. Goodrich Co. (Australia).	DJ	The Dunlop Tire & Rubber Corp. (Ireland).
BN	The B. F. Goodrich Co. (Philippines).	DK	The Dunlop Tire & Rubber Corp. (France).
BP	The B. F. Goodrich Co. (Iran).	DL	The Dunlop Tire & Rubber Corp. (France).
BT	Semperit Gummiwerke A.G. (Austria).	DM	The Dunlop Tire & Rubber Corp. (Germany).
BU	Semperit Gummiwerke A.G. (Ireland).	DN	The Dunlop Tire & Rubber Corp. (Germany).
BV	IRI International Rubber Co.	DP	The Dunlop Tire & Rubber Corp. (England).
BW	The Gates Rubber Co.	DT	The Dunlop Tire & Rubber Corp. (Australia).
BX	The Gates Rubber Co.	DU	The Dunlop Tire & Rubber Corp. (Australia).
BY	The Gates Rubber Co.	DV	Vredestein (The Netherlands).
B1	Manufacture Francaise Pneumatiques Michelin, LaRoche Sur Yon, France.	DW	Vredestein (The Netherlands).
B2	Dunlop Malaysian Industries Berhad, Selangor, Malaysia.	DX	Vredestein Radium (The Netherlands).
B3	Michelin Tire Mfg. Co. of Canada Ltd., Bridge- water, Nova Scotia.	DY	Denman Rubber Manufacturing Co.
B4	Taurus Hungarian Rubber Works. 1965 Budapest, Kerepesi UT17, Hungary.	D1	Viking-Askim-1800 Askim, Norway.
B5	Olsztynskie Zaklady Opon Samochodowych "STOMIL," A1.Zwyciestwa 71, Olsztyn, Poland.	D2	Dayton Tire & Rubber Co., P.O. Box 1000, La Vergne, Tennessee 37086.
B6	Michelin Tire Corp., P.O. Box 5049, Spartanburg, S. Carolina 29304.	D3	United Tire & Rubber Co., Northam Ind. Park Cobourg, Ontario, Canada K9A 4K2.

<i>Code No.</i>	<i>New Tire Manufacturers</i>	<i>Code No.</i>	<i>New Tire Manufacturers</i>
D4	Dunlop India Ltd., P.O. Box Sahaganj, Dist. Hooghly, West Bengal, India.	F5	Fate S.A.I.C.J., Avda Alte Blanco Encalada 3003, Buenos Aires, Argentina.
D5	Dunlop India Ltd., Ambattur, Madras-600053, India.	F6	General Fabrica Espanola (Firestone Owned) Torrelavega Plant, Spain.
D6	Borovo, Ygoslavenski Kombinat Gume i Obose, Borovo, Yugoslavia.	F7	General Fabrica Espanola (Firestone Owned) Puente San Miguel Plant, Spain.
D7	Dunlop South Africa Ltd., Ladysmith plant 151, Helpmekaar Road, Danskraal Ind. sites, Rep. of S. Africa.	F8	Vikrant Tyres Ltd., K.R.S. Road, Mysore (Karnataka State) India.
D8	Dunlop South Africa Ltd., Durban Plant 265, Sydney Road, 4001 Durban, Rep. of S. Africa.	F9	Dunlop New Zealand, Limited, P.O. Box 40343, Upper Hutt, New Zealand
D9	United Tire & Rubber Co., Ltd., 275 Belfield Road, Rexdale, Ontario, Canada, M9 W 5C6.	HA	Michelin Tire Corp. (Spain).
EA	Metzeler A.G. (Germany).	HB	Michelin Tire Corp. (Spain).
EB	Metzeler A.G. (Germany).	HC	Michelin Tire Corp. (Spain).
EC	Metzeler A.G. (Germany).	HD	Michelin Tire Corp. (Italy).
ED	Okamoto Riken Gomu Co., Ltd. (Japan).	HE	Michelin Tire Corp. (Italy).
EE	Nitto Tire Co., Ltd. (Japan).	HF	Michelin Tire Corp. (Italy).
EF	Hung Ah Tire Co., Ltd. (Korea).	HH	Michelin Tire Corp. (Italy).
EH	Bridgestone Tire Co., Ltd. (Japan).	HJ	Michelin Tire Corp. (United Kingdom).
EJ	Bridgestone Tire Co., Ltd. (Japan).	HK	Michelin Tire Corp. (United Kingdom).
EK	Bridgestone Tire Co., Ltd. (Japan).	HL	Michelin Tire Corp. (United Kingdom).
EL	Bridgestone Tire Co., Ltd. (Japan).	HM	Michelin Tire Corp. (United Kingdom).
EM	Bridgestone Tire Co., Ltd. (Japan).	HN	Michelin Tire Corp. (Canada).
EN	Bridgestone Tire Co., Ltd. (Japan).	HP	Michelin Tire Corp. (South Vietnam).
EP	Bridgestone Tire Co., Ltd. (Japan).	HT	CEAT (Italy).
ET	Sumitomo Rubber Industries, Ltd. (Japan).	HU	CEAT (Italy).
EU	Sumitomo Rubber Industries, Ltd. (Japan).	HV	CEAT (Italy).
EV	Kleber-Colombes Co. (France).	HW	Withdrawn.
EW	Kleber-Colombes Co. (France).	HX	The Dayton Tire & Rubber Co.
EX	Kleber-Colombes Co. (France).	HY	The Dayton Tire & Rubber Co.
EY	Kleber-Colombes Co. (France).	H1	De La SAFE Neumaticos Michelin, Valladolid, Spain.
E1	Chung Hsin Industrial Co. Ltd., Taichong Hsin, Taiwan.	H2	SamYang Tire Mfg. Co. Ltd., Song Jung Plt., Junnam, Korea.
E2	Industria de Pneumatico Firestone SA, Sao Paulo, Brazil.	H3	Sava Industrija Gumijevih, 64,000 Kranj, Yugoslavia.
E3	Seiberling Tire & Rubber Co., P.O. Box 1000, La Vergne, Tennessee 37086.	H4	Bridgestone-Houfu, Yamaguchi-ken, Japan.
E4	Firestone of New Zealand, Papanuvi, Christ Church 5, New Zealand.	H5	Hutchinson-Mapa, 45120 Chalette Sur Loing, France.
E5	Firestone South Africa (Pty) Ltd., P.O. Box 992, Port Elizabeth 6000, S. Africa.	H6	Shin Hung Rubber Co. Ltd., 156 Sang Pyong-Dong Junju, Kyung Nam, Korea.
E6	Firestone Tunisie SA, Boite Postale 55, Menzel-Bourguiba, Tunisia.	H7	Li Hsin Rubber Industrial Co. Ltd., 42 Yuan Lu Road, Sec. 1, Taiwan, China.
E7	Firestone East Africa Ltd., P.O. Box 30429, Nairobi, Kenya.	H8	Firestone, 2600 South Council Road, Oklahoma City, OK. 73124.
E8	Firestone Ghana Ltd., P.O. Box 5758, Accra, Ghana.	H9	Reifen-Berg, 5000 Koln 80 (Mulheim), Clevischer Ring 134, West Germany
E9	Firestone South Africa (Pty), P.O. Box 496, Brits 0250, South Africa.	JA	The Lee Tire & Rubber Co.
FA	The Yokohama Rubber Co., Ltd. (Japan).	JB	The Lee Tire & Rubber Co.
FB	The Yokohama Rubber Co., Ltd. (Japan).	JC	The Lee Tire & Rubber Co.
FC	The Yokohama Rubber Co., Ltd. (Japan).	JD	The Lee Tire & Rubber Co.
FD	The Yokohama Rubber Co., Ltd. (Japan).	JE	The Lee Tire & Rubber Co.
FE	The Yokohama Rubber Co., Ltd. (Japan).	JF	The Lee Tire & Rubber Co.
FF	Michelin Tire Corp. (France).	JH	The Lee Tire & Rubber Co.
FH	Michelin Tire Corp. (France).	JJ	The Lee Tire & Rubber Co.
FJ	Michelin Tire Corp. (France).	JK	The Lee Tire & Rubber Co.
FK	Michelin Tire Corp. (France).	JL	The Lee Tire & Rubber Co.
FL	Michelin Tire Corp. (France).	JM	The Lee Tire & Rubber Co.
FM	Michelin Tire Corp. (France).	JN	The Lee Tire & Rubber Co.
FN	Michelin Tire Corp. (France).	JP	The Lee Tire & Rubber Co.
FP	Michelin Tire Corp. (Algeria).	JT	The Lee Tire & Rubber Co.
FT	Michelin Tire Corp. (Germany).	JU	The Lee Tire & Rubber Co. (Canada).
FU	Michelin Tire Corp. (Germany).	JV	The Lee Tire & Rubber Co. (Canada).
FV	Michelin Tire Corp. (Germany).	JW	The Lee Tire & Rubber Co. (Canada).
FW	Michelin Tire Corp. (Germany).	JX	Lee Tire & Rubber Co. (Canada).
FX	Michelin Tire Corp. (Belgium).	JY	Lee Tire & Rubber Co. (Argentina).
FY	Michelin Tire Corp. (The Netherlands).	J1	Phillips Petroleum Co., Bartlesville, OK 74004.
F1	Michelin Tyre Co. Ltd., Baldovie Dundee, Scotland.	J2	Bridgestone Singapore Co. Ltd., 2 Jurong Port Road, Jurong Town, Singapore 22, Singapore.
F2	CA Firestone Venezolana, Valencia, Venezuela.	J3	Gumarne Maja, Puchov, Czechoslovakia.
F3	Manufacture Francaise Des Pneumatic Michelin, Roanne, France.	J4	Rubena N.P., Nachod, Czechoslovakia.
F4	Fabrica De Pneus Fapobol, Sarl Rua Azevedo Coutinho 39-1.0, Oporto, Portugal.	J5	Lee Tire & Rubber Co., State Rt. 33, Box 799, Logan, Ohio 43138.
		J6	Jaroslavl Tire Co., Jaroslavl, USSR.
		J7	R&J Mfg. Corp., 1420 Stanley Dr., Plymouth, Indiana 46563.

<i>Code No.</i>	<i>New Tire Manufacturers</i>
J8	DaChung Hua Rubber Ind. Co., Shanghai Tire Plant, 839 Hanyshan Rd., Shanghai, China.
[J9	P.T. Intirub, 454 Cililitan, P.O. Box 2626, Besar, Jakarta, Indonesia]
KA	Lee Tire & Rubber Co. (Australia).
KB	Lee Tire & Rubber Co. (Australia).
KC	Lee Tire & Rubber Co. (Brazil).
KD	Lee Tire & Rubber Co. (Colombia).
KE	Lee Tire & Rubber Co. (Republic of Congo).
KF	Lee Tire & Rubber Co. (France).
KH	Lee Tire & Rubber Co. (Germany).
KJ	Lee Tire & Rubber Co. (Germany).
KK	Lee Tire & Rubber Co. (Greece).
KL	Lee Tire & Rubber Co. (Guatemala).
KM	Lee Tire & Rubber Co. (Luxembourg).
KN	Lee Tire & Rubber Co. (India).
KP	Lee Tire & Rubber Co. (Indonesia).
KT	Lee Tire & Rubber Co. (Italy).
KU	Lee Tire & Rubber Co. (Jamaica).
KV	Lee Tire & Rubber Co. (Mexico).
KW	Lee Tire & Rubber Co. (Peru).
KX	Lee Tire & Rubber Co. (Philippines).
KY	Lee Tire & Rubber Co. (Scotland).
K1	Phillips Petroleum Co., 1501 Commerce Drive, Stow, Ohio 44224.
K2	Lee Tire & Rubber Co., Madisonville, KY 42431.
K3	Kenda Rubber Industrial Co. Ltd., Yuanlin, Taiwan.
K4	Uniroyal S.A., Queretaro, Qte. Mexico.
K5	VEB Reifenkombinat Furstenwalde, GDR-124 Furstenwalde-Sud, Trankeweg Germany.
K6	Lee Tire & Rubber Co., One Goodyear Blvd., Lawton, Oklahoma.
K7	Lee Tire & Rubber Co., Camino Melipilla KM16, Maipu Box 3607, Santiago, Chile.
K8	Kelly Springfield Tire Co., Peti Surat 49, Shah, Alam, Selngor, Malaysia.
[K9	Natier Tire & Rubber Co., Ltd., 557 Shan Chiao Road, Sec. 1, Shetou, Changhua, Taiwan, R.O.C. 511]
LA	Lee Tire & Rubber Co. (South Africa).
LB	Lee Tire & Rubber Co. (Sweden).
LC	Lee Tire & Rubber Co. (Thailand).
LD	Lee Tire & Rubber Co. (Turkey.)
LE	Lee Tire & Rubber Co. (Venezuela.)
LF	Lee Tire & Rubber Co. (England).
LH	Uniroyal, Inc. (Australia).
LJ	Uniroyal, Inc. (Belgium).
LK	Uniroyal, Inc. (Columbia).
LL	Uniroyal, Inc. (France).
LM	Uniroyal, Inc. (Germany).
LN	Uniroyal, Inc. (Mexico).
LP	Uniroyal, Inc. (Scotland).
LT	Uniroyal, Inc. (Turkey).
LU	Uniroyal, Inc. (Venezuela).
LV	Mansfield-Denman-General Co., Ltd. (Canada).
LW	Trelleborg Rubber Co., Inc. (Sweden).
LX	Mitsuboshi Belting, Ltd. (Japan).
LY	Mitsuboshi Belting, Ltd. (Japan).
L1	Goodyear Taiwan Ltd., Taipei, Taiwan, Rep. of China.
L2	Wuon Poong Industrial Co., Ltd., 112-5 Sokong-Dong, Chung-Ku, Seoul, Korea.
L3	Tong Shin Chemical Products Co., Ltd., Seoul, Korea.
L4	Cipcmp Intreprinderea De Anvelope, Danubiana, Romania.
L5	Lassa Lastik Sanayi VeTicaret, A.S. Fabrikas, Kosekoy, P.K. 250 Izmit, Turkey.
L6	Modi Rubber Limited, Modipuram Plant, Meerut UP250110, India.
L7	Cipcmp Intreprinderea De Anvelope, Zalau, Romania.
L8	Dunlop Zimbabwe Ltd., Donnington, Bulawayo, Zimbabwe.

<i>Code No.</i>	<i>New Tire Manufacturers</i>
MA	The Goodyear Tire & Rubber Co.
MB	The Goodyear Tire & Rubber Co.
MC	The Goodyear Tire & Rubber Co.
MD	The Goodyear Tire & Rubber Co.
ME	The Goodyear Tire & Rubber Co.
MF	The Goodyear Tire & Rubber Co.
MH	The Goodyear Tire & Rubber Co.
MJ	The Goodyear Tire & Rubber Co.
MK	The Goodyear Tire & Rubber Co.
ML	The Goodyear Tire & Rubber Co.
MM	The Goodyear Tire & Rubber Co.
MN	The Goodyear Tire & Rubber Co.
MP	The Goodyear Tire & Rubber Co.
MT	The Goodyear Tire & Rubber Co.
MU	The Goodyear Tire & Rubber Co. (Argentina)
MV	The Goodyear Tire & Rubber Co., (Australia)
MW	The Goodyear Tire & Rubber Co. (Australia).
MX	The Goodyear Tire & Rubber Co. (Brazil).
MY	The Goodyear Tire & Rubber Co. (Colombia).
M1	Goodyear Maroc S.A. Casablanca, Morocco.
M2	Goodyear Tire & Rubber Co., Madisonville, KY 42431.
M3	Michelin Tire Corp., 730 S. Pleasantburg Drive, Greenville, S. Carolina 29602.
M4	Goodyear Tyre & Rubber Co., Logan, Ohio 43138.
M5	Michelin Tire Mfg. Co. of Canada Ltd., P.O. Box 5000, Kentville, Nova Scotia B4NV36.
M6	Goodyear Tire & Rubber Co., One Goodyear Blvd., Lawton, OK 73504.
M7	Goodyear DeChile S.A.I.C., Camino Melipilla K.M.16 Maipu, P.O. Box 3607, Santiago, Chile.
[M8	Premier Tyres Limited, Kalamassery, Kerala State, India]
[M9	Uniroyal Tire Corporation, Uniroyal Research Center, Middlebury, CT 06749]
NA	The Goodyear Tire & Rubber Co. (Republic of Congo).
NB	The Goodyear Tire & Rubber Co. (England).
NC	The Goodyear Tire & Rubber Co. (France).
ND	The Goodyear Tire & Rubber Co. (Germany).
NE	The Goodyear Tire & Rubber Co. (Germany).
NF	The Goodyear Tire & Rubber Co. (Greece).
NH	The Goodyear Tire & Rubber Co.
NJ	The Goodyear Tire & Rubber Co. (Luxembourg).
NK	The Goodyear Tire & Rubber Co. (India.)
NL	The Goodyear Tire & Rubber Co. (Indonesia).
NM	The Goodyear Tire & Rubber Co. (Italy).
NN	The Goodyear Tire & Rubber Co. (Jamaica).
NP	The Goodyear Tire & Rubber Co. (Mexico).
NT	The Goodyear Tire & Rubber Co. (Peru).
NU	The Goodyear Tire & Rubber Co. (Philippines).
NV	The Goodyear Tire & Rubber Co. (Scotland).
NW	The Goodyear Tire & Rubber Co. (South Africa).
NX	The Goodyear Tire & Rubber Co. (Sweden).
NY	The Goodyear Tire & Rubber Co. (Thailand).
N1	Maloja AG Pneu Und Gummiwerke, Ormalingerstrasse Gelterkinden, Switzerland, CH 4460.
N2	Hurtubise Nutread, 525 Vickers Street, Tonawanda, N.Y. 14150.
N3	Ryoto Tire Co., Ltd., Kuwana Plant, 2400 Arano Nakagami, Tohin-Cho Inabe-Gun, Mie-ken, Japan.
N4	Cipcmp Intreprinderea De Anvelope, Victoria, Romania.
N5	Pneumant, VEB Reifenwerk Riesa, Paul-Greifzu-Strasse 20, 84 Riesa, Germany.
N6	Pneumant VEB Reifenwerk Heidenau Hautsttrass. 44 GDR, 8312 Heidenau, Germany.
N7	Cipcmp Intreprinderea De Anvelope, Caracal, Romania.
N8	Lee Tire & Rubber Co. (Goodyear, Malaysia Berhad), Peti Surat 49, Shah Alam, Selengor, Malaysia.

Code No.	New Tire Manufacturers
[N9	Cia Pneus Tropical, Km105/BR, 324, Centro Industrial Desubae 44100, Feira de Santana, Bahia, Brazil]
PA	The Goodyear Tire & Rubber Co. (Turkey).
PB	The Goodyear Tire & Rubber Co. (Venezuela).
PC	The Goodyear Tire & Rubber Co. (Canada).
PD	The Goodyear Tire & Rubber Co. (Canada).
PE	The Goodyear Tire & Rubber Co. (Canada).
PF	The Goodyear Tire & Rubber Co. (Canada).
PH	The Kelly-Springfield Tire Co.
PJ	The Kelly-Springfield Tire Co.
PK	The Kelly-Springfield Tire Co.
PL	The Kelly-Springfield Tire Co.
PM	The Kelly-Springfield Tire Co.
PN	The Kelly-Springfield Tire Co.
PP	The Kelly-Springfield Tire Co.
PT	The Kelly-Springfield Tire Co.
PU	The Kelly-Springfield Tire Co.
PV	The Kelly-Springfield Tire Co.
PW	The Kelly-Springfield Tire Co.
PX	The Kelly-Springfield Tire Co.
PY	The Kelly-Springfield Tire Co.
P1	Gislaved Gummi Fabriken, 33200 Gislaved, Sweden.
P2	Kelly Springfield, Madisonville, Ky. 42431.
P3	Skeplanda Gummi AB, 440-40 Alvangen, Sweden.
P4	Kelly Springfield, Route 33, Logan, Ohio 43138.
P5	General Popo S.A., Central Camionera, Zona Industrial, San Luis Potosi S.L.P., Mexico.
P6	Kelly Springfield Tire Co., One Goodyear Blvd., Lawton, OK 73504.
P7	Kelly Springfield, Camino Melipilla K.M.16, Maipu, P.O. Box 3607, Santiago, Chile.
P8	China National Chemicals Import & Export Corp., Shandong Branch, Qingdao 97 Cangtai Rd., China.
[P9	MRF, Ltd., P.B. No. 1 Ponda, Goa 403401, India]
TA	The Kelly-Springfield Tire Co.
TB	The Kelly-Springfield Tire Co. (Argentina).
TC	The Kelly-Springfield Tire Co. (Australia).
TD	The Kelly-Springfield Tire Co. (Australia).
TE	The Kelly-Springfield Tire Co. (Brazil).
TF	The Kelly-Springfield Tire Co. (Colombia).
TH	The Kelly-Springfield Tire Co. (Republic of Congo).
TJ	The Kelly-Springfield Tire Co. (England).
TK	The Kelly-Springfield Tire Co. (France).
TL	The Kelly-Springfield Tire Co. (Germany).
TM	The Kelly-Springfield Tire Co. (Germany).
TN	The Kelly-Springfield Tire Co. (Greece).
TP	The Kelly-Springfield Tire Co. (Guatemala).
TT	The Kelly-Springfield Tire Co. (Luxembourg).
TU	The Kelly-Springfield Tire Co. (India).
TV	The Kelly-Springfield Tire Co. (Indonesia).
TW	The Kelly-Springfield Tire Co. (Italy).
TX	The Kelly-Springfield Tire Co. (Jamaica).
TY	The Kelly-Springfield Tire Co. (Mexico).
T1	Hankook Tire Mfg. Co., Ltd., Seoul, Korea.
T2	Ozos (Uniroyal) A.G., Olsztyn, Poland.
T3	Debieckie Zattldy Opon Samochodowych, Stomil, Debica, Poland (Uniroyal).
T4	S.A. Carideng (Rubber Factory), Jan Rosierlaan 114, B 3760 Lanaken, Belgium.
T5	Tigar Pirot, 18300 Pirot, Yugoslavia.
T6	Hulera Tornel S.A., Sta. Lucia 198 Fracc. Ind. San Antonio, Mexico, 16, D.F.
T7	Hankook Tire Mfg. Co. Inc., Daejun Plant, 658-1 Sukbong-RI, Daeduk-kun, Choongchung Namdo, Korea.
T8	Goodyear Tire & Rubber Co., Goodyear Malaysia Berhad, Peti Surat 49, Shah Alam, Selangor, Malaysia.
[T9	MRF, Ltd., Thiruthani Road, Ichiputhur 631 060, Arkonam, India]
UA	The Kelly-Springfield Tire Co. (Peru).
UB	The Kelly-Springfield Tire Co. (Philippines).

Code No.	New Tire Manufacturers
UC	The Kelly-Springfield Tire Co. (Scotland).
UD	The Kelly-Springfield Tire Co. (South Africa).
UE	The Kelly-Springfield Tire Co. (Sweden).
UF	The Kelly-Springfield Tire Co. (Thailand).
UH	The Kelly-Springfield Tire Co. (Turkey).
UJ	The Kelly-Springfield Tire Co. (Venezuela).
UK	The Kelly-Springfield Tire Co. (Canada).
UL	The Kelly-Springfield Tire Co. (Canada).
UM	The Kelly-Springfield Tire Co. (Canada).
UN	The Kelly-Springfield Tire Co. (Canada).
UP	Copper Tire & Rubber Co.
UT	Copper Tire & Rubber Co.
UU	Carlisle Tire & Rubber Division of Carlisle Corp.
UV	Kyowa Rubber Industry Co., Ltd. (Japan).
UW	Not assigned.
UX	Not assigned.
UY	Not assigned.
U1	Lien Shin Tire Co. Ltd., 20 Chung Shan Road, Taipei, Taiwan.
U2	Sumitomo Rubber Industries Ltd., Shirakawa City, Fukushima Pref. Japan (Dunlop).
U3	Miloje Zacic, 3700 Krusevac, Yugoslavia.
U4	Geo. Byers Sons, Inc., 46 East Town Street, Columbus, Ohio 43215.
U5	Farbentabriken Bayer GMBH, D 5090 Leverkusen, West Germany.
U6	Pneumant-VEB Reifenwerk Dresden, GDR-8040 Dresden, Mannheimer Strasse Germany.
U7	Pneumant-VEB Reifenwerk Neubrandenburg GDR-20 Neubrandenberg, Germany.
U8	Hsin Fung Factory of Nankang Rubber Corp. Ltd., 399 Hsin Shing Road, Yuan San, Taiwan.
[U9	Cooper Tire & Rubber Company, 1689 South Green Street, Tupelo, MS 38801]
VA	The Firestone Tire & Rubber Co.
VB	The Firestone Tire & Rubber Co.
VC	The Firestone Tire & Rubber Co.
VD	The Firestone Tire & Rubber Co.
VE	The Firestone Tire & Rubber Co.
VF	The Firestone Tire & Rubber Co.
VH	The Firestone Tire & Rubber Co.
VJ	The Firestone Tire & Rubber Co.
VK	The Firestone Tire & Rubber Co.
VL	The Firestone Tire & Rubber Co. (Canada).
VM	The Firestone Tire & Rubber Co. (Canada).
VN	The Firestone Tire & Rubber Co. (Canada).
VP	The Firestone Tire & Rubber Co. (Italy).
VT	The Firestone Tire & Rubber Co. (Spain).
VU	Withdrawn.
VV	The Firestone Tire & Rubber Co. (Sweden).
VW	The Firestone Tire & Rubber Co. (Japan).
VX	The Firestone Tire & Rubber Co. (England).
VY	The Firestone Tire & Rubber Co. (Wales).
V1	Livingston Tire Shop, North Main Street, Hubbard, Ohio 44425.
V2	Volzhsky Tire Plant, Volzhsk 404103, USSR.
V3	Tahsin Rubber Tire Co. Ltd., Tuchen Village Taipei, Hsieng, Taiwan.
V4	Ohtsu Tire & Rubber Co., Miyakonojo City, Miyazaki Pref., Japan (Firestone).
V5	Firestone Tire & Rubber Co., Mexico City, Mexico.
V6	Firestone Tire & Rubber Co., Cuernavaca, Mexico.
V7	Voronezhsky Tire Plant, Voronezh 494034 USSR.
V8	Boras Gummi Fabrik A.B. Dockvagenl, S502 38 Boras, Sweden (Mac Ripper Tire and Rubber Company).
[V9	M & R Tire Co., 309 Main Street, Watertown, MA 02172]
WA	The Firestone Tire & Rubber Co. (France).
WB	The Firestone Tire & Rubber Co. (Costa Rica).
WC	The Firestone Tire & Rubber Co. (Australia).
WD	The Firestone Tire & Rubber Co. (Switzerland).

Code No. *New Tire Manufacturers*

WE ----- Withdrawn.

WF ----- The Firestone Tire & Rubber Co. (Spain).

WH ----- The Firestone Tire & Rubber Co. (Sweden).

WJ ----- The Firestone Tire & Rubber Co. (Australia).

WK ----- Pennsylvania Tire & Rubber Company
of Mississippi.

WL ----- The Mansfield Tire & Rubber Co.

WM ----- Olympic Tire & Rubber Co. Pty., Ltd.
(Australia).

WN ----- Olympic Tire & Rubber Co Pty., Ltd.
(Australia).

WP ----- Schenuit Industries, Inc.

WT ----- Madras Rubber Factory, Ltd. (India).

WU ----- Not Assigned.

WV ----- Not Assigned.

WW ----- Not Assigned.

WX ----- Not Assigned.

WY ----- Not Assigned.

W1 ----- Firestone Tire & Rubber Co., P.O. Box 1000, La
Vergne, Tennessee 37086.

W2 ----- Firestone Tire & Rubber Co., Wilson, N. Carolina
27893.

W3 ----- Vredestein Doetinchem B.V., Doetinchem, The
Netherlands (B.F. Goodrich).

W4 ----- Dunlop Tyres, Somerton, Victoria, Australia.

W5 ----- Firestone Argentina SAIC, Antartida, Argentina,
2715 Llavollol, Buenos Aires, Argentina.

W6 ----- Firestone Tire & Rubber Co., P.O. Box 1355,
Commerce Center, Makati, Risal, Philippines.

W7 ----- Firestone Portuguesa S.A.R.L., Apartado 3, Alco-
chete, Portugal.

W8 ----- Firestone Tire & Rubber Co. Ltd., P.O. Box Pra-
kanong 11/118, Bangkok, Thailand.

W9 ----- Industrie De Pneumaticos Firestone S.A., Caixa
Postal 2505, Rio De Janeiro, Brazil.

XA ----- Pirelli Tire Corp. (Italy).

XB ----- Pirelli Tire Corp. (Italy).

XC ----- Pirelli Tire Corp. (Italy).

XD ----- Pirelli Tire Corp. (Italy).

XE ----- Pirelli Tire Corp. (Italy).

Code No. *New Tire Manufacturers*

XF ----- Pirelli Tire Corp. (Spain).

XH ----- Pirelli Tire Corp. (Greece).

XJ ----- Pirelli Tire Corp. (Turkey).

XK ----- Pirelli Tire Corp. (Brazil).

XL ----- Pirelli Tire Corp. (Brazil).

XM ----- Pirelli Tire Corp. (Argentina).

XN ----- Pirelli Tire Corp. (England).

XP ----- Pirelli Tire Corp. (England).

XT ----- Veith-Pirelli A.G. (Germany).

X1 ----- Tong Shin Chemical Products, Co. Inc., Seoul,
Korea.

X2 ----- Hwa Fong Rubber Ind. Co. Ltd., 45 Futsen Road,
Yuanlin, Taiwan.

X3 ----- Belotserkovsky Tire Plant, Belaya Tserkov,
256414, U.S.S.R.

X4 ----- Pars Tyre Co., (Pirelli), Saveh, Iran.

X5 ----- JK Industries Ltd., Kankroli, Udaipur District,
Rajasthan, India.

X6 ----- Bobruysky Tire Plant, Bobruysk 213824 U.S.S.R.

X7 ----- Chimkentsky Tire Plant, Chimkent 486025 U.S.S.R.

X8 ----- Dnepropetrovsky Tire Plant, Dnepropetrovsk
320033 U.S.S.R.

X9 ----- Moscovsky Tire Plant, Moscow 109088 U.S.S.R.

X0 ----- Nizhnekamsky Tire Plant, Nishnekamsk 423510
U.S.S.R.

Y1 ----- Companhia Goodyear DoBrasil, KM-128 Ameri-
cana, Sao Paulo, Brasil.

Y2 ----- Dayton Tire Co., Wilson, N. Carolina 27893.

Y3 ----- Seiberling Tire & Rubber Co., Wilson, N. Carolina
27893.

Y4 ----- Dayton Tire & Rubber Co., 345-15th St. S.W.,
Barberton, Ohio (Firestone).

Y5 ----- Tsentai Rubber Factory, 27 Chung Shan Rd., E.I.
Shanghai, China.

Y6 ----- I.T. International Sdn. Bhd., P.O. Box 100 Alor
Setar Kedah, Malaysia.

Y7 ----- Bridgestone Tire Co., (U.S.A.) Ltd., I-24 Waldron
Dr., La Vergne, Tenn.

Y8 ----- Bombay Tyres International Limited, Hay Bunder
Road, Bombay, Maharashtra, India 400 033

**Miscellaneous New Tire Manufacturers Transactions
As Reported to NHTSA**

<i>Manufacturer</i>	<i>Code</i>	<i>Remark</i>
Armstrong Rubber Company	CE	Plant closed 4/3/81
Bridgestone Tire Company	LH	Purchased from UNIROYAL as of 6/13/82
Ceat, S.p.a.	HU	Sold to Pirelli Tire Corp. in May 1984
Cooper Tire & Rubber Company	U9	Purchased from Pennsylvania Tire & Rubber on 1/24/84
Dayton Tire & Rubber Company	DC	Purchased from Dunlop on 11/1/75
Dunlop Olympic Tyres	DT, DU, WM, W4	Merger of Dunlop and Olympic on 4/29/81
Dunlop Tire & Rubber Corp.	DF, DH, DJ, DP, WN	Plants closed
ditto	DT, DU, WM, W4	Plants sold to Dunlop Olympic on 4/29/81
ditto	DC	Plant sold to Firestone T&R on 11/1/75
Firestone Tire & Rubber	DC	Purchased from Dunlop T&R on 11/1/75
ditto	VV	Plant sold to Viskafors Gummifabrik in April 1980
General Tire & Rubber Company	LV	Purchased from Mansfield-Denman on 11/30/78
B.F. Goodrich Company	BJ	Plant sold 12/79
ditto	BK	Plant sold 1/80
ditto	BM	Plant sold to Olympic in 7/75
ditto	BN	Plant sold 8/81
ditto	BP	Plant sold 5/78
Nitto Tire Company, Ltd.	N3	Plant sold to Ryoto Tire Co., Ltd. on 1/23/80
Olympic Tire & Rubber Co., Pty., Ltd.	WM, W4	Sold to Dunlop Olympic on 4/29/81
ditto	WN	Plant closed in 1978
Pennsylvania Tire & Rubber of Mississippi	WK	Plant sold to Cooper T&R on 1/24/84
Pirelli Tire Corporation	HU	Plant purchased from Ceat, S.p.a. in May 1984
Ryoto Tire Company	N3	Plant purchased from Nitto Tire Company on 1/23/80
SAMYAND Tire, Inc.	XU	Plant closed in 1976
UNIROYAL, Inc.	LH	Plant sold to Bridgestone Tire Company on 6/13/82
Viskafors Gummifabrik AB	VV	Plant purchased from Firestone T&R in April 1980

TABLE 3. TIRE SIZE CODES

Tire Size Code	Tire Size Designation ¹	Tire Size Code	Tire Size Designation ¹	Tire Size Code	Tire Size Designation ¹
AA	4.00-4	B7	5.00 R 12	D4	6.00 R 13
AB	3.50-4	B8	5.20-12	D5	6.2-13
AC	3.00-5	B9	5.20-12 LT	D6	6.20-13
AD	4.00-5	CA	5.20 R 12	D7	6.40-13
AE	3.50-5	CB	5.30-12	D8	6.40-13 LT
AF	6.90-6	CC	5.50-12	D9	6.40 R 13
AH	3.00-8	CD	5.50-12 LT	EA	6.50-13
AJ	3.50-6	CE	5.50 R 12	EB	6.50-13 LT
AK	4.10-6	CF	5.60-12	EC	6.50-13 ST
AL	4.50-6	CH	5.60-12 LT	ED	6.50 R 13
AM	5.30-6	CJ	5.60 R 12	EE	6.70-13
AN	6.00-6	CK	5.9-12	EF	6.70-13 LT
AP	3.25-8	CL	5.90-12	EH	6.70 R 13
AT	3.50-8	CM	6.00-12	EJ	6.9-13
AU	3.00-7	CN	6.00-12 LT	EK	6.90-13
AV	4.00-7	CP	6.2-12	EL	7.00-13
AW	4.80-7	CT	6.20-12	EM	7.00-13 LT
AX	5.30-7	CU	6.90-12	EN	7.00 R 13
AY	5.00-8	CV	23.5 X 8.5-12	EP	7.25-13
A1	H60-14	CW	125-12	ET	7.25 R 13
A2	4.00-8	CX	125 R 12	EU	7.50-13
A3	4.80-8	CY	125-12/5.35-12	EV	135-13
A4	5.70-8	C1	135-12	EW	135 R 13
A5	16.5 X 6.5-8	C2	135 R 12	EX	135-13/5.65-13
A6	18.5 X 8.5-8	C3	135-12/5.65-12	EY	145-13
A7	CR70-14	C4	145-12	E1	145 R 13
A8	2.75-9	C5	145 R 12	E2	145-13/5.95-13
A9	4.80-9	C6	145-12/5.95-12	E3	150 R 13
BA	6.00-9	C7	155-12	E4	155-13
BB	6.90-9	C8	155 R 12	E5	155 R 13
BC	3.50-9	C9	155-12/6.15-12	E6	155-13/6.15-13
BD	4.00-10	DA	4.80-10	E7	160 R 13
BE	3.00-10	DB	3.25-12	E8	165-13
BF	3.50-10	DC	3.50-12	E9	165 R 13
BH	5.20-10	DD	4.50-12 LT	FA	165-13/6.45-13
BJ	5.20 R 10	DE	5.00-12 LT	FB	165/70 R 13
BK	5.9-10	DF	7.00-12	FC	170 R 13
BL	5.90-10	DH	5.00-13	FD	175-13
BM	6.50-10	DJ	5.00-13 LT	FE	175 R 13
BN	7.00-10	DK	5.00 R 13	FF	175-13/6.95-13
BP	7.50-10	DL	5.20-13	FH	175/70 R 13
BT	9.00-10	DM	5.20 R 13	FJ	185-13
BU	20.5 X 8.0-10	DN	5.50-13	FK	185 R 13
BV	145-10	DP	5.50-13 LT	FL	185-13/7.35-13
BW	145 R 10	DT	5.50 R 13	FM	185/70 R 13
BX	145-10/5.95-10	DU	5.60-13	FN	195-13
BY	4.50-10 LT ²	DV	5.60-13 LT	FP	195 R 13
B1	5.00-10 LT	DW	5.60 R 13	FT	195/70 R 13
B2	3.00-12	DX	5.90-13	FU	D70-13
B3	4.00-12	DY	5.90-13 LT	FV	B78-13
B4	4.50-12	D1	5.90 R 13	FW	BR78-13
B5	4.80-12	D2	6.00-13	FX	C78-13
B6	5.00-12	D3	6.00-13 LT	FY	7.50-12

¹ The letters "H", "S", and "V" may be included in the tire size designation adjacent to or in place of a dash without affecting the size code for the designation.

² As used in this table the letters at the end of the tire size indicate the following: LT—Light Truck, ML—Mining & Logging, MH—Mobile Home, ST—Special Trailer.

TABLE 3. TIRE SIZE CODES—Continued

Tire Size Code	Tire Size Designation ¹	Tire Size Code	Tire Size Designation ¹	Tire Size Code	Tire Size Designation ¹
F1	140 R 12	J3	175 R 14	L5	E78-14
F2	6.5-13	J4	185-14	L6	ER78-14
F3	185/60 R 13	J5	185 R 14	L7	F78-14
F4	A70-13	J6	185/70 R 14	L8	FR78-14
F5	A78-13	J7	195-14	L9	G78-14
F6	CR78-13	J8	195 R 14	MA	GR78-14
F7	2.25-14	J9	195/70 R 14	MB	H78-14
F8	2.75-14	KA	205-14	MC	HR78-14
F9	3.00-14	KB	205 R 14	MD	J78-14
HA	6.70-14 LT	KC	215-14	ME	JR78-14
HB	165-14 LT	KD	215 R 14	MF	205-14 LT
HC	2.50-14	KE	225-14	MH	G80-24.5
HD	5.00-14 LT	KF	225 R 14	MJ	H80-24.5
HE	5.20-14	KH	620 R 14	MK	7-14.5
HF	5.20 R 14	KJ	690 R 14	ML	8-14.5
HH	5.50-14 LT	KK	AR78-13	MM	9-14.5
HJ	5.60-14	KL	195-14 LT	MN	6.60 R 15
HK	5.90-14	KM	185-14 LT	MP	2.00-15
HL	5.90-14 LT	KN	A80-22.5	MT	2.25-15
HM	5.90 R 14	KP	B80-22.5	MU	2.50-15
HN	6.00-14	KT	C80-22.5	MV	3.00-15
HP	6.00-14 LT	KU	D80-22.5	MW	3.25-15
HT	6.40-14	KV	E80-22.5	MX	5.0-15
HU	6.40-14 LT	KW	F60-14	MY	5.20-15
HV	6.45-14	KX	C60-14	M1	5.5-15
HW	6.50-14	KY	J60-14	M2	5.50-15 L
HX	6.50-14 LT	K1	L60-14	M3	5.50-15 LT
HY	6.70-14	K2	F80-22.5	M4	5.60-15
H1	6.95-14	K3	G80-22.5	M5	5.60 R 15
H2	7.00-14	K4	H80-22.5	M6	5.90-15
H3	7.00-14 LT	K5	J80-22.5	M7	5.90-15 LT
H4	7.00 R 14	K6	A80-24.5	M8	6.00-15
H5	7.35-14	K7	B80-24.5	M9	6.00-15 L
H6	7.50-14	K8	BR78-14	NA	6.00-15 LT
H7	7.50-14 LT	K9	D70-14	NB	6.2-15
H8	7.50 R 14	LA	DR70-14	NC	6.40-15
H9	7.75-14	LB	E70-14	ND	6.40-15 LT
JA	7.75-14 ST	LC	ER70-14	NE	6.40 R 15
JB	8.00-14	LD	F70-14	NF	6.50-15
JC	8.25-14	LE	FR70-14	NH	6.50-15 L
JD	8.50-14	LF	G70-14	NJ	6.50-15 LT
JE	8.55-14	LH	GR70-14	NK	6.70-15
JF	8.85-14	LJ	H70-14	NL	6.70-15 LT
JH	9.00-14	LK	HR70-14	NM	6.70 R 15
JJ	9.50-14	LL	J70-14	NN	6.85-15
JK	135-14	LM	JR70-14	NP	6.9-15
JL	135 R 14	LN	L70-14	NT	7.00-15
JM	135-14/5.65-14	LP	LR70-14	NU	7.00-15 L
JN	145-14	LT	C80-24.5	NV	7.00-15 LT
JP	145 R 14	LU	D80-24.5	NW	7.10-15
JT	145-14/5.95-14	LV	E80-24.5	NX	7.10-15 LT
JU	155-14	LW	F80-24.5	NY	7.35-15
JV	155 R 14	LX	G77-14	N1	7.50-15
JW	155-14/6.15-14	LY	B78-14	N2	7.60-15
JX	155/70 R 14	L1	C78-14	N3	7.60 R 15
JY	165-14	L2	CR78-14	N4	7.75-15
J1	165 R 14	L3	D78-14	N5	7.75-15 ST
J2	175-14	L4	DR78-14	N6	8.00-15

TABLE 3. TIRE SIZE CODES—Continued

Tire Size Code	Tire Size Designation ¹	Tire Size Code	Tire Size Designation ¹	Tire Size Code	Tire Size Designation ¹
N7	8.15-15	T9	205/70 R 14	WB	11.00-15
N8	8.20-15	UA	215/70 R 14	WC	2.25-16
N9	8.25-15	UB	H60-15	WD	2.50-16
PA	8.25-15 LT	UC	E60-15	WE	3.00-16
PB	8.45-15	UD	F60-15	WF	3.25-16
PC	8.55-15	UE	FR60-15	WH	3.50-16
PD	8.85-15	UF	G60-15	WJ	5.00-16
PE	8.90-15	UH	GR60-15	WK	5.10-16
PF	9.00-15	UJ	J60-15	WL	5.50-16 LT
PH	9.00-15 LT	UK	L60-15	WM	6.00-16
PJ	9.15-15	UL	4.60-15	WN	6.00-16 LT
PK	10-15	UM	2.75-15	WP	6.50-16
PL	10.00-15	UN	2.50-9	WT	6.50-16 LT
PM	7.50-15 LT	UP	2.50-10	WU	6.70-16
PN	7.00-15 TR	UT	5.00-9	WV	7.00-16
PP	8.25-15 TR	UU	6.7-10	WW	7.00-16 LT
PT	9.00-15 TR	UV	C70-15	WX	7.50-16
PU	7.50-15 TR	UW	D70-15	WY	7.50-16 LT
PV	125-15	UX	DR70-15	W1	8.25-16
PW	125 R 15	UY	E70-15	W2	9.00-16
PX	125-15/5.35-15	U1	ER70-15	W3	10-16
PY	135-15	U2	F70-15	W4	8.25-16 LT
P1	135 R 15	U3	FR70-15	W5	9.00-16 LT
P2	135-15/5.65-15	U4	G70-15	W6	11.00-16
P3	145-15	U5	GR70-15	W7	19-400 C
P4	145 R 15	U6	H70-15	W8	165-400
P5	145-15/5.95-15	U7	HR70-15	W9	235-16
P6	155-15	U8	J70-15	XA	185-16
P7	155 R 15	U9	JR70-15	XB	19-400 LT
P8	155-15/6.35-15	VA	K70-15	XC	G45C-16
P9	165-15	VB	KR70-15	XD	E50C-16
TA	165-15 LT	VC	L70-15	XE	F50C-16
TB	165 R 15	VD	LR70-15	XF	7.00-16 TR
TC	175-15	VE	17-400 TR	XH	7.50-16 TR
TD	175 R 15	VF	185-300 TR	XJ	8.00-16.5
TE	175-15/7.15-15	VH	185-300 LT	XK	8.75-16.5
TF	175/70 R 15	VJ	AR78-15	XL	9.50-16.5
TH	180-15	VK	BR78-15	XM	10-16.5
TJ	185-15	VL	C78-15	XN	12-16.5
TK	185 R 15	VM	D78-15	XP	185 R 16
TL	185/70 R 15	VN	E78-15	XT	4.50-17
TM	195-15	VP	ER78-15	XU	2.00-17
TN	195 R 15	VT	F78-15	XV	2.25-17
TP	205-15	VU	FR78-15	XW	2.50-17
TT	205 R 15	VV	G78-15	XX	2.75-17
TU	215-15	VW	GR78-15	XY	3.00-17
TV	215 R 15	VX	H78-15	X1	3.25-17
TW	225-15	VY	HR78-15	X2	3.50-17
TX	225 R 15	V1	J78-15	X3	6.50-17
TY	235-15	V2	JR78-15	X4	6.50-17 LT
T1	235 R 15	V3	L78-15	X5	7.00-17
T2	J80-24.5	V4	LR78-15	X6	7.50-17
T3	ER60-15	V5	N78-15	X7	8.25-17
T4	D78-13	V6	17-15 (17-380 LT)	X8	7.50-17 LT
T5	A78-15	V7	17-400 LT	X9	225/70 R 14
T6	DR70-13	V8	11-15	YA	G50C-17
T7	HR60-15	V9	11-16	YB	H50C-17
T8	E60-14	WA	L84-15	YC	195/70 R 15

TABLE 3. TIRE SIZE CODES—Continued

Tire Size Code	Tire Size Designation ¹	Tire Size Code	Tire Size Designation ¹	Tire Size Code	Tire Size Designation ¹
YD	4.20-18	2F	9.00-20	4J	13.5-24.5
YE	8-17.5 LT	2H	9.4-20	4K	7.00-20 ML
YF	11-17.5	2J	10.00-20	4L	7.50-20 ML
YH	7-17.5	2K	10.3-20	4M	8.25-20 ML
YJ	8-17.5	2L	11.00-20	4N	9.00-20 ML
YK	8.5-17.5	2M	11.1-20	4P	10.00-20 ML
YL	9.5-17.5	2N	11.50-20	4T	10.00-22 ML
YM	10-17.5	2P	11.9-20	4U	10.00-24 ML
YN	14-17.5	2T	12.00-20	4V	11.00-20 ML
YP	9-17.5	2U	12.5-20	4W	11.00-22 ML
YT	205/70 R 15	2V	13.00-20	4X	11.00-24 ML
YU	2.25-18	2W	14.00-20	4Y	11.00-25 ML
YV	2.50-18	2X	6.50-20 LT	41	12.00-20 ML
YW	2.75-18	2Y	7.00-20 LT	42	12.00-21 ML
YX	3.00-18	21	13/80-20	43	12.00-24 ML
YY	3.25-18	22	14/80-20	44	12.00-25 ML
Y1	3.50-18	23	2.75-21	45	13.00-20 ML
Y2	4.00-18	24	3.00-21	46	13.00-24 ML
Y3	4.50-18	25	2.50-21	47	13.00-25 ML
Y4	6.00-18	26	2.75-20	48	14.00-20 ML
Y5	7.00-18	27	10.00-22	49	14.00-21 ML
Y6	7.50-18	28	11.00-22	5A	14.00-24 ML
Y7	8.25-18	29	11.1-22	5B	14.00-25 ML
Y8	9.00-18	3A	11.9-22	5C	10.3-20 ML
Y9	10.00-18	3B	12.00-22	5D	11.1-20 ML
1A	11.00-18	3C	14.00-22	5E	12.5-20 ML
1B	6.00-18 LT	3D	11.50-22	5F	9-22.5 ML
1C	6.00-20 LT	3E	4.10-18	5H	9.4-22.5 ML
1D	L50C-18	3F	4.10-19	5J	10-22.5 ML
1E	7.00-18 LT	3H	7-22.5	5K	10.3-22.5 ML
1F	12-19.5	3J	8-22.5	5L	11-22.5 ML
1H	2.00-19	3K	8.5-22.5	5M	11-24.5 ML
1J	2.25-19	3L	9-22.5	5N	14-17.5 ML
1K	2.50-19	3M	9.4-22.5	5P	15-19.5 ML
1L	2.75-19	3N	10-22.5	5T	15-22.5 ML
1M	3.00-19	3P	10.3-22.5	5U	16.5-19.5 ML
1N	3.25-19	3T	11-22.5	5V	16.5-22.5 ML
1P	3.50-19	3U	11.1-22.5	5W	18-19.5 ML
1T	4.00-19	3V	11.5-22.5	5X	18-22.5 ML
1U	11.00-19	3W	11.9-22.5	5Y	19.5-19.5 ML
1V	9.5-19.5	3X	12-22.5	51	23-23.5 ML
1W	10-19.5	3Y	12.5-22.5	52	18-21 ML
1X	11-19.5	31	15-22.5	53	19.5-21 ML
1Y	7-19.5	32	16.5-22.5	54	23-21 ML
11	7.5-19.5	33	18-22.5	55	6.00-13 ST
12	8-19.5	34	215/70 R 15	56	7.35-14 ST
13	9-19.5	35	225/70 R 15	57	8.25-14 ST
14	14-19.5	36	185/60 R 13	58	7.35-15 ST
15	15-19.5	38	9.00-24	59	8.25-15 ST
16	16.5-19.5	38	10.00-24	6A	12.00-22 ML
17	18-19.5	39	11.00-24	6B	4.30-18
18	19.5-19.5	4A	12.00-24	6C	3.60-19
19	6.00-20	4B	14.00-24	6D	3.00-20
2A	6.50-20	4C	3.50-7	6E	4.25-18
2B	7.00-20	4D	3.00-4	6F	MP90-18
2C	7.50-20	4E	12.5-24.5	6H	3.75-19
2D	8.25-20	4F	11-24.5	6J	MM90-19
2E	8.5-20	4H	12-24.5	6K	3.25-7

TABLE 3. TIRE SIZE CODES—Continued

Tire Size Code	Tire Size Designation ¹	Tire Size Code	Tire Size Designation ¹	Tire Size Code	Tire Size Designation ¹
6L	2.75-16	8N	2-22½	0T	Not Assigned
6M	4.00-16	8P	2¾-15	0U	BR60-13
6N	7.9	8T	2¾-16	0V	15.00-20
6P	25X 7.50-15	8U	2¾-17	0W	16.00-20
6T	27X 8.50-15	8V	2¾-18	0X	12/80-20
6U	27X 9.50-15	8W	2¾-19	0Y	14/80-24
6V	29X 12.00-15	8X	2¾-19 R	01	15.5/80-20
6W	31X 13.50-15	8Y	2¾-20	02	13-22.5
6X	31X 15.50-15	81	2½-8	03	21-22.5
6Y	C70-14	82	2½-9	04	9/70-22.5
61	Not Assigned	83	2½-16	05	10/70-22.5
62	Not Assigned	84	2½-17	06	11/70-22.5
63	Not Assigned	85	2½-18	07	12/70-22.5
64	Not Assigned	86	2½-19	08	13/70-22.5
65	Not Assigned	87	2½-19 R	09	7.25/75-17.5
66	3.40-5	88	2¾-9	10	8.00/75-17.5
67	4.10-4	89	2¾-16	20	8.75/75-17.5
68	4.10-5	9A	2¾-17	30	9.50/75-17.5
69	175-14 LT	9B	2¾-17 R	40	7.25/75-16.5
7A	11-14	9C	3-10	50	8.00/75-16.5
7B	E78-14 LT	9D	3-12	60	8.75/75-16.5
7C	G78-15 LT	9E	21 x 4	70	9.50/75-16.5
7D	H78-15 LT	9F	22 x 4½	80	6.70-14 C
7E	180 R 15	9H	15.50-20	90	7-17.5 C
7F	185-16 LT	9J	18.50-20	RA	125-12 C
7H	205-16 LT	9K	19.50-20	RB	125-13 C
7J	215-16 LT	9L	2¼-14	RC	125-14 C
7K	F78-16 LT	9M	2½-20	RD	125-15 C
7L	H78-16 LT	9N	2¾-16 R	RE	135-12 C
7M	L78-16 LT	9P	2¾-18	RF	135-13 C
7N	135 R 10	9T	10-20	RH	135-14 C
7P	6.95-14 LT	9U	11-24	RJ	135-15 C
7T	7-14.5 MH	9V	11.25-24	RK	145-10 C
7U	8-14.5 MH	9W	15 x 4½-8	RL	145-12 C
7V	9-14.5 MH	9X	14.75/80-20	RM	145-13 C
7W	4.25/85-18	9Y	23 x 5	RN	145-14 C
7X	A78-14	91	25 x 6	RP	145-15 C
7Y	7.50-18 MPT	92	15 x 4½-8	RT	155-12 C
71	10.5-18 MPT	93	18 x 7-8	RU	155-13 C
72	12.5-18 MPT	94	21 x 8-9	RV	155-14 C
73	12.5-20 MPT	95	23 x 9-10	RW	155-15 C
74	14.5-20 MPT	96	27 x 10-12	RX	A60-13
75	10.5-20 MPT	97	2.00-15 TR	RY	C60-15
76	10.5-20	98	2.50-15 TR	R1	155-16 C
77	8.25-10	99	3.00-15 TR	R2	165-13 C
78	150 R 12	0A	GR60-14	R3	165-16 C
79	150 R 14	0B	560 x 165-11	R4	175-13 C
8A	1¾-19	0C	680 x 180-15	R5	175-15 C
8B	1¾-19¾	0D	8.55-15 ST	R6	175-16 C
8C	2-12	0E	3.50-14	R7	185-13 C
8D	2-16	0F	3.25-14	R8	185-15 C
8E	2-17	0H	3.50-15	R9	195-15 C
8F	2-17 R	0J	AR70-13	A0	195-16 C
8H	2-18	0K	B60-13	B0	205-15 C
8J	2-19	0L	245/60 R 14	C0	215-14 C
8K	2-19 R	0M	255/60 R 15	D0	215-15 C
8L	2-19¾	0N	2¾-15	E0	225-14 C
8M	2-22	0P	2.50-20	F0	225-15 C

TABLE 3. TIRE SIZE CODES—Continued

Tire Size Code	Tire Size Designation ¹	Tire Size Code	Tire Size Designation ¹	Tire Size Code	Tire Size Designation ¹
H0	225-16 C	BR	LR60-15	VR	13/80-24
J0	235-14 C	CR	ER60-15	WR	175-16 C
K0	235-15 C	DR	D60-13	XR	195-16 C
L0	235-16 C	ER	C60-13	YR	BR70-13
M0	21-400 C	FR	D60-14	1R	185-15 LT
N0	3.50-20	HR	175/70 R 14	2R	13-22.5 ML
P0	3.75-15	JR	MN90-18	3R	MR70-15
T0	3.60-18	KR	MR90-18	4R	E60-26.5
U0	3.00-10 C	LR	4.25-19	5R	6.7-12
V0	4.00-10 C	MR	230-15	6R	5.4-14
W0	4.00-8 C	NR	5.4-10	7R	7.4-14
X0	4.50-8 C	PR	ER60-13	8R	5.4-16
Y0	265/60 R 14	TR	FR60-14	9R	4.60-18
AR	215/60 R 15	UR	C60C-15		

**36 F.R. 7539
April 21, 1971**

PREAMBLE TO PART 575—CONSUMER INFORMATION

Action on Petitions for Reconsideration—Amendment

Regulations requiring manufacturers of passenger cars and motorcycles to provide information on vehicle stopping distance (§ 375.101), tire reserve load (§ 375.102), and acceleration and passing ability (§ 375.106) were issued by the Federal Highway Administrator and published in the *Federal Register* on January 25, 1969 (34 F.R. 1246). Several petitions for reconsideration of these regulations were received. In response to these petitions, and in order to clarify and simplify the requirements and the information to be provided to purchasers, these regulations are hereby amended and reissued in the form set forth below.

§ 375.101 *Vehicle stopping distance.* This section required that manufacturers state the tire size, type and size of brakes, method of brake actuation and auxiliary brake equipment, and maximum loaded and lightly loaded vehicle weights. The effect of stating these requirements was to greatly restrict the grouping of vehicles and options that was permitted for the purposes of furnishing information. It has been determined that in order to reduce the required number of different information documents, manufacturers should be permitted to group vehicles at their discretion, as long as each vehicle in the group can meet or exceed the performance levels indicated, and the vehicles in each group are identified in the terms by which they are normally described to the public. The requirement for specific descriptive information is therefore deleted.

Since the information must be valid for all vehicles in the group to which it applies, the requirement that it refer to the smallest tire size offered has been found unnecessary, and deleted. It has also been determined that variations in stopping distances between different vehicles at 30 mph are not as meaningful for comparison

purposes as those at 60 mph, and therefore information is required only for the latter speed.

It should be noted that the regulations establish the conditions under which the performance level represented by the information provided can be met or exceeded by every vehicle to which the information applies. They do not establish the procedures by which manufacturers should generate the information, although those procedures are to be inferred from the regulations. For example, both sections contain the condition that wind velocity is zero. This does not mean that manufacturers' tests must be conducted under still air conditions; it means that the performance level established must be attainable by all vehicles in the group under those conditions. One obvious method of satisfying the condition from the manufacturer's standpoint is to conduct verification tests under adverse wind conditions (tailwind for braking, headwind for acceleration). As another example, the condition that ambient temperature be between 32°F and 100°F means that the information presented must be attainable by all vehicles in the group at all temperatures within that range (when other conditions are as stated).

The amended section requires that stopping distances be those attainable without lock-up on any wheel. This condition is the most meaningful from a safety standpoint, since steering control tends to be lost when wheels are locked. Several petitioners submitted data showing minimal differences in maximum and lightly loaded vehicle weight stopping distances to support their request for substitution of a single test weight. Their results, however, were apparently derived from tests conducted with locked wheels, under which conditions stopping distance becomes a function largely of vehicle velocity and the friction coefficient between the tire and the

road, and has no relationship to vehicle weight. It is believed that the condition of no wheel lock-up will result in data showing meaningful differences in stopping distances test weights. Accordingly, the requirement of information covering these two vehicle weight conditions is retained, and petitions on this point are denied.

The section as issued required performance information for a partially failed service brake subsystem ("emergency brake system") only at maximum loaded vehicle weight. It has been determined that in some cases the most adverse condition may occur at lighter loads. The amended rule therefore requires information for "the most adverse combination of maximum or lightly loaded vehicle weight and complete loss of braking in one or the other of the vehicle brake subsystems."

Several petitioners suggested that information be limited to one test weight, instead of requiring it for both lightly loaded and maximum loaded vehicle weight. It has been determined, however, that information on both conditions may reveal vehicles having superior brake balance, and the advantage of anti-skid or load proportioning devices, and also aid purchasers who travel mainly in one or the other of the loading conditions. The petitions to that effect are therefore denied.

§ 375.102 *Tire reverse load.* The section required that manufacturers state the number of passengers and the cargo and luggage weight for two different loading conditions, and the actual vehicle weight within a range of no more than 100 pounds under those conditions. These requirements restricted the grouping of vehicles and options that was permitted for the purposes of furnishing information. It has been determined that in order to reduce the required number of different information documents, manufacturers should be permitted to group vehicles by recommended tire size designations regardless of weight, as long as the reserve load figure is met or exceeded by every vehicle in the group. The requirements for providing weight and loading information are therefore deleted.

Section 375.102 as issued required that reverse load figures be provided for the vehicle at normal vehicle weight (2 or 3 persons and no luggage) as well as maximum loaded vehicle weight. It also required the furnishing of a "tire over-

load percentage", the percentage difference between the load rating of a tire at recommended inflation pressures for normal vehicle weight and the load on the tire at maximum loaded vehicle weight. Several petitions suggested that the providing of these various percentage figures would tend to confuse persons to whom the information is furnished, and therefore decrease its usefulness to the consumer. Representatives of consumer groups have also suggested, in earlier proceedings concerning the consumer information regulations, that for maximum usability the information should be as simple and clear as possible. In light of these considerations, it has been determined that the tire reserve load figure provided should be limited to a single percentage for each recommended tire size designation, at maximum loaded vehicle weight and the manufacturer's recommended inflation pressure. The requirements for tire reserve load at normal vehicle weight and for tire overload percentage accordingly are deleted.

Two further changes in the calculation methods have been made for simplicity and clarity. Instead of using the actual load on each wheel as the basis for calculation, the wheel load figure is changed to one-half of each axle's share of the maximum loaded vehicle weight. This reflects the method used in Standard No. 110 for determining the vehicle maximum load on the tire. Also, the denominator of the fraction representing the tire reserve load percentage is changed from the load on the wheel to the load rating of the tire. A tire with a load rating of 1500 pounds, for example, used with a wheel load of 900 pounds, would have a reserve load percentage of 40% ($600/1500 \times 100$) rather than 66⅔% ($600/900 \times 100$). The former figure has been determined to be somewhat more meaningful in cases of large reserve loads.

§ 375.106 *Acceleration and passing ability.* The section as issued required that times be provided for acceleration from 20 to 35 mph and from 50 to 80 mph, and times and distances for prescribed passing maneuvers involving two lane changes. On the basis of petitions submitted, and further consideration of the need for simplicity and clarity in the information presented, it has been determined that the most useful information would be in the form of passing dis-

tances and times for a simple straight-line passing maneuver at low and high speeds. In order to eliminate the difficulties of conducting a uniform passing maneuver involving a long pace vehicle and a limiting of the passing speed precisely to a specified level, the information required is to be derived on the basis of a time-distance plot of vehicle performance at maximum acceleration from 20 to 35 and 50 to 80 miles per hour.

For reasons discussed above in regard to section 375.101, the requirement of providing the weight of the vehicle is deleted from this section.

Because the amended section does not require information relating to an actual passing maneuver, but only that based on two straight-line acceleration maneuvers with a simple graphic computation, the exception of manufacturers of 500 or fewer vehicles annually from certain of the requirements is removed from this section.

Several petitioners contended that the requirement that information be provided under the condition of full-power operation of a vehicle air conditioner would lead to variable, non-repeatable results. This may be true of the results achieved in manufacturers' tests. The information presented is not, however, to be simply the results of manufacturers' tests, but rather a minimum level of performance that can be met or exceeded by every vehicle to which the information applies. Manufacturers are free, therefore, to adjust the data to account for any variation in results that might be encountered. The degradation of acceleration ability by the use of an air conditioner may be significant in some cases, and therefore it is important from the standpoint of safety that it be reflected in the information provided. The petitions to the contrary are accordingly denied.

Some petitioners objected to the required use of a correction factor to ambient conditions in accordance with SAE Standard J816a, pointing out that the factor was designed to be applicable exclusively to engine dynamometer testing and not to road testing of vehicles. The contention has

been found to have merit. In the section as amended, ranges of ambient conditions of temperature, dry barometric pressure, and relative humidity are provided, and the information is required to be valid at all points within those ranges.

In addition to the above, a new paragraph (c), containing specific definitions, is added to section 375.2, Definitions.

In order to allow adequate time for manufacturers to prepare the information, the three sections are effective for vehicles manufactured on or after January 1, 1970.

In consideration of the above, 49 CFR §§ 375.101, 375.102, and 375.106 are amended, and a new paragraph (c) is added to § 375.2, to read as set forth below. This notice of action on petitions for reconsideration is issued under the authority of sections 112 and 119 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1401, 1407) and the delegation of authority by the Secretary of Transportation to the Federal Highway Administrator, 49 CFR 1.4(c).

Issued: May 19, 1969.

F. C. Turner

Federal Highway Administrator.

SUBPART A—GENERAL

Sec.

- 375.1 Scope.
- 375.2 Definitions.
- 375.3 Matter Incorporated by reference.
- 375.4 Applicability.
- 375.5 Separability.
- 375.6 Requirements.

SUBPART B—CONSUMER INFORMATION ITEMS

- 375.101 Vehicle Stopping Distance.
- 375.102 Tire reserve load.
- 375.103 Reserved.
- 375.104 Reserved.
- 375.105 Reserved.
- 365.106 Acceleration and passing ability.

May 23, 1969

34 F.R. 8112

PREAMBLE TO AMENDMENT TO PART 575—CONSUMER INFORMATION

Amended regulations concerning the furnishing of consumer information for motor vehicles, 49 CFR §§ 375.101, 102, 106, were published in the *Federal Register* of May 23, 1969 (34 F.R. 8112). Sections 375.101, *Vehicle Stopping Distance*, and 375.106, *Acceleration and Passing Ability*, in subsections (d)(7) and (d)(1)(vii) respectively, specified that the information provided shall be valid for road surfaces with a skid number of 70, as measured in accordance with American Society for Testing and Materials Method E-274 at 40 miles per hour, omitting water delivery as specified in paragraph 7.1 of that Method.

Several petitions for reconsideration have been received, requesting that the skid number condition be set at higher level because there are only a limited number of test tracks presently with surfaces of that low a skid number. It is recognized that the level of 70 may be somewhat lower than many existing test track and road surfaces. It has been determined, in light of the petitions received, that the skid number condition can be set at a somewhat higher level without detracting from the value of the information provided or the enforceability of the regulations. Accordingly, the figure "70" in sections 375.101(d)(7) and 375.106(d)(1)(vii) is hereby changed to "75".

One petitioner requested a delay in the effective date of the regulation because of difficulties in obtaining equipment for the measurement of skid number. In light of the relaxation of the skid number requirement embodied in this notice, and the possibility of temporarily leasing either measuring equipment or test facilities, evidenced by fact that only one such request was received, the request for a delay in effective date is denied.

Since this amendment relaxes a requirement and imposes no additional burden on any person, notice and opportunity for comment thereon are unnecessary and the amendment is incorporated into the above-referenced regulations without change in the effective date. This notice of amendment in response to petitioners for reconsideration is issued under the authority of sections 112 and 119 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1402, 1407) and the delegation of authority by the Secretary of Transportation to the Federal Highway Administrator, 49 CFR § 1.4(c).

Issued on July 14, 1969.

F. C. Turner
Federal Highway Administrator

34 F.R. 11974
July 16, 1969

PREAMBLE TO AMENDMENT TO PART 575—CONSUMER INFORMATION

Regulations requiring manufacturers of motor vehicles to provide information to consumers concerning performance characteristics of their vehicles were published on January 25, 1969 (34 F.R. 1246), and amended on May 23, 1969 (34 F.R. 8112). By notice of July 11, 1969 (34 F.R. 11501) it was proposed that the regulations be amended to require manufacturers to provide the information to prospective purchasers, as well as those who have already bought a vehicle, and also to provide the information to the Administrator 30 days before the information is required to be provided to purchasers.

No general objections to the proposed amendment were received. One manufacturer objected to the requirement of providing copies to the Administrator 30 days in advance, on the basis that this did not allow sufficient lead time from the date of the proposal. In light of the fact that the information required to be provided consists only of performance figures that the manufacturer is certain can be exceeded by its vehicles, that the information must be provided in large quantities to dealers by January 1, 1970, and that no other manufacturers evidenced difficulty in meeting the December 1 date, the objection is found not to be meritorious.

The Automobile Manufacturers Association made two suggestions for changes to the regulation, both of which have been accepted and incorporated into the regulation. One change adds language to make it clear that the locations at which the information is to be provided are outlets with which the manufacturer has some legal connection. The other is that the date on which information relating to newly introduced vehicles

is required is the "announcement date", on which dealers are authorized to display and sell the vehicles.

The proposal stated that three copies should be submitted to the Administrator by December 1, 1969. It has been determined that in light of the need for immediate processing and the large amount of information that will be received at that time, a somewhat larger number of copies will be needed. The number of copies has been changed, accordingly, from three to ten. Since the additional burden on automotive manufacturers of providing these copies appears to be insubstantial, a further notice of proposed rule-making is found to be unnecessary. Other minor changes in wording are made for clarity.

Effective Dates: Subsections (a) and (b) of § 375.6, Requirements, are effective January 1, 1970. Subsection (c) of that section is effective December 1, 1969.

In light of the foregoing, Subpart A—General, of 49 CFR Part 375 is amended to read as set forth below. This amendment is issued under the authority of sections 112 and 119 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1401, 1407), and the delegation of authority from the Secretary of Transportation to the Federal Highway Administration, 49 CFR § 1.4(c).

Issued on October 16, 1969.

E. H. Holmes, Acting
Federal Highway Administrator

34 F.R. 17108
October 22, 1969

PREAMBLE TO AMENDMENT TO PART 575—CONSUMER INFORMATION

Motorcycle Brake Burnishing Requirement

On May 23, 1969, the Federal Highway Administration published 49 CFR § 375.101, Vehicle Stopping Distance, of the Consumer Information Regulations (34 F.R. 8112). Paragraph (e)-(1)(ii) of that section, describing the burnishing procedures for motorcycles, is as follows: "Same as for passenger cars, except substitute 30 m.p.h. for 40 m.p.h. and 150° F. for 250° F., and maintain hand lever force to foot lever force ratio of approximately 1 to 2."

A manufacturer has stated that such a burnishing procedure, which was drawn from a draft SAE Recommended Practice, would be inappropriate for its vehicles, and suggests that the required burnishing procedures should be that recommended by the manufacturer. Since it appears that a uniform burnishing procedure suitable for all motorcycles has not yet been developed, the suggestion is found to have merit, to the extent that manufacturers have recommended such procedures. A general burnishing procedure must still be specified, however, for the purpose of determining compliance of those vehicles for which the manufacturers have not made a procedure publicly available. Accordingly, subparagraph (e)(1)(ii) of section 375.101 is hereby amended to read as follows:

"Motorcycles. Adjust and burnish brakes in accordance with manufacturer's recommendations. Where no burnishing procedures have been recommended by the manufacturer, follow the procedure specified above for passenger cars, except substitute 30 m.p.h. for 40 m.p.h. and 150° F. and 250° F., and maintain hand lever force to foot lever force ratio of approximately 1 to 2."

The Consumer Information regulations require manufacturers to submit information to the

FHWA by December 2, 1969, and it is important, therefore, that this amendment to the regulations be made effective without delay. The regulations require only that the manufacturers submit information to purchasers (and to the FHWA) as to performance levels that can be met or exceeded by their vehicles, and it is not necessary that vehicles be retested as long as they perform as well under the manufacturers' own burnishing procedures as under the previously specified ones. Manufacturers are, of course, free to provide new performance figures at any time, under the procedures specified in Part 375. If in a particular case a manufacturer determines that its vehicles may not be able to meet the performance figures provided when its own recommended burnishing procedures are utilized, and is not able to provide new and appropriate figures within the time specified, it should include a notation to that effect at the time that the figures are first provided to the FHWA. The vehicles in question will not be considered to be in violation of the regulations if they meet the performance figures provided under the previously specified burnishing procedures, and if new and corrected figures are provided under section 375.101, as amended, not later than September 1, 1970.

Because of the importance of providing to consumers by January 1, 1970, the probability that few if any manufacturers will be adversely affected by the amendment, and the provisions for relief included herein, notice and public procedure thereon are found to be impracticable, unnecessary, and contrary to the public interest, and the amendment described above is made effective on publication in the *Federal Register*.

Effective: November 26, 1969

This amendment is issued under the authority of sections 112 and 119 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1401, 1407), and the delegation of authority from the Secretary of Transportation to the Federal Highway Administrator, 49 CFR § 1.4(c).

Issued on November 24, 1969.

F. C. Turner
Federal Highway Administrator

34 F.R. 18865
November 26, 1969

PREAMBLE TO AMENDMENT TO PART 575—CONSUMER INFORMATION
(Availability Requirements)

The purpose of this notice is to amend section 575.6 of the Consumer Information Regulations (49 CFR Part 575) to require that the information supplied pursuant to Subpart B of the Regulations be provided in sufficient quantity to permit retention by prospective customers or mailing to them upon request. A notice of proposed rulemaking was published on January 14, 1971 (36 F.R. 557), proposing to carry out the legislative mandate of P.L. 91-625 (84 Stat. 262). That legislation was designed to remedy difficulties resulting from the current practice of making consumer information available only in the showroom, by permitting the Secretary to require that the information be provided in a printed format which could be retained by customers who visit the showroom or mailed to others upon their request.

A limited number of comments were received in response to the Notice, some of which merely expressed support for the additional requirement. The Chrysler Corporation requested that the amendment be clarified to provide that temporary unavailability would not constitute a failure to comply with the regulations. As is noted in the Notice of proposed rulemaking, the uncertainty of demand makes it difficult to establish precise standards as to what is "sufficient." It has been determined, therefore, that any further specification of this provision would be inappropriate at this time. It is intended that

manufacturers and dealers will cooperate to take all reasonable steps to ensure that a continuous supply of the information is available.

The Chrysler Corporation further requested that the regulation clearly indicate that a reasonable charge can be made for the materials. The legislative history of P.L. 91-625 indicates that a major purpose of the amendment was to make consumer information more easily available to consumers in making their purchase. A charge for consumer information on several makes and models of vehicles could present the car shopper with as great an obstacle to availability of information as is the case with the present system. In view of this purpose and the general aim of the consumer information regulations to provide for as wide a dissemination of information as possible, it has been determined that the retention copies should be provided without charge.

In consideration of the above, 49 CFR 575.6(b) is amended. . . .

Effective date: January 1, 1972.

Issued on September 28, 1971.

Douglas W. Toms
Administrator

36 F.R. 19310
October 2, 1971

PREAMBLE TO AMENDMENT TO PART 575—CONSUMER INFORMATION

(Truck-Camper Loading)

(Docket No. 71-7; Notice 5)

This notice reissues the portion of 49 CFR § 571.126, Motor Vehicle Safety Standard No. 126, *Trucker-Camper Loading*, that was previously applicable to truck manufacturers as a consumer information regulation, 49 CFR § 575.103, *Truck-Camper Loading*. It also responds to petitions for reconsideration of Standard No. 126 on issues that are not addressed in Notice 4, which is published in this issue (37 F.R. 26605).

Petitions for reconsideration of Standard No. 126 (37 F.R. 16497) were filed by Chrysler Corporation (Chrysler), Ford Motor Company (Ford), General Motors Corporation (GM), Jeep Corporation (Jeep), Motor Vehicle Manufacturers Association (MVMA) Recreational Vehicle Institute, Inc. (RVI) and Toyota Motor Sales USA, Inc. (Toyota).

In response to information contained in some of the petitions, the portions of the standard previously applicable to truck manufacturers are being reissued under this notice as a consumer information regulation for the reasons stated in Notice 4. Minor amendments are also made to the regulation on the basis of some of the petitions while the Administrator has declined to grant requested relief from other requirements of the regulation.

1. *Effective date.* GM has petitioned for a delayed effective date. As a truck manufacturer, GM feels that additional lead time is required "to develop, process, and print the necessary information on an orderly basis." The Administration has found for good cause shown that an effective date earlier than 180 days after issuance of Standard No. 126 was in the public interest; however, to allow truck manufacturers sufficient time for testing to determine cargo

center of gravity locations the effective date of the requirements applicable to truck manufacturers is being extended 2 months, until March 1, 1973.

2. *Definitions and information.* As discussed in Notice 4 Ford objected to the definition of "cargo weight rating" and the term "total load". Standard No. 126 has been amended to meet Ford's objections, and similar changes are made in the terminology of the new truck consumer information regulation.

Ford also suggests that the phrase "any additional weight carried in or on the camper" should be substituted for "the weight of camper cargo, and the weight of passengers in the camper" in paragraph S5.2.1(d) of Standard No. 126, now § 575.103(e)(3). It believes the suggested language would be more meaningful to the average user and that the present language could be construed as endorsing the carrying of passengers in campers. Ford's request is denied. The NHTSA considers that the specificity of references to cargo and passengers is more meaningful to consumers than the general reference to "any additional weight". Further, given the prevalence of carrying passengers in campers, the NHTSA does not believe that the present language can realistically be considered to have a significant effect on this practice.

Both Ford and GM objected to the paragraph requiring the manufacturer to furnish trailer towing recommendations, on the grounds of vagueness and lack of prior notice and opportunity to comment. The NHTSA concurs, and is deleting this requirement.

Ford suggests that paragraph S5.2.1(a) of Standard No. 126 (now § 575.103(e)(1)) should be revised to make clear that the slide-in camper

Effective: March 1, 1973

also has a center of gravity designation determined in accordance with the regulation, which falls within the boundaries specified by the vehicle manufacturer. Since campers manufactured before the effective date of the regulation may be mounted on trucks manufactured after March 1, 1973, Ford's suggestion has not been adopted.

GM has petitioned that a warning be required to accompany the regulation's information, stating that the longitudinal center of gravity is only one of the many factors affecting the overall performance of a vehicle and that other factors concerning vehicle handling should be considered by the operator. The NHTSA denies GM's petition on this point. Proper loading and load distribution in truck-camper combinations is a highly significant handling factor, and such a warning might cause a truck operator to feel the loading information presented is of little significance. The regulation does not, however, prohibit GM or other manufacturers from furnishing such additional warnings if they see fit.

GM has also asked for a confirmation of its assumption that "the pictorial representation of

the recommended longitudinal center of gravity zone for the cargo weight rating need not be to scale but can be generalized so long as the longitudinal boundaries of the zone are clearly set forth." The NHSTA agrees with this interpretation.

Effective Date: March 1, 1973.

In consideration of the foregoing, 49 CFR Part 575 is amended by adding a new § 575.103, *Truck-camper Loading*. . . .

This notice is issued pursuant to the authority of sections 112 and 119 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 USC 1401, 1407) and the delegation of authority at 49 CFR 1.51.

Issued on December 6, 1972.

Douglas W. Toms
Administrator

37 F.R. 26607
December 14, 1972

PREAMBLE TO AMENDMENT TO PART 575—CONSUMER INFORMATION

Truck-Camper Loading

(Docket No. 71-7; Notice 6)

This notice responds to petitions for reconsideration of 49 CFR § 575.103, *Truck-camper loading*, with amendments extending the effective date to April 1, 1973, and allowing optional wording of certain statements until October 1, 1973.

On December 14, 1972, Part 575 of Title 49, Code of Federal Regulations, was amended by adding § 575.103 *Truck-camper loading* (37 F.R. 26607). The amendment was in essence that portion of Federal Motor Vehicle Safety Standard No. 126, *Truck-camper loading* that applied to manufacturers of trucks accommodating slide-in campers, as originally published on August 15, 1972 (37 F.R. 16497). Pursuant to 49 CFR § 553.35, petitions for reconsideration of § 575.103 have been filed by General Motors Corporation and International Harvester Company. Ford Motor Company has asked for a clarification.

In response to information contained in these petitions the regulation is being amended in certain respects, and a new effective date of April 1, 1973 adopted. Requested changes in other requirements of the regulation are denied.

1. *Effective date*: Both petitioners request delay of the effective date of the regulation for at least 60 days, until May 1, 1973 at the earliest. One reason for the request is that petitioners had printed their manuals on the basis of the notice of August 15, 1972, and that the additional time is needed to print new materials conforming to modified texts published on December 14, 1972. General Motors also states that the additional time is needed to prepare and disseminate data in a manner meeting the requirement that it be available to prospective purchasers. While data has been prepared for each truck, it has not yet been consolidated into a single sheet or pamphlet

suitable for showroom display and availability. The requests of both petitioners reflect the probability that the material will not be submitted to the Administrator at least 30 days before it is available to prospective purchasers, as required by § 575.6(c), and the possibility that the data will not be ready by March 1, 1973.

The NHTSA has determined that good cause has been shown for postponement of the effective date until April 1, 1973. This agency recognizes, however, that the minor textual changes made in the December notice create problems of conformity for those manufacturers who in good faith relied on the August notice in ordering materials. Accordingly, the regulation is being amended to allow the earlier wording on an optional basis until October 1, 1973. These amendments permit use of the phrase "total load" instead of "total cargo load" in paragraph (e)(3) where it twice appears, and the legend "Aft End of Cargo Area" for "Rear End of Truck Bed" in Figure 1, Truck Loading Information. The word "rating" appearing on the last line of paragraph (e)(5) is properly "ratings" as printed in the August notice, and a correction is made. Further, the NHTSA considers it important that a manufacturer fulfill the requirements of § 575.6(b) by making information available to prospective purchasers when trucks manufactured on or after April 1, 1973 are placed on sale. Considering the short lead time between December 14, 1972 and February 1, 1973 and the intervening holidays, the NHTSA will not take enforcement action with respect to the furnishing of information under §§ 575.103 and 575.6(c) prior to April 1, 1973, if manufacturers provide information to this agency as required by those sections not later than the date by which the information must be provided to prospective purchasers.

Effective: April 1, 1973

2. *Administrative Procedure Act.* Harvester believes that the Administrative Procedure Act was violated in that interested persons were not provided an opportunity to comment upon providing information under Part 575 prior to enactment of § 575.103. The NHTSA views Harvester's comment as a narrow construction of the requirements of the Act, and disagrees with petitioner's conclusion. The content of § 575.103 was proposed on April 9, 1971 (36 F.R. 6837) and adopted as a safety standard on August 15, 1972 (37 F.R. 16497). Pursuant to petitions for reconsideration from Chrysler Corporation, Ford Motor Company, General Motors, Jeep Corporation, and Motor Vehicle Manufacturers' Association that Standard No. 126 would be more appropriate as a consumer information regulation, the NHTSA adopted § 575.103 on December 14, 1972 with content virtually identical to that issued in the previous August. Thus the agency considers it has met 5 USC § 553 by providing notice of the terms and substance of the rule, and an opportunity to comment. It is true that notice was not provided on the specific issue that distinguishes the consumer information regulation from a motor vehicle safety standard (*i.e.*, availability of information to a prospective purchaser and the agency at specified time periods), but the NHTSA considers this issue a minor one in relation to the regulation as a whole for which adequate notice was given. In view of the weight of comment that the standard should properly be a consumer information regulation, no further notice was deemed necessary. The NHTSA has

already in this notice indicated its willingness to liberally interpret § 575.6(c) because of the time factor involved.

3. *Clarification.* Ford Motor Company has asked for a clarification of the term "weight of occupants" used to compute "cargo weight rating", as defined by the regulation. Specifically, Ford inquires whether the weight is that of a 95th percentile male—that of an "occupant" as defined by § 571.3(b)—or that of a person weighing 150 pounds, the figure applicable to other consumer information regulations and used in the safety standards.

The NHTSA intended "weight of occupants" to be the "normal occupant weight" figure of 150 pounds specified in Motor Vehicle Safety Standard No. 110 rather than that of a 95th percentile male, which is greater. To clarify this, the phrase, "computed as 150 pounds times the number of designated seating positions," is added to the regulation.

In consideration of the foregoing, 49 CFR § 575.103, *Truck-camper loading*, is amended . . .

Effective date: April 1, 1973.

(Sec. 112 and 119, Pub. L. 89-563; 80 Stat. 718, 15 USC 1401, and 1407; delegation of authority at 49 CFR 1.51.)

Issued on February 12, 1973.

Douglas W. Toms
Administrator

38 F.R. 4400
February 14, 1973

PREAMBLE TO AMENDMENT TO PART 575—CONSUMER INFORMATION

Subpart A—General

(Docket No. 73-5; Notice 1)

This notice amends the definition section of the regulation on Federal motor vehicle consumer information reflecting previous amendments to definitions in the Federal motor vehicle safety standards.

The definitions of "brake power unit" and "lightly loaded vehicle weight" in 49 CFR § 575.2(c) have been obsoleted by recent amendments to these terms in Motor Vehicle Safety Standard No. 105a, *Hydraulic Brake Systems* (37 F.R. 17970). "Brake power unit" has been redefined to more accurately describe the characteristics of the component concerned. The term "curb weight" used in defining "lightly loaded vehicle weight" has been replaced by "unloaded vehicle weight" (as defined in § 571.3) as a more precise description of vehicle condition. Finally, "Maximum sustained vehicle speed"

should be grammatically a speed "attainable" rather than "obtainable".

Effective date: February 28, 1973. Since these amendments are primarily a matter of form and have no significant effect on substantive requirements, it is found for good cause that notice and public procedure thereon is unnecessary, and an immediate effective date is in the public interest.

(Sec. 112, 119 Pub. L. 89-563, 80 Stat. 718, 15 U.S.C. 1401, 1407; delegation of authority at 49 CFR 1.51.)

Issued on February 21, 1973.

Douglas W. Toms
Administrator

38 F.R. 5338
February 28, 1973

PREAMBLE TO AMENDMENT TO PART 575—CONSUMER INFORMATION

Subpart A—General

(Docket 72-24; Notice 2)

This notice amends 49 CFR 575, Consumer Information, to require manufacturers to identify specially-configured vehicles not available for purchase by the general public as "special vehicles" in the information submitted to the NHTSA under § 575.6(c).

A notice of proposed rulemaking to this effect was published on November 8, 1972 (37 F.R. 23732). As noted in that proposal, inclusion of these vehicles in compilations or rankings published by this agency as consumer information serves no beneficial purpose, and could confuse the consumer.

No comments opposed the proposal. General Motors Corporation commented that the amendment should more clearly indicate that the special vehicle identification requirements only apply to the information supplied to NHTSA under § 575.6(c). The new section reflects this suggestion.

Ford Motor Company agreed with GM that the special vehicle identification is useful in information supplied to NHTSA. Ford also suggested, however, that consumer information on special vehicles need not be included at all in the

information supplied "on location" to prospective purchasers in accordance with § 575.6(b). The NHTSA does not have information at present to support or repudiate this suggestion, which is beyond the scope of the proposal. If Ford or any other person wishes to petition for rulemaking on this subject, the agency will consider it for possible future rulemaking.

In response to an implied question by Truck Body and Equipment Association, Inc., the amendment does not change the applicability of the Consumer Information regulations, as set forth in Subpart B of Part 575.

In consideration of the foregoing, 49 CFR Part 575, Consumer Information, is amended. . .

Effective date: June 11, 1973.

(Secs. 112, 119, Pub. L. 89-563, 80 Stat. 718, 15 U.S.C. 1401, 1407; delegation of authority at 49 CFR 1.51.)

Issued on May 1, 1973.

James E. Wilson
Acting Administrator

38 F.R. 11347

May 7, 1973

PREAMBLE TO AMENDMENT TO PART 575—CONSUMER INFORMATION

(Docket No. 25, Notice 8)

This notice establishes a Consumer Information regulation on Uniform Tire Quality Grading. The notice is based on proposals published March 7, 1973 (38 F.R. 6194), and August 14, 1973 (38 F.R. 21939). An earlier proposal, published September 21, 1971 (36 F.R. 18751) was later withdrawn (April 21, 1972; 37 F.R. 7903). Comments submitted in response to these proposals have been considered in the preparation of this notice.

The regulation will require tire manufacturers and brand name owners to provide relative grading information for 13-, 14- and 15-inch tire size designations for tire traction, treadwear, and high speed performance. The respective grades will be molded into or onto the tire sidewall, contained in a label affixed to each tire, and provided for examination by prospective purchasers in a form retainable by them at each location where tires are sold. The requirements are effective with respect to passenger cars when they are equipped with new tires bearing quality grades.

Treadwear: The regulation requires each tire to be graded for treadwear performance using numbers which indicate the percentage of treadwear the tire will produce when compared to the treadwear obtained from a "control tire" specified in the regulation. Each tire will be graded with either the number "60", representing treadwear performance less than 80 percent of the control tire's, or the number "80", "120", "160" or "200", representing at least that percentage of control tire wear. The grades are fewer in number and represent broader performance ranges than those proposed, as a result of comments that the proposed grades were too numerous and would not take into account inherent differences in tire performance.

The method for obtaining treadwear grades is essentially that proposed in the notice of March 7, 1973. Treadwear grades will be determined by using a convoy of up to four identical passenger cars with one vehicle equipped with four identical control tires, and each of the remaining vehicles equipped with four identical manufacturer's tires (candidate tires) having the same nominal rim diameter as the control tire. The NHTSA intends that the convoy vehicles be driven as similarly as possible with respect to such factors as steering and braking. The vehicles are run for 16,000 miles over a surface that will produce control tire wear equal to between 65 and 85 percent of original tread depth. The proposal had suggested that the tires be worn to 90 percent of tread depth. This percentage has been reduced to prevent the tires from being worn below their treadwear indicators. The proposal had further suggested that candidate tires be loaded to 100 percent of the load specified for their inflation pressure in the 1972 Tire and Rim Association Yearbook. In response to comments that vehicles are rarely loaded to that extent in practice, the load has been changed to 90 percent of the load specified for the inflation pressure in the 1972 Tire and Rim Association Yearbook. The NHTSA believes the road test method for measuring treadwear to be the most satisfactory that is presently available. Moreover, the method has been used for many years by tire manufacturers to evaluate the treadwear potential of newly developed tire designs and compounds.

Many comments agreed that a 16,000-mile road test was appropriate for grading the treadwear of radial tires. Some comments urged, however, that only a 12,000-mile test be specified for bias and bias/belted tires. The NHTSA has

not accepted this recommendation as it believes the comparative data for candidate tires of different construction types will necessarily be more accurate if the comparisons are based on the same degree of control tire wear.

Certain comments referred to the existing national energy shortage, requesting that the agency take into account the problems presented by the shortage in the final requirements. The NHTSA recognizes the degree of energy that will be necessary to perform the appropriate grading tests, particularly with respect to the test for treadwear grading. Research has been undertaken and will continue with a view to reducing the energy needs to establish treadwear performance without adversely affecting the validity of test results. The NHTSA invites suggestions or proposals in this regard, including supportive data, directed to the establishment of alternative methods or tests for grading tire treadwear.

Traction: Each tire will bear a traction grade of "90", "105", or "120", representing at least that percentage of control tire performance. The test for obtaining traction grades is similar to that proposed on March 7, 1973. It utilizes a two-wheeled test trailer built essentially to specifications in American Society of Testing and Materials E-274-70, *Skid Resistance of Paved Surfaces Using a Full-Scale Tire*. The test consists of towing the trailer over specified wet test surfaces, equipped first with identical control tires, and then with identical candidate tires of the same rim diameter as the control tire. The average coefficient of friction is computed when one trailer wheel is locked on each of the two surfaces at 20, 40, and 60 miles per hour. The grade, similarly to the treadwear grade, is the comparative difference between candidate and control tire performance. The final rule differs from the notice in that the proposed traction grade representing less than 90 percent of control tire performance has not been included. This results from the notice proposing to amend Motor Vehicle Safety Standard No. 109 (49 CFR 571.109) (38 F.R. 31841; November 19, 1973) to require all passenger car tires to achieve at least this level of control tire performance. The NHTSA expects that this requirement will become effective on the effective date of this

regulation, thereby necessitating the deletion of the grade. The other grades specified differ from those proposed to the extent that the range between grades has been increased to better allow for inherent gradations in actual tire performance.

Many comments urged that grading for tire traction not be established at this time. The comments argued that the current state of the art has not advanced to the point where reliable and reproducible results can be obtained using the proposed two-wheel trailer method.

The NHTSA believes the traction test issued by this notice, utilizing the two-wheeled trailer, is an objective procedure, capable of producing repeatable results, and is therefore satisfactory for the purpose of measuring and grading straight-line, wet-surface braking traction. In this regard, on the basis of information received from General Motors, that company is presently using the identical methodology in the specifications for tire traction for its "TPC" specification tire. This tire is presently manufactured by numerous domestic tire companies. Moreover, grading tire traction is a necessary adjunct, in the view of NHTSA, to grading tire treadwear, for it is commonly known that treadwear and traction performance result from diverse tire properties. The two tests, therefore, serve as a check that manufacturers will not design tires that perform well in one area at the expense of performance in the other. The minimum traction performance requirement recommended by the comments as a substitute for traction grading is insufficient, in the view of NHTSA, to serve this function alone.

Many comments stated that traction test surfaces should be defined by test surface composition and skid number, rather than by skid number alone as proposed. It was argued that without a surface specification, reversals in tire performance may occur. The NHTSA agrees that the inclusion of precise surface specifications may improve the reliability of traction test results. It has not adopted such specifications in this notice as they have not been previously proposed. However, recent developments have been made in the establishment of test surfaces by the Federal Highway Administration of the Department of Transportation. Test surfaces developed

by that agency are proposed in a notice issued concurrently with this notice (1061) for later inclusion in the regulation.

Some comments argued that the description of this grading parameter as "traction" was misleading, as the proposed test dealt only with wet braking traction and not dry pavement or cornering traction. They suggested therefore that the grading parameter be referred to as braking or stopping traction, or as "wet-surface traction." The NHTSA does not dispute that these other traction properties are important aspects of tire traction, and expects to add these performance aspects to the traction grading scheme when appropriate test procedures are developed. The NHTSA does not believe, however, that the description of the existing test as "traction" is misleading. The terminology suggested by the comments, in the view of NHTSA, would be over technical and unnecessary.

High speed performance: High speed performance grades of "A", "B", or "C" are required to be affixed to each tire based on its performance on the high speed laboratory test wheel which is presently used in testing for conformity to Motor Vehicle Safety Standard No. 109. The test utilized is as proposed—an extension of the Standard No. 109 high speed performance test. A tire will be graded "C" if it only passes the Standard No. 109 test. In order to achieve a grade of "B", the tire must run without failure an additional ½ hour at 425 rpm and two additional hours, one at 450 rpm and the other at 475 rpm. To achieve a grade of "A" the tire must be run without failure an additional hour at 500 rpm and another hour at 525 rpm. The NHTSA has recently revised the criteria for tire failure in Standard No. 109 (38 F.R. 27050; September 28, 1973) and the revised criteria are the criteria included in this rule.

The principal comment regarding the proposed high speed grading format was that it should consist of only two grades—one recommended for general use and the other for use by emergency vehicles. The comments argued that further grading of high speed performance was unnecessary and would promote high speed driving. The NHTSA views the suggested 2-grade scheme as rendering any high speed grade meaningless for most consumers. Essentially, it pro-

vides no information other than conformity to Standard No. 109. The NHTSA believes driving habits with respect to speed do differ among the driving population and that the grading scheme should be based on that consideration.

Control Tires: Both treadwear and traction grades are based on comparative results using a control tire specified in the rule. The control tires are 2-ply, rayon tires of bias construction, in sizes 6.50 x 13, 7.75 x 14, and 8.55 x 15. The control tire in each specified rim diameter will be used in testing all candidate tires having that rim diameter. The precise specifications for the tires are identical to those proposed.

Control tires will be manufactured pursuant to NHTSA contract and will be used in NHTSA compliance testing. They will be made available to the industry for testing purposes, and the NHTSA will accept, for purposes of compliance tests, results based upon their performance. The agency may consider manufacturers who use different test devices to have failed to exercise the due care contemplated by the National Traffic and Motor Vehicle Safety Act should their tires fail to perform to the specified grades when subject to agency tests.

The final rule modifies certain aspects of the proposed rule apart from the grading tests. In response to several comments, labels are not required to be affixed to the tread surface of tires which are furnished as original equipment on new vehicles. These vehicles are generally driven before sale, and labels on the tire tread surface are therefore of questionable value. Information on these tires will still be required to be otherwise furnished with the vehicle, and available for retention by prospective purchasers. The NHTSA did not, however, agree with comments recommending that the affixed label requirement be deleted entirely. Tires are frequently on display in sales outlets, and the affixed label will provide consumers with the clearest understanding of the grades applicable to a particular tire.

The grades molded onto the tire sidewall are required to be placed between the shoulder and the maximum section width, rather than between the maximum section width and the bead as proposed. The NHTSA believes the grades should apply only to the original tire, and the placement of grades above the maximum section width

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increases the likelihood that grades will be removed if the tire is retreaded.

Certain comments expressed the view that providing information for tires placed on new vehicles and furnishing that information to the NHTSA 30 days before the vehicles are available to the public is difficult to accomplish because of the variety of tire and vehicle combinations involved. The NHTSA does not believe sufficient justification has been shown for deleting these requirements. While some modification may be necessary to existing manufacturer practices, the NHTSA cannot agree that the regulation presents unmanageable problems for manufacturers.

Effective date: September 1, 1974. The NHTSA has issued this notice pursuant to an order of the United States District Court for the

District of Columbia. That order specifies that the regulation take effect on September 1, 1974.

In light of the above, sections 575.4 and 575.6 are revised, and a new section 575.104 "Uniform Tire Quality Grading", is added in Chapter V, Title 49, Code of Federal Regulations. . . .

(Secs. 103, 112, 119, 201, 203; Pub. L. 89-563, 80 Stat. 718, 15 U.S.C. 1392, 1401, 1407, 1421, 1423; delegation of authority at 49 CFR 1.51.)

Issued on December 28, 1973.

James B. Gregory
Administrator

39 F.R. 1037
January 4, 1974

PREAMBLE TO AMENDMENT TO PART 575--CONSUMER INFORMATION REQUIREMENTS

(Docket No. 25; Notice 11)

This notice revokes the Uniform Tire Quality Grading regulation published January 4, 1974 (39 F.R. 1037), and responds to petitions for reconsideration received with respect to the regulation.

The Uniform Tire Quality Grading regulation specified the use of "control tires" in the establishment of grades for treadwear and traction. The NHTSA expected that control tires would be manufactured by an industry source pursuant to NHTSA contract, and would be available for both industry and government use. A solicitation for a proposal to manufacture control tires was advertised to the domestic tire industry. Two proposals were received. Each, however, has been determined to be nonresponsive to the solicitation, which has accordingly been cancelled.

Due to the failure of NHTSA to procure a control tire, the agency must revoke the Uniform Tire Quality Grading regulation in its present form. The revocation of the regulation renders moot the petitions for reconsideration received.

On May 2, 1974, an order was entered by the United States District Court for the District of Columbia in the case of *Nash v. Brinegar* (Civil Action No. 177-73) requiring the NHTSA to issue, by June 15, 1974, a notice of proposed rulemaking for a revised Uniform Tire Quality Grading regulation having a proposed effective date of May 1, 1975.

In light of the above, § 575.104 "Uniform Tire Quality Grading" of Chapter V, Title 49, Code of Federal Regulations, is revoked, effective

(Secs. 103, 112, 119, 201, 203; Pub. L. 89-563, 80 Stat. 718, 15 U.S.C. 1392, 1401, 1407, 1421, 1423; delegation of authority at 49 CFR 1.51.)

Issued on May 6, 1974.

Gene G. Mannella
Acting Administrator

39 F.R. 16469
May 9, 1974



PREAMBLE TO AMENDMENT TO PART 575—CONSUMER INFORMATION

(Docket No. 74-18; Notice 2)

This notice amends Part 575, Consumer Information, so that the requirement that manufacturers have consumer information available in showrooms does not apply to special vehicles not available to the general public.

On April 26, 1974, the National Highway Traffic Safety Administration proposed to amend Part 575 to provide consumers with information for only those vehicles which they were eligible to purchase (39 F.R. 14728). The proposal, which was in response to a petition from Ford Motor Company, stated that information concerning special vehicles would continue to be made available to eligible purchasers. Comments concerning the proposal were received from American Motors Corporation, General

Motors Corporation and Chrysler Corporation. All comments favored the proposal.

In consideration of the foregoing, 49 CFR 575.7 is amended. . . .

Effective date: March 13, 1975. Because the amendment relieves a restriction, it is found for good cause shown that an effective date immediately upon publication is in the public interest.

(Secs. 103, 112, 114, 203, Pub. L. 89-563, 80 Stat. 718, 15 U.S.C. 1392, 1401, 1407, 1423; delegation of authority at 49 CFR 1.51.)

Issued on March 7, 1975.

Noel C. Bufe
Acting Administrator
40 F.R. 11727
March 13, 1975



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PREAMBLE TO AMENDMENT TO PART 575—CONSUMER INFORMATION

(Docket No. 25; Notice 17)

This notice establishes Uniform Tire Quality Grading Standards. The notice is based on proposals published June 14, 1974 (39 F.R. 20808, Notice 12), August 9, 1974 (39 F.R. 28644, Notice 14), and January 7, 1975 (40 F.R. 1273, Notice 15). Comments submitted in response to these proposals have been considered in the preparation of this notice.

A rule on this subject was issued on January 4, 1974 (39 F.R. 1037). It was revoked on May 9, 1974 (39 F.R. 16469), due to the inability of the NHTSA to obtain from the tire industry "control tires" which were to have been used as the basis for determining the comparative performance grades for treadwear and traction.

The rule issued today requires manufacturers to provide grading information for new passenger car tires in each of the following performance areas: treadwear, traction, and temperature resistance. The respective grades are to be molded into or onto the tire sidewall, contained in a label affixed to each tire (except for OEM tires), and provided for examination by prospective purchasers in a form retainable by them at each location where tires are sold.

TREADWEAR

Treadwear grades are based on a tire's projected mileage (the distance which it is expected to travel before wearing down to its treadwear indicators) as tested on a single, predetermined test run of approximately 6400 miles. A tire's treadwear grade is expressed as the percentage which its projected mileage represents of a nominal 30,000 miles, rounded off to the nearest lower 10% increment. For example, a tire with a projected mileage of 24,000 would be graded "80", while one with a projected mileage of 40,000 would be graded "130".

The test course has been established by the NHTSA in the vicinity of San Angelo, Texas, as described in Appendix A. It is the same as that discussed at the public briefings on this subject which took place July 23 and July 29, 1974, except that the direction of travel has been reversed on the northwest loop to increase safety by reducing the number left turns. The course is approximately 400 miles long, and each treadwear test will require 16 circuits. It is anticipated that both the industry, at each manufacturer's option, and the agency will perform treadwear tests on this course; the former for establishing grades, and the latter for purposes of compliance testing, i.e., testing the validity of the grades assigned. To arrange for allocations of test time at the site, industry members should contact the NHTSA facility manager, P.O. Box 6591, Goodfellow Air Force Base, San Angelo, Texas 76901; telephone (915) 655-0546. While manufacturers are not required to test on the site, it would be to their advantage to do so, since the legal standard against which compliance with the rule will be measured is a tire's performance in government tests on that course.

The method of determining projected mileages is essentially that proposed in Notice 12 as modified by Notices 14 and 15 in this docket. The treadwear performance of a candidate tire is measured along with that of course monitoring tires (CMTs) if the same general construction type (bias, bias-belted, or radial) used to monitor changes in course severity. The CMTs are tires procured by the NHTSA—one group each of the three general types—which are made available by the agency for purchase and use by regulated persons at the test site. To obtain course monitoring tires, regulated persons should contact the NHTSA facility manager at the above address.

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Each test convoy consists of one car equipped with four CMTs and three or fewer other cars equipped with candidate tires of the same construction type. (Candidate tires on the same axle are identical, but front tires on a test vehicle may differ from rear tires as long as all four are of the same size designation.) After a two-circuit break-in period, the initial tread depth of each tire is determined by averaging the depth measured at six equally spaced locations in each groove. At the end of every two circuits (800 miles), each tire's tread depth is measured again in the same way, the tires are rotated, vehicle positions in the convoy are rotated, and wheel alignments are readjusted if necessary. At the end of the 16-circuit test, each tire's overall wear rate is calculated from the nine measured tread depths and their corresponding mileages-after-break-in as follows: The regression line which "best fits" these data points is determined by applying the method of least squares as described in Appendix C; the wear rate is defined as the absolute value of the slope of the regression line, in mils of tread depth per 1000 miles. This wear rate is adjusted for changes in course severity by a multiplier consisting of the base wear rate for that type of course monitoring tire divided by the measured average of the wear rates for the four CMTs in that convoy. A candidate tire's tread depth after break-in (minus 62 mils to account for wearout when the treadwear indicators are reached) divided by its adjusted wear rate and multiplied by 1000, plus 800 miles, yields its projected mileage. The projected mileage is divided by 30,000 and multiplied by 100 to determine the percentage which, when rounded off, represents the candidate tire's treadwear grade.

A discussion of the NHTSA response to the comments on treadwear grading follows.

Duration of break-in period and test. The 400 mile break-in period originally proposed in Notice 12 was extended in Notice 15 to 800 miles, to permit the rotation of each tire between axles after 400 miles. The Rubber Manufacturers Association (RMA) suggested that a 1600-mile break-in, by permitting each tire to be rotated

once through each position on the test car, would provide more reliable results. An analysis of variance in a study conducted by the NHTSA showed no significant variations in wear from one side of a car to the other. Further, a review of data from extensive testing on the San Angelo course showed no anomalies or consistent variations in wear rate occurring after the first 800 miles. The NHTSA is convinced that the 800-mile break-in period is sufficient to allow a tire to establish its equilibrium inflated shape and stabilize its wear rate. Therefore, the RMA suggestion has not been adopted.

Many of the comments to Notice 12 suggested that testing distances greater than 6400 miles are necessary for accurate tread life projections. Testing to 40%, 50%, and even 90% of wearout was urged. Unfortunately, only the submission of North American Dunlop was accompanied by substantive data. These data, showing non-linear wear rates, were of questionable validity because the tires were not broken in prior to testing and because the data were collected by different test fleets in different parts of the country. Nonetheless, as a result of the large number of adverse comments, the NHTSA requested further information from all knowledgeable and concerned parties to document and substantiate the position that a longer treadwear test is necessary. The additional data were requested in a written inquiry to the RMA and in Notice 15. Because of the need to limit test time, test cost, and fuel consumption, the objective was to determine the minimum test distance which can reliably predict ultimate tire treadwear life.

The responses to these requests have been reviewed and analyzed. Again, the NHTSA finds the industry data and conclusions that greater testing distances are necessary lacking in rigor and completeness. In most cases, the conditions of the industry tests were not disclosed or did not coincide with the prescribed control procedures. Serious doubt is cast upon the conclusions because of inadequate information on one or more of the following test conditions: changes in weather and season, course severity, conformity with prescribed break-in period, mileage between

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readings, method of projected mileage, size of convoy, number of tires tested, and uniformity and frequency of tread depth measurement.

A controlled test program recently completed by the NHTSA was designed to test the hypothesis that the rate of wear of tires is constant after an 800-mile break-in. The design and conclusions of the test are discussed in detail in a paper by Brenner, Scheiner, and Kondo ("Uniform Tire Quality Grading; Effect of Status of Wear on Tire Wear Rate," *NHTSA Technical Note T-1014*, March, 1975—General Reference entry no. 42 in this docket.) The general conclusions of the test are: (1) that the inherent rate of wear of tires, after an 800 mile break-in period, is constant and (2) that the projected tread life for a tire estimated from a 6,400-mile test after 800-mile break-in is accurate for all three tire types. Accordingly, the 6,400 mile test period has been retained.

Grading based on minimum performance. The RMA expressed strong disagreement with any system in which treadwear grades are based on a tire line's *minimum* projected mileage on the San Angelo test course, urging instead that the average performance of a line is a more appropriate grade. The RMA suggested further that the proposed grading system "ignores the bell-shaped distribution curve which describes any performance characteristics and would require the downgrading of an entire line of tires until no portion of the distribution curve fell below any selected treadwear grade, notwithstanding that the large bulk of a given group of tires was well above the grade."

The NHTSA rejects the arguments and the position taken by the industry on this issue. It is precisely the fact that, in industrial processes involving production of large numbers of items, the products group themselves into the so-called bell-shaped or normal distribution which allows for measurement of central tendency and variation and forms the basis of scientific quality control.

Tests performed by the NHTSA and described in the paper cited above have shown conclusively that different production tires exhibit considerable

differences in their variability about their respective average values. Thus, two different tire brands might have identical average values for treadwear, but differ markedly in their variance or standard deviation. These differences would probably be attributable to differences in process and quality control.

Recognition of differences in inherent variability among tire manufacturers and tire lines is of the utmost importance to the consumer. The average or mean measure of a group of tires does not provide sufficient information to enable the consumer to make an informed choice. If one tire on a user's car wears out in 10,000 miles, the fact that the "average" tire of that type wears to 25,000 miles in the same driving environment does not alter his need to purchase a new tire. Ideally, the consumer might be provided with more information if he were given a measure of the mean (central tendency) and standard deviation (variability) for each tire type, but the complexity and possible confusion generated by such a system would negate its advantages. In the NHTSA's judgment, the most valuable single grade for the consumer is one corresponding to a level of performance which he can be reasonably certain is exceeded by the universe population for that tire brand and line.

As with the other consumer information regulations issued by this agency, a grade represents a minimum performance figure to which every tire is expected to conform if tested by the government under the procedures set forth in the rule. Thus, any manufacturer in doubt about the performance capabilities of a line of his tires is free to assign a lower grade than what might actually be achieved, and he is expected to ensure that substantially all the tires marked with a particular grade are capable of achieving it.

Homogeneity of course monitoring tires. Another aspect of the Notice 12 proposal which generated much controversy is the adoption by the NHTSA of production tires for use as course monitoring tires. The commenters suggested that changes in course severity be monitored instead by tires manufactured under rigidly specified conditions to ensure homogeneity. Because varia-

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tions in the performance of course monitoring tires are reflected in treadwear projections for all candidate tires, it follows that the more homogeneous the universe of the monitoring tires, the more precisely the performance of the candidate tires can be graded. The NHTSA is in complete accord with the industry's desire to minimize the variability of tires chosen for course monitoring. The development of specifications for special "control tires", in which materials, processing, and other conditions are rigidly controlled to a degree beyond that possible for mass production, will continue. The NHTSA hopes to work with the tire industry to reduce the variability of course monitoring tires to the maximum extent possible. However, it should be noted that an earlier version of this regulation had to be revoked due to the difficulty in obtaining such "control tires." Recent tests (summarized in the paper cited above) demonstrate that implementation of a viable treadwear grading system need not be delayed further, pending development of special tires. In these tests, the current radial CMTs—Goodyear Custom Steelgards chosen from a single, short production run—show a coefficient of variation (standard deviation of wear rate divided by mean) of 4.9%. This degree of uniformity is commensurate with universally accepted criteria for test control purposes. Hence, grading of radial tires may be started immediately. The tentatively adopted bias and bias-belted CMTs showed coefficients of variation of 7.3% and 12.4%, respectively. Existing test data indicate that the NHTSA will be able to identify and procure other tires of these two construction types, exhibiting homogeneity comparable to the current radial CMTs, in time for testing in accordance with the implementation schedule set out below. In any event, the variability of course monitoring tires will be taken into account by the NHTSA in connection with its compliance testing. At worst, the degree of grading imprecision associated with CMT variability will be no greater than one-half the levels measured for the current bias and bias-belted tire lots, because the standard deviation for the average of a set of four tires is equal to one-half that of the universe

standard deviation. It is the NHTSA's judgment that treadwear grades of this level of precision will provide substantially more meaningful information to the prospective tire buyer than is currently available.

To make efficient use of the available CMTs, the NHTSA expects to conduct treadwear tests with used CMTs, as well as with new ones. This will not affect any mileage projections, because the inherent wear rate of tires is constant after break-in. Test results will be discarded if the treadwear indicators are showing on any of the CMTs at the end of a test.

The need for three separate course monitoring tires. Many commenters suggested that a single CMT of the bias-ply type be used, arguing that the use of a different CMT for each general construction type would create three separate treadwear rating systems. These suggestions appear to result from a misunderstanding of the role of the course monitoring tires. They are not used as yardsticks against which candidate tires are graded. Instead, they are used to monitor changes in the severity of the test course. Experiments performed by the NHTSA (Brenner, F.C. and Kondo, A., "Elements in the Road Evaluation of Tire Wear", *Tire Science and Technology*, Vol. I, No. 1, Feb. 1973, p. 17—General Reference entry no. 17 in this docket) show that changes in test course severity will affect tires of differing construction types to differing degrees. For example, the improvement in projected tread life from the severest to the mildest test courses in the experiments was 12% for bias tires, yet it was 91% for bias-belted tires and 140% for radial tires. In fact, a variety of factors influence course severity, each having different relative effects on the various tire types. Therefore, the use of a single course monitoring tire on courses of varying severity, or even on a given course whose severity is subject to variation due to weather and road wear, would not permit the correct adjustment of measured wear rates for environmental influences. Only with a CMT for each construction type can a single, uniform treadwear grading system be established.

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Expression of treadwear grades. The system of treadwear grading proposed in Notice 12 specified six grades, as follows:

Grade X (projected mileage less than 15,000)
Grade 15 (projected mileage at least 15,000)
Grade 25 (" " " " 25,000)
Grade 35 (" " " " 35,000)
Grade 45 (" " " " 45,000)
Grade 60 (" " " " 60,000)

Among the objections to this proposal was that small differences in actual treadwear in the vicinity of grade boundaries would be misrepresented as large differences because of the breadth of the predetermined categories. The NHTSA was also concerned that the broad categories could in some cases reduce the desirable competitive impact of the treadwear grading system if tires of substantially differing treadwear performance were grouped in the same grade. For these reasons, a relatively continuous grading system was proposed in Notice 15, in which tires would be graded with two digit numbers representing their minimum projected mileages in thousands of miles as determined on the San Angelo test course. The major objection to both of these proposals was that grades expressing projected mileages would lead consumers to expect every tire to yield its indicated mileage. The manufacturers were especially concerned that this would subject them to implied warranty obligations, despite the disclaimer on the label. The NHTSA remains convinced that treadwear grades which are directly related to projected mileages are the most appropriate way of expressing treadwear performance. To overcome any possible misinterpretation by consumers, the grading system established today is changed from that of Notice 15 to indicate relative performance on a percentage basis, as described above. This decision is based in part upon the fact that testing performed to date on the San Angelo course has given projected mileages that are generally higher than those the average user will obtain; i.e., it appears to be a relatively mild course.

Wheel alignment procedure. Test vehicle wheel alignment procedures received considerable comment. Notice 12 proposed alignment to vehicle manufacturer's specifications after vehicle loading. Notice 15 proposed that this be done before loading, and that the measurements taken after loading be used as a basis for setting alignment for the duration of the test. The majority of the commenters strongly favored a return to the original procedure. The NHTSA takes particular cognizance of the fact that those commenters who have actually tried both procedures in testing at San Angelo find the procedure of Notice 12 to be satisfactory and practicable, and that of Notice 15 to be unusable. NHTSA representatives at San Angelo have reported satisfactory operation on a variety of vehicles using the originally proposed procedure, and have not observed any uneven tire wear that would indicate alignment problems. For these reasons, the final rule prescribes alignment procedures which are identical with those proposed in Notice 12.

Tire rotation procedure. Several commenters objected to using the proposed "X" rotation procedure for testing radial tires. The NHTSA is aware that this procedure differs from that recommended by many groups for consumers' use. While some vehicle and tire manufacturers recommend that radial tires be rotated only fore-aft, others recommend no rotation at all and yet others are silent on the subject. The primary reason for these other methods appears to be to improve passenger comfort by reducing vibration. No data have been submitted, however, to suggest that the proposed method has any adverse or uneven effect on radial tire wear. Further, this method has the advantage, for treadwear testing, of balancing out any side-to-side or axle wear differences attributable to the vehicle or to the course. Accordingly, the proposed tire rotation method has been adopted without change.

Choice of grooves to be measured. Some commenters suggested that treadwear projections be calculated from measurements of the most worn grooves on candidate tires, rather than from the averages of measurements made in all grooves.

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It was argued that, because many States require replacement of passenger car tires when treadwear indicators appear in any two adjacent grooves, the proposed method of calculation would yield misleadingly high projections. Analysis of projections based on both methods (Brenner, F.C. and Kondo, A., "Patterns of Tread Wear and Estimated Tread Life," *Tire Science and Technology*, Vol. 2, No. 1, 1973—General Reference entry no. 27 in this docket) shows a high correlation between the resulting tire rankings. Because the treadwear grading system established today is based on relative performance, there is no disadvantage in adopting the proposed method. On a related issue, the E.T.R.T.O. pointed out that some grooves near the tire shoulder which are designed only for esthetic reasons exhibit practically no wear, and suggested that measurements be made only in those grooves which contain treadwear indicators. This suggestion has been adopted.

Calculation of projected mileage. Several methods for calculating the tire wear rates to be used in determining projected mileages were considered. Notice 12 proposed calculating the geometric mean of the wear rates measured for each 800-mile increment. This approach was rejected because the geometric mean is extremely sensitive to inaccurate readings in any single measurement. Use of the arithmetic mean of the incremental wear rates appears to be the general industry practice. Unfortunately, however, the intermediate readings have no effect on such a calculation, because the result is a function only of the initial tread depth (after break-in) and that measured 6,400 miles later. Therefore, a wear rate calculated by the industry method is extremely sensitive to errors in these two measurements. In Notice 15, the NHTSA proposed that wear rate be calculated by the least-squares regression method, as described above. This approach has the advantage of weighting all measurements and minimizing the effect of inaccurate readings, so it has been adopted.

Differing tires on a single test vehicle. Uniroyal and the E.T.R.T.O. argued that each test convoy vehicle should be equipped with four identical tires; the reason given was that otherwise, the performance of a candidate tire would be a function of the tires chosen by the NHTSA for use on the other axle of the test vehicle during compliance testing. The NHTSA is unaware of any data that support this position. The rule adopted today requires that all vehicles in a single convoy be equipped with tires of the same general construction type, and that all tires on a single vehicle be of the same size designation. In extensive testing at San Angelo with this procedure, none of the suggested undesirable variations has been observed.

Differing test vehicles in a single convoy. Several commenters suggested that the rule specify that all vehicles in a given convoy be identical, to reduce variations in projected treadlife. The NHTSA is in complete agreement with the premise that those variables which can be identified and which can affect treadwear results should be controlled as closely as is feasible. Variations in vehicle type, however, do not appear to produce significant variations in treadwear projections. Nevertheless, to minimize such variations, tires will be tested for compliance only on vehicles for which they are available as original equipment or recommended replacement options. Where practical, all vehicles in a given convoy will be of the same make. However, to test tires designed for the range of wheel sizes available, the suggested method would require a proliferation of course monitoring tires, one for each combination of wheel size and construction type. Therefore, the suggestion has not been adopted.

Accuracy of tread depth measurements. The RMA suggested that the interval between measurements be increased to 1,600 miles to reduce the effects of measurement error. However, if this interval were used instead of 800 miles, only five readings would be obtained in the 6,400 mile treadwear test, so errors in any one reading would result in a greater overall error. A recently completed study (Kondo, A. and Brenner,

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F.C., "Report on Round-Robin Groove Depth Measuring Experiment," *NHTSA Technical Note T-1012*, March 1975—General Reference entry no. 44 in this docket) shows that variations among measurements of the same tread depth by different operators do not present a serious problem. The study found that the only significant variations in measurement results occur as a result of differences in measuring techniques between different laboratories. Since these techniques are consistent within a given laboratory, the different laboratories arrive at the same results in terms of the slope of the tread depth regression line that is the basis of the treadwear grade.

TRACTION

Traction grades are based on a tire's traction coefficient as measured on two wet skid pads, one of asphalt and one of concrete. Because a method for producing identical skid test surfaces at different sites has not yet been developed, the NHTSA has established two skid pads, described in Appendix B, near the treadwear test course in San Angelo. These pads represent typical highway surfaces. The asphalt surface has a traction coefficient, when tested wet using the American Society for Testing and Materials (ASTM) E 501 tire, of 0.50 ± 0.10 . The concrete surface was described in Notice 12 as having a traction coefficient, when similarly tested, of 0.47 ± 0.05 . Due to surface polishing, this coefficient has declined and stabilized at 0.35 ± 0.10 . As with the treadwear course, these pads are available for use by manufacturers as well as the agency. For allocations of test time, industry members should contact the NHTSA facility manager at the above address.

Before each candidate tire test, the traction coefficient of each surface is measured with two ASTM tires to monitor variations in the surface, using a two-wheeled test trailer built in accordance with ASTM Method E-274-70. The candidate tire's traction coefficient is similarly measured on each surface, and then adjusted by adding a fixed coefficient (0.50 for asphalt, 0.35

for concrete) and subtracting the average coefficient obtained from measurements with the two ASTM tires.

The tire industry's major objection to the proposed rule was that, with four possible grades for traction, two tires might be graded differently without a meaningful difference in their performance. The RMA suggested a scheme with two grade categories above a minimum requirement. The rule issued today, by setting two threshold levels of performance, establishes three grades: "0", for performance below the first threshold; "*", for performance above the first threshold; and "***", for performance above the second threshold. The NHTSA is convinced that the grades thus defined reflect significant differences in traction performance.

Firestone suggested that further testing may demonstrate that only one pad is necessary to give the best and most consistently repeatable results. However, the ranking of a group of tires based on their performance on one surface can differ from their ranking on another surface. In fact, one tire manufacturer suggested that an additional surface of low coefficient be included in the testing scheme for this reason. The NHTSA agrees that an additional surface may increase the utility of the traction grading system, and anticipates a proposal to implement this suggestion in the future.

The suggestion of Pirelli, that measurements be made during the period between 0.5 and 1.5 seconds after wheel lockup instead of the period between 0.2 and 1.2 seconds, has been adopted. To permit more efficient use of the skid pads, the rule specifies a test sequence which differs slightly from that originally proposed: instead of being tested repeatedly on the asphalt pad and then repeatedly on the concrete pad, each tire is run alternately over the two pads. A change in paragraph (f) (2) (i) (A) permits tires to be conditioned on the test trailer as an alternative to conditioning on a passenger car. Another change facilitates the use of trailers with instrumentation on only one side, which had been inadvertently precluded by the wording of the proposed rule.

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TEMPERATURE RESISTANCE

The major objection to the proposed high speed performance grading scheme was that it was neither necessary nor beneficial to the consumer. Several commenters pointed out that Standard No. 109 specifies testing a tire against a laboratory wheel at a speed corresponding to 85 mph, and argued that certification of a tire to this minimum requirement provides the consumer with adequate information about its performance at all expected driving speeds. They suggested that only one higher grade be established, for tires designed to be used on emergency vehicles. Some commenters indicated that, as proposed, the rule seemed to condone or even encourage the unsafe operation of motor vehicles above legal speed limits. To preclude this misinterpretation, the third tire characteristic to be graded has been renamed "temperature resistance". The grade is indicative of the running temperature of the tire. Sustained high temperature can cause the material of the tire to degenerate and reduce tire life, and excessive temperature can lead to sudden tire failure. Therefore, the distinctions provided by three grades of temperature resistance are meaningful to the consumer. Except for the name change, this aspect of quality grading has been adopted as proposed. A grade of "C" corresponds to the minimum requirements of Standard No. 109. "B" indicates completion of the 500 rpm test stage specified in paragraph (g)(9), while "A" indicates completion of the 575 rpm test range.

PROVISION OF GRADING INFORMATION

Several commenters objected to the proposed tread label requirement, suggesting that point-of-sale material such as posters and leaflets could provide the consumer with adequate information about tire grades. For the reasons discussed in Notice 12, the NHTSA is convinced that labels affixed to the tread of the tire are the only satisfactory method of providing complete information to replacement tire purchasers. Therefore, the scheme for transmitting quality grading information to consumers, combining sidewall mold-

ing, tread labels, and point-of-sale materials, has been adopted substantially as proposed. A change in paragraph (d)(1)(ii) clarifies the respective duties of vehicle manufacturers and tire manufacturers to provide information for prospective purchasers.

Several vehicle manufacturers requested that new vehicles not be required to be equipped with graded tires until six months after the date that tires must be graded. These commenters appear to have misunderstood the scope of the quality grading standard. The NHTSA expects that tires which comply with the standard will appear on new vehicles as inventories of ungraded tires are depleted. Part 575.6 requires of the vehicle manufacturer only that he provide the specified information to purchasers and prospective purchasers when he equips a vehicle with one or more tires manufactured after the applicable effective date of this rule.

The NHTSA has determined that an Inflationary Impact Statement is not required pursuant to Executive Order 11821. Industry cost estimates and an inflation impact review are filed in public Docket No. 25. This review includes an evaluation of the expected cost of the rule.

In consideration of the foregoing, a new § 575.104, "Uniform Tire Quality Grading Standards" is added to 49 CFR Part 575. . . .

Effective dates. For all requirements other than the molding requirement of paragraph (d)(1)(i)(A): January 1, 1976, for radial ply tires; July 1, 1976, for bias-belted tires; January 1, 1977, for bias ply tires. For paragraph (d)(1)(i)(A): July 1, 1976, for radial ply tires; January 1, 1977, for bias-belted tires; July 1, 1977, for bias-ply tires.

(Secs. 103, 112, 119, 201, 203; Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1407, 1421, 1423); delegation of authority at 49 CFR 1.51.)

Issued on May 20, 1975.

James B. Gregory
Administrator
40 F.R. 23073
May 28, 1975

Effective: January 1, 1976
July 1, 1976
January 1, 1977
July 1, 1977

PREAMBLE TO AMENDMENT TO PART 575—CONSUMER INFORMATION

(Docket No. 25; Notice 18)

This notice republishes, with minor changes, paragraphs (e) (1) (v) and (f) (2) (i) (B), Figure 2, and the appendices of § 575.104, *Uniform Tire Quality Grading Standards*, which was published May 28, 1975 (40 F.R. 23073; Notice 17).

In describing the rims on which candidate tires are to be mounted, Notice 17 inadvertently referred to the Appendix to Standard No. 110. On February 6, 1975, the definition of "test rim" in Standard No. 109 was amended and the Appendix to Standard No. 110 was deleted (Docket No. 74-25; Notice 2; effective August 5, 1975). Under the new definition, a "test rim" may be any of several widths, only one of which is equal to that listed under the words "test rim width" in Table I of the Appendix to Standard No. 109. Paragraphs (e) (1) (v) and (f) (2) (i) (B) are corrected to specify the rim mounting scheme in terms of the new definition.

As Figure 2 was published in the Federal Register, the words "DOT Quality Grades" appeared as the Figure's title. In fact, the words are a part of the text which must appear on each tread label required by paragraph (d) (1) (B), and accordingly the figure is republished with the correct title.

The treadwear test course described in Appendix A is changed so that the loops are traveled in the following order: south, east, and northwest. This change is designed to increase safety by reducing the number of left turns. The table of key points and mileages is revised to reflect

the change. Corresponding changes are made in the numbers used to designate these points in the text and in Figure 3.

To prevent the bunching of test vehicles at STOP signs and thereby increase safety, the speed to which vehicles must decelerate when abreast of the direction sign is changed in Appendix A to read "20 mph".

The reference to Figure 2 in the second paragraph of Appendix B is corrected to indicate that the asphalt skid pad is depicted in Figure 4. The shading of the skid pads is corrected to correspond to the description in the text.

The first two paragraphs of Appendix C, *Method of Least Squares*, were omitted. Those paragraphs are now inserted and the graph is designated as Figure 5.

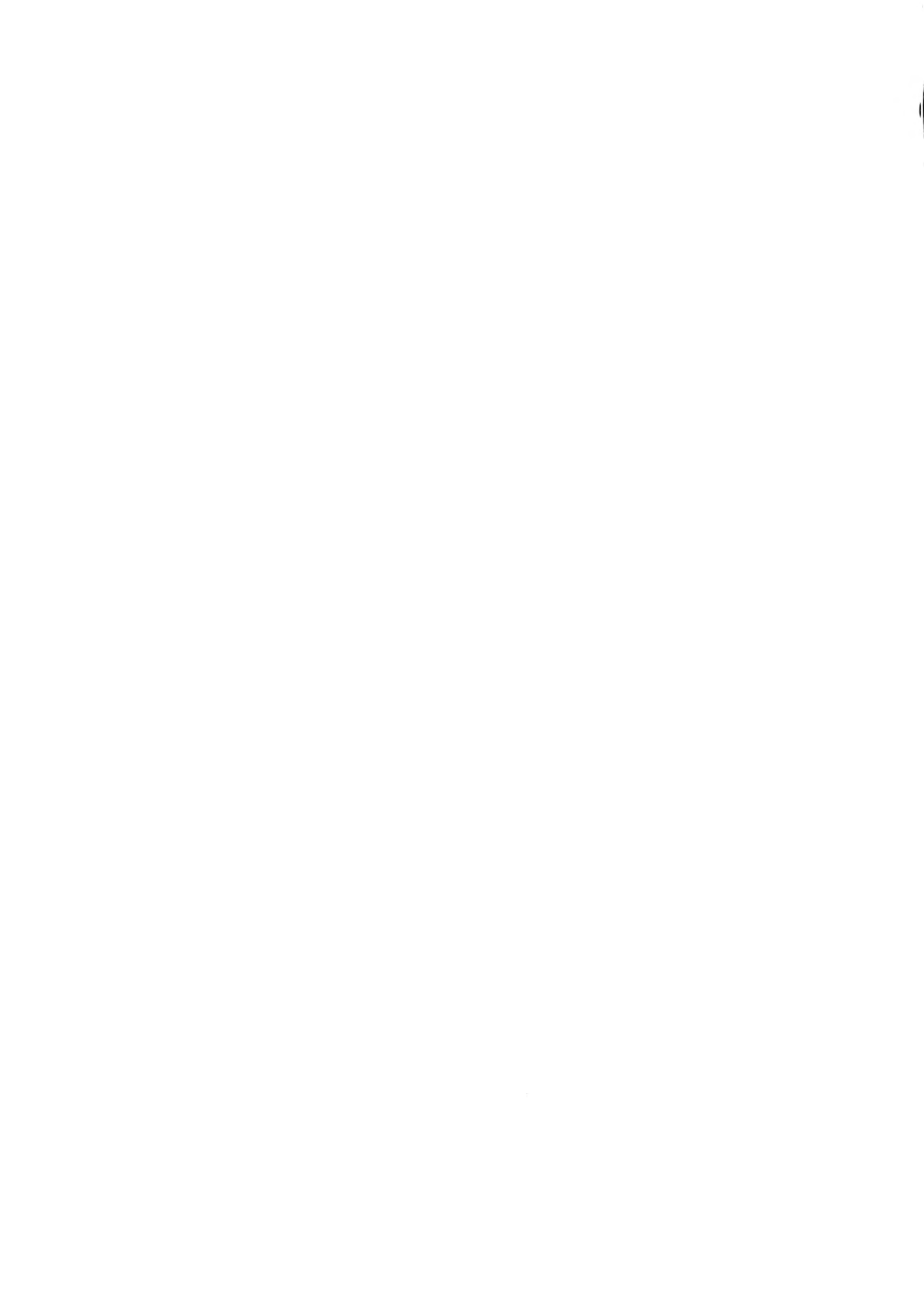
In consideration of the foregoing, paragraphs (e) (1) (v) and (f) (2) (i) (B), Figure 2, and the appendices to § 575.104 of Title 49, Code of Federal Regulations, are republished. . . .

(Secs. 103, 112, 119, 201, 203; Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1407, 1421, 1423); delegation of authority at 49 CFR 1.51.)

Issued on June 25, 1975.

James B. Gregory
Administrator

40 F.R. 28071
July 3, 1975



PREAMBLE TO AMENDMENT TO PART 575—CONSUMER INFORMATION

(Docket No. 75-27; Notice 2)

This notice amends Standard No. 105-75, *Hydraulic Brake Systems*, 49 CFR 571.105-75, to revise the parking brake test procedure (S7.7). In addition, this notice amends Subpart B of Part 575, *Consumer Information*, 49 CFR § 575.101, by replacing the present test procedures in that section for passenger car testing with equivalent procedures from Standard No. 105-75.

The NHTSA proposed a modification of the parking brake test procedures in Standard No. 105-75 to permit a reapplication of the parking brake if the first application of the brake failed to hold the vehicle stationary on the test incline. Toyo Kogyo requested the modification as representative of normal driver action (in cases where the application appears to be insufficient to hold the vehicle), justifying the change as necessary to permit new vehicle components to stretch or "set" during the initial application as occurs in any vehicle delivered to a purchaser. The NHTSA agreed that reapplication would be a reasonable test procedure and proposed a revision of S7.7.

Comments were received from Toyo Kogyo, General Motors, American Motors Corporation, and Chrysler Corporation in support of the change. No comments were received that objected to the proposal. The standard is amended accordingly.

The NHTSA also proposed that the consumer information item requiring publication of the stopping ability of passenger cars and motorcycles (49 CFR § 575.101) be modified for passenger cars so that test data developed under Standard No. 105-75 could be the basis for the required consumer information. The existing test procedures of the consumer information item would be replaced by Standard No. 105-75 test procedures, and a transition period until Jan-

uary 1, 1977, would be provided to allow manufacturers latitude in adopting the new procedures.

The Motor Vehicle Manufacturers Association (MVMA), Chrysler Corporation, American Motors Corporation, Ford Motor Company, and General Motors Corporation supported the modifications. The MVMA and Ford pointed out an inadvertent omission in the proposal of a required change in the present loading specification (maximum loaded vehicle weight) to the Standard No. 105-75 loading specification (gross vehicle weight rating (GVWR)). No comments opposed the modification, and the consumer information item is therefore amended as proposed, with the additional modification noted by the MVMA and Ford. The transition period for use of either loading specification conforms to the transition period for use of either test procedure (until January 1, 1977). The MVMA asked for a June 1, 1977, date for transition to the new loading specification but did not explain the need for more time. The NHTSA will consider any data on this subject submitted by the MVMA.

With regard to test loading, Chrysler Corporation repeated a request for revision of the loading conditions of Standard No. 105-75. The request was earlier submitted improperly as a petition for reconsideration of an NHTSA action which did not deal with test loading (40 F.R. 24525, June 9, 1975). Section 553.35 of NHTSA regulations (49 CFR 553.35) allows petitions for reconsideration of rules issued by the NHTSA, but in this case no rule was issued on test loading that could form the basis for reconsideration. The NHTSA discussed Chrysler's request at a meeting with Chrysler officials on August 21, 1975. Based on the limited information presented by Chrysler at that meeting, the

Effective: January 6, 1976

NHTSA has concluded that a reduction in test weight would not be justified. At the meeting it was agreed that Chrysler would submit any additional data it had in support of the request. To date no data have been received, and the NHTSA cannot meaningfully reconsider Chrysler's request without further data.

The NHTSA also proposed modification of the means for establishing the skid number of the surface on which stopping distance tests are conducted in Standard No. 105-75, Standard No. 121, *Air Brake Systems*, Standard No. 122, *Motorcycle Brake Systems*, and the Consumer Information Item on brake performance. Comments received were not in agreement on how to accomplish the transition from the former ASTM method to the new one. The skid number proposal will therefore be treated separately at a later date so that its resolution will not delay this amendment of the parking brake and consumer information item test procedures.

In consideration of the foregoing, amendments are made in Chapter V of Title 49, Code of Federal Regulations. . . .

Effective date: January 6, 1976. Because these amendments, to the extent that they impose new substantive requirements, are made optional for an interim period, and because manufacturers must plan future testing based on the test procedures as they exist in the present standard, 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 December 31, 1975.

James B. Gregory
Administrator

41 F.R. 1066
January 6, 1976

PREAMBLE TO AMENDMENT TO PART 575—CONSUMER INFORMATION

(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, Amer-

ican 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 575—CONSUMER INFORMATION

(Docket No. 75-27; Notice 4)

This notice amends Standard No. 105-75, *Hydraulic Brake Systems*, and Standard No. 122, *Motorcycle Brake Systems*, to modify the means for establishing the frictional resistance of the surface on which stopping distance tests are conducted. A similar amendment is made to Part 575, *Consumer Information*, of Title 49 of the Code of Federal Regulations.

The National Highway Traffic Safety Administration (NHTSA) proposed the change in Standard No. 105-75 (49 CFR 571.105-75), Standard No. 121, *Air Brake Systems* (49 CFR 571.121), Standard No. 122 (49 CFR 571.122), and the Consumer Information Regulations (49 CFR 575.101) in response to a petition from British-Leyland Motors Limited (40 FR 45200, October 1, 1975). The existing test procedure in these regulations has specified use of the American Society for Testing and Materials (ASTM) E-274-65T procedure, using an ASTM E249 tire that is no longer manufactured.

Responses were received on the proposed ASTM change from White Motor Corporation (White), Mack Trucks, Inc. (Mack), Freightliner Corporation (Freightliner), Ford Motor Company (Ford), General Motors Corporation (GM), Chrysler Corporation (Chrysler), American Motors Corporation (AMC), and International Harvester (IH). The National Motor Vehicle Safety Advisory Council made no comment on the proposal.

Most commenters supported use of the new test procedure and tire, although they differed in recommendations for correlating the reading produced under the new procedure with that produced under the old procedure. Manufacturers are presently certifying compliance to brake standards on test surfaces with a satisfactory reading under the old procedure, and they should be able to continue testing and certifying com-

pliance on the same surface without any increase in the severity of the tests. To accomplish this transition, the correlation in readings between the procedures has been determined, and the difference is reflected in a change of the dry surface value from "skid number" 75 to "skid number" 81.

Freightliner urged postponement of any action until it could be supported by "adequate and statistically reliable test data." AMC also recommended that the NHTSA do nothing "until the industry has had sufficient time to evaluate and verify the performance of the ASTM E501 test tire on all types of surfaces."

The change in procedure is prompted by the ASTM decision to utilize a new tire in ascertaining the frictional coefficient of test surfaces. As a result the old tire is no longer manufactured and only the new tire is available for skid number measurement. Manufacturers have conducted comparative tests with the new tire to determine the correlation between the readings given by the two tires. Neither Freightliner nor AMC submitted data showing that the agency's proposal to adjust the dry surface skid number upwards is unjustified. Only Mack submitted data and it supported the NHTSA and Federal Highway Administration test data that have been placed in the docket. General Motors considered the agency's proposed upward adjustment to be the maximum desirable based on its data. International Harvester, Chrysler, and Ford supported the change in dry surface skid number without qualification, and White suggested that a skid number of 85 be utilized. The agency finds that the AMC and Freightliner requests for further delay are unjustified.

Ford and Freightliner asked that the skid number for the lower coefficient (wet) surface also be adjusted. The agency's purpose in pro-

Effective: June 14, 1976

posing the adjustment is limited to changes necessary to avoid a modification of the test surfaces or an increase in the severity of performance levels specified under the safety standards. The NHTSA earlier concluded that change of the wet surface specification was unnecessary, and no evidence has been supplied that would modify the earlier determination.

General Motors noted that an editorial change to the newer ASTM procedure does not appear in early publications of that procedure. To put all interested persons on notice of the editorial change, the NHTSA has included the change in its references to the ASTM E274-70 procedure.

Freightliner asserted that the newer procedure included modification of a formula that justified a larger upwards adjustment than that proposed by the agency. Actually, the modifications only corrected an error in the earlier formula which had no effect on the determination of frictional coefficient. Manufacturers either utilized a test trailer that obviated the need for calculations using the formula, or were aware of the error and corrected for it in their calculations. Thus the adjustment requested by Freightliner is not warranted.

In accordance with recently-enunciated Department of Transportation policy encouraging adequate analysis of the consequences of regulatory action (41 FR 16201, April 16, 1976), the agency herewith summarizes its evaluation of the economic and other consequences of this amendment on the public and private sectors, including possible loss of safety benefit. Because the new references to procedures and a test tire are expected to accord with existing practices, the amendment is judged not to have any significant impact on costs or benefits of the standards and consumer information item that are modified by the change.

Standard No. 121, *Air Brake Systems*, is presently subject to judicial review under Section 105(a) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. Section 1394(a)). The U.S. Court of Appeals hearing the petition for review has indicated that it prefers to review the standard as it presently exists, without unnecessary amendment. To the degree possible, the agency is complying with that request and therefore, in the case of Standard No. 121, will delay the update of ASTM procedure until review is completed.

It is noted that this change in procedure for ascertaining the frictional resistance of the test surface does not invalidate data collected using the older procedure, and manufacturers can presumably certify on the basis of stopping distance tests conducted on surfaces measured by the old tire.

In consideration of the foregoing, amendments are made in Chapter V of Title 49, Code of Federal Regulations. . . .

Effective date: June 14, 1976. Because the older test tire is no longer manufactured, and because the amendment of procedure and test tire is intended only to duplicate the existing procedure and tire, this amendment creates no additional requirements for any person, and an immediate effective date is found to be 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 8, 1976.

James B. Gregory
Administrator

41 F.R. 24592
June 17, 1976

PREAMBLE TO AMENDMENT TO PART 575—CONSUMER INFORMATION REGULATIONS

Uniform Tire Quality Grading

(Docket No. 25; Notice 24)

Action: Final rule.

Summary: This notice announces the effective dates for implementation of a uniform tire quality grading regulation with respect to bias and bias-belted tires, as authorized by Section 203 of the National Traffic and Motor Vehicle Safety Act of 1966. This notice also responds to comments on, and makes final, proposals concerning course monitoring tires and labeling as well as to petitions for reconsideration of the rule.

Effective date: For all requirements, other than the molding requirement of paragraph (d)(1)(i)(A), the effective dates are: March 1, 1979 for bias ply tires, and September 1, 1979 for bias-belted tires.

For paragraph (d)(1)(i)(A), the molding requirement, the effective dates are: September 1, 1979 for bias ply tires, and March 1, 1980 for bias-belted tires. No effective date is established at this time for radial tires.

Addresses: Petitions for reconsideration of the tire labeling amendments should refer to the docket number and be submitted to: Room 5108, Nassif Building, 400 Seventh Street S.W., Washington, D.C. 20590.

For further information contact:

Dr. F. Cecil Brenner, Office of Automotive Ratings, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202) 426-1742.

Supplementary information: On May 28, 1975 (40 FR 23073), the NHTSA published as a final rule a regulation pertaining to Uniform Tire Quality Grading (UTQG) as authorized by the National Traffic and Motor Vehicle Safety Act of 1966 (the Act) (15 U.S.C. 1381 *et seq.*). The

purpose of this regulation is to alleviate confusion in the purchase of passenger car tires and to provide simple comparative data upon which an informed tire selection can be made by consumers. Under the regulation, tires will be graded in three areas of performance: treadwear, traction, and temperature resistance.

Implementation of the regulation was delayed pending litigation of the validity of its grading procedures. In *B.F. Goodrich et al v. Department of Transportation*, 541 F.2d 1178 (6th Cir., 1976), the court upheld for the most part the agency's approach to tire quality grading. The court remanded for further agency consideration, however, two aspects of the regulation. First, the court suggested that the NHTSA reexamine the labeling requirements of the regulation to ensure that sufficient warnings would be provided to consumers to avoid the misapplication of the label information. Second, the court remanded to the agency the matter of the selection of course monitoring tires, for the agency to complete its testing and selection of the three course monitoring tires or, if this had already been accomplished, for reopening of the record to permit a brief period of industry comment on the selections. The court upheld the rule in all other respects.

Pursuant to the remand in the *B. F. Goodrich* decision, the agency issued two proposals; one to modify labeling requirements and the other announcing the selection of the course monitoring tires. Comments were received from several manufacturers and manufacturer representatives. This notice responds to those comments.

In response to the publication of the UTQG regulation (May 28, 1975) (40 FR 23073), the agency received several petitions for reconsidera-

tion. The agency announced that these petitions would not be immediately answered owing to the ongoing litigation involving the regulation (40 FR 57806). Since the challenge to the regulation has now been disposed of by the court, this notice responds fully to those petitions for reconsideration.

I. Labeling (Notice 21).

On December 13, 1976, the NHTSA published a notice of proposed rulemaking to revise the traction and temperature resistance labeling requirements of UTQG (49 CFR 575.104). That notice was in response to the decision in the *B. F. Goodrich* case.

The petitioners in the *B. F. Goodrich* case argued that the then existing labeling requirements would be misleading in several respects pertaining to traction testing and temperature resistance. The court remanded those issues to the agency for further consideration, suggesting the addition to the labels of clarifying warnings. The agency's December 13, 1976 notice proposed warnings in accordance with the court's decision that would ensure that UTQG label information would not be misconstrued.

The NHTSA received seven comments in response to the notice of proposed rulemaking. Most of these comments favored the warnings proposed by the agency with several comments proposing minor editorial changes for clarity. The agency has altered somewhat the final version of these warnings in consideration of the comments. The Vehicle Equipment Safety Commission did not submit comments.

Treadwear Labeling

The Rubber Manufacturers Association (RMA) recommended in its comments that the agency modify the treadwear example in Figure 2 which explains that tires rated at 200 will achieve twice the mileage as tires rated at 100. RMA indicated that few if any commercially available tires could achieve such a rating. Accordingly, they suggested that the example show that a tire rated 150 would wear $1\frac{1}{2}$ times as well as a tire graded 100.

The agency considers RMA's suggestion to have merit. Initially, the 200 figure was selected for the example because it facilitates understand-

ing of the treadwear grading concept since it speaks in terms of round numbers (e.g., a tire grade 200 wears twice as well as a tire grade 100). However, since few tires can achieve such a rating, the example would have little practical application. Therefore, the agency modifies the example to reflect that 150 represents a treadlife $1\frac{1}{2}$ times as good as that represented by the grade of 100.

Traction Labeling

Goodyear Tire and Rubber Company, Firestone Tire and Rubber Company, and the RMA suggested in their comments that the NHTSA amend the traction information in Figure 2 of the label to indicate that the tires were tested under controlled conditions on specified government test surfaces. The agency believes that this information is useful to prevent misleading the consumer and amends Figure 2 accordingly.

General Motors Corporation (GM) recommended that the agency add further warnings to the traction information that would indicate that actual traction results would differ depending upon tread depth, road surface, and speed. GM contended that the proposed warning did not sufficiently detail the extent of the limitations upon the use of these traction data.

The NHTSA is concerned that the warnings printed in the tire information be kept to the absolute minimum in length while ensuring adequate consumer information. If warnings and tire information become so lengthy as to become burdensome upon the consumer to read, it is possible that the information would go unused. The agency has determined that the statement in the warning that a tire was "measured under controlled conditions on specified government test surfaces" indicates that the test results were achieved under highly specified conditions. Clearly, changes in any of the test conditions could affect the traction results. This meaning is obvious from the present wording of the warning and further elaboration would needlessly lengthen the tire information. Therefore, the agency declines to adopt GM's suggested modification.

The agency has reached the position that the clarity of the traction grading information might

be enhanced by the use of the letters A, B, and C in place of the symbols **, *, and O presently employed to denote traction grades. A proposal to modify the traction grading system by substitution of the letters A, B, and C for the present traction symbols is published concurrently with this notice in the proposed rule section of the *Federal Register*.

Temperature Resistance Labeling

Several commenters suggested that the tire temperature warning be clarified to indicate that excessive speed, underinflation, or excessive loading, either alone or in combination, can result in temperature increases and possible tire failure. The commenters suggested this change because heat build-up can occur at normal speeds when there is tire underinflation or overloading. The current proposal, however, implies that heat build-up would only occur at excessive speeds. The NHTSA agrees with this suggestion and modifies the temperature warning accordingly.

The RMA suggested that the label elaborate on the meaning of the temperature grades C, B, and A. The grades C, B, and A represent comparative differences in a tire's ability to withstand the generation of heat without suffering structural degeneration and potential tire failure. Although the grades C, B, and A in themselves do not inform a consumer of the specific amount of difference between tires in the three grades, the grades do convey to the consumer the fact that one tire performs better than the other in this specific test. To specify more exactly the amount of difference in heat dissipation represented by each grade or the technical nature of the test involved would merely confuse many people not versed in the technical nature of the test. Therefore, the agency has determined that the temperature grading method should be retained as it is. The NHTSA notes further that the court in the *B. F. Goodrich* case examined this aspect of temperature grading and found it to be adequate.

Miscellaneous Labeling

Several commenters requested that the agency implement a labeling system similar to that employed by the Federal Trade Commission (FTC) under the Magnuson-Moss Warranty Act (Pub.

L. 93-637). The FTC in its regulations (16 CFR Part 702) permits the display of warranty information in any of four locations. The commenters to Notice 21 suggested that the agency should adopt the FTC's approach since Congress could not have intended that our regulations be more burdensome than those imposed under the Magnuson-Moss Warranty Act (Warranty Act).

The purpose of the Warranty Act is to ensure the open display of warranty data in order to provide consumers an opportunity to make buying choices based upon available warranties. The purpose of UTQG is similar but not identical to the Warranty Act. UTQG, like the Warranty Act, is intended to provide information to the consumer permitting him or her to make a rational choice in the selection of a product—specifically tires. Beyond the warranty data, however, the UTQG will dispel some of the inaccuracies and otherwise misleading information currently extant in the tire marketing business.

Congress considered tire retailing procedures to be a substantial problem. Accordingly, the Congress enacted a special provision in the National Traffic and Motor Vehicle Safety Act of 1966 to provide information to consumers on these products. The agency considers this specific mandate to justify the requirement that grading information be provided in several locations. At present, grading information must be contained on the tire sidewall (49 CFR 575.104(d)(1)(i)(A)), on a label affixed to the tread surface (49 CFR 575.104(d)(1)(i)(B)), and in the information furnished under CFR 575.6(a) and (c) to motor vehicle purchasers and to prospective purchasers of vehicles or tires (49 CFR 575.104(d)(1)(ii) and (iii)). The provision of UTQG information in several locations will ensure the broadest possible dissemination of this information to consumers.

Further, unlike many other consumer goods that can be adequately handled by the Warranty Act, tires deserve additional consumer safeguards owing to their varied methods of marketing and their importance to traffic safety. Many consumer goods are purchased only as a single final unit from a retail outlet (e.g., small appliances). Tires, on the other hand, can be purchased individually or can come, as in the case of original equipment, as a component of another retail

product (a motor vehicle). Accordingly, the need for maximum dissemination of information through several labeling locations is increased by the varied methods of tire retailing. The crucial role of tires in motor vehicle safety makes it imperative that information on tire quality be brought to the attention of consumers regardless of the marketing method employed.

The agency has previously carefully assessed its requirements for labeling in compliance with UTQG. In that assessment the agency determined that the Congressional mandate coupled with the unique nature of tire marketing warranted the labeling requirements established by the NHTSA. Further, the court in the *B. F. Goodrich* case upheld this labeling approach. Therefore, the agency declines to adopt the modification suggested by the commenters concerning the establishment of alternative labeling rather than mandatory labeling in several locations.

With regard to the wisdom of the UTQG labeling system in comparison with Warranty Act provisions, it is instructive that the FTC Chairman concluded in a September 16, 1977 letter to Goodyear that "it is apparent that the Uniform Tire Quality Grading System will produce useful, reliable information for the buying public." The letter contained no suggestions for improvement of the UTQG regulation, or that the UTQG regulation is in conflict with the Warranty Act.

On a matter of general application to the information label issue, Goodyear recommended that the agency ensure that the tire grading information will be presented to the tire purchaser. To achieve this goal, Goodyear suggested that the tire retailer be required to display the information. Without such a requirement they argued, tire grading information would not be useful.

The agency agrees that the provision of information in an easily identifiable and readily accessible location is necessary to the success of the tire grading concept. This is one of the reasons that the agency has been insistent about requiring the display of this information in a uniform fashion. The NHTSA encourages the open display of this information but remains convinced that the requirement that tires contain a label on the tire tread explaining the grading system is

necessary for purposes of informing the public of tire grading. This label cannot be removed from the tire prior to sale. It is noted that a proposal to modify the requirements for this label is published concurrently with this notice in the proposed rule section of the *Federal Register*.

II. Course Monitoring Tires

On February 14, 1977, the agency issued a notice of proposed rulemaking that tentatively selected the course monitoring tires (CMT's) to be used for treadwear testing (42 FR 10320; February 22, 1977). The CMT's are run on the treadwear test course simultaneously with candidate tires in order to provide an index of course variability that allows the adjustment of treadwear results for such variability. The agency had previously selected the CMT's for radial tires. The court in *B. F. Goodrich* suggested that the NHTSA select all three of the CMT's concurrently including bias ply and bias-belted CMT's which the agency had previously not selected. The court further suggested that the agency permit a short comment period to receive responses on the agency CMT selections.

Most of the comments to this proposal did not question the selection of tires chosen by the NHTSA. Rather, the comments focused upon alleged inadequacies in the NHTSA rulemaking procedures and the statistical analysis employed by the agency to determine the coefficients of variation (COV) for the tires selected. Several commenters criticized aspects of the UTQG procedures previously determined to be valid by the court in the *B. F. Goodrich* case.

Adequacy of NHTSA Data

B. F. Goodrich and several other commenters argued that the agency did not provide ample time for meaningful comment to the notice announcing the selection of CMT's. These commenters alleged that the agency did not submit data to the docket in a timely fashion nor in complete form. For example, they argued that over 2,000 pages of data were docketed on February 14, 1977, which could have been placed in the docket as it was generated through the months of testing.

The agency placed in the public docket on February 14, 1977, more than 2000 pages of data

accumulated through tests of the course monitoring tires. The notice announcing the CMT selections was issued simultaneously, and both the data and the notice were promptly brought to the industry's attention, even though the notice was not published by the *Federal Register* until February 22. Thus, the industry was given somewhat more than the 30-day comment period to analyze and evaluate the data. Commenters should note that the court in the *B. F. Goodrich* case considered that a 30-day comment period would be sufficient to permit adequate comment on the agency announcement of the CMT selections.

The agency did not submit the data pertaining to the CMT selections to the docket in a piecemeal fashion as the commenters suggested should be done for several reasons. First, until all the data were generated and reviewed by the agency no decision could be made concerning the adequacy, in light of the court's mandate, of the CMT's initially selected by the agency. Only after accumulating a mass of data from many tests could the agency be sure of its selections and accordingly go forward with a notice making public its selections. To have released this information prior to the actual determination of the adequacy of the chosen tires would have been premature.

A second reason for waiting to release the information was the ongoing litigation on the subject of UTQG. The court's remand did not formally reach the agency until the mandate issued on December 3, 1976. Since further agency rulemaking action depended upon the outcome of the *B. F. Goodrich* case, the NHTSA considered it necessary to receive the final mandate of the court prior to continuing with its rulemaking effort with respect to UTQG. Upon receipt of the mandate of the court, the agency began rulemaking in compliance with the remand. Rulemaking proceeded expeditiously even though petitioners in the *B. F. Goodrich* case had filed a petition for certiorari.

A further criticism by the commenters concerned an alleged continued withholding by the agency of data necessary for informed comments on the CMT selections. Several commenters stated that the data in the docket contain omis-

sions. For example, the numbered data do not progress in a serial manner.

The agency has not withheld relevant information from the docket as the commenters suggest. The extent that the numbered data (test numbers) do not proceed in a serial manner results from the inclusion of the docket only of those tests involved with the computation of the coefficients of variation (COV). The COV's were computed from the first 6,400-mile cycle (after an 800-mile break-in) of the CMT, as prescribed in the UTQG regulation. Subsequent cycles run on the same CMT were not run for purposes of computing the COV. Therefore, subsequent test cycles of the same tires were deleted from the docketed data so as not to be confused with the computation of the COV's. All of the data upon which the agency based its determinations pertaining to the COV's were placed in the docket.

A further argument of the commenters was that the agency failed to include an analysis of the data indicating how our conclusions concerning COV's were achieved. The agency has used an established method for the determination of the coefficients of variation. The method chosen is an accepted statistical technique. The NHTSA does not consider it necessary to reproduce underlying, routine computations when each set of data is put into the docket.

In connection with the alleged lack of information in the docket, several commenters suggested that the NHTSA make further submissions to the docket concerning the test procedures used by the agency in testing the CMT's. The existing rule on UTQG contains the test procedures for conducting treadwear tests, and the *B. F. Goodrich* case upheld these test procedures. When the agency tests CMT's, the procedures outlined in the rule are, of course, rigidly followed. No other information relevant to the conduct of these tests exists to be placed in the docket.

Some commenters argued that the NHTSA should make public some of the test variables in existence on the days tests were conducted. For example, they suggested that weather could have an impact upon test results and, therefore, records of such weather conditions should be made available to them. The agency did not maintain such records, for the simple reason that the CMT procedure is specifically intended to account for

all such variables. Of course, data such as weather conditions, can be determined from the information contained in the docket. The test data list the date each test was run. If parties care to gather extraneous data for their own purposes, weather information for the days in question can be obtained by contacting a weather service. It should be noted that many major tire manufacturers test in Southwest Texas. Indeed, Goodyear has stated in a brochure which describes its San Angelo proving ground, that "the San Angelo area presents the most ideal conditions for tire testing in the United States." (Docket 25, GR 86.)

The RMA requested as part of their comments that, since further information should in their opinion be placed in the docket, the agency extend the comment period. The agency, as stated above, placed all pertinent information in the docket, obviating the need for an extended comment period. Further, NHTSA procedures for requesting extensions, 49 CFR 553.19, require that such a request be submitted not less than 10 days before expiration of the comment period in accordance with those procedures. Instead, the RMA included a request for extension in the body of their docket comment. It should be noted that, while the procedurally defective request was not granted, the agency has continued to accept and consider the comments of the RMA and others that have been received well after the comment closing date.

Several commenters suggested that the NHTSA publish the base course wear rates for the CMT's chosen by the agency. Publication of these wear rates, the commenters argued, was necessary for their testing of the CMT's and thus for meaningful comments on Notice 22. The agency disagrees that it is necessary to have the base course wear rates for purposes of commenting upon the tires selected by the agency as CMT's. It is the coefficient of variation experienced in the testing that is relevant to their selection as monitors of the course, and the base course wear rate is irrelevant to this consideration.

Since the commenters desired the publication of these figures, albeit irrelevant to the selection of the CMT's, the agency hereby makes them public. The wear rates for the bias ply tire

(Armstrong Surveyor 78) and for the bias-belted tire (General Jumbo 780) are 9.00 mils and 6.00 mils per 1,000 miles, respectively. Since these figures have no impact upon the selection of CMT's announced in Notice 22, no comment period is required as a result of the publication of the base course wear rates.

Firestone submitted two NHTSA technical papers for inclusion in the Docket. These papers have been modified by Firestone's underlining without other comment. These papers are included in the docket even though they are not relevant to the present UTQG regulation.

Possible Radial Wear Rate Problem

In Notice 22, the agency stated that the data appeared to indicate that the wear rate for some radial tires may not be constant. The NHTSA concluded, therefore, that radials would not be included for the time being under the UTQG rule, since computations made under that rule contemplate a constant adjusted wear rate for projection purposes. Industry commenters objected to this treatment of radials and argued that the agency should not proceed with any of the grading requirements unless it proceeds with them all simultaneously.

These commenters cited the *B. F. Goodrich* case which remanded the course monitoring tire issue to the agency, because a selection of all of the CMT's had not been made prior to the establishment of an effective date for the implementation of the rule to all tire types. The commenters interpreted this court mandate to mean that the agency was required to proceed with the promulgation of grading requirements for all three tire types concurrently. The agency does not interpret the court decision in that manner.

The 6th Circuit Court remanded to the agency the issue of the selection of the CMT's. It should be noted that at the time of the court decision the agency had not selected the bias and bias-belted CMT's even though it had established the effective dates for all tire types. Moreover, the court noted that the selection of the radial CMT had been based upon a series of tests (reported in NHTSA Technical Note T-1014) which were flawed by a problem not clearly identified or explained. The court's conclusion, therefore, was

that it was inappropriate to schedule the effective date for compliance of tires with UTQG when the NHTSA had not given notice and invited comment on its selection of the CMT's. This mandate of the court does not prohibit the promulgation of the rule in phases, however.

The court's opinion stated that it would be inappropriate to require grading of a tire when all of the procedures (in this case the CMT selection) had not been chosen, and commented upon, for that tire. The court did not, in the opinion of the NHTSA, state that the agency could not proceed with rulemaking on some tire types pending further study of the application of the rule to another tire type. Therefore, the agency does not find merit in the position of the commenters who allege that the agency must proceed with a rule for all tire types at the same time.

The agency has responded to the remand in Notice 22 by announcing the selection of all CMT's. That notice gave the industry adequate time to comment upon the agency's selections. However, until possible problems concerning the testing of radials are resolved, the agency will not set an effective date for the application of the rule to radial tires. As long as an effective date applicable to the grading of radials is not established prior to the establishment of grading procedures for that tire, the NHTSA can implement the rule with respect to the other tire types and is not in violation of the court's remand.

Several commenters argued that regardless of the court mandate, the NHTSA should not go forward with tire grading for two tire types while excluding radials. The commenters asserted that altered test procedures for radials could result in different tests or a different test course for radial tires which would make comparisons between them and the other tire types meaningless.

By this comment, it is apparent that some people may have misunderstood the agency's earlier notice announcing the possible problem with radials. The problem that may attend the grading of radial tires is one of computing the wear rate after the 6400-mile test has been completed, since there is some evidence suggesting that these tires may not wear at a constant rate after only an 800-mile break-in. No comparable

problem has been found for bias and bias-belted tires. Ample data have been generated demonstrating that the wear rates for bias ply and bias-belted tires are constant after an 800-mile break-in. At present there are no plans to alter the test course or the actual test procedures. If changes were considered necessary in either the test course or procedures, careful attention would then be given to their impact upon the comparative nature of the grades given other tire types. The agency would not implement test procedures for radial tires that differ from the procedures used for bias and bias-belted tires without affording adequate time for comment upon such test procedures and without carefully evaluating comments received on such test procedures.

The agency would like to note that with respect to the issue of radials, it was stated in the earlier notice that an *apparent* problem had been discovered with radials. The agency is not yet convinced that this problem does exist. However, until such time as further analysis can be accomplished, the NHTSA considers it prudent to proceed cautiously with the implementation of the UTQG requirements for radial tires.

Several commenters questioned the validity of the test procedures for testing treadwear. Goodyear stated that the driving instructions are unclear and, in particular, the braking procedure is not good. They stated further that the spacing in convoys was dangerously close on corners. Cooper Tire Company stated that the tests could not be repeated within statistically acceptable margins of error and, therefore, would be unenforceable.

The NHTSA does not agree with these comments questioning the validity of the test methodology. The agency has determined that these procedures provide a viable testing technique which can be duplicated for enforcement purposes. Further, the court in *B. F. Goodrich* upheld the test methodology. Accordingly, the agency sees no need to modify the test procedures.

Goodyear also argued that the test course has been changed since the last update of the rule by the agency. For example, they argued that some stop signs are now yield signs. On a test course of this size and nature, minor modifications of road signs are to be expected with certain regu-

larity. The regulation only lists "key points" to assist regulated parties, and has updated the regulation to reflect changes in these key points and will continue to do so. The minor changes in the test track which have occurred since the last publication of the regulation are included in this notice.

The agency notes that with respect to sign changes in the treadwear course, such minor changes have no significant impact on tire grading. The use of CMT's is designed to reduce the effects, if any, of the course variables, including course markings. Therefore, the agency considers that minor changes in the road markings which will occur from time to time should have no impact upon the comparative ratings of tires. Nevertheless, the NHTSA will make every effort to update the regulation periodically to reflect changed course markings.

III. Effective dates

Several commenters asserted that the agency must propose effective dates to give the industry time to comment on the appropriateness of such dates. Notice 22 did not propose effective dates for the implementation of the regulation to bias and bias-belted tires. The agency has established the effective dates for all provisions other than the molding requirement as seven months from the publication of the final rule in the case of bias ply tires and 13 months from publication in the case of bias-belted tires. An additional six months has been provided in each case for the revision of tire molds. The issue of effective dates was litigated in the *B. F. Goodrich* case. The court there held that the implementation lead time as chosen by the agency was sufficient. The determination was based upon an evaluation of the capacity of the treadwear course and traction skid pads in relation to the number of tires to be tested. Therefore, since the agency has not modified the test procedure in any manner, there is no need to raise again the issue of effective dates as long as the agency allows the same lead time as was held valid by the court. Moreover, as noted in the court's opinion, the agency will closely monitor the actual use of the treadwear course and traction skid pads and will exercise its discretion to extend the lead time periods if it should become necessary to do so in the future.

Cooper Tire Company stated that changing the order of implementation of the requirements requires a reassessment of the effective date requirements. For example, radial tires no longer will be the first tire type to be tested. According to Cooper, a manufacturer may be harmed by the change in the order of implementation and further study of the effective dates is thus warranted.

The agency does not agree that a change in the order of implementation of the grading regulation for different tire types requires total reconsideration of the effective dates. As set forth in this notice and in Notice 22, bias ply will be the first tire construction type required to be graded. A count by NHTSA staff of the number of passenger tire lines set forth in a standard reference, "1977 Tread Design Guide" (published by the Tire Information Center, Commack, New York), excluding winter treads (snow tires) and duplicates of the same tread design, indicates that of some 1139 tire lines on the market, approximately 431 are radials, 408 are bias-ply, and the remaining 300 are bias-belted. Therefore, if ample time was provided in the previous rule for the testing of radials, and the court held that the lead time was sufficient, there certainly should be sufficient lead time to test bias ply tires which are fewer in number. Although this change may create greater test burdens for individual manufacturers, it will not impair the ability of the test facilities to accommodate tire grading.

IV. Statistical Comments

The RMA criticized the NHTSA's statistical analysis of the data upon which the coefficients of variation were derived. The RMA submitted a paper written by Dr. Shelemyahu Zacks purporting to discredit the NHTSA's analysis. Through this paper the RMA suggested that the coefficients of variation (COV) were larger than the agency had indicated.

The analysis done by the NHTSA was conducted according to statistically acceptable procedures, but the NHTSA concluded that it would be prudent to obtain an impartial review of both the Zacks' and the NHTSA's analyses of the COV's. The agency contracted with a noted statistician, Dr. Herbert Solomon, who reviewed the agency's procedures in view of Dr. Zacks' criticisms of those procedures and concluded that

the agency was correct in its method of computation of the COV's. The full text of both the Zacks and Solomon papers as well as the agency's analyses of the former are in the public docket.

Subsequent to the Solomon report, the RMA submitted several comments intended to refute the accuracy of the report. In particular, the RMA contended that the use by NHTSA of "n" ("n"=sample size), rather than "n-1", as the divisor in computing the sample standard deviation was incorrect and produced an inaccurately low COV. After careful review of this question, the agency has concluded that the use of "n" in the formula for the sample standard deviation is a proper statistical approach as a step in the process of determining the sample COV. Moreover even if the alternative "n-1" formula were adopted, the resulting COV's of 4.74, 3.08, and 2.70 for bias, belted bias, and radial tires respectively would still fall within the 5% coefficient of variation which was approved by the court in the *B. F. Goodrich* case. The RMA's other contentions were also carefully reviewed and were found to be invalid and to reiterate much of the information contained in earlier RMA comments. Therefore, the agency declines to adopt the statistical approach proffered by the RMA as well as the other recommendations of the RMA that attend their method of statistical analysis.

B. F. Goodrich submitted a statistical study by its engineering staff of models of the wear behavior of tires. (C. Thomas Wright, "The Adequacy of Linear Models in Tread Life Testing"). The agency's analysis of the study revealed that significant errors in the study accounted for Wright's differences with the linear model employed in the regulation. The agency analysis was placed in the docket, and B. F. Goodrich subsequently filed a rebuttal to the analysis. Review by the agency of that rebuttal confirms that Wright's differences with the regulation's linear model involve his failure to observe conventional statistical precepts.

Uniroyal submitted comments suggesting that the NHTSA testing procedure did not adequately consider the effects of actual driving conditions upon tire grades. Uniroyal conducted a random sampling of tires on automobiles in parking lots. The conclusion of that study was that tires wear

at varied rates depending upon the type of car, size of tire, load on the tire, and many other variables. Uniroyal suggested that its results indicated that it would have to test unlimited combinations of its tires to ensure correct grading.

The NHTSA has always stated that UTQG does not give an exact measurement of a tire's life under all conditions. The agency realizes that tire life will vary depending upon a number of conditions. The court in *B. F. Goodrich* also recognized this fact when it stated that no test designed to grade millions of tires will be perfect. Few measuring techniques are. However, for this reason the agency cautions individuals concerning misapplication of the grading information.

The Uniroyal survey yields results that are to be expected but that have no impact upon the validity of the UTQG test procedures. The test procedures for UTQG control most of the variables. The course, speed, drivers, stopping conditions, and many other variables are controlled for tire testing purposes. For those environmental variables beyond the control of the agency, the NHTSA uses the CMT to measure their effect. The Uniroyal study did not control these variables. Accordingly, it does not present an accurate picture of comparative data between tire lines. The agency has determined that comparing different tires under similar conditions on the treadwear course and traction skid pads does yield excellent comparative data. Therefore, the agency discounts the value of the Uniroyal study for purposes of questioning the validity of UTQG testing. The Uniroyal study merely indicates that the public must be cautioned against the misuse of grades provided on the tires. The NHTSA concludes that the warnings provided on the grading label information provide sufficient cautionary advice to the consumer.

Cooper Tire Company ran computer tests intended to show that the same tire might receive different grades with any two tire treadwear tests. According to Cooper this indicated that the UTQG requirements are unenforceable.

It has been argued in the past that enforcement testing for many of the agency's regulations and standards depends upon a test of a single piece of equipment or motor vehicle and accordingly

the results cannot be projected to all vehicles or equipment. In other words, the commenters suggest that a noncompliance in one vehicle or item of motor vehicle equipment does not mean that all vehicles are defective.

The agency's enforcement actions pertaining to all standards have been conducted, in the past, using a variety of data. A failure of equipment or a vehicle to reach a performance standard during an agency enforcement test indicates a potential noncompliance. The agency then goes to the manufacturer of the affected vehicle or equipment and requests the results of the manufacturer's tests or other data upon which he based his certification of compliance with the standard. A similar method of enforcement is contemplated for UTQG.

V. Petitions for Reconsideration.

On May 28, 1975, the NHTSA published the final UTQG rule. In response to that rule, several petitions for reconsideration were received by the agency. A response to these petitions for reconsideration was delayed pending the outcome of the litigation in the *B. F. Goodrich* case. Several of the issues raised in the petitions have been answered by that litigation or in subsequent notices issued by the agency. The NHTSA will now respond to those issues raised in the petitions and not previously addressed.

Several tire manufacturers commented that the lead time allowed prior to the effective date of the regulation was not adequate. The Japan Automobile Tire Manufacturers' Association, Inc. argued that there were significant time problems in the shipment of tires to the United States for treadwear testing on our test course and transmission of the resultant data back to Japan.

The issue of lead time was litigated in the *B. F. Goodrich* case. The court upheld the agency's proposed lead time. Since the agency does not propose to reduce the amount of lead time from that proposed in 1975, there should be no problem with meeting the effective date of the regulation.

Automobile manufacturers argued that they need more lead time than tire manufacturers since the specificity of the data required in the owner's manual forces them to wait until they

receive the newly graded tires before printing the manuals. On a related point, many of the manufacturers suggested that the agency require in the owner's manual only general tire grading information. They argued that this is necessary because frequently manufacturers are unable to obtain the tire with which they normally equip their cars. In such an event, they would have to print a new owner's manual containing the new tire information and would be required by Part 575 of our regulations to submit a copy of this new information to the NHTSA 30 days prior to its issuance.

The agency has determined that the automobile manufacturers should operate under the same lead time constrictions as the tire manufacturers. Therefore, the effective date of the requirements applicable to the tire manufacturers shall also be applicable to the automobile manufacturers. This will ensure complete dissemination of grading information at the earliest possible time.

The agency has concluded that the manufacturer's suggestion to provide only general tire information in the owner's manual has merit. It would be cumbersome for a manufacturer to submit to the agency for 30-day review its owner's manual information every time a change in tires was contemplated or required. The agency considers it sufficient for purposes of informing consumers, for manufacturers to provide general grading information in the owner's manual. This information would explain the grading system, giving the cautionary warnings to the consumer concerning the possible misuse of the UTQG information. The consumer could then be directed to look at the tire sidewall for the particular grading of the tire. The rule has been amended to reflect this modification.

The Motor Vehicle Manufacturers Association (MVMA) and GM argued that the temperature resistance grading system would be misleading to consumers. Both suggested a two grade approach to temperature testing using the "high speed" designation for tires designed to operate under those conditions. The agency does not agree that the temperature information will be misleading. The implementation of the proposed warnings on the misuse of the temperature information should prevent any potential for consumer misunder-

standing. The agency notes further that the court upheld the existing temperature resistance test.

Several manufacturers suggested that the NHTSA exempt the space saver tire from the UTQG requirements. They argued that this tire is designed for a limited life and for a special use only and, therefore, should not be required to comply with the regulation.

The NHTSA agrees that the space saver tire and other temporary use spare tires should be exempt from the requirements of the regulation. These tires are of reduced size or are inflatable. They are designed so that as installed in the vehicle, they reduce vehicle weight and create more vehicle interior space. Since the useful life of these tires is frequently limited to 2,000 miles, it would be inappropriate to require them to comply with the treadwear requirements. The agency amends the regulation to indicate that the space saver and temporary use spare tires are exempted from the regulation's requirements.

Volkswagen and the European Tyre and Rim Technical Organisation (ETRTO) argued that the treadwear information would confuse the public and be misused. ETRTO argued further that treadwear grading has nothing to do with safety and should be deleted from the requirements.

The treadwear labeling requirements are proper and were upheld by the court. Accordingly, the agency declines to change or delete those requirements as suggested by the manufacturers. Further, the agency notes that the UTQG regulation is promulgated under a special authorization of the Act (15 U.S.C. 1423). It is a consumer information regulation issued at the behest of the Congress.

On a related matter of labeling, ETRTO also requested that the words "treadwear", "temperature", and "traction" not be required to be molded into the sidewall owing to the expense of that operation. Once again, the 6th Circuit upheld the agency on its proposed labeling requirements while suggesting additional warnings to prevent the misuse of that information. The NHTSA requires the use of the words "traction", "treadwear", and "temperature", because these words

will help avoid confusion as to the meaning of the symbols molded onto the tire sidewall.

ETRTO also suggested that NHTSA extend the effective dates for the traction requirements since the standard test trailer can not accommodate small tires. The agency declines to extend the effective date for the implementation of the requirements. However, small tires are being excluded from the requirements until such time as a test trailer is equipped to test them.

Dunlop recommended that the lowest of the three possible tire traction grades be eliminated, on grounds that an open-ended grade would allow production of tires with extremely poor traction in order to obtain higher treadwear or temperature resistance grades. In effect, Dunlop was requesting a minimum traction standard. The agency has an outstanding proposal that would establish such a minimum standard (38 FR 31841); November 19, 1973) and will respond to Dunlop's request by means of the separate rulemaking.

Dunlop suggested that the agency permit the tire information to be molded onto the tire in two tiers using smaller size lettering. Currently the regulation requires that the information be molded into the sidewall in either one or three tiers using $\frac{1}{4}$ inch lettering. Dunlop argued that some of their tires are too small to permit the display of information printed in one tier without conflicting with other information molded on the sidewall. Further, they stated that the depth of their tires was such that three tiers of information would not easily fit on them.

The exclusion of the smallest tires from the UTQG requirements for the time being may alleviate this problem since these are the tires that present the greatest problems concerning available space for sidewall molding. Nonetheless the agency amends the regulation to reduce the print size of the required molding from $\frac{1}{4}$ inch to $\frac{5}{32}$ inch. Finally, the NHTSA can see no reason not to permit the molding of information into the sidewall in two tiers. Accordingly, the agency amends the regulation establishing a format for two tier information.

In a comment by ETRTO, it was suggested that the agency clarify its position with respect to the use of front wheel drive and rear wheel

drive vehicles in a convoy for treadwear testing. The regulation states that the vehicles used will be rear wheel drive vehicles, but the preamble (Notice 17) stated that testing would be accomplished by the use of vehicles for which the tires were designed, which might include front wheel drive vehicles. In accordance with the regulation which was issued in 1975 and upheld by the court, the agency has determined that only rear wheel drive vehicles will be used for treadwear testing. This removes the possibility that any vehicle variations between front and rear wheel drive vehicles will affect the tire test results.

In accordance with Department policy encouraging adequate analysis of the consequences of regulatory action, the agency has evaluated the anticipated economic and other consequences of this amendment on the public and private sectors. The agency has determined that the regulation will benefit tire consumers by affording them more detailed information upon which to make informed tire purchases. The regulation will thus reduce some of the existing confusing claims associated with tire marketing.

As the purpose of UTQGs is to help the consumer make an informed choice in the purchase of passenger car tires, the agency will soon initiate action to evaluate whether the rule is meeting this goal. It is planned that surveys will be undertaken to determine how easily understandable and meaningful the grades are to purchasers, how the grades are utilized in purchase decisions and any measurable economic effect that may occur both within the passenger tire industry and to consumers as a result of the rule. The emphasis will be on the utility of the grading system to consumers. Major points of interest of the con-

sumer survey will be the extent to which consumers use the grading system in their purchase decisions, the extent to which it has increased their knowledge and awareness of the characteristics of various tire constructions and tire lines and whether they feel the grading system is valid and worthwhile.

Effective date finding: Under section 203 of the Act, the Congress stated that the regulation should become effective not sooner than 180 days nor later than one year from the date that the rule is issued. Based upon this direction and other agency findings concerning required lead time for grading tires, the agency has determined, and the Court has upheld, that phased implementation of the rule in essentially 6-month intervals is appropriate.

The program official and lawyer principally responsible for the development of this rulemaking document are Dr. F. Cecil Brenner and Richard Hipolit, respectively.

In consideration of the foregoing Part 575.104 of Title 49 of the Code of Federal Regulations, is amended. . . .

(Secs. 103, 112, 119, 201, 203; Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1407, 1421, 1423); delegation of authority at 49 CFR 1.50.)

Issued on July 12, 1978.

Joan Claybrook
Administrator

43 F.R. 30542
July 17, 1978

PREAMBLE TO AMENDMENT TO PART 575—CONSUMER INFORMATION REGULATIONS

Temperature for Tire Testing

(Docket No. 25; Notice 25)

Action: Final rule.

Summary: This notice establishes a uniform tire testing temperature for the test requirements of the Uniform Tire Quality Grading regulation and the Federal motor vehicle safety standard for non-passenger-car tires. This amendment simplifies existing requirements by permitting various tire tests to be conducted at the same temperature.

Effective date: July 17, 1978.

For further information contact:

Arturo Casanova III, Crash Avoidance Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202) 426-1715.

Supplementary information: The National Highway Traffic Safety Administration (NHTSA) proposed on March 3, 1977 (42 FR 12207), to amend the ambient temperature conditions for tire testing contained in Standard No. 119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars* (49 CFR 571.119), and in Part 575, *Uniform Tire Quality Grading* (49 CFR 575.104) (UTQG). The purpose of this proposed amendment was to harmonize existing tire testing temperatures as requested by the Goodyear Tire and Rubber Company. The ambient temperatures were previously specified as follows:

Standard No. 109: "100±5° F."

Standard No. 119: "any temperature . . . up to 100° F."

UTQG: "at 105° F."

In the notice of proposed rulemaking, the agency proposed to amend Standard No. 119 and UTQG to reflect the tire temperature utilized in

Standard No. 109 (100±5° F.). As an alternative method of expressing the test temperature, the NHTSA proposed to amend the standards to specify "any temperature up to 95° F."

Five comments were received in response to that proposal. All comments favored the proposed amendment that would have instituted a 100±5° F. temperature. The Vehicle Equipment Safety Commission did not take a position on this proposal.

After consideration of the issues involved in the proposal and review of the comments, the agency has determined that the test temperature should be expressed as "any temperature up to 95° F." Accordingly, Standard No. 119 and UTQG are amended to specify temperature testing at "any temperature up to 95° F." It is the NHTSA's opinion that the 95° F. test temperature is in effect the same test temperature as would be achieved by using the 5-degree tolerance (100±5).

The NHTSA has often stated in interpretations on similar issues that the use of tolerances in safety standards reflects a misunderstanding of the legal nature of the safety standards. Standards are not instructions, but performance levels that vehicles or equipment are required by law to be capable of meeting. Any tolerance in this context would be meaningless and misleading, since it would merely have the effect of stating a performance level that the equipment must meet when tested by the government, but in a confusing manner.

Recognizing that no measurement is perfectly precise, a manufacturer's tests should be designed to show, using tire testing temperature as an example, that his tires will comply with the requirements at exactly 95° F. This may be done in at least two ways: (1) by using a test method

that corresponds so closely to the required temperature that no significant differences could occur as a result of differences between the actual temperature and the specified one, or (2) by determining which side of the specified temperature is adverse to the product tested, and being sure that the actual temperature of the test differs from the specified one on the adverse side.

The amendment of Standard No. 119 and UTQG to reflect the 95° F. temperature creates a different temperature phraseology for those standards than exists in Standard No. 109 which still has the 100±5° F. temperature. As stated earlier, the NHTSA considers the Standard No. 109 temperature tolerance to mean in actuality "any temperature up to 95° F." However, since modification of that standard was not proposed in the earlier notice, the agency does not amend it in this final rule. However, the agency intends to issue an interpretive amendment that will amend Standard No. 109 to adopt the alternative expression for tire temperature testing (any temperature up to 95° F.) unless objections are received.

In accordance with Departmental policy encouraging analysis of the impact of regulatory actions upon the public and private sectors, the agency has determined that this modification will

result in no appreciable safety gains or losses. These amendments may result in slightly lower costs for tire temperature testing since all temperatures will be uniform.

Since these amendments relieve restrictions and impose no additional burdens, it is found for good cause shown that an immediate effective date is in the public interest.

In consideration of the foregoing, . . . amendments are made in Parts 571 and 575 of Title 49, Code of Federal Regulations.

The program official and lawyer principally responsible for the development of this rulemaking document are Arturo Casanova and Roger Tilton, respectively.

(Secs. 103, 112, 119, 201, 203, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1421, 1423); delegation of authority at 49 CFR 1.50.)

Issued on July 12, 1978.

Joan Claybrook
Administrator

43 F.R. 30541
July 17, 1978

PREAMBLE TO AMENDMENT TO PART 575—CONSUMER INFORMATION REGULATIONS

Uniform Tire Quality Grading

(Docket No. 25; Notice 27)

This notice amends the Uniform Tire Quality Grading (UTQG) Standards to revise the grading symbols used to indicate traction grades and responds to a petition for reconsideration of the effective dates for the information requirement regarding first purchasers of motor vehicles. The notice, further, responds to petitions for reconsideration submitted by the Rubber Manufacturers Association and The Goodyear Tire & Rubber Company, regarding an amendment of the tire testing temperature employed in the UTQG regulation and the non-passenger-car tire safety standards, which established a single test temperature for the performance requirements of the two standards. The notice also withdraws a NHTSA proposal to modify the tread label requirements of the Uniform Tire Quality Grading Standard. These actions are intended to aid consumer understanding of the UTQG grading system and facilitate industry tire testing.

Effective date: October 23, 1978.

For further information contact:

Dr. F. Cecil Brenner, Office of Automotive Ratings, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 426-1740.

Supplementary information: On July 17, 1978, (43 FR 30542), NHTSA republished the UTQG Standards (49 CFR 575.104) to assist the consumer in the informed purchase of passenger car tires. (Docket No. 25, Notice 24). The standard requires that manufacturers and brand name owners provide simple comparative data on tire performance, which can be considered by purchasers in selecting between competing tire lines. Concurrently, with issuance of the final rule, the agency proposed modifications of the standard's provisions relating to traction grading symbols and tread labels (43 FR 30586; July 17, 1978).

Traction Grading Symbols

The notice of proposed rulemaking (43 FR 30586), issued concurrently with the republished final rule, proposed revision of the symbols used to denote tire traction grades. The agency invited comment on the use of an A, B, C hierarchy of traction grades in place of the **, *, 0 system now required by paragraph (d) (2) (ii).

The Automobile Club of New York commented that the proposed traction grading symbols would be "far more meaningful to consumers" than the asterisks and zeros used in the existing regulation. The National Tire Dealers & Retreaders Association viewed the letter grading proposal as an improvement, and, in response to Notice 24, the Metropolitan Dade County, Florida, Office of the Consumer Advocate approved of an A, B, C grading system as falling within the experience of all consumers.

The only negative comment came from Atlas Supply Company which expressed concern that, if consumers are warned, as the rule requires, that tires with a C traction grade may have poor traction performance, they may assume that a C temperature resistance grade likewise denotes poor temperature resistance qualities. Atlas recommended that the lowest traction grade be abolished completely and that only the symbols A and B be used to represent traction grades.

In fact, the agency is currently considering promulgation of a tire traction safety standard which would set a minimum performance level such that tires falling within the lowest UTQG traction performance grade would not comply with the safety standard (43 FR 11100; March 16, 1978, and 38 FR 31841; November 19, 1973). Pending issuance of such a standard, however, consumers should not be misled as to the nature of the C temperature grade, since the explanation of the grading system, to be furnished under the

standard, specifically states that the C grade indicates a level of performance which meets the applicable Federal safety standard.

The agency has concluded that the A, B, C grading symbols for traction performance will be an aid to consumer understanding of the UTQG system due to the general familiarity with letter grading systems and the hierarchy inherently associated with these symbols. Consumer comprehension of the grading system will also be improved by eliminating the need to use three different sets of symbols. The symbols A, B, and C are, therefore, adopted to represent traction grades under the UTQG Standard.

Tread Label Requirements

The existing UTQG regulation provides that each passenger car tire, other than one sold as original equipment on a new vehicle, shall have affixed to its tread surface a label indicating the specific treadwear, traction, and temperature grades for that tire, as well as a general explanation of the grading system. In its July 17, 1978 notice of proposed rulemaking (43 FR 30586), the agency proposed to amend section 575.104 (d)(1)(i)(B) of the standard, to require only general grading information on the tread label, while retaining a separate requirement that specific grades be molded on the tire sidewall. The tread label would have been modified to include a statement referring the consumer to the tire sidewall for the actual grades of the particular tire. The notice also proposed that specific tire grades be supplied, at the manufacturer's option, on either tread labels or on the sidewall during the six-month period prior to the effective dates of the molding requirement.

In commenting on the notice, Goodyear argued that provision of specific grading information on the tread label would not be feasible and would add to the cost of implementation of the standard. American Motors Corporation commented that provision of specific grades in two places would be redundant and an unnecessary expense.

However, Michael Peskoe, an individual involved in early development of the standard, argued that the tread labeling requirement is not redundant, since tire sidewall molding was intended primarily to supply a permanent record

of the tire grades, to be considered when replacing the tires, rather than to convey information to the prospective purchaser. He also stated that, with regard to cost and feasibility considerations, tire specific identification labels, bearing information such as tire line and size, are already in widespread use within the industry to aid in the distribution of tires. Therefore, the burden of adding the specific UTQG grades for the particular tire classification should be minimal.

The Automobile Club of New York and Mr. Peskoe commented that provision of specific tire grades only on the sidewall would hinder use of the information in the situation, common in tire dealerships and service stations, where tires are displayed on racks, sidewall to sidewall. Tires would have to be removed from the display rack before the grades molded on the sidewall could be observed. The problem would be compounded where the purchaser wishes to compare the grades on several tires.

While NHTSA is concerned with keeping the cost of the UTQG regulation at a minimum, existing tire labeling and marketing practices lead the agency to the conclusion that tread labels containing specific tire grading information should continue to be required for replacement tires. The agency had earlier determined that identification of specific tire grades on tread labels is feasible and involves a very limited cost to manufacturers and consumers. Tire-specific tread labels have been demonstrated to be an integral and necessary part of the regulation's plan for getting useful information to tire purchasers. The proposal to require only general grading information on tire tread labels is, therefore, withdrawn.

Effective Dates for Point of Sale Information

Notice 24 set March 1, 1979, in the case of bias-ply tires and September 1, 1979, in the case of bias-belted tires, as effective dates for all UTQG requirements except the molding requirements of paragraph (D)(1)(i)(A). The molding requirements applicable to bias and bias-belted tires were made effective September 1, 1979, and March 1, 1980, respectively.

The purpose of this delayed phase-in schedule for tire sidewall molding is to provide manufacturers with extra time to prepare new tire molds

containing grading information. However, the delay in effective dates for tire molding had the unintended effect of creating a six-month interval between the time vehicle manufacturers must provide point of sale information on tire quality grading to prospective purchasers, and first purchasers of motor vehicles (49 CFR 575.104(d) (1) (ii) and (iii)) and the date on which grading information actually must appear on the tires sold. In the case of information to be furnished to first purchasers under paragraph (d) (1) (iii), potential for confusion exists since consumers will be referred to the tire sidewall for specific tire grades, when in many cases, molds will not yet have been modified for the tire lines being supplied.

To correct this situation, American Motors Corporation has petitioned NHTSA to reconsider the effective dates for paragraph (d) (1) (iii). American Motors has recommended that the effective dates for paragraph (d) (1) (iii) be amended to correspond to those of paragraph (d) (1) (i) (A), the molding requirement. The agency has already recognized the difficulties involved in providing specific grades for original equipment tires through the use of tread labels (39 FR 1037; January 4, 1974) or point of sale information (43 FR 30547; July 17, 1978). To better coordinate the availability of specific tire grading information on tire molds and the provision of explanatory information through vehicle owner's manuals, American Motors' petition for reconsideration is granted. The effective dates for paragraph (d) (1) (iii) are changed to September 1, 1979, for bias-ply tires and March 1, 1980, for bias-belted tires.

Paragraph (d) (1) (ii) of the regulation requires that vehicle and tire manufacturers furnish to prospective purchasers an explanation of the UTQG grading system. Although this provision also takes effect six months prior to the tire molding requirements, the agency has concluded that no corresponding change in effective dates is necessary. Paragraph (d) (1) (ii) provides for the availability of valuable information to prospective tire purchasers, since specific grading information will be available on replacement tires sold during the six-month phase-in period. Further, the paragraph contains no potentially confusing

reference to the tire sidewall as does paragraph (d) (1) (iii). Prospective vehicle purchasers who obtain the information prior to the sidewall molding effective dates will be given the opportunity to familiarize themselves in advance with the new grading system.

Temperature for Tire Testing

On March 3, 1977 (42 FR 12207), NHTSA proposed to amend Standard No. 119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars* (49 CFR 571.119), and the UTQG Standards to establish the same ambient temperature for tire testing in both standards, to allow more efficient use of tire test facilities. The notice proposed "any temperature up to 95° F" and "100±5° F" as alternative means of phrasing the new, identical test temperature.

After consideration of comments, the agency determined that the ambient test temperature should be expressed as "any temperature up to 95° F" (43 FR 30541; July 17, 1978). NHTSA received petitions for reconsideration from the Rubber Manufacturers Association (RMA) and The Goodyear Tire & Rubber Company, recommending that the test temperatures for Standard No. 119 and the UTQG regulation include tolerances and be specified as "100° F±5° F." As NHTSA has frequently stated in past notices on these and other standards (e.g., 40 FR 47141; October 8, 1975), such a recommendation reflects a misunderstanding of the legal nature of motor vehicle standards. NHTSA standards are not instructions to test engineers, but performance levels that vehicles and equipment must be capable of meeting. The use of a tolerance range in this context is confusing since it creates ambiguity as to the performance level required.

Establishment of a precise performance requirement, expressed without a tolerance, still recognizes that measurement techniques cannot be controlled perfectly. Given a specified performance level, manufacturers can design their tests to assure compliance in at least two ways: (1) by using a test procedure that conforms so closely to the specified measurement that no significant variations could occur, or (2) by determining which side of the specified level is adverse

to the product being tested, and targeting test conditions so that any deviation will occur on the adverse side. In this case, a tire manufacturer may use an ambient temperature slightly above 95° F to demonstrate, through adverse conditions, that its tire would comply at the specified temperature.

In its petition for reconsideration, Goodyear commented that all test laboratories should employ the same ambient temperature conditions. However, such uniformity is not advantageous in a regulatory context, since government compliance testing and manufacturers' laboratory evaluations are undertaken for different purposes.

Goodyear also argued that a fixed 95° F test temperature and a "100±5° F" tolerance range do not establish "in effect the same test temperature", as stated in the agency's July 17, 1978 notice (43 FR 30541). A fixed 95° F requirement is, in fact, from the manufacturers' perspective identical to a "100±5° F" provision, since, given a controlled variation in test conditions of 5° F in either direction from the target temperature, manufacturers seeking to assure compliance with a 95° F requirement will set their test target temperature at 100° F. For these reasons, the petitioners' recommendation of a "100±5° F" test temperature is rejected.

The RMA and Goodyear petitions noted that the open-ended nature of the requirement "any temperature up to 95° F" appeared to require that tires be capable of attaining specified performance levels when tested at temperatures ranging from 95° F to sub-zero conditions. The RMA petition stated as its primary concern the possibility, under the UTQG system, that a tire could be conditioned at a higher temperature than that at which it is tested for temperature resistance. Such inconsistency could, the RMA suggested, result in the tire being underinflated during testing.

The agency has concluded that the ambient temperature specification "at 95° F" more accurately describes the fixed temperature which the agency intended to establish than does the open-ended provision "any temperature up to 95° F." Standard No. 119 and the UTQG

Standards are, therefore, amended by substitution of a fixed temperature requirement of 95° F in place of "any temperature up to 95° F."

To the extent that the RMA and Goodyear petitions for reconsideration are not granted by this amendment, the petitions are denied.

In accordance with Departmental policy encouraging analysis of the impact of regulatory actions upon the public and private sectors, the agency has determined that these actions will have no appreciable negative impact on safety. Since the modification of effective dates relieves a restriction, and the change in grading symbols will result in no new burdens, no additional costs will be imposed on manufacturers or the consumer. Withdrawal of the tread labeling proposal imposes no new costs not contemplated in issuance of the UTQG Standards. The new temperature phraseology has absolutely no effect on the tire performance requirements, but will eliminate any possible ambiguity in the standards' meaning. For these reasons, the agency hereby finds that this notice does not have significant impact for purposes of the internal review.

Effective date: In view of the need for a fixed temperature requirement to allow tire performance testing to proceed, and the ongoing preparation by the industry for implementation of the UTQG system, the agency finds that an immediate effective date for the amendments to Standard No. 119 and the UTQG regulation is in the public interest.

In consideration of the foregoing, the following amendments are made in Part 575 and 571. . . .

(Sec. 103, 112, 119, 201, 203, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1421, 1423); delegation of authority at 49 CFR 1.50.)

Issued on October 23, 1978.

Joan Claybrook
Administrator

43 F.R. 50430-50440
October 30, 1978

PREAMBLE TO AMENDMENT TO PART 575—CONSUMER INFORMATION

Uniform Tire Quality Grading

(Docket No. 25, Notice 31)

Action: Final rule and establishment of effective dates.

Summary: This notice announces the effective dates for application of the Uniform Tire Quality Grading (UTQG) regulation to radial tires and discusses comments on previously announced testing and analysis of radial tire treadwear under the road test conditions of the UTQG regulation. This notice also interprets the effect of the thirty-day stay of the UTQG effective dates, granted by the U.S. Court of Appeals for the Sixth Circuit, and corrects an inadvertent error in the text of the regulation.

Effective date: For all requirements other than the molding requirement of paragraph (d)(1)(i)(A) and the first purchaser requirement of paragraph (d)(1)(iii), the effective date for radial tires is April 1, 1980.

For paragraph (d)(1)(i)(A), the molding requirement, and paragraph (d)(1)(iii), the first purchaser requirement, the effective date for radial tires is October 1, 1980.

For further information contact:

Dr. F. Cecil Brenner, Office of Automotive Ratings, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 205 (202) 426-1740.

Supplementary information: Acting under the authority of the National Traffic and Motor Vehicle Safety Act of 1966 (the Act) (15 U.S.C. 1381, et seq.), the NHTSA republished as a final rule the UTQG Standards, establishing a system for grading passenger car tires in the performance areas of treadwear, traction and temperature resistance (43 FR 30542); July 17, 1978). The regulation will provide consumers with useful, comparative data upon which to base informed

decisions in the purchase of tires. Extensive rulemaking preceded the July 17th notice, and a comprehensive discussion of the regulation's purpose and technical justification may be found in a series of earlier Federal Register notices (40 FR 23073; May 28, 1975; 39 FR 20808; June 14, 1974); 39 FR 1037; January 4, 1974; 36 FR 18751; September 21, 1971).

The July 17 notice also established effective dates for application of the regulation to bias and bias-belted tires. Establishment of an effective date for radial tires was deferred pending further analysis of test results relating to the treadwear properties of radials. Questions concerning the two other performance areas of the standard, traction and temperature resistance had previously been resolved, and therefore are not discussed in this notice.

On November 2, 1978, NHTSA issued a notice (43 FR 51735; November 6, 1978) announcing the availability for inspection of the results of the agency's test program for radial tires and NHTSA's analysis of the test results (Docket 25; Notice 28). A thirty-day period, later extended to 45 days (43 FR 57308; December 7, 1978), was provided for public comment on the data and analysis. After examination of all comments received, NHTSA has concluded that an effective date for grading of radial tires under the UTQG system can and should be established at this time.

Need for Grading of Radial Tires

In response to Notice 28, several commenters pointed out the importance of extending the UTQG Standards to radial tires at the earliest possible date. The Federal Trade Commission (FTC), while recognizing the establishment of a credible system for grading bias and bias-belted tires as a substantial accomplishment, commented

that extension of the system to radial tires will be of special significance to the public. The FTC, the Center for Auto Safety (CFAS), and Consumer's Union noted the increasing share of the tire market represented by radial tires, which now account for approximately half of the replacement tire market and an even higher percentage of original equipment sales. CFAS noted that NHTSA's test data revealed significant differences in treadwear properties among radial tires of different manufacturers. In fact, it is likely, based on the data, that some radial tires may yield twice the mileage of those of other manufacturers.

CFAS and the City of Cleveland's Office of Consumer Affairs commented on the need, exemplified by the recent recall of 14.5 million radials by one domestic tire manufacturer, to make safety a factor in the purchase of radial tires. The City of Cleveland reported encountering consumer frustration with present tire marketing practices and expressed concern that inability on the part of consumers to ascertain the quality of tires they are buying may lead to careless and ill-advised purchasing decisions and unsafe operating practices. NHTSA agrees and has seen no new arguments that suggest Congress' directive for establishing a uniform system for grading motor vehicle tires should not be fulfilled by the contemplated method.

Extent of NHTSA Radial Tire Testing

General Motors Corporation and the Rubber Manufacturers Association (RMA) contended that NHTSA's tests of radial tire treadwear were inadequate as a basis for extension of the UTQG regulation to radial tires. General Motors argued that radial tire treadwear does not become constant after tires are broken in, but continues to vary upward and downward, as evidenced by comparing adjusted wear rates in the final 6,400 miles of NHTSA's 38,400-mile radial tire treadwear test with the averages of adjusted wear rates from several 6,400-mile test series. The RMA stated its position that radial tire wear rates continue to decline in the later stages of tire life, pointing to NHTSA and RMA test data on the subject. Both General Motors and the RMA contended that, given the nature of radial tire treadwear, NHTSA must test some radial

tires to actual wearout to confirm that treadwear projections based on 6,400-mile tests correlate closely with actual tire treadlife.

NHTSA has not suggested that radial tire treadwear is precisely constant after break-in. Rather the agency's position, as stated in Notice 28, is that radial tire treadwear after break-in can be adequately described by a straight line fitted to a series of data points representing tread depth against miles traveled, thereby providing an adequate basis for treadwear projections. Variations in wear rate of the type noted by General Motors and the RMA cause a sinuous fluctuation in wear pattern which can be closely approximated by a straight line projection of treadwear based on the first 6,400 miles of testing.

NHTSA chose not to run tested tires to actual wearout because such tests are expensive and time consuming, and accurate projections of treadlife are possible with tires which have substantial wear, but are not worn out. For these reasons, projecting radial tire treadlife from tests run short of wearout is common in the industry (e.g., "A Statistical Procedure for the Prediction of Tire Tread Wear Rate and Tread Wear Rate Differences" by Dudley, Bower, and Reilly of the Dunlop Research Centre) and is, the agency has concluded, a reliable means of determining tire treadwear properties of radial, bias, and bias-belted tires.

Accuracy of the Treadwear Grading Procedure for Radial Tires

General Motors, Michelin Tire Corporation, and the RMA commented that the existing UTQG procedures does not project the treadlife of radial tires with a sufficient degree of accuracy, based on the data submitted to the rulemaking docket in connection with Notice 28. General Motors and the RMA noted that treadwear projections calculated only from wear rates observed in the initial 6,400-mile test sequence differed in some cases by one or two UTQG grade levels from projections based on wear rates from later 6,400-mile test cycles or from averages of several test cycles. These commenters noted that the range of such differences was slightly higher when individual tires were compared rather than the averages of four-tire sets. Michelin expressed concern that the regulation would create an im-

pression of equality among tires which in reality vary in quality. General Motors suggested that projections based on later test cycles or averages established over a longer test period would provide a more accurate projection of actual tread-life.

NHTSA established the 6,400-mile test sequence, with an 800-mile break-in, after considering the adequacy of the data which could be obtained over that test distance and the expenditure of money and resources required for additional testing. The grades arrived at by projecting from later test series or combinations of series were generally consistent with the results obtained in the first 6,400 miles of testing, and those variations which did occur were relatively minor.

As noted by the U.S. Court of Appeals for the Sixth Circuit in *B. F. Goodrich Co. v. Department of Transportation*, 541 F.2d 1178 (1976), no system designed to grade millions of tires can be expected to approach perfection. Considering the present absence of tire quality information in the market place, the agency has concluded that the UTQG treadwear grading procedure provides reasonable accuracy when applied to radial tires and will be of significant value to tire consumers in making purchasing decisions.

General Motors commented that tire grades should be assigned based on the lowest mileage projected for any tire among a set of four candidate tires and not on the average projected mileage of a four tire set. The UTQG regulation states that each tire will be capable of providing at least the level of performance represented by the UTQG grades assigned to it. UTQG grades based solely on either average grade levels or on the projected mileage of a particular tested tire would not provide an adequate basis for consumer reliance on the grading information. In determining accurate treadwear grades for tire lines, manufacturers must consider the population variability evidenced in their tire testing.

Validity of the CMT Adjustment Procedure

The UTQG regulation accounts for environmental influences on candidate tire wear rates during testing by means of an adjustment factor derived by comparing the wear rates of concurrently run course monitoring tires (CMT's) with

an established CMT base course wear rate (BCWR) (49 CFR 575.104(d)(2)). In Notice 28, NHTSA explained how the same adjustment procedure could be used to correct for a measurement anomaly that generates the appearance of a higher wear rate for radial tires in the first 4,000 miles of testing following the 800-mile break-in. In response to Notice 28, CFAS reviewed the UTQG adjustment procedure, as it applies to radial tires, and commented that this procedure is the proper method for grading radials. However, Michelin and the RMA, in their comments on that notice, suggested that the CMT adjustment procedure may be invalid for radial tires, both in the context of wear rate changes and as a control on environmental factors.

The RMA argued that NHTSA has not provided supporting data for its theory that the shift in radial tire wear rate during the initial phases of treadlife is caused by changes in tire geometry as the tire attains its equilibrium shape. However, detailing the underlying mechanism of the apparent change in wear rate is incidental to the fact that radial tire wear rates do stabilize in a consistent fashion, permitting use of the CMT adjustment to project treadlife with reasonable accuracy.

The RMA contended that wear patterns of certain radial tires differ markedly from the apparent accelerated pattern observed by NHTSA during the first 4,000 miles of treadlife after the 800-mile break-in, and that NHTSA's test of several tire brands provided an inadequate basis to draw conclusions about radial tires in general. Michelin, although citing no data on the subject, commented that an accelerated wear pattern in the early stages of treadlife may not exist in all radial tires to the same degree.

NHTSA's test of radial tire treadwear, reported in Notice 28, included ten different tire brands, selected to include a wide range of prices and materials, as well as both domestic and foreign manufacture. This sample constitutes a reasonable and adequate basis upon which to draw conclusions concerning tires available on the American market. In spite of the wide variety of radial designs included in NHTSA's test, the agency found the wear rate patterns of the tires studied to be remarkably consistent in the initial

6,400-miles of testing, after the 800-mile break-in. This consistency is exemplified by treadwear projections in the paper "Test of Tread Wear Grading Procedure—the Course Monitoring Tire Adjustment on Radial Tire Wear Rates", by Brenner and Williams (Docket 25, General Reference No. 105), which compared estimates of tread life for nine sets of candidate tires based on data from the first 6,400 miles of testing after break-in, with estimates based on data from 6,400 to 38,400 miles of testing. The projections computed from these data sets did not differ significantly, indicating that the UTQG adjustment procedure accurately accounted for the initial wear rate characteristics of all tires tested.

Based on this test experience, the agency believes that the data from its tests and analysis of that data has demonstrated that the wear patterns exhibited by radial tires early in their treadlives are sufficiently consistent to permit accurate projection of treadwear based on the existing UTQG test procedure. NHTSA plans to closely monitor testing at the San Angelo course to insure that the UTQG test procedure accommodates future developments in tire technology and continues to provide an accurate basis for treadwear grading.

On the question of consistency beyond the initial 4,000 miles of testing, both Michelin and the RMA argued that not all tires tested by NHTSA responded to environmental factors in an identical manner, as demonstrated by comparing graphs of unadjusted candidate tire wear rates by test cycle with graphs of data from concurrently run CMT's. The RMA also noted that graphic representations of radial tire adjusted wear rates per test cycle were not always horizontal, but in some cases sloped somewhat upward or downward.

Close examination of the graphs of unadjusted candidate tire wear rates and CMT wear rates indicates that the wear rates fluctuated in a reasonably parallel fashion in all but an insignificant number of cases. NHTSA has never contended that every tire of every brand must behave in a perfectly consistent manner before a valid grading system can be established. NHTSA finds that the level of consistency exhibited by the tested tires is sufficient to confirm the validity of

the CMT approach as a reasonably fair and reasonably reliable means of radial tire grading.

With regard to the slope of the adjusted wear rate curves, NHTSA has applied a test of independence to this data to determine if the adjusted wear rates of the tested tires were dependent on the test cycle. In no case was the slope significantly different from zero at the 95 percent confidence level. In fact, of the curves which slanted to any measurable degree, sixteen had a slightly positive slope and seventeen had a slightly negative slope, as would be expected if the true slope were zero. This analysis suggests that CMT and candidate tires continue to wear in a consistent fashion beyond the initial phase of testing.

The RMA's comments suggest that some confusion may exist as to whether CMT's are to be reused for testing after an initial 6,400-mile test cycle after break-in. Since radial tires, including CMT's, exhibit an apparent change in wear pattern during this initial phase of treadlife, when measured by a tread depth gauge, the CMT adjustment procedure will be accurate only if new candidate tires are run with new CMT's so that the wear rate change occurs in all tires simultaneously.

Radial CMT's were run beyond the initial 6,400-mile cycle in NHTSA's testing announced in Notice 28, in order to provide an extended comparison of CMT's and candidate tires run concurrently. In its UTQG compliance testing, however, NHTSA will use new radial CMT's, broken-in in accordance with 49 CFR 575.104 (d) (2) (v), for each 6,400-mile test.

Also on the issue of the CMT adjustment procedure, the RMA commented that NHTSA's test data indicate a coefficient of variation (COV) for radial CMT's of over 5 percent, the standard upheld in the *B. F. Goodrich* case as the agency's target for the maximum permissible level of variability for these tires. Much of the data cited by the RMA on this point involved test cycles beyond the initial 6,400-mile cycle, after break-in. Data on the variability of CMT's at test distances beyond 6,400 miles, after break-in, are irrelevant to the UTQG system, since, as noted above, radial CMT's will not be reused after an initial 6,400-mile test cycle.

In examining data from the initial test cycle, the RMA combined wear rates from several test vehicles and then developed COV's from that data, thereby interjecting vehicle variability into the computation. Vehicle variability, while unrelated to the properties of the tire, has the effect of inflating coefficients of variation. When this extraneous factor is removed from the computation, the test data indicate a COV well within the acceptable 5 percent level.

Michelin expressed concern that running CMT's of a standard size with candidate tires of differing sizes may lead to inaccuracy in the adjustment of data. National Bureau of Standards Technical Note 486, "Some Problems in Measuring Tread Wear of Tires," by Spinner and Barton (Docket 25, General Reference No. 4), compared projected mileages for three sizes of radial and bias-ply tires of several manufacturers run under different road conditions. Data in the report suggest that tires of different sizes react similarly to differing external conditions. Therefore, the practical burden of providing a different CMT for each size of candidate tire may be avoided.

Finally, General Motors and the RMA asserted that, in order to facilitate comparisons among radial, bias, and bias-belted tires, BCWR's must be established by running the three types of CMT's concurrently to limit the influence of environmental variables on the test results. The RMA also contended that a BCWR cannot be established without running CMT's to actual wearout.

NHTSA established BCWR's through experience with tires of all three construction types in over 5 million tire miles of testing over a two year period. In the course of this extensive testing, each tire type can be expected to have encountered a random mix of environmental conditions resulting in a similar net impact on treadwear.

Other Comments

Michelin commented that the regulation's procedure of rotating tires among different positions on a test vehicle, but not between vehicles, precludes the detection of vehicle mechanical problems which could affect grading. Adequate preventive maintenance of test vehicles is the

primary safeguard against distortion of data by vehicle malfunctions. Additionally, an analysis of variance of the data obtained in a convoy or on a vehicle provides another effective method of detecting a malfunction. (See, "Elements in the Road Evaluation of Tire Wear", by Brenner and Kondo, Docket 25; General Reference No. 17). NHTSA does not believe that rotation of tires among vehicles would significantly improve on these existing techniques.

General Motors noted that several tires studied by NHTSA had to be removed from the test due to failure or uneven wear prior to actual wearout and suggested that the agency must account for these anomalies before proceeding with rule-making.

Early in the course of rulemaking on UTQG, NHTSA concluded that considerations of cost and consumer understanding required some limitation on the number of grading categories in which UTQG information would be presented. Based on examination of numerous comments in the rulemaking docket, the agency concluded that treadwear, traction, and temperature resistance are the tire characteristics of greatest importance to consumers. For this reason, information on subjects such as evenness of tread wear and susceptibility to road hazard damage, while of value to consumers, is not provided under the regulation. NHTSA will consider General Motors comment, however, as a suggestion for possible future rulemaking.

The RMA noted several minor computational and other errors in the previously referred to paper by Brenner and Williams (Docket 25, General Reference No. 105), submitted to the docket in connection with Notice 28. Some of these errors were corrected by a subsequent submission to the docket (Docket 25, General Reference No. 105A). In any case, the errors were of a non-substantive nature and had no impact on the agency's rulemaking process and decisions.

Impact of the Thirty Day Stay of Effective Dates

On January 19, 1979, the U.S. Court of Appeals for the Sixth Circuit, in the case *B. F. Goodrich Co. v. Department of Transportation* (No. 78-3392), granted a thirty-day stay of the effective dates for application of the UTQG regu-

lation to bias and bias-belted tires. The regulation was scheduled to become effective March 1, 1979 for bias-ply tires and September 1, 1979 for bias-belted tires, with the exception of the sidewall molding requirements of paragraph (d)(1)(i)(A) and the first purchaser requirements of paragraph (d)(1)(iii) which were to become effective September 1, 1979 and March 1, 1980 for bias and bias-belted tires, respectively.

NHTSA interprets the Sixth Circuit's action as postponing the effective dates of the UTQG regulation one month to April 1, 1979 for bias-ply tires and October 1, 1979 for bias-belted tires. However, the effective dates for the molding requirements of paragraph (d)(1)(i)(A) and the first purchaser requirements of paragraph (d)(1)(iii) are postponed to October 1, 1979 for bias-ply tires and April 1, 1980 for bias-belted tires to allow manufacturers time to convert tire molds. This postponement of effective dates has been taken into account in establishing effective dates for application of the regulation to radial tires, to assure adequate lead time for completion of tire testing.

In accordance with Departmental policy encouraging adequate analysis of the consequences of regulatory actions, the agency has evaluated the anticipated economic, environmental and other consequences of extending the UTQG regulation to include radial tires and has determined that the impact of this action is fully consistent with impacts evaluated in July 1978 in establishing effective dates for bias and bias-belted tires. Based on the authority of Section 203 of the Act,

previous agency findings concerning required lead time for grading tires, and the decision of the U.S. Court of Appeals for the Sixth Circuit in *B. F. Goodrich*, the NHTSA hereby establishes radial tire effective dates consistent with the basic six-month phase-in schedule announced on July 17, 1978 (43 FR 30542) for bias and bias-belted tires.

In an unrelated matter, NHTSA's FEDERAL REGISTER notice announcing effective dates for application of the UTQG Standards to bias and bias-belted tires (43 FR 30542); July 17, 1978) contained an inadvertent error in use of the word "of" rather than the intended word "are" in the first sentence of the third section of Figure 2 of the regulation. This error is corrected by substitution of the word "are" in place of "of" in Figure 2.

In consideration of the foregoing, the Uniform Tire Quality Grading Standards (49 CFR 575.104), are amended

The program official and lawyer principally responsible for the development of this rulemaking document are Dr. F. Cecil Brenner and Richard J. Hipolit, respectively.

(Sec. 103, 112, 119, 201, 203; Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1407, 1421, 1423); delegation of authority at 49 CFR 1.50.)

Issued on March 9, 1979.

Joan Claybrook
Administrator

44 F.R. 15721-15724
March 15, 1979

PREAMBLE TO AN AMENDMENT TO PART 575—CONSUMER INFORMATION

Uniform Tire Quality Rating

(Docket No. 25; Notice 35)

ACTION: Final rule.

SUMMARY: This notice amends the Uniform Tire Quality Grading (UTQG) Standards through minor modifications in the format of tire tread labels used to convey UTQG information. The modifications are intended to assure that tires are labeled with the correct UTQG grades, to permit flexibility in the design of labels, and to facilitate consumer access to the grading information.

EFFECTIVE DATE: December 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Dr. F. Cecil Brenner, Office of Automotive Ratings, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-1740).

SUPPLEMENTARY INFORMATION: On January 8, 1979, NHTSA published a request for public comment (44 F.R. 1814) on a petition for rulemaking submitted by Armstrong Rubber Company asking that the UTQG regulation be amended to permit tire grading information and explanatory material concerning the UTQG system to be furnished to consumers by means of two separate tire tread labels rather than the single label called for in the regulation (49 CFR 575.104(d) (1) (i) (B)). Armstrong, joined by Atlas Supply Company, contended that the chance of mislabeling tires would be reduced, if UTQG grades could be placed on the same label with tire identification information. However, practical limitations exist on the size of tread labels which can be effectively applied and retained on the tire tread surface. Some manufacturers reportedly encountered difficulty in fitting tire identification information, UTQG grades, and required UTQG explanatory information on a single label. For this reason, Armstrong and Atlas suggested that UTQG explanatory information be furnished on a

separate label adjacent to a label containing UTQG grades and tire identification information.

In view of the favorable comments received in response to NHTSA's request for comment on the Armstrong petition, the agency proposed to modify the tread label format requirements to employ a two-part label format (44 F.R. 30139; May 24, 1979). NHTSA proposed that Part I of the label contain a display of the UTQG grades applicable to the particular tire while Part II would contain the general explanation of the grading system. At the manufacturer's option Parts I and II could appear on separate labels. To assure that the labels would be legible to consumers, the notice also proposed requirements for orientation of the label text and minimum type size.

Commenters on the proposal were in general agreement that flexibility in the design of tire tread labels is a desirable goal. While some manufacturers expressed the opinion without explanation that two-part labels would be impractical for their operations, others welcomed the proposal as a means of dealing with label size limitations.

Some commenters favored retention of the original label format pointing out that the proposed label would be slightly longer than its predecessor and arguing that the proposed label would isolate the tire grades from the explanatory material. Some industry sources expressed the opinion that the proposed changes would be of no benefit to consumers.

NHTSA disagrees with these criticisms of the proposal. The new format should increase the length of the label by only a fraction of an inch, if at all, and should not pose a problem to manufacturers wishing to employ a single label. The separation of the grades from the explanatory material should not create confusion since the two

parts could be separated by no more than one inch in any case. The agency has reached the conclusion that displaying grades for all three performance categories together on Part I of the label will in fact benefit consumers by facilitating access to the information.

Maximum retainability will be assured with the new format since manufacturers may choose to employ two labels if they are unable to fit all of the necessary information on a single label of a manageable size. Similarly, the possibility of mislabeling will be reduced, because the two-part option makes it possible in all cases to include applicable UTQG grades on tire identification labels. For these reasons, NHTSA has determined to adopt the proposed two-part label format with minor modifications.

Several commenters suggested that orientation of the tread label text should not be specified in the regulation since flexibility in label design would be reduced by such a requirement. However, NHTSA has concluded that since most manufacturer's tire identification labels are arranged with lines of type running perpendicular to the tread circumference, tires are most likely to be displayed so that labels with this orientation will be easily readable by consumers. Therefore, the agency has chosen to retain the proposed requirement regarding label text orientation.

Goodyear Tire & Rubber Company suggested the possibility of printing Part I of the proposed label below Part II, when both parts are contained on a single tread label. NHTSA finds this suggestion unacceptable because the UTQG grades would be difficult to locate if preceded by a body of textual material.

Goodyear also commented on several occasions that specifying a minimum type size for the printing of labels would be of no benefit since many factors other than type size, such as letter style, spacing, and format, contribute to legibility. NHTSA agrees that a minimum type size requirement alone is insufficient to assure the readability of labels. For this reason, NHTSA has chosen to withdraw its proposed minimum type size requirement at this time. The agency will, however, continue to monitor industry compliance with the labeling requirements to ascertain whether a comprehensive set of requirements is necessary to assure that tread labels will be legible to consumers.

The agency has found considerable merit in another Goodyear suggestion, to delete the range of possible grades adjacent to the categories "TRACTION" and "TEMPERATURE" on Part II of the label. These letters were originally included on the label to provide a display on which the grade attributable to a particular tire could be marked. Since grades will now be marked on Part I of the label, the range of possible grades in Part II is superfluous and has been deleted from the required format. If, however, manufacturers wish to display the array of grades on both Part I and Part II of their labels, NHTSA has no objection to this practice.

Goodyear was joined by General Tire & Rubber Company in requesting that NHTSA clarify whether the three category headings, "TREADWEAR," "TRACTION," and "TEMPERATURE," in Part I of the proposed label must be laid out side by side, across the label, or one below the other, down the label. In the interest of flexibility, the regulation makes either of these layouts acceptable, although the relative order of the categories must be maintained to permit easy reference to the explanatory material.

Similarly, several manufacturers recommended that the regulations permit grades to be displayed either to the right of or directly below the grading category to which they apply. Again, to facilitate efficient label design, the regulation permits the use of either of these locations for the display of grades.

Industry commenters asked that NHTSA clarify whether the use of lower case letters in the label text, as set out in Figure 2 of the regulation, precludes manufacturers from printing labels using all capital letters in the label text. The regulation has been modified to permit the optional use of all capital letters in printing the text of Figure 2.

NHTSA wishes to confirm Firestone Tire & Rubber Company's understanding that the words "Part I" and "Part II" appearing in Figure 2 as proposed are for reference purposes only and need not be printed on the tread label. General and the Rubber Manufacturers Association called NHTSA's attention to certain typographical errors in the proposed Figure 2 text, which have been corrected in the amendment as adopted.

Several manufacturers suggested that the original label format be permitted as an option, or

that, as a minimum, waste be avoided by allowing labels printed with the original format to be used up regardless of the adoption of a new label format. NHTSA considers the new two-part label format to be superior to the original format in terms of clarity and readability. Therefore, the agency has concluded that universal conversion to the new format is desirable. However, since manufacturers have expended significant resources in efforts to comply with the original labeling requirement, NHTSA will permit the use of labels employing the original format, at the manufacturers option, until October 1, 1980. This period of flexibility should permit any labels already printed to be used up and allow a smooth transition to the new format.

Since this amendment will increase manufacturers' flexibility in complying with the UTQG

labeling requirements, and since the transition to the new labeling format will be phased in so as to avoid economic waste, the agency has found that this notice does not have significant impact for purposes of internal review. In view of the fact that some manufacturers may still be in the process of obtaining labels for their bias-belted tire lines, this amendment will become effective December 1, 1979.

Issued on November 20, 1979.

Joan Claybrook,
Administrator
44 F.R. 68475
November 29, 1979

PREAMBLE TO AN AMENDMENT TO PART 575—CONSUMER INFORMATION

Uniform Tire Quality Rating

(Docket No. 25; Notice 37)

ACTION: Final rule; correction.

SUMMARY: This notice corrects an inadvertent error in the text of the National Highway Traffic Safety Administration's (NHTSA) final rule modifying the tread label format used under the Uniform Tire Quality Grading (UTQG) Standards (49 CFR 575.104).

SUPPLEMENTARY INFORMATION: On November 29, 1979, NHTSA published a notice (44 F.R. 68475) making minor modifications in the final format of tire tread labels used to convey UTQG information to consumers. That notice contained an inadvertent error in the text of Figure 2 of the regulation in that the words "one and one-half" were substituted for the words "one and a half" under the heading "Treadwear" in Part II of the tread label text. The notice is therefore revised to reflect the intended wording.

F.R. Doc. 79-36522 appearing at 44 F.R. 68475 is corrected at page 68477 in the third column as follows:

Figure 2, Part II of the Uniform Tire Quality Grading Standards, 49 CFR 575.104, is corrected by substitution of the words "one and a half" in place of the words "one and one-half" under the heading "Treadwear".

Issued on January 22, 1980.

Michael M. Finkelstein,
*Associate Administrator
for Rulemaking*

**45 F.R. 6947
January 31, 1980**

PREAMBLE TO PART 575—CONSUMER INFORMATION REGULATIONS UNIFORM TIRE QUALITY GRADING

(Docket No. 25; Notice 38)

ACTION: Interpretation.

SUMMARY: This notice clarifies the procedure to be used under the Uniform Tire Quality Grading (UTQG) Standards in measuring tread depth of tires without circumferential grooves or with a limited number of grooves. The regulation's provision for measurement of tread depth in tire grooves has given rise to questions concerning the proper means of measurement for such tires. This notice is intended to facilitate testing of tires of this type.

EFFECTIVE DATE: This interpretation is effective immediately.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Hipolit, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-1834).

SUPPLEMENTARY INFORMATION:

The UTQG Standards (49 CFR 575.104) require the grading of passenger car tires on three performance characteristics: treadwear, traction and temperature resistance. In setting forth the procedure to be followed in evaluating treadwear performance, the regulation states that, after an 800-mile break-in, tires are to be run for 6,400 miles over a designated course, with tread depth measurements to be taken every 800 miles. The regulation specifies that tread depth is measured at six equally spaced points in each tire groove other than shoulder grooves, avoiding treadwear indicators. Tire grooves are typically arranged symmetrically around the center of the tread.

On May 24, 1979, the National Highway Traffic Safety Administration (NHTSA) published in the *Federal Register* (44 FR 30139) an interpretation that tires designed for year round use do not qualify as "deep tread, winter-type snow tires,"

which are excluded from the coverage of the UTQG regulation by 49 CFR 575.104(c). In response to this interpretation, the Goodyear Tire & Rubber Company commented to NHTSA (Docket 25; Notice 32-011) that a technical problem may exist in the measurement of tread depth of tires for year round use since circumferential grooves are absent in the designs of many such tires.

NHTSA is aware that certain other standard tire designs, as well as year round designs, may incorporate lugs, discontinuous projections molded in the tread rubber, separated by voids, in place of ribs defined by circumferential grooves. In other cases, the limited number of grooves on the tire could lead to inaccurate results if measurements were made in only those grooves.

To assure accurate tread depth measurements on tires lacking circumferential grooves, and tires with fewer than four grooves, measurements are to be made along a minimum of four circumferential lines equally spaced across the tire tread surface. These lines are to be symmetrically arranged around a circumferential line at the center of the tread. The outermost line on each side of the circumferential tread centerline is to be placed within one inch of the shoulder.

Measurements are to be made at six equally spaced points along each line. If the design of the tire is such that, on a particular circumferential line, six equally spaced points do not exist at which groove or void depth exceeds by $\frac{1}{16}$ th of an inch the distance from the tread surface to the tire's treadwear indicator, measurements are not to be taken along that line. If measurements cannot be taken on four equally-spaced, symmetrically-arranged lines, the requirement for equal spacing does not apply. Measurements in that case are to be taken along a minimum of four lines, with an equal number of symmetrically arranged measured lines on either side of the tread centerline.

NHTSA recognizes that, due to the implementation schedule of the regulation, certain manufacturers may have already conducted treadwear tests on tires falling within the scope of this interpretation. The Agency does not object to the use in grading of treadwear data generated prior to the publication date of this notice, if such data was acquired using a test method varying only in minor, non-substantive respects from the method described in this interpretation.

The principal author of this notice is Richard J. Hipolit of the Office of Chief Counsel.

Issued on March 24, 1980.

Joan Claybrook
Administrator

45 F.R. 23441
April 7, 1980

PREAMBLE TO AMENDMENTS TO PART 575—CONSUMER INFORMATION REGULATIONS; UNIFORM TIRE QUALITY GRADING

(Docket No. 25; Notice 39)

ACTION: Final Rule.

SUMMARY: This notice amends the Uniform Tire Quality Grading (UTQG) Standards to exclude from the requirements of the regulation tires produced in small numbers, which are not recommended for use on recent vehicle models. The amendment is intended to reduce costs to consumers and reduce regulatory burdens on industry in an area where the purchase of tires based on comparison of performance characteristics is limited.

EFFECTIVE DATE: This amendment is effective immediately.

FOR FURTHER INFORMATION CONTACT:

Dr. F. Cecil Brenner, Office of Automotive Ratings, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-1740).

SUPPLEMENTARY INFORMATION:

The UTQG Standards 49 CFR § 575.104 are intended to enable consumers to make an informed choice in the purchase of passenger car tires through the use of comparative performance information relating to tire treadwear, traction and temperature resistance. The standards apply to new pneumatic tires for use on passenger cars manufactured after 1948. Deep tread, winter-type snow tires, space-saver or temporary use spare tires, and tires with nominal rim diameters of 10 to 12 inches have been excluded from the application of the regulation (49 CFR § 575.104(c)).

Several tire manufacturers and dealers have informed the National Highway Traffic Safety Administration (NHTSA) that a small class of tires exists for which marketplace competition based on performance characteristics is extremely limited. These tires, which are purchased for use on vehicles manufactured after 1948 but nonetheless

considered by their owners to be classic or antique, are produced in small numbers in a wide variety of designs and sizes. Purchasers of these tires are reportedly concerned primarily with appearance, authenticity, and availability rather than tire performance.

Information supplied by Intermark Tire Company indicates that a similar limited market exists for tires used on older vehicles requiring tire sizes no longer employed as original equipment on new vehicles. Intermark petitioned NHTSA to remove these tires from the coverage of the regulation on the basis that little market competition exists in their sale and that availability is the primary factor in the purchase of this class of tire.

In order to reduce costs to consumers and eliminate the need for industry to grade the multiplicity of small lines of tires in which comparative performance information would have limited value, NHTSA published a notice proposing to remove certain limited production tires from the application of the UTQG regulation (45 FR 807; January 3, 1980). Four criteria, were specified to define limited production tires. First the annual production by the tire's manufacturer of tires of the same design and size could not exceed 15,000 tires. Second, if the tire were marketed by a brand name owner, the annual purchase by the brand name owner could not exceed 15,000 tires. Third, the tire's size could not have been listed as a manufacturer's recommended size designation for a new motor vehicle produced or imported into this country in quantities greater than 10,000 during the preceding calendar year. Fourth, the annual production by the tire's manufacturer, or the total annual-purchase by the tire's brand name owner, if applicable, of different tires otherwise meeting the criteria for limited

production tires could not exceed 35,000 tires. The proposal also clarified that differences in design would be determined on the basis of structural characteristics, materials and tread pattern, rather than cosmetic differences.

Commenters on the proposal, including the Rubber Manufacturers Association, the National Tire Dealers and Retreaders Association, Dunlop Limited, Intermark, Kelsey Tire Company and McCreary Tire and Rubber Company agreed that tire quality grading should not be required for limited production tires. Among the reasons stated for support of the proposal were expected cost savings to industry and the consumer and the special consideration affecting the purchase of these tires. After consideration of these comments, the agency has adopted the proposed amendment with minor modification.

Intermark pointed out a possible anomalous situation which could result from the wording of subparagraph (c)(2)(iv) of the proposal. That provision placed a 35,000 tire limit on a manufacturer's total annual production of tires meeting the limited production criteria, *or*, in the case of tires marketed under a brand name, on the total annual purchase of limited production tires by a brand name owner. Thus, under this commenter's reading of (c)(2)(iv), 40,000 tires meeting the criteria of subparagraphs (c)(2)(i), (ii), and (iii) could be produced by a manufacturer, sold in groups of 10,000 to four different brand name owners, and still qualify as limited production tires. At the same time, another manufacturer could produce 40,000 tires meeting the first three criteria for sale in its own company outlets and be required to grade the tires. To make it clear that the 35,000 tire limitation on manufacturer's production applies whether or not the tires are marketed by a brand name owner, subparagraph (c)(2)(iv) has been modified by substituting the word "and" for "or."

Kelsey Tire Company asked how the criteria would apply to tires which are produced abroad in large numbers but are imported in quantities which would fall within the unit limitations of subparagraphs (c)(2)(i), (ii), and (iv) of the proposal. To make clear that the criteria are to be applied to foreign tires only insofar as they are imported in this country, subparagraphs (c)(2)(i) and (iv) have been modified to refer to "annual domestic production or importation into the United States by the tire's

manufacturer." The reference to "importation . . . by the tire's manufacturer" includes in the total all tires entering the United States for sale under the name of the manufacturer, regardless of the shipping or title arrangements made by the manufacturer with distributors. Similarly, subparagraphs (c)(2)(ii) and (iv) have been modified to clarify the status of tires purchased by brand name owners.

McCreary and Intermark argued that the unit restrictions on production of tires meeting the criteria are too restrictive and should be eliminated or eased significantly. McCreary predicted that the total number of classic car tires produced by individual manufacturers will grow, although production runs of individual designs and sizes will remain small. Intermark contended that production limitations unfairly penalize efficient manufacturers and that a new vehicle recommended size designation provision such as proposed subparagraph (c)(2)(iii) would be sufficient to define the intended class of limited production tires.

NHTSA considers the stated limitations broad enough to encompass the "classic" car tire market as it is presently constituted. With regard to the larger production runs of tires in outdated sizes, NHTSA believes that the production of tires in numbers greater than the proposed limitations is suggestive of wider availability and resulting increased competition which would make UTQG information of greater value. Further, relaxing or eliminating unit restrictions could result in the exclusion from the application of the standard of high performance or racing tires which are not recommended as original equipment. The agency believes that comparative tire grading information should be available to purchasers of tires of this type. NHTSA will monitor the limited production tire market to determine whether future market changes require revision of the 35,000 tire limitation.

Pursuant to E.O. 12044, "Improving Government Regulation," and implementing departmental guidelines, the agency has considered the effects of this amendment. It reaffirms its earlier determination that the amendment is not significant and that the effects are so minimal as not to warrant preparation of a regulatory evaluation. NHTSA has determined that these amendments will result in modest cost savings to industry and consumers, while having no appreciable effect on safety or the environment.

Because this amendment relieves a restriction and because the agency desires to minimize any possible interruption in tire production pending the effective date of this amendment, the amendment is effective immediately.

In consideration of the foregoing, 49 CFR § 575.104(c) is amended to read:

§ 575.104 Uniform tire quality grading standards.

* * * * *

(c) *Application.*

(1) This section applies to new pneumatic tires for use on passenger cars. However, this section does not apply to deep tread, winter-type snow tires, space-saver or temporary use spare tires, tires with nominal rim diameters of 10 to 12 inches, or to limited production tires as defined in paragraph (c) (2) of this section.

(2) "Limited production tire" means a tire meeting all of the following criteria, as applicable:

(i) The annual domestic production or importation into the United States by the tire's manufacturer of tires of the same design and size as the tire does not exceed 15,000 tires;

(ii) In the case of a tire marketed under a brand name, the annual domestic purchase or importation into the United States by a brand name owner of tires of the same design and size as the tire does not exceed 15,000 tires;

(iii) The tire's size was not listed as a vehicle manufacturer's recommended tire size designation for a new motor vehicle produced in or imported into the United States in quantities greater than 10,000 during the calendar year preceding the year of the tire's manufacture; and

(iv) The total annual domestic production or importation into the United States by the tire's manufacturer, and in the case of a tire marketed under a brand name, the total annual domestic purchase or purchase for importation into the United States by the tire's brand name owner, of tires meeting the criteria of subparagraphs (c) (2) (i), (ii), and (iii) of this section, does not exceed 35,000 tires.

Tire design is the combination of general structural characteristics, materials, and tread pattern, but does not include cosmetic, identifying or other minor variations among tires.

The principal authors of this notice are Dr. F. Cecil Brenner of the Office of Automotive Ratings and Richard J. Hipolit of the Office of Chief Counsel.

Issued on March 24, 1980.

Joan Claybrook
Administrator

45 F.R. 23442
April 7, 1980



PREAMBLE TO AN AMENDMENT TO PART 575

ACTION: Final rule.

SUMMARY: This notice amends the Consumer Information Regulations by deletion of the requirement that manufacturers supply information on acceleration and passing ability to vehicle first purchasers and prospective purchasers. The notice also revises the timing of manufacturers' submissions of performance data to the National Highway Traffic Safety Administration (NHTSA). These modifications, which were proposed in response to a General Motors Corporation petition for rule-making, are intended to lessen regulatory burdens on industry, while providing performance data in a manner more useful to consumers.

EFFECTIVE DATES: The amendment of section 575.6(d) is effective June 1, 1981. The deletion of section 575.106 is effective immediately, July 7, 1980.

FOR FURTHER INFORMATION CONTACT:

Ivy Baer, Office of Automotive Ratings,
National Highway Traffic Safety
Administration, 400 Seventh Street,
S.W., Washington, D.C. 20590 (202-426-1740)

SUPPLEMENTARY INFORMATION: The Consumer Information Regulations (49 CFR Part 575) provide first purchasers and prospective purchasers with performance information relating to the safety of motor vehicles and tires. This information is intended to aid consumers in making comparative purchasing decisions and in the safe operation of vehicles. General Motors Corporation petitioned NHTSA to delete requirements for consumer information on passenger car and motorcycle stopping distance (49 CFR 575.101), passenger car tire reserve load (49 CFR 575.102), and passenger car and motorcycle acceleration and passing ability

(49 CFR 575.106), on the basis that this information is of limited value to consumers. In response to this petition, NHTSA proposed (44 FR 15748; March 15, 1979) to delete the requirement for acceleration and passing ability information and to limit the application of the tire reserve load provisions to vehicles with significant cargo capacity, thus dropping the requirement for most passenger cars. NHTSA also proposed that vehicle manufacturers submit performance data to the agency at least 90 days before model introduction, compared to the 30-day advance submission which had been required (49 CFR 575.6).

Timing of Data Submission

The primary purpose of the advance submission to NHTSA is to permit the agency to compile and disseminate performance data in a comparative format for use by prospective vehicle purchasers. A major criticism of the consumer information program in the past has been that comparative information reached the consumer too late in the model year to be of real value in choosing between competing vehicles. A 90-day advance submission would permit the agency to assemble and distribute comparative information early in the model year, when it would be of greatest value to consumers.

Some industry commenters questioned the need for earlier submission of data on the basis that agency delays in publishing the data will result in comparative information being available late in the model year, in spite of the earlier submission. Other manufacturers argued that consumer interest in the information is limited in any case. General Motors suggested that vehicle design changes during the model year rapidly outdate the information, further limiting its value.

However, the Center for Auto Safety (CFAS) commented that it receives numerous requests

from consumers for comparative information on motor vehicles. CFAS also pointed out the popularity of comparative motor vehicle information on the rare occasions when such information is made available by independent publishers. NHTSA has concluded that consumer interest in comparative performance information would be substantial if the information were made available in a timely manner. Further, NHTSA has determined that few running design changes during the model year are so major as to significantly affect the performance characteristics covered by the consumer information regulations.

The success of the Environmental Protection Agency in publishing its popular fuel economy guides in a timely manner indicates that publication of vehicle information by NHTSA early in the model year is practical. However, based on past experience, it appears that a 90-day advance submission is the minimum leadtime necessary for NHTSA to publish and distribute the information.

Some manufacturers indicated they may have difficulty providing accurate performance information 90 days in advance of model introduction due to the possibility of last minute design changes. However, American Motors Corporation commented that a 90-day advance submission requirement would pose no problem at new model introduction, although it would inhibit running changes during the model year. In view of the importance of supplying comparative information early in the model year, NHTSA has adopted the proposed 90-day advance submission requirement for model introduction. However, to avoid delaying the introduction of product improvements, the 30-day notice period has been retained for changes occurring during the model year.

Tire Reserve Load

In response to General Motors' petition, NHTSA proposed modifying the tire reserve load information requirement to limit its application to trucks and multipurpose passenger vehicles with a gross vehicle weight rating of 10,000 pounds or less, and to passenger cars with a maximum cargo capacity of 25 cubic feet or more. The regulation had applied to all passenger cars, but not to trucks or multipurpose passenger vehicles.

Comments from many industry and consumer sources recommended deleting the tire reserve load information requirement completely. CFAS

commented that consumer interest in tire reserve load information has been limited. Many comments from car, truck and recreational vehicle manufacturers expressed concern that presenting information on tire reserve load may encourage vehicle overloading by misleading consumers into thinking that vehicles have additional load carrying capacity. Several commenters suggested that Federal Motor Vehicle Safety Standards 110 and 120 provide the appropriate means of ensuring that vehicles are equipped with tires of adequate size and load rating.

A recent study conducted for NHTSA (Docket 79-02, Notice 1-016) indicates that tire reserve load is an important factor in preventing passenger car tire failure. Additional information is being gathered on this subject and the agency is planning to propose amendment of Federal Motor Vehicle Safety Standard 110 to require a minimum tire reserve load on passenger cars. Preliminary analysis suggests that a tire reserve load percentage of 10% or greater is necessary to provide an adequate safety margin.

NHTSA has found that presently available information is not sufficient to justify extension of the tire reserve load requirements to light trucks and multipurpose passenger vehicles at this time. However, in view of the safety implications of tire reserve load for passenger cars and in the absence of a requirement for minimum tire reserve load, NHTSA believes that information on this subject should be available to passenger car purchasers and owners. The agency has concluded that provision of tire reserve load information in its present form does not encourage vehicle overloading, since a warning against loading vehicles beyond their stated capacity must accompany the information.

For these reasons, NHTSA has determined that the existing requirement for tire reserve load information must remain in effect at least until the completion of rulemaking on the possible amendment of Federal Motor Vehicle Safety Standard 110. If the provision of tire reserve load information no longer appears necessary then, the agency will reconsider the status of tire reserve load as a consumer information item. At this time, however, NHTSA withdraws the proposal to modify the tire reserve load consumer information requirements.

Acceleration and Passing Ability

The final aspect of NHTSA's proposal was dele-

tion of acceleration and passing ability (49 CFR 575.106) from the consumer information requirements. The acceleration and passing ability provision required information on the distance and time needed to pass a truck traveling at 20 mph and at 50 mph. The passing vehicle was permitted to attain speeds of up to 35 mph and 80 mph in the respective maneuvers.

In proposing deletion of this requirement, NHTSA felt that the national interest in energy conservation had substantially diminished consumer demand for rapid acceleration capability. Further, the high speed driving permitted by the test procedures appeared to contradict the safety and energy saving policies behind the national 55-mph speed limit. Commenters on the proposal, including American Motors, CFAS, General Motors and Volkswagen of America, unanimously agreed that the acceleration and passing ability provision was no longer of interest to consumers and had become inconsistent with national goals. Section 575.106 has, therefore, been deleted from the consumer information regulations.

NHTSA's regulatory evaluation, conducted pursuant to E.O. 12044, "Improving Government Regulations" and departmental guidelines, indicates that the amendments are not significant. They decrease the regulatory burden on industry, while having no appreciable negative impact on safety. A copy of the regulatory evaluation can be obtained from the Docket Section, Room 5108, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Also, the amendments will have no measurable effect on the environment.

Because the amendments as they pertain to acceleration and passing ability relieve a restriction, and to avoid any unnecessary costs in complying with this requirement, the deletion of section 575.106 is effective immediately. So that useful performance information can be provided to consumers for model year 1982 vehicles, the amendment to section 575.6 is effective June 1, 1981.

In consideration of the foregoing, 49 CFR Part

575, Consumer Information Regulations, is amended as follows:

1. Section 575.6(d) is amended to read:

§575.6 Requirements

* * * * *

(d) In the case of all sections of Subpart B, other than §575.104, as they apply to information submitted prior to new model introduction, each manufacturer of motor vehicles shall submit to the Administrator 10 copies of the information specified in Subpart B of this part that is applicable to the vehicles offered for sale, at least 90 days before it is first provided for examination by prospective purchasers pursuant to paragraph (c) of this section. In the case of §575.104, and all other sections of Subpart B as they apply to post-introduction changes in information submitted for the current model year, each manufacturer of motor vehicles, each brand name owner of tires, and each manufacturer of tires for which there is no brand name owner shall submit to the Administrator 10 copies of the information specified in Subpart B of this part that is applicable to the vehicles or tires offered for sale, at least 30 days before it is first provided for examination by prospective purchasers pursuant to paragraph (c) of this section.

2. Section 575.106 is deleted.

The principal authors of this proposal are Ivy Baer of the Office of Automotive Ratings and Richard J. Hipolit of the Office of the Chief Counsel.

Issued on July 7, 1980.

Joan Claybrook
Administrator

45 FR 47152
July 14, 1980



PREAMBLE TO AN AMENDMENT TO PART 575

Consumer Information Regulations Uniform Tire Quality Grading (Docket No. 25; Notice 4)

ACTION: Final rule.

SUMMARY: This notice amends the Uniform Tire Quality Grading (UTQG) Standards to provide for the testing of metric tires, tires with inflation pressures measured in kilopascals. Since the original UTQG test requirements were written prior to the introduction of metric tires and specified inflation pressures measured in pounds per square inch, modification of the regulation is now necessary to identify inflation pressures applicable to metric tires. The notice also makes technical changes in the UTQG traction test procedure to facilitate efficient use of test facilities.

EFFECTIVE DATE: The amendments are effective immediately.

FOR FURTHER INFORMATION CONTACT:

Dr. F. Cecil Brenner, Office of Automotive Ratings, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, 202-426-1740

SUPPLEMENTARY INFORMATION: The UTQG standards prescribe test procedures for evaluation of the treadwear, traction, and temperature resistance properties of passenger car tires. Grades based on these are used by consumers to evaluate the relative performance of competing tire lines. Test procedures for all three performance categories were established specifying inflation pressures in pounds per square inch.

Following the introduction of metric tires with inflation pressures measured in kilopascals, the National Highway Traffic Safety Administration (NHTSA) recognized the need to add metric inflation pressures to the UTQG test procedures. The agency proposed (44 F.R. 56389; October 1, 1979; Notice 34) that for purposes of traction testing,

metric tires would be inflated and tire loads determined using a prescribed inflation pressure of 180 kPa. Under the proposal, other tires would continue to be tested at an inflation pressure of 24 psi. NHTSA's notice also proposed modification of the temperature resistance test procedure to provide, in the case of metric tires, for use of inflation pressures 60 kPa less than the tires' maximum permissible inflation pressure.

In response to comments, NHTSA modified the original proposal (45 F.R. 35408; May 27, 1980; Notice 40) to include treadwear testing in the proposed modifications and to incorporate a table indicating treadwear, traction, and temperature resistance test inflation pressures for tires with various maximum permissible inflation pressures in kilopascals and pounds per square inch. In the proposed table, different test inflation pressures were specified for tires with differing maximum permissible inflation pressures.

The agency also proposed, in Notice 34, modification of the traction test procedure to permit the adjustment of candidate tire test results with standard tire results obtained either before or after the candidate tire test sequence, so long as all data to be compared were collected within the same two-hour period. This change was intended to promote efficient use of the traction test facilities by permitting data from more than one candidate tire test sequence to be adjusted by comparison with the same standard tire sequence.

Upon examination of additional data, NHTSA concluded that a three-hour period could be employed without affecting the accuracy of the test results. Use of a three-hour period would permit more than one candidate tire test sequence to be run both before and after the corresponding standard tire test sequence. A three-hour period for comparative testing was proposed in Notice 40. Having received no negative comments on the

traction test sequence proposal as stated in that notice, NHTSA has determined that the amendment will be adopted as proposed.

On the proposed changes to provide for testing of metric tires, Goodyear Tire & Rubber Company noted that the table of test inflation pressures proposed in Notice 40 calls for variations in the prescribed test inflation pressure depending on the maximum permissible inflation pressure of the tested tire. The original traction procedure specified a single test inflation pressure for all tires. Goodyear expressed concern that such a change could affect test results and, consequently, tire grades, and require wasteful additional testing to confirm grades already assigned. Goodyear recommended that NHTSA adopt the amendment proposed in Notice 34 that all metric tires be tested using the inflation pressure 180 kPa and all other tires be tested using the original 24 psi inflation pressure.

NHTSA agrees that unnecessary costs associated with the UTQG Standard should be avoided. For this reason, the agency has determined that reference to traction testing will be deleted from the table of test inflation pressures, and the addition of the metric traction test inflation pressure of 180 kPa proposed in Notice 34 will be adopted instead. Those aspects of Notice 40 pertaining to treadwear and temperature resistance testing of metric tires will be adopted as proposed in that notice.

Pursuant to Executive Order 12044, "Improving Government Regulations," and implementing Departmental guidelines, the agency has considered the effects of these amendments. NHTSA reaffirms its earlier determination that the amendments are not significant and that the effects are so minimal as not to warrant preparation of a regulatory evaluation. NHTSA has determined these amendments will result in modest cost savings to industry and consumers, while having no appreciable effect on safety or the environment.

Because these amendments will facilitate the efficient and accurate completion of testing presently underway, the amendments are effective immediately.

In consideration of the foregoing, 49 CFR §575.104 is amended as follows:

1. In section 575.104(e)(2)(ii) by substitution of

the words "the applicable pressure specified in Table 1 of this section," in place of the words "an inflation pressure 8 pounds per square inch less than its maximum permissible inflation pressure."

2. In section 575.104 (f) (2) (i) (B) and (D) by addition of the words, "or, in the case of a tire with inflation pressure measured in kilopascals, to 180 kPa" following the words "to 24 psi."

3. In section 575.104(f)(2)(vii) by addition of the following sentence, at the end thereof: "The standard tire traction coefficient so determined may be used in the computation of adjusted traction coefficients for more than one candidate tire."

4. In section 575.104 (f)(2)(viii) by addition of the words, "or, on the case of a tire with inflation pressure measured in kilopascals, the load specified at 180 kPa," following the words "at 24 psi," and by addition of the sentences, "Candidate tire measurements may be taken either before or after the standard tire measurements used to compute the standard tire traction coefficient. Take all standard tire and candidate tire measurements used in computation of a candidate tire's adjusted traction coefficient within a single three hour period" following the first sentence thereof.

5. In section 575.104 (g) (1) by substitution of the words "the applicable pressure specified in Table 1 of this section," in place of the words "2 pounds per square inch less than its maximum permissible inflation pressure."

6. In section 575.104(g)(3) by substitution of the words "the applicable pressure specified in Table 1 of this section," in place of the words "2 pounds per square inch less than the maximum permissible inflation pressure."

7. In section 575.104(g)(6) by substitution of the words "applicable inflation pressure specified in Table 1 of this section," in place of the words "inflation pressure that is 8 pounds per square inch less than the tire's maximum permissible inflation pressure."

8. In section 575.104(g)(8) by substitution of the words "the applicable pressure specified in Table 1 of this section," in place of the words "2 pounds per square inch less than that the tire's maximum permissible inflation pressure."

9. By addition of the following table at the conclusion of the text of that section:

Table 1.— Test Inflation Pressures

Maximum permissible inflation pressure	32 lb/in ²	36 lb/in ²	40 lb/in ²	240 kPa	280 kPa	300 kPa
Pressure to be used in tests for treadwear and in determination of tire load for temperature resistance testing.	24	28	32	180	220	180
Pressure to used for all aspects of temperature resistance testing other than determination of tire load.	30	34	38	220	260	220

The principal authors of this notice are Dr. F. Cecil Brenner of Office of Automotive Ratings and Richard J. Hipolit of the Office of Chief Counsel.

Issued on October 15, 1980.

Joan Claybrook
Administrator

45 FR 70273
October 23, 1980

PREAMBLE TO AN AMENDMENT TO PART 575

Consumer Information Regulations; Uniform Tire Quality Grading

(Docket No. 25; Notice 45)

ACTION: Final rule.

SUMMARY: This notice amends the Uniform Tire Quality Grading Standards to permit tire grades to be molded on the tire sidewall beginning at any time up to six months after introduction of a new tire line. This amendment, which was proposed in response to a petition from Atlas Supply Company, is intended to avoid disruption of production while tire grades are determined. The notice also extends the deadline for conversion to new format tire tread labels in order to permit unused supplies of old-format labels to be used up.

EFFECTIVE DATE: August 15, 1981.

SUPPLEMENTARY INFORMATION:

Background

On January 26, 1981, the National Highway Traffic Safety Administration (NHTSA) published a notice of proposed rulemaking (46 F.R. 8063; Docket 25, Notice 44) proposing amendment of the sidewall molding and tread labeling requirements of the Uniform Tire Quality Grading (UTQG) Standards (49 CFR 575.104). In response to a petition for rulemaking filed by Atlas Supply Company, NHTSA proposed a four month phase-in period for molding of UTQG grades on the sidewalls of tires of newly introduced tire lines. Under the regulation as originally issued, all covered tires were required to have UTQG grades molded on the sidewall (49 CFR 575.104(d)(1)(i)(A)). Atlas, with

support from the Goodyear Tire & Rubber Company and the General Tire & Rubber Company, requested that initial production runs of new tire lines be exempted from the molding requirement pending determination of UTQG grades.

The notice of proposed rulemaking also responded to a petition for rulemaking submitted by Armstrong Rubber Company. Armstrong had requested that the deadline for conversion to the new UTQG tread label format established in Docket 25, Notice 35 (44 F.R. 68475; November 29, 1979) be extended at least nine months to permit supplies of old-format labels to be used up. In response to Armstrong's petition, NHTSA proposed that the deadline for conversion to the new format be extended from October 1, 1980, until April 1, 1982.

As indicated in the Notice of Intent published by NHTSA on April 9, 1981, (46 F.R. 21203), NHTSA is currently reviewing the requirements of the Uniform Tire Quality Grading System regulatory program, to determine the degree to which it accurately and clearly provides meaningful information to consumers in accordance with the requirements of 15 U.S.C. 1423. Proposed rulemaking or further action on this question will be published within thirty days of this notice.

Proposed Rulemaking—Decision

NHTSA received several comments from tire and motor vehicle manufacturers on the proposed amendments. After review of these comments, the agency has concluded that,

while amendment of the regulation is warranted, several changes in the specifics of the proposal are desirable.

Proposed Rulemaking—Comments

Support for the concept of a temporary exemption from the UTQG molding requirements for new tire lines was indicated by both tire and motor vehicle industry sources. The Rubber Manufacturers Association (RMA) commented that such an exemption would resolve difficulties associated with grading new tire lines, and save costs to manufacturers, while not significantly affecting the distribution of grading information to the public.

Ford Motor Company expressed its opinion that a temporary exemption would make good economic sense by permitting full utilization of production facilities while UTQG grades are determined. Full utilization of equipment was a primary goal of the Atlas petition, which expressed concern that a substantial investment in tire molds would be unproductive while UTQG testing was conducted using a small initial sample of tires.

Goodyear also expressed general support for the proposal, since it would permit UTQG grades to be based on testing of production tires. Goodyear noted that while UTQG testing of prototype tires is possible, testing of production tires is desirable because of the greater variety of sizes available for testing.

While supporting the proposal for a molding exemption period, tire industry commenters uniformly agreed that the four-month period proposed by NHTSA would be inadequate. Goodyear, Atlas, and the RMA agreed that a six-month period would be preferable. These commenters viewed four months as the period in which grades could be determined and molds stamped under optimal conditions. However, these sources pointed out that unexpected delays in tire selection, testing, data analysis, retesting, or stamping could easily extend beyond the four-month period. Atlas' comments suggested that the potential for delay is even greater where multiple sources of supply are involved. In order to

allow for potential uncontrollable delays of this nature, NHTSA has determined that the period for introduction of molded grades on new tire lines will be extended to six months from the date production commences.

NHTSA's notice of proposed rulemaking on this subject contained a proposed requirement that motor vehicle manufacturers affix to the window of each of their vehicles equipped with tires exempted from the molding requirement a sticker containing tire-specific UTQG information. This proposal was intended to assure that prospective vehicle purchasers have access to UTQG information. Tire-specific grades for original equipment tires are not available on tread labels or in vehicle manufacturers' point of sale information. However, the window sticker proposal was uniformly opposed by motor vehicle and tire industry commenters.

General Motors Corporation, Chrysler Corporation, Volkswagen of America, Inc., and Goodyear all argued that significant assembly line problems would result from adoption of a window sticker requirement. Comments received from these manufacturers indicated that several lines of tires are frequently used as original equipment on a single vehicle model and, under the proposal, more than one tire line without molded grades could be available for use in an assembly plant at one time.

Given this diversity of tire use, commenters pointed out, assembly line personnel would have to inspect each vehicle and determine whether ungraded tires were being used. These employees would then have to determine the correct UTQG window sticker to be affixed to the vehicle. Under such a system, labeling errors would be likely in the absence of costly and time-consuming reinspection. Alternatively, expensive special parts identification and storage programs could be undertaken to track ungraded tires through the plant and affix the appropriate labels when the tires are used.

Several commenters argued that such a labeling program would be unreasonably burdensome and expensive in comparison to

the benefits which would be expected from such a program. Ford Motor Company estimated that UTQG window stickers would result in an annual cost to that company of \$50,000. General Motors (GM) estimated that window stickers could be affixed at a cost of \$.50 per car if used on all cars it produced. According to GM, this cost would be much higher in the limited application contemplated by the proposal, due to increased scheduling and inspection costs.

At the same time, General Motors, Chrysler, and Goodyear argued that the major importance of UTQG is in the replacement market and that tire grades seldom influence new car purchases. GM pointed out that it establishes its own performance criteria for original equipment tires beyond the UTQG performance categories, and that in this way vehicle purchasers are assured of getting suitable tires regardless of molded UTQG grades.

While Ford suggested several alternatives to the window sticker proposal, the other commenters addressing the issue recommended that no accommodation at all is necessary for ungraded original equipment tires. In this regard, Goodyear noted that the estimate used in the notice of proposed rulemaking that no more than five percent of original equipment tires would be ungraded was probably high and the actual figure will likely be considerably below that estimate. NHTSA is also aware that in the event a vehicle purchaser is interested in UTQG information on original equipment tires temporarily exempted from the molding requirement, UTQG information would be readily available from local tire dealers and other sources. In view of the above considerations, NHTSA has determined that the proposed UTQG window sticker is unnecessary and unduly burdensome and the proposal for such a sticker is withdrawn.

NHTSA's notice of proposed rulemaking also proposed a sunset provision for the molding requirement change. This provision would have automatically terminated the molding exemption at the end of three years, unless the agency determined that an extension were necessary. Goodyear and the

RMA pointed out in their comments that a sunset provision is unnecessary, since the agency already has the authority to review and amend the regulation at any time, if it appears that the exemption is not working as planned. In fact, Atlas recommended that the agency review the effect of the amendment no later than 18 months after its effective date.

Goodyear noted that, if the sunset provision is adopted, unforeseen delays in completion of NHTSA's review could lead to disruptions in the event the three-year sunset period expires before the review process can be completed and the exemption extended. While NHTSA plans to monitor the effect of the molding exemption and will propose any necessary modifications, the agency has concluded that the proposed sunset provision is unnecessary and potentially disruptive. Therefore, the sunset provision is withdrawn.

Finally, only one commenter expressed an opinion on the proposal to extend the deadline for conversion to the new tread label format. As discussed in Armstrong's petition on this subject, the original October 1, 1980, effective date appeared appropriate at the time it was established. However, a sudden market shift toward radial tires resulted in unused supplies of old-format labels for bias-belted tires. In order to permit existing stocks of labels to be used, NHTSA proposed extension of the deadline for conversion to the new label format until April 1, 1982.

Goodyear complained that it had scrapped unused supplies of old-format labels when the format change took effect and argued that extension of the deadline at this time would not be fair and equitable. Goodyear went on, however, to state its preference that the deadline for conversion be eliminated altogether in the interest of efficient use of available materials.

NHTSA regrets that Goodyear found it necessary to dispose of a quantity of old-format labels which could not be used up prior to the October 1 deadline. However, the agency believes that such economic waste would only be compounded by requiring disposal of labels which may have been

retained by other manufacturers. At the same time, complete elimination of the conversion deadline could indefinitely delay conversion to the new label format, which the agency considers superior. For these reasons, the deadline for conversion to the new tread label format is extended until April 1, 1982. Of course, manufacturers and brand name owners wishing to use new-format labels prior to that date are free to do so.

Several commenters stressed the need to act quickly on the proposed amendments in order to avoid production disruptions and economic penalties which may be encountered in the planned introduction of new tire lines. Since the changes outlined above relieve restrictions and have these beneficial effects, they are made effective immediately upon publication.

NHTSA has evaluated these amendments and found that their effect would be to provide minor cost savings for tire manufacturers and brand name owners.

Accordingly, the agency has determined that the amendments are not a major rule within the meaning of Executive Order 12291 and are not significant for purposes of Department of Transportation policies and procedures for internal review of proposals. The agency has further determined that the cost savings are not large enough to warrant preparation of a regulatory evaluation under the procedures. The agency has also determined that the amendments, which relieve restrictions and provide minor cost savings, will not significantly affect a substantial number of small entities. Finally, the agency has concluded that the environmental consequences of the amendments will be minimal.

Issued on July 30, 1981.

Raymond A. Peck, Jr.
Administrator
46 F.R. 41514
August 17, 1981

PREAMBLE TO AN AMENDMENT TO PART 575

Consumer Information Regulations (Docket No. 79-02; Notice 5)

ACTION: Final rule.

SUMMARY: This notice amends the Consumer Information Regulations to permit amendment of previously submitted motor vehicle performance information at any time up to 30 days prior to new model introduction. This amendment is intended to reduce regulatory burdens on industry by allowing greater flexibility in the implementation of pre-introduction product changes.

EFFECTIVE DATE: June 1, 1982.

SUPPLEMENTARY INFORMATION: The Consumer Information Regulations (49 CFR Part 575) require that manufacturers of motor vehicles and tires provide prospective purchasers and first purchasers with information on the performance of their products in the areas of vehicle stopping ability (49 CFR §575.101), vehicle tire reserve load (49 CFR §575.102), truck camper loading (49 CFR §575.103), and uniform tire quality grading (49 CFR §575.104). In addition to the requirements that information be furnished directly to consumers, manufacturers are required to submit information to the National Highway Traffic Safety Administration (NHTSA) prior to the introduction of new vehicle models and tire lines or modification of existing lines. This advance submission requirement is intended to permit the agency to compile the information supplied by various manufacturers in a comparative format for distribution to consumers.

As originally issued, and presently in force, the regulation requires that all information be submitted to NHTSA at least 30 days prior to the date on which the information is made available to prospective purchasers (49 CFR §575.6(d)). The regulation requires that information must be made available to prospective purchasers not

later than the day on which the manufacturer first authorizes the subject product to be put on public display and sold to consumers (49 CFR §575.6(c)).

To enable NHTSA to compile the information in a comparative booklet for distribution early enough in the model year to be useful to most consumers, the agency amended the regulations to require that motor vehicle manufacturers submit information at least 90 days in advance of new model introduction (45 F.R. 47152; July 14, 1980). The 30-day period was retained for post-introduction vehicle changes and for tire quality grading information. The amendment was originally scheduled to take effect June 1, 1981, but the effective date was postponed until June 1, 1982 (46 F.R. 29269; June 1, 1981), to allow consideration of a petition from Ford Motor Company requesting greater flexibility in the requirement.

Ford contended that the 90-day advance submission requirement could create hardships for manufacturers when last minute pre-introduction product changes, resulting from component supply difficulties or other factors, affect the performance characteristics covered by Part 575. In such a situation, a manufacturer could be forced to delay introduction of a vehicle model until a new 90-day advance notice period had been completed. To avoid this result, Ford recommended that manufacturers be permitted to amend initial pre-introduction submissions at any time prior to 30 days before model introduction. NHTSA responded with a notice of proposed rulemaking to permit such revisions in the event of unforeseeable pre-introduction modifications in vehicle design or equipment (46 F.R. 4054; August 10, 1981; Docket 79-02; Notice 4). This proposal was among the deregulatory measures discussed in the Administration's

notice of intent on measures to aid the auto industry.

NHTSA received comments from seven motor vehicle manufacturers and importers in response to the notice of proposed rulemaking. All commenters agreed that the proposed amendment would be an improvement over the established 90-day requirement, in that greater flexibility would be provided in the introduction of necessary product changes. As noted by Ford, the amendment would facilitate implementation of product development and marketing schedules, while still providing information adequate for NHTSA's purposes. NHTSA agrees and has determined that the proposed amendment should be adopted with one modification.

General Motors and Volkswagen of America, Inc. commented that limiting changes in performance information to those resulting from "unforeseeable" product changes is inappropriate. Volkswagen argued that only the manufacturer can adequately judge whether product changes are unforeseeable, and that agency attempts to enforce such a requirement could lead to undesirable consequences. Moreover, a manufacturer acting in good faith could be faced with a dilemma if the manufacturer is unable to conclude that a needed product change was unforeseeable, although in fact it had not been anticipated in a particular instance. (Docket 79-02, Notice 4, No. 004). General Motors argued that cost factors alone are a sufficient incentive to manufacturers to avoid last minute product changes and therefore no foreseeability standard is necessary to insure that changes are made in good faith. General Motors suggested that if any qualifier is thought necessary, "unforeseen" or "unanticipated" would be preferable. (Docket 79-02, Notice 4, No. 007).

NHTSA continues to believe that some provision is necessary to assure that only good faith product changes form the basis for modifications of pre-introduction submissions. However, NHTSA does not wish to inhibit product changes which the agency may believe could have been foreseen, but honestly were not. To avoid this result, the agency has concluded that "unforeseen" rather than "unforeseeable" is a more appropriate description of the types of product changes which would justify amendments of pre-introduction consumer information submissions.

Volkswagen and General Motors also commented that the 90-day advance submission requirement is unnecessary and that the original 30-day period should be retained. Volkswagen contended that the agency could not use the manufacturers' submissions until 30 days prior to model introduction in any case because the data would be subject to change. Volkswagen also suggested that manufacturers could circumvent the 90-day requirement by making minimal performance claims in their initial submissions and amending the information at a later date. General Motors commented that the further in advance information is submitted, the less accurate it will be, and that the successful publication of the Environmental Protection Agency's fuel economy guide establishes the feasibility of publishing comparative information with a brief advance submission period.

NHTSA's past experience indicates that 30 days is inadequate for this agency to compile, publish and distribute a useful comparative booklet. Moreover, any design or equipment related inaccuracies inherent in a 90-day advance submission can be corrected under the amendment adopted in this notice. While it is true that the agency could not publish and distribute the information until the period for amendment of initial submissions expired, the agency could compile the information and begin the publishing process, incorporating any necessary changes prior to printing. Comments submitted by Yamaha Motor Corporation, U.S.A. (Docket 79-02, Notice 4, No. 001), suggest that the number of required changes will be small. Finally, the type of abuse noted by Volkswagen would be precluded under the amended regulation because the type of revision described would not have been necessitated by unforeseen product changes.

Commenters also suggested rescinding the advance submission requirement completely or rescinding the stopping distance and tire reserve load provisions. Still other commenters recommended that the agency reassess the costs and benefits of the Consumer Information Regulations as a whole. The rationale for these recommendations centered on the alleged lack of consumer interest in the information and the limited amount of information provided under the program.

As noted by commenters, NHTSA has proposed rescission of the requirement that auto manufacturers provide tire reserve load information to the public and the agency (46 F.R. 47100; September 24, 1981). However, in conjunction with the Administration's efforts to ease regulatory burdens on the auto industry, the agency wishes to maintain a functioning consumer information program as a possible substitute for mandatory safety regulations. As part of the agency's ongoing program to identify and eliminate unnecessary regulatory burdens, NHTSA plans to review the benefits of and need for the Consumer Information Regulations as a component of the agency's total regulatory program. If this review indicates that the consumer information program is not useful and cost-beneficial, the future of the regulation will be addressed in a later rulemaking proceeding.

NHTSA has evaluated this relieving of a restriction and found that its effect will be to provide minor cost savings for motor vehicle manufacturers. Accordingly, the agency has determined that the action is not a major rule within the meaning of Executive Order 12291 and is not significant for purposes of Department of Transportation policies and procedures for internal review of regulatory actions. The agency

has further determined that the cost savings are so minimal as to not warrant preparation of a regulatory evaluation under the procedures. The agency certifies pursuant to the Regulatory Flexibility Act that the action will not have a significant economic impact on a substantial number of small entities because the cost savings will be modest and few, if any, motor vehicle manufacturers can be considered small entities within the meaning of the statute. Finally, the agency has concluded that the environmental consequences of the proposed change will be of such limited scope that they clearly will not have a significant effect on the quality of the human environment.

Issued on February 11, 1982.

Raymond A. Peck, Jr.
Administrator

47 F.R. 7257
February 18, 1982



PREAMBLE TO AN AMENDMENT TO PART 575

Consumer Information Regulations (Docket No. 81-09; Notice 2)

ACTION: Final rule.

SUMMARY: This notice amends the Consumer Information Regulations by revocation of the requirement that motor vehicle manufacturers provide information on passenger car tire reserve load. The National Highway Traffic Safety Administration has concluded that this information is without value to consumers, and that deletion of the requirement will avoid unnecessary regulatory burdens on industry.

EFFECTIVE DATE: This amendment is effective immediately.

SUPPLEMENTARY INFORMATION: The Consumer Information Regulations (49 CFR Part 575) require that manufacturers of motor vehicles and tires provide consumers with information on the performance of their products under various performance criteria. In the case of motor vehicle manufacturers, information is required in the areas of passenger car and motorcycle stopping distance (49 CFR §575.101), passenger car tire reserve load (49 CFR §575.102), and truck camper loading (CFR §575.103). National Highway Traffic Safety Administration (NHTSA) regulations require that motor vehicle manufacturers supply the required performance information in writing to first purchasers of their motor vehicles at the time of delivery (49 CFR §575.6(a)) and that the information be made available for examination by prospective purchasers at each location where the vehicles to which it applies are sold (49 CFR §575.6(c)). The information must also be submitted in advance to NHTSA (49 CFR §575.6(d)).

On September 24, 1981, NHTSA published in the *Federal Register* a proposal to delete from the Consumer Information Regulations the

requirement for provision of information on passenger car tire reserve load (46 F.R. 47100; Docket No. 81-09, Notice 1). Tire reserve load is the difference between a tire's stated load rating and the load imposed on the tire at maximum loaded vehicle weight. This difference is expressed as a percentage of tire load rating under the regulation.

NHTSA's proposal noted that a NHTSA analysis, "The Relationship Between Tire Reserve Load Percentage and Tire Failure" (Docket No. 81-09, Notice 1, No. 002), had concluded that no relationship exists between tire reserve load percentage and tire failure rate. This analysis was based on the results of a study prepared for NHTSA by Chi Associates, "Statistical Analysis of Tire Failure vs. Tire Reserve Load Percentage" (Docket No. 81-09, Notice 1, No. 001), using tire reserve load data obtained from eight automobile manufacturers under special order from this agency. The proposal also noted the lack of major differences among manufacturers' reported tire reserve load percentages, and the safeguards against overloading contained in Federal Motor Vehicle Safety Standard No. 110 (FMVSS No. 110), Tire Selection and Rims.

In response to its proposal to delete the requirement for tire reserve load information, NHTSA received comments from seven motor vehicle manufacturers and importers. The commenters were unanimous in their support of the agency's proposal. Comments received generally focused on the lack of benefit to consumers resulting from provision of tire reserve load information.

Several commenters noted the lack of any proven safety benefit from the tire reserve load regulation. Two commenters, Ford Motor Company and Volkswagen of America, Inc., cited the above mentioned NHTSA analysis in support

of the proposition that tire reserve load is an invalid predictor of tire failure (Docket No. 81-09, Notice 1, Nos. 004 and 006). General Motors Corporation (Docket No. 81-09, Notice 1, No. 007) and American Motors Corporation (Docket No. 81-09, Notice 1, No. 008, referencing its prior comment, Docket No. 79-02, Notice 1, No. 012) argued that FMVSS No. 110 is sufficient to protect against the installation of tires with inadequate load carrying capacity.

American Motors also pointed out that much of the information required under the tire reserve load regulation is redundant of information which must be included on glove compartment placards pursuant to FMVSS No. 110. In this regard, information on recommended tire size designation and recommended inflation pressure for maximum loaded vehicle weight, required under paragraphs (c)(2) and (3) of the tire reserve load regulation (49 CFR §575.102(c)(2) and (3)) is essentially the same as that required under paragraphs s4.3(c) and (d) of FMVSS No. 110 (49 CFR §575.110, s4.3(c) and (d)).

Several commenters argued that not only is tire reserve load information lacking in safety value, but it may actually pose a danger to highway safety. Renault USA, Inc., Volkswagen, General Motors and American Motors all expressed concern that provision of tire reserve load information would mislead consumers into loading their vehicles beyond gross vehicle weight ratings (Docket No. 81-09, Notice 1, Nos. 003, 006, 007, 008). Renault and American Motors also noted that the tire reserve load regulation fails to take into account the effect of inflation pressure, thus further limiting the usefulness of the regulation and creating additional potential hazards resulting from improper tire inflation.

Chrysler Corporation and General Motors emphasized the minimal consumer interest in tire reserve load information (Docket No. 81-09, Notice 1, Nos. 005 and 007). As evidence of this minimal interest, both manufacturers noted the lack of consumer requests for point of sale information currently available.

Some cost savings are likely to result to automobile manufacturers as a result of deletion of this requirement. General Motors pointed out that, even if tire reserve load is dropped from the consumer information regulations, manufacturers will still be required to print and distribute

booklets containing information on vehicle stopping distance and thus cost savings will be limited (Docket No. 81-09, Notice 1, No. 007). However, Ford commented that elimination of the tire reserve load provision would result in some savings in manpower and computer time (Docket No. 81-09, Notice 1, No. 004). Similarly, Volkswagen noted that manufacturers' booklet publication costs would be reduced and reporting requirements simplified if the proposed amendment were adopted (Docket No. 81-09, Notice 1, No. 006).

In view of the lack of benefits of the tire reserve load information requirements, the potential for reduction of unnecessary regulatory burdens by deletion of these requirements, and the other considerations discussed above, NHTSA has concluded that the tire reserve load requirements of the Consumer Information Regulations should be revoked. In order to avoid continued imposition of unnecessary regulatory burdens, this amendment relieving a restriction is made effective immediately.

Several commenters also suggested rescinding the vehicle stopping distance information requirement of the regulation, thereby eliminating all requirements for vehicle specific consumer information applicable to passenger cars. While beyond the scope of this rulemaking proceeding, NHTSA is reviewing the benefits of and need for other aspects of the Consumer Information Regulations in connection with a petition for rulemaking submitted by General Motors. If this review indicates that vehicle stopping distance information is not useful, the potential deletion of this requirement will be made the subject of a future rulemaking proceeding.

NHTSA has evaluated this relieving of a restriction and found that its effect would be to provide minor cost savings for motor vehicle manufacturers. Accordingly, the agency has determined that this action is not a major rule within the meaning of Executive Order 12291 and is not significant for purposes of Department of Transportation policies and procedures for internal review of regulatory actions. The agency has further determined that the cost savings are minimal and do not warrant preparation of a regulatory evaluation under the procedures.

The agency certifies, pursuant to the Regulatory Flexibility Act, that this action will not "have a

significant economic impact on a substantial number of small entities," and that a Regulatory Flexibility Analysis was therefore not required. Few, if any, motor vehicle manufacturers can be considered small entities within the meaning of the statute. Small organizations and small government jurisdictions will not be significantly affected by this action. These entities could be affected by the action as motor vehicle purchasers. However, the agency has determined that tire reserve load information is not of value to purchasers. Moreover, possible cost savings associated with the action will be minor in the

case of individual purchasers.

Issued on May 28, 1982.

Raymond A. Peck, Jr.
Administrator

47 F.R. 24593
June 7, 1982

PREAMBLE TO AN AMENDMENT TO PART 575
Consumer Information Regulations; Uniform Tire Quality Grading
(Docket No. 25; Notice 46)

ACTION: Interim final rule and request for comments.

SUMMARY: This notice makes several technical amendments to the test procedures in the regulation on Uniform Tire Quality Grading (UTQG). The UTQG regulation specifies that the tire rim size and tire loading used in testing individual tires are to be determined by using Table 1, Appendix A of Federal Motor Vehicle Safety Standard No. 109, New pneumatic tires. Since the portion of Table 1, Appendix A relied upon by the UTQG regulation was deleted in a previous agency rulemaking, effective June 15, 1982, reliance upon that Appendix will no longer be appropriate after that date. This notice replaces the references to Appendix A with equivalent methods for determining rim size and tire loading.

DATES: This amendment is effective June 15, 1982.

SUPPLEMENTARY INFORMATION: The Uniform Tire Quality Grading (UTQG) regulation (49 CFR 575.104) requires that manufacturers and brand name owners of passenger car tires provide consumers with information on the treadwear, traction and temperature resistance of their tires. This information is to be generated in accordance with procedures specified in the regulation.

Two parameters specified in the test procedures are the proper test rim width for each tire, and the load under which the tire is to be tested. The UTQG regulation refers to Appendix A of Federal Motor Vehicle Safety Standard No. 109 (FMVSS 109) for the determination of rim size to be used for testing purposes. Table 1 of Appendix A provides a complete listing of tire sizes available

in this country and for each size indicates the proper test rim size and maximum loads at various tire pressures.

The UTQG regulation also refers to Appendix A of FMVSS 109 for the determination of tire load. The tire load for temperature resistance testing is the load specified in Appendix A of FMVSS 109 for the tire pressure listed in Table 1 of the UTQG regulation. Thus, load is currently determined by obtaining the tire pressure from Table 1 of the UTQG regulation and finding the load for that pressure level in Appendix A. The tire load for treadwear and traction testing is determined in the same way, except that the load level found in Appendix A is multiplied by 85 percent.

Beginning on June 15, 1982, reliance upon Appendix A of FMVSS 109 to determine rim size and tire load for UTQG testing will no longer be possible. On that date, the agency's amendment (December 17, 1981; 46 F.R. 61473) deleting Table 1 of Appendix A will become effective. As FMVSS 109 is currently written, the tire manufacturers and brand name owners must submit the rim size information to NHTSA for incorporation in Table 1. Under the amendment, they will be able to satisfy FMVSS 109 by either securing the incorporation of the information in a publication of a standardization organization like the Tire and Rim Association or one of its foreign counterparts or by submitting it to the agency, their dealers, and others who request it, without the need for the information's incorporation in any other document.

As to tire load information, the tire manufacturers and brand name owners must currently calculate loads for pressure levels ranging from 16 to 40 pounds per square inch in most cases and submit the information to NHTSA for incorporation in Table 1. After June 14, they need determine the load only for a single

pressure level, the maximum one. The responsibilities of the manufacturers and brand name owners under amended FMVSS 109 regarding load information may be satisfied in the same fashion as their responsibilities regarding rim size.

The deletion of Table 1 of Appendix A was intended to reduce an unnecessary regulatory burden placed by FMVSS 109 on the tire industry and the agency. The action was not intended to make any change in the UTQG test procedures. However, the deletion of Table 1 of Appendix A necessitates amending the UTQG regulation so that rim size and tire load can be determined without reference to that appendix.

This notice provides the means for making those determinations. The rim size to be used for UTQG testing is the same size specified by the tire manufacturer or brand name owner in a publication of a standardization association or in a submission directly to the agency. This provision does not in any way change the rim size used for UTQG testing. Instead, it simply changes the source of obtaining the rim size information.

As to tire loading, the UTQG testing will henceforth rely upon mathematical calculation involving a tire's maximum load, as molded on its sidewall, instead of relying upon information submitted by the manufacturer or brand name owner to any organization or agency. Under the new procedure, the maximum load is multiplied by a factor, ranging from .851 to .887 depending on the tire's maximum inflation pressure, and the result is rounded. The rounded result is used for temperature resistance testing. For treadwear and traction testing, the rounded result is multiplied by 85 percent. In most instances, this procedure produces the same load as is currently obtained by reference to Table 1 of Appendix A. In those instances in which the load is different, the degree of difference is so slight that the difference will not have any practical effect on the UTQG test results.

The agency finds good cause for issuing these amendments without prior notice and comment. The agency believes that prior notice and comment are unnecessary. The revisions are technical and editorial in nature. In most instances, the revisions produce no changes in the procedures under which tires are tested for UTQG purposes. In the few instances in which there will be a

change, the change is so slight as to be substantively insignificant. Although the agency has concluded that prior notice and comment are unnecessary, it has decided to go beyond the minimum requirements of the Administrative Procedures Act and provide a 60-day comment period on these amendments. For the same reasons set forth above and to permit continued implementation of the UTQG regulation, the agency finds good cause for making the revisions effective immediately.

Since this proceeding is merely intended to allow the continued implementation of the UTQG regulation without any change in the manner of implementation, NHTSA has determined that this proceeding does not involve a major rule within the meaning of Executive Order 12291 or a significant rule within the meaning of the Department of Transportation regulatory procedures. Further, there are virtually no economic impacts of this action so that preparation of a full regulatory evaluation is unnecessary.

The Regulatory Flexibility Act does not require the preparation of flexibility analyses with respect to rulemaking proceedings, such as this one, for which prior notice and comment is not required by the Administrative Procedures Act. If the requirement for preparation of such analyses were applicable, the agency would certify that this action would not have a significant economic impact on a substantial number of small entities. As noted above, this action will make essentially no change in the implementation of the UTQG regulation.

NHTSA has concluded that this action will have essentially no environmental consequences and therefore that there will be no significant effect on the quality of the human environment.

Interested persons are invited to submit comments on the agency's action announced above and on any other topics relevant to this notice. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary argument in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three

copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation must certify in writing that each item for which confidential treatment is required is in fact confidential within the meaning of section (b)(4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items have previously been disclosed or otherwise become available to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address

both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. NHTSA will continue to file relevant material as it becomes available in the docket after the closing date; it is recommended that interested persons continue to examine the docket for new material. Those persons desiring to be notified upon receipt of their comments in the rulemaking docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Issued on June 11, 1982.

Raymond A. Peck, Jr.
Administrator

47 F.R. 25930
June 15, 1982

PREAMBLE TO AN AMENDMENT TO PART 575

Consumer Information Regulations; Uniform Tire Quality Grading (Docket No. 25; Notice 48)

ACTION: Interim final rule and request for comments.

SUMMARY: This notice makes a technical correction to the test procedures used in Uniform Tire Quality Grading (UTQG). A recently issued amendment to those procedures inadvertently omitted certain factors to be used in determining the load under which tires are to be tested for traction. This notice corrects the prior amendment. This notice also provides that, for a two-year period, tires whose test loads would change significantly as a result of the use of the treadwear, temperature resistance and traction load factors shall continue to be tested at the loads used in UTQG testing prior to June 14, 1982. The agency intends this notice to ensure that test loads will not significantly change from previously specified loads.

EFFECTIVE DATE: The UTQG amendment is effective on August 12, 1982.

SUPPLEMENTARY INFORMATION: Under the UTQG system, tires sold in this country are tested and grades are assigned for treadwear, traction, and temperature resistance. Prior to June 15, 1982, the UTQG Standards provided that the tire rim size and test loads used for UTQG testing were to be obtained from the tire tables of Appendix A to Federal Motor Vehicle Safety Standard No. 109, New pneumatic tires. However, those tables were deleted from FMVSS 109 effective June 15, 1982. In order to provide a substitute means for determining rims and test loads for all three performance characteristics, NHTSA published an interim final rule on June 15, 1982 (47 F.R. 25930). The June 15 notice specified alternative methods for determining test rim sizes and test loads, without having to

refer to the now-deleted tire tables of Standard 109.

Of relevance here is the new procedure for determining test loads. That procedure requires multiplying the maximum tire load appearing on the tire's sidewall by certain specified factors.

The agency's June 15 correction notice inadvertently omitted factors for traction testing. The factors which were listed in that notice were those appropriate for treadwear and temperature resistance testing only. Therefore, the agency is now correcting the table set forth in the June 15 notice to include the factors to be used in UTQG traction testing. The agency has selected these factors, like those specified in the June 15 notice for treadwear and temperature resistance testing, in an attempt to produce approximately the same test load as was previously specified by reference to the tire tables of Standard 109. The agency believes that for most tire types and sizes, this procedure will produce tire load specifications which differ from loads specified by the old procedure by less than 10 pounds. The agency believes that this difference will not be large enough to produce significant differences in test results, but invites comment on this point.

The agency has identified 14 individual tire sizes which would have differences of more than 10 pounds in test loads under the load factors for treadwear, temperature resistance or traction testing under UTQG. These discrepancies apparently result from differences in the manner in which various tire companies determine maximum tire loads and "design" loads. For these 14 tires, the agency is specifying as an interim measure that the loads previously determined by reference to the tire tables may continue to be used for a period of two years. The two-year period will permit the tire manufacturers to make any design changes they feel necessary in these

tires. While the agency believes that those 14 tire sizes represent the only tires now sold in the U.S. with load discrepancies of greater than 10 pounds, there may be others. Commenters are requested to inform the agency of any additional tires for which such a discrepancy exists. These tires will be added to that list when final action is taken on the interim final rule.

The agency finds good cause for issuing this amendment without prior notice and comment. The agency believes that prior notice and comment are unnecessary, since the revisions are technical and editorial in nature. They are intended to allow the continued implementation of the UTQG regulation in the same manner as it was before June 15, 1982. Although the agency has concluded that prior notice and comment are unnecessary, it has decided to go beyond the minimum requirements of the Administrative Procedures Act and provide a comment period on this amendment. For the same reasons set forth above and to permit continued implementation of the UTQG regulation, the agency finds good cause for making the revisions effective immediately.

Since this amendment is not intended to cause any significant change in implementation of the UTQG regulation as it existed on June 14, 1982, NHTSA has determined that this proceeding does not involve a major rule within the meaning of Executive Order 12291 or a significant rule within the meaning of the Department of Transportation regulatory procedures. Further, there are virtually no economic impacts of this action so that preparation of a full regulatory evaluation is unnecessary.

The Regulatory Flexibility Act does not require the preparation of flexibility analyses with respect to rulemaking proceedings, such as this one, since the agency certifies that this action would not have a significant economic impact on a substantial number of small entities. As noted above, this action will make essentially no change in the implementation of the UTQG regulation.

NHTSA has concluded that this action will have essentially no environmental consequences and therefore that there will be no significant effect on the quality of the human environment.

Interested persons are invited to submit comments on the agency's action announced above and on any other topics relevant to this

notice. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary argument in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation must certify in writing that each item for which confidential treatment is required is in fact confidential within the meaning of section (b)(4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items have previously been disclosed or otherwise become available to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. NHTSA will continue to file relevant material as it becomes available in the docket after the closing date; it is recommended that interested persons continue to examine the docket for new material. Those persons desiring to be notified

upon receipt of their comments in the rulemaking docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Issued on August 5, 1982.

Raymond A. Peck, Jr.
Administrator

47 F.R. 34990
August 12, 1982

PREAMBLE TO AN AMENDMENT TO PART 575

Consumer Information Regulations Uniform Tire Quality Grading

[Docket No. 25; Notice 52]

ACTION: Final rule.

SUMMARY: This notice suspends, on an interim basis, the treadwear grading requirements of the Uniform Tire Quality Grading Standards (UTQGS). No change is made in the requirements of grading the traction and temperature resistance performance of new tires except for a minor change in the format for molding those grades on tires.

The UTQGS treadwear grading requirements are intended to aid consumers in assessing the value of new tires in terms of relative treadwear performance. This suspension is being adopted because available information and analysis indicate that the treadwear grades are apparently not only failing to aid many consumers, but also are affirmatively misleading them in their selection of new tires. The unreliability of the treadwear grades arises from two major sources. One is the variability of treadwear test results, which could be caused by either the lack of sufficient measures in the treadwear test procedures to ensure repeatability, or by the inherent complexity of the structure of individual tires themselves, which would preclude reproducibility of test results and, thus, comparative examination between or among tires. The other major source of unreliability is substantial differences among the practices of the tire manufacturers in translating test results into grades.

The agency has identified a wide variety of presently uncontrolled and perhaps uncontrollable sources of variability in the treadwear test procedure, and believes that other sources remain to be discovered. Although some or all of these sources may ultimately be found to

be controllable to the extent that the variability in test results is reduced to acceptable levels, considerable research must be completed before the agency can determine whether or how that can be achieved. Much of the necessary research has already been initiated. When the research is completed, the agency will determine whether the suspension of treadwear grading should be lifted.

The agency is also amending Part 575 to change the format for molding grades on the sidewalls of new tires. The new format, which would include traction and temperature resistance grades but not treadwear grades, must be used on new tires produced in molds manufactured after (180 days after publication in the *Federal Register*). The agency expects and directs that manufacturers will cease printing tire labels and consumer information materials which include treadwear grades described or characterized as having been determined by or under the UTQGS procedures of the United States Government.

As a result of the amendments adopted by this notice, consumers will cease to be misled by unreliable treadwear grade information. In addition, the costs of implementing the treadwear grading program will no longer be imposed on the manufacturers and consumers.

DATES: The suspension of the existing requirements relating to treadwear grades, and the new alternative provision specifying the format for the molding of only traction and temperature resistance information on new tires are effective February 7, 1983. The provision requiring use of the new format is effective for tires produced in molds manufactured on or after August 8, 1983.

SUPPLEMENTARY INFORMATION: Section 203 of the National Traffic and Motor Vehicle Safety Act requires the Secretary of Transportation to prescribe a "uniform quality grading system for motor vehicle tires." As explained in that section, this system is intended to "assist the consumer to make an informed choice in the purchase of motor vehicle tires." The uniform tire quality grading standards (UTQGS) became effective April 1, 1979, for bias tires; October 1, 1979, for bias belted tires; and April 1, 1980, for radial tires. UTQGS requires manufacturers and brand name owners of passenger car tires to test and grade their tires according to their expected performance in use with respect to the properties of treadwear, traction, and temperature resistance, and provide consumers with information regarding those grades.

Treadwear Testing and Grading Process

This notice focuses on the treadwear grades. Unlike grades for the properties of traction and temperature resistance, the treadwear grades have never been intended to promote safety. Their essential value has always been to aid consumers in selecting new tires by informing them of the performance expectations of tread life for each tire offered for sale, so that they can compare on a common basis the relative value of one tire versus another. Although these grades are not intended to be used for predicting the actual mileage that a particular tire will achieve, the relevance and effectiveness of the grades depend directly on the accuracy of the projections of tread life derived from tests and assigned by grades.

The grades are based on a tire's projected mileage (the distance which it is expected to travel before wearing down to its treadwear indicators) as tested on a single, predetermined course laid out on public roads near San Angelo, Texas. Each treadwear test consists of 16 circuits of the approximately 400 mile long course. A tire's tread depth is measured periodically during the test. Based upon these measurements, the tire's projected mileage is calculated. A tire's treadwear grade is expressed as the percentage which its projected mileage represents of a nominal 30,000 miles. For example, a tire with a projected mileage of 24,000 would be graded "80,"

(i.e., 24,000 is 80 percent of 30,000 miles), while one with a projected mileage of 39,000 would be graded "130," (i.e., 39,000 is 130 percent of 30,000, rounded).

Because the measured treadwear upon which grades are based occurs under outdoor road conditions, any comparison between candidate tire performances must involve a standardization of results by correction for the particular environmental conditions of each test. To do this, the treadwear performance of a candidate tire is measured in all cases in conjunction with that of a so-called "course monitoring tire" (CMT) of the same construction type. The treadwear of the standardized CMT's is measured to reflect and monitor changes in course severity due to factors such as road surface wear and environmental conditions. The actual measured treadwear of the candidate tire is adjusted on the basis of the actual measured treadwear on the CMT's run in the same convoy, and the resulting adjusted candidate tire treadwear is used as the basis for assigning the treadwear grade.

To promote their uniformity, the CMT's are selected from a single production lot manufactured at a single plant, under more stringent quality control measures (set by contract with NHTSA) than would otherwise apply to production tires.

Each test convoy consists of one car equipped with four CMT's and three or fewer other cars equipped with candidate tires of the same construction type. Candidate tires on the same axle are identical, but front tires on a test vehicle may differ from rear tires as long as all four are of the same size designation. After a two-circuit break-in period, the initial tread depth of each tire is determined by averaging the depth measured in each groove at six equally spaced locations around the circumference of the tire. At the end of every two circuits (800 miles), each tire's tread depth is measured again, the tires are rotated on the car, and wheel alignments may be readjusted as needed to fall within the ranges of the vehicle manufacturer's specifications. At the end of the 16-circuit test, each tire's overall wear rate is calculated from the nine measured tread depths and their corresponding mileages after break-in by using a regression line technique.

Part 575 requires that the treadwear grading information be disseminated in three ways. First,

the actual grade must be molded onto the sidewall of each tire. Second, the grade and an explanation of the treadwear grading process must appear on a paper label affixed to the tire tread. Third, the grade and the same explanation must be included in materials made available to prospective purchasers and first purchasers of new motor vehicles and tires.

Agency's Recent Actions

The basis and validity of the UTQGS has been a longstanding source of controversy and uncertainty within the agency and among interested parties. In view of the manifest potential conflict between the clear desirability of a valid, effective program to enable more informed consumer choice in the marketplace and the potential for serious adverse effect on the marketplace of an inadequate or potentially misleading programmatic result, the agency responded to its own enforcement uncertainties, described more fully below, by reviewing the current state of knowledge concerning the UTQGS, and addressing the specific sources of variability already identified.

Variability due to treadwear test procedures.
In response to longstanding concerns about the variability and unreliability of the treadwear test results and grades and about the underlying causes of these problems, the agency conducted a review in May 1982 of treadwear test procedures being used by the tire testing companies in San Angelo. That review confirmed the existence of numerous uncontrolled sources of potential variability in treadwear test results. The potential cumulative effect of those sources would produce test result variability approaching the unacceptable magnitude long asserted by many tire manufacturers. The high level of test result variability could result in tires with better actual treadwear performance being graded as inferior to tires with worse actual performance, or vice versa.

The review did not, however, address in detail the relative significance of the various sources of variability. That question and the ultimate question of whether the identified sources of variability can be sufficiently controlled so as to bring the overall amount of variability down to an acceptable level can be answered only after

extensive research and testing.

Among the sources of variability discussed in the review were the weight scales intended to assure the proper loading of the cars used in the testing convoys, errors or inconsistencies introduced by variations in the amount of force applied to the probes used to measure tread depth and tendencies of measuring personnel to "search" for tread depth measurements consistent with expected rates of treadwear, discrepancies in the level of the training of technicians, fairly wide tolerances on critical alignment settings, unquantifiable variations in vehicle weights and weight distribution and suspension modification, and variations in driver techniques and in weather conditions on the course.

Each of the specific identified sources of such variability is discussed in detail below.

Variability due to grade assignment practices.
Following the initial implementation of UTQGS, the agency sent a special order to the tire manufacturers to obtain information regarding their practices for translating treadwear test results into grades. The response indicated wide variation within the industry regarding those practices. Some manufacturers evaluated data by applying statistical procedures to estimate the percentage of their production which would equal or exceed a particular grade. Other manufacturers did not use such a procedure, relying instead on business and engineering judgment in assigning grades. The agency tentatively concluded that these differing practices created the substantial likelihood that different manufacturers, although faced with similar test results, would assign different grades to their tires. Accordingly, NHTSA issued a notice of proposed rulemaking requesting comment on a standardized process for translating test results into grades. (46 F. R. 10429, February 2, 1981). Commenters generally criticized the proposed process, particularly for its failure to account properly for undergrading. The agency is continuing its efforts aimed at developing a uniform procedure for translating test results into treadwear grades. However, until this problem is resolved, the unreliability of treadwear grades is compounded by the fact that the relationship between test results and assigned grades is not a constant one from

manufacturer to manufacturer.

Variability inherent in the nature of tire structure. A potential for an unquantified degree of variability is inherent in the differences between seemingly identical (i.e., in terms of brand, line, size, and manufacturing lot) tires. The potential arises from the complex combination of a variety of factors, including the materials, designs, and manufacturing procedures, that go into the production of tires. The materials include the rubber composition and various reinforcing materials such as rayon, steel, polyester, etc., which themselves are developed from complicated manufacturing processes. The design of a tire includes such factors as the cross section shape, the orientation and structure of the reinforcing materials, the tread design, and the construction (bias, bias-belted, or radial). The manufacturing procedures include the processes employed during manufacturing and the conditions such as temperatures and times of vulcanization. Separately and together, these variables can have a significant effect on tread life.

In the production of tires, the manufacturers use a variety of techniques in an attempt to control all of these variables and to achieve a consistent level of quality and performance for their different products. The success of these efforts varies from tire line to tire line, lot to lot, and from manufacturer to manufacturer. The complexity of the entire process will inevitably lead to some variation in performance, including treadwear performance between nominally identical tires.

NOTICE OF PROPOSED RULEMAKING

Based on the assertions and submissions of the tire manufacturers and the agency's review of the test procedures and of its own enforcement data, the agency tentatively concluded in July 1982 that treadwear grading under UTQGS should be suspended pending completion of research regarding the extent to which the sources of variability could be isolated and reduced. Accordingly, it issued a notice of proposed rulemaking to obtain both written comments and oral testimony on suspending treadwear grading (47 F.R. 30084, July 12, 1982) and to schedule a public meeting August 12, 1982. The agency

stated that it was issuing the proposal principally to avoid the dissemination of information potentially misleading to consumers and secondarily to minimize the imposition of unwarranted compliance costs on industry and consumers. The agency noted its concern that the treadwear grading was not only failing to achieve its statutory goal of informing consumers, but also affirmatively misleading them.

In defending UTQGS against earlier judicial challenges, NHTSA had taken the position that the treadwear test procedure was adequately specified to ensure that test result variability was limited to acceptable levels. See *B.F. Goodrich v. Department of Transportation*, 541 F. 2d 1178 (6th Cir. 1976) (hereinafter referred to as "*Goodrich I*"); and *B.F. Goodrich v. Department of Transportation*, 592 F. 2d 322 (6th Cir. 1979). For example, the agency had stated in the *Goodrich I* litigation that variables in the testing procedure are controlled and taken into account, principally through the selection of a single test course and the use of CMT's. With respect to certain potential sources of variability, the agency stated that their effects on treadwear testing and grading would be minimal. The agency indicated in its suspension proposal that it could no longer make the same representations. These statements have been further undermined by information now available to the agency.

The notice summarized the material relied upon by the agency in making its tentative conclusions, including the information and arguments submitted by the tire manufacturers. Firestone Tire and Rubber Company, for example, found that treadwear test results could vary up to 30 percent even for CMT tires, which are specially manufactured for maximum homogeneity. That company also pointed out several possible causes of the variability, including variability in test vehicles and driver techniques as well as deficiencies in the details of the test procedures themselves. General Tire and Rubber Company reported additional sources of variability, including vehicle wheel alignment, weight distribution, and test course environmental factors. B.F. Goodrich Company stated that differences in tire tread composition between candidate tires being tested and the CMT's could be a major source of variability. As a group, the tire manufacturers generally

contended that the variability of the test results is too great to permit meaningful treadwear grading or compliance testing. The agency's own preliminary research confirms this conclusion and supports the need for the suspension.

The proposal also discussed the agency's enforcement data and described at length the review conducted by NHTSA of the treadwear testing companies. The agency emphasized that the list of sources of variability mentioned in the review was not exhaustive, but intended merely to be illustrative of the types of possible such sources and of the difficulties which exist in seeking to establish a treadwear test procedure that could produce valid, repeatable results. The agency found that the combination of the examined sources represented a potential for test result variability of serious dimensions. Each potential source of variability was described and the potential effect of them on test results was estimated. For example, effects of ± 34 or 35 points were estimated for two sources of variability and ± 14 points for another.

Summary of Comments on Proposal

Written comments and oral testimony were received from a variety of sources, although the most detailed ones were from tire manufacturers. While there was a division of opinion regarding the merits of the proposal, most commenters favored the suspension. Proponents of the suspension included tire manufacturers, several tire manufacturers' associations, tire dealers, a motor vehicle manufacturer, some consumers, and a public interest group. Proponents agreed with the agency's statement that the treadwear test results and grades were so variable and unreliable as to confuse and mislead consumers. They also listed again the factors that they thought were causing the variability. Some proponents suggested that the problems are so serious that simple suspension was inadequate. They urged that the agency go further and rescind the treadwear provisions altogether.

Opponents of the proposed suspension included one tire manufacturer, a tire dealer, a public interest group, a county consumer protection agency, and a number of consumers. The tire manufacturer argued that the treadwear grade information was sufficiently correlated with

actual differences in tire performance to be helpful to those consumers who use that information. It acknowledged that there was variability in the treadwear test results and differences in the grade assignment practices, but contended that these problems could be satisfactorily controlled through further identified changes in UTQGS. The manufacturer argued that even if there were difficulties in enforcing the current treadwear requirements, the overall value of the comparative treadwear information justified retention of the requirements while the enforcement problems were addressed. The public interest group argued that NHTSA was ignoring its statutory mandate, as interpreted by that group, in contemplating a suspension of treadwear grading. That opponent argued further that the agency had artificially narrowed the options under consideration in this rulemaking proceeding.

Two tire testing companies submitted detailed comments regarding their testing practices. They generally argued that the problems discussed in the agency's review of testing companies did not apply to them. One asserted further that the suspension would have a severe economic impact in the San Angelo, Texas area, where treadwear tests are conducted. The San Angelo Chamber of Commerce concurred in that assessment.

Summary of Suspension Decision

NHTSA has decided to suspend the treadwear provisions of UTQGS because available information and analysis indicate that the treadwear grades are apparently not only failing to aid many consumers, but are also affirmatively misleading them in their selection of new tires. The capacity of these grades to mislead consumers arises principally from variability in treadwear test results unrelated to actual differences in measured or projected performance, and secondarily from differences among manufacturers in their translation of test results into grades. In its proposal, the agency identified some of the wide variety of uncontrolled sources of variability in the insufficiently specific treadwear test procedures. The agency has been able to quantify the effect of only some of those sources. Other sources are

believed to exist and continue to be discovered. Indeed, the tire manufacturer opposing the suspension reported only last November its discovery of a "major unreported source of variability." (Letter from R. H. Snyder, Uniroyal Tire Company, to Raymond Peck, NHTSA Administrator, November 12, 1982, Docket 25, Notice 47, No. 090).

In their comments to the agency, the opponents of the suspension did not controvert the premise of the agency that there is substantial variability in test results and that there are specific identified sources of much of that variability. The tire manufacturer opposing suspension conceded that test result variability and differences in grading practices can be so large as to result in changes between the order in which tires are ranked based on test results and the order in which they are ranked based on grades. Indeed, comparisons of the agency's own compliance test data and grades assigned by the tire manufacturers indicate that these ranking changes occur with some frequency and can be substantial. Moreover, the opponents did not deny that there were significant problems with enforcing the treadwear requirements of Part 575 as they are now written.

Where the rank order of measured performances or assigned grades changes, it is clear that only one of such differing results can in fact be objectively correct and valid. Any such change in ranking thus represents a clear and present danger that grades can be affirmatively misleading. Resulting purchasing decisions based on such incorrect grades are not merely wrong, but represent instances in which the government-created program of consumer assistance through the dissemination of objective comparative information has in fact affirmatively misled the consumers which are intended to be assisted.

Although the sources of variability may ultimately be controllable to the extent that the variability and unreliability derived from treadwear test results and grades are reduced to lower, more acceptable levels, considerable research must be completed before that is even a possibility. Even if such research were now complete, it is not clear at this point how much of the current test-derived variability and unreliability could be eliminated. Much of the necessary research has already been initiated.

When the research is completed, the agency will address the question of whether the problems can be reduced to the point that it can begin considering whether to reinstate the UTQGS treadwear system.

Rational for Suspension Decision

Magnitude of the Overall Variability and Reliability Problem

Available data demonstrate that the treadwear test results can vary substantially and that the treadwear grades assigned by the manufacturers are unreliable for the purposes of comparing tires. Data submitted by the tire manufacturers indicate that subjecting tires of a particular type and line to the same tests on separate occasions produces differences in test results of up to 80 points. The agency's own compliance test data include examples of significant test result variability.¹

Moreover, in addition to test result variability, the process of assigning grades can and demonstrably has introduced other unacceptable levels of uncertainty as far as the consumer is concerned. Treadwear grades are often not a reliable indicator of the relative tread life of tires because the order in which tires are ranked on the basis of test results can differ significantly from the order in which they are ranked on the basis of grades. The magnitude of these crossovers (i.e., changes in rank) can be

¹The agency believes that the enforcement data are a particularly significant source of information since the data comprise the most complete set of test results available. They reflect consistent application of test procedures under the direction of a single party, the agency, under circumstances involving the greatest incentive of any interested party to minimize variability in data, the exigencies of the certainty required for enforcement purposes. In fact, to attempt to resolve doubts as to variability, the agency has in fact refined its enforcement test procedures to a greater extent than is required by Part 575. For example, all enforcement tests are conducted by a single contractor, eliminating the influence of differences between test facilities. Highly accurate electronic scales are used to determine wheel loads. Very precise wheel alignment equipment is used. That equipment has been operated by the same skilled technicians for all compliance tests since mid-1981. Thus, NHTSA believes that statements regarding test variability which are based on these enforcement data could tend only to understate the variability experienced by others in testing tires and assigning grades.

substantial, as is shown in a graph which B. F. Goodrich constructed by plotting the agency's enforcement data against the grades assigned by the tire manufacturers for the same tires. (This is the same graph shown on page III-2 of the agency's regulatory evaluation for this rulemaking action and is similar to one prepared by Uniroyal.) Goodrich's graph includes information on radial ply tires primarily, although it also covers tires of other construction types. There are numerous examples in the graph of tires whose test results fell within a 10 point range, but whose assigned grades were spread over an 80 to 100 point range. Some tires had average test results which were 10 points below those of other tires, but were assigned grades as much as 60 or 70 points higher. Some tires assigned the same grade had average test results that were scattered over a 100 point range. These phenomena are not restricted to a particular portion of the graph, but exist throughout, from the left side where bias ply and bias belted tires predominate to the right side where radial ply tires predominate.

The magnitude and pervasiveness of the crossovers and grading quirks means that the treadwear grades have the capacity for more than simply confusing consumers about the relative performance of tires exhibiting nearly the same performance. The possibility exists for confusion even between some tires in the lower third percentile and some tires in the upper third percentile of treadwear performance. Thus, whether a prospective purchaser seeking the particular size (i.e., diameter) of tire appropriate for his or her vehicle is looking at the entire spectrum of construction types, or is focusing on a single construction type only, there is a significant possibility that the person may be misled about the relative performance of tires. The possibility is greatest in the latter case, since the smaller the difference in actual performance between tires under consideration, the greater the probability that test variability and crossovers will cause the grades of those tires to be misleading about the relative performance of those tires. The ranges in grades for particular construction types are not very large when compared with the magnitude of the problems created by test variability and crossovers. Treadwear grades typically range from 60-120 (a

60 point range) for bias ply tires of all sizes, 90-150 (a 60 point range) for bias belted tires of all sizes, 120-200 (an 80 point range) for 13 inch diameter radial ply tires, 160-220 (a 60 point range) for 14 inch diameter radial ply tires, and 170-220 (a 50 point range) for 15 inch radial ply tires. The ranges for radials are particularly relevant since radials account for most original equipment tires on new cars and a substantial majority of replacement tires for used cars.

It is considered especially significant that the occurrence of such rank changes is not uncommon. For examples for each of a majority of the tires in Goodrich's graph, other tires could be found in the graph which had a lower assigned grade but which, based on compliance test results, exhibited superior performance.

Although the agency recognizes that the graphs submitted by Goodrich and Uniroyal reflect, in part, manufacturer-to-manufacturer differences in grade assignment procedures and not just variability in test results, the agency considers the analyses made using the graphs to be significant since they point out the extent to which consumers may in fact be misled by treadwear grades. In its analysis, Uniroyal calculated a correlation coefficient of 0.763 for the two variables (test results and grades),² and a similar rank order correlation. The coefficient of 0.763 implies that only about 58 percent (the square of the correlation coefficient) of the variation in tire treadwear grades can be explained by actual differences in treadwear

²Using a slightly different data base, B. F. Goodrich calculated a correlation coefficient of 0.78 between the agency's enforcement test results and assigned grades.

³While the argument has been made that this aspect of variability should not be taken into account because it is entirely within the control of the grading manufacturer, the agency is not able to conclude from the data before it that any actually assigned grade is without basis in test data. In implementing the statute to determine whether the sanctions imposed by the statute and agency regulation should be applied to given manufacturers, the agency has been forced to conclude that all assigned grades so reviewed have been reasonable, based on agency and manufacturer supporting data. Under such circumstances, the agency finds that the overwhelming policy purpose of the UTQGS to inform consumers of comparative tire data, in a meaningful way (i.e., one that is valid, reasonably accurate, and objectively verifiable for enforcement purposes) in order to affect their tire purchase decisions, requires that this uncertainty also be taken into account.

performance. The agency estimates that as many as 10 of the 40 percentage points of unexplained variability may be due to differences in grade assignment practices.³

In reaching its decision that currently documented levels of variability are unreasonable and cannot sustain retention of the UTQGS treadwear grading requirements in their present form, the agency has been guided by two principal conclusions: first, the rank order of test results and the rank order of assigned grades can and do change with repeated testing under currently allowable procedures. This result has also taken place when the agency's own, far more carefully controlled compliance efforts are the basis for the test.

Second, the levels of certainty and predictability which the agency expected would be achieved over time and which the agency so represented to the courts which have upheld UTQGS against charges of unacceptable uncertainty, have not been achieved in fact.

At a minimum, the agency concludes that such a level of potential rank order change, under applicable test procedures, is unacceptable. The agency also concludes that unless the level of certainty previously asserted by the government in litigation can be verified to exist, the continued integrity of the process is undermined to a separate and unsupportable degree.

Agency research is thus primarily directed to the determination of the degree to which these effects can be eliminated.

Specific Sources of Variability

The agency's proposal described a variety of potential sources of variability in the treadwear test results based on a review of testing being done in San Angelo. The tire manufacturers supporting the suspension, and the commenting tire testing companies generally agreed that many of such sources contributed to test result variability. While some commenters, especially two testing companies describing in detail their own testing practices, disputed the magnitude of the variability that could be caused by several of the sources, it remains uncontroverted that the sources identified in the proposal are potential contributors to variability.

One such testing company objected to the

inference it drew from the proposal that the agency believed that the testing companies as a group were to blame for the variability in the test results. That company also stated its belief that the proposal unfairly criticized the practices of testing companies as though all such companies followed identical practices. The agency recognizes, and reaffirms its conclusions, that the primary source of test variability lies in the shortcomings of the test procedures themselves. Further, it rejects any implication that the testing companies were improperly following such procedures.

The agency emphasizes that the list of sources in the proposal was not exhaustive. The proposal specifically noted that the list was included for illustrative purposes only. It was recognized that additional research would likely reveal other sources, of the indisputable and undisputed levels of variability. Indeed, the record of comments has provided information regarding several previously unmentioned sources of variability, e.g., tire/wheel rim width combinations and the effect of rubber's high coefficient of thermal expansion on tire groove depth measurement.

The following specific sources of variability have been confirmed by the agency as a result of the current rulemaking proceeding.

Problems of instrumentation—scales. Some testing companies use scales that are designed for weighing objects up to 20,000 pounds. Scales are rarely accurate below 10 percent of their maximum measuring capacity. Since the loads being weighed for UTQGS purposes are less than half that level, the potential for inaccurately loading the tires on the test cars is obvious. This problem is compounded by the inability of many such scales to provide readings more precise than at 5 pound intervals. The combination of these factors could lead to significant potential measurement errors.

Using a ratio of 1:4 between changes in load and changes in treadwear, the agency stated in its proposal that a 20 to 30 pound error in measuring a 700 to 800 pound load could cause test results errors of ± 20 to 34 points in a tire with a treadwear grade of 200. The two tire testing companies submitting detailed comments stated that their own scales are regularly calibrated, and that maximum weighing errors of not more than 10 pounds could be expected under

such circumstances. One of the companies also argued that the ratio between load changes and treadwear changes is actually closer to 1:1. The agency cannot now determine with certainty the correct ratio between changes in tire load and changes in treadwear. Even assuming such actual ratio may be lower than 1:4, the agency believes that scale miscalibration is a factor that can potentially contribute significantly to variability in treadwear test results.

—*tread depth probes.* Tire testing companies currently measure tread depth by means of either mechanical gauges with dial indicators or electronic devices which translate probe displacement into a voltage reading in mils or thousandths of an inch. NHTSA's tests of measurement devices produced measurement errors of between 3 and 5 mils for electronic probes and up to 10 mils for mechanical gauges, with the magnitude of error appearing to depend on the amount of the pressure placed on the probe. Variations in pressure can be caused by differences in strength or technique among personnel or even by the gradual effect of fatigue on a given technician. The resulting measurement differences on tires graded from 160 to 200 can cause treadwear grading errors of ± 2 to 3 points. The two tire testing companies argued that measurement errors of 10 mils were in fact difficult to achieve and would not normally be expected to occur. The agency concurs that the typical such error would be expected to be less than 10 mils, but concludes that variation in the pressure placed on the probes remains one of the potential sources which collectively has produced high levels of test variability.

Electronic probes are subject to other sources of measurement error. The lack of temperature compensation in some of the electronic probes can cause drifts in both the zero reading and the gain. One tire testing company did note that its electronic probes are attached directly to a computer, and asserted that they are capable of measuring accurately over a wide range of temperatures. While such drift can be corrected for in such a process, the agency has determined that such corrections are not in fact routinely sought or made by testing companies in general. Further, any change in probe force at the bottom of the groove for tires with varying hardness will generate different tread depth readings

depending on the spring constant, the amount of deflection used in the design, and the shape of the tip on the electronic probe. The use of uncalibrated springs produces additional measurement differences.

—*wheel alignment equipment and procedures.* The agency has determined that treadwear is very sensitive to wheel alignment, much more so than had previously been understood by interested parties. One of the two tire testing companies agreed with this proposition. B. F. Goodrich supported this proposition by asserting that $4/32$ nds of an inch increase in toe-in can decrease tread life by 15 to 30 percent. Since Part 575 permits the wheels to be aligned anywhere within the vehicle manufacturers' specified range of acceptable alignments, differences in toe-in are possible. Armstrong Rubber Company cited various vehicle manufacturer specifications which had a minimum-to-maximum range of from $5/32$ nds to $14/32$ nds of an inch.

The comments on the proposal reveal that the use of different toe-in settings for a given vehicle can and do occur. Some testing companies align wheels to the minimum toe-in setting within the acceptable range while others align to the mid-point of the range. Indeed, practices of the two commenting tire testing companies vary in precisely this fashion, with one aligning to the minimum point and the other to the mid-point.

Differences in wheel alignment may also occur as a result of differences in the frequency of wheel alignment and in the skill of the technicians who perform the alignments. The two tire testing commenters asserted that they use accurate alignment equipment and well-trained personnel. Assuming this to be true for these particular companies, however, does not remove wheel alignment as a potential source of variability even with respect to their testing. As noted above, the wheel alignment practices of these two companies vary significantly. Further, for these as well as the other tire testing companies, the problem of maintaining the alignment equipment in proper adjustment is a formidable one. Although all testers have suitable alignment equipment, their success in using it to achieve accurate results depends on the skill of the technicians operating it, the calibration of the equipment, and the frequency of alignment during a test.

Problems of measurement. The agency believes that several measurement problems contribute to variability as well. Observed but currently unquantifiable measurement errors occur as a result of information feedback during testing, i.e., access by measuring personnel to the previous day's tread depth measurements and resulting conscious or unconscious bias to parallel or duplicate those measurements. The agency also believes error to be caused by the documented practice of some testing companies to establish an absolute level of coefficient of variation, i.e., the degree of variability among the separate measurements of depth in the same groove around the circumference of the tire. Some technicians tend to "hunt" for groove depths as uniform as possible around the circumference of the tire, on the understandable but not factually supportable or recognizable assumption that such variation should be minimized.

One tire testing company indicated in its comments that it took steps to avoid these sources of variability. Even assuming this company is fully successful in that effort, the agency believes that such problems exist for other testing companies, and would compromise the success of the program unless all companies were equally successful.

Problems with vehicle maintenance and use. The agency continues to believe that factors relating to the test cars produce substantial variability. One of these factors is the wide variation found in the approaches of the testing companies to achieving a proper vertical load on a tire. Some testing companies allow the weight to be placed forward of the front wheels, rearward of the rear wheels, or even on the vehicle exterior. In addition, some but not all companies place heavy deer guards on the front of their test cars.⁴

The overloading of some test cars also produces unquantifiable effects on treadwear test results. Some testing companies load their cars to whatever weight is required to achieve the appropriate load level for a test tire. As a result, the gross vehicle weight rating for the specific

⁴Some tire testing companies stated that weight is removed from their cars to compensate for the deer guards. However, the agency did not observe any accurate means of weight compensation.

cars themselves may be exceeded, necessitating the use of special springs or shims to reestablish normal ride height. Such heavy loads can cause the cars to bottom out, while the variations in springs create differences in roll stiffness and weight transfer among vehicles of the same type.

Each of these practices introduces changes in the handling characteristics of the cars and in different polar moments of inertia, between and among wheels, vehicles, and the entire test fleet. These factors would produce different rates of tire wear as the cars corner, accelerate, or decelerate.

The two commenting tire testing companies indicated that they attempt to control these sources of variability. However, there is no evidence that those efforts are fully successful, and agency observations indicate that the other companies are not in practice as careful as those two companies.

Problems with drivers and weather conditions. The agency found in its review that drivers of the test cars varied significantly in their skill and driving techniques. These differences are reflected in the frequency and severity of accelerations and decelerations. Further, the agency believes that adverse weather conditions may affect driving techniques and thereby treadwear. One tire testing company indicated that it carefully sought to limit these sources of variability. However, not all testing companies have adopted the same measures. In addition, adverse weather conditions cannot be controlled.

CMT tread composition. Most CMT's do not currently have tread composition similar to that of most candidate tires. As a result, a substantial question has been raised as to whether the use of the CMT measurements in fact validly compensate for environmental effects upon candidate tire wear. The last two lots of radial CMT's contained about 30 percent natural rubber. Most tires produced in the U.S. do not contain any natural rubber, while some Japanese tires contain substantial quantities of it. The presence of a significant percentage of natural rubber in CMT's is important since natural rubber is more sensitive to temperature changes than the current tread compounds used in tires, and in general wears at a faster rate in hot weather than the current materials do. Thus, where the CMT in use contains a large

percentage of natural rubber and the candidate tires do not, candidate tires graded in hot weather would be expected to have higher grades than those graded in cool weather.

The significance of CMT tread composition appears to be borne out by a report from B. F. Goodrich. That company stated that candidate tires made of compounds similar to that of the CMT's received more consistent ratings than those whose compounds were less similar. B. F. Goodrich's analysis indicates also that the latter tires can receive different relative rankings.

Wheel rim width. Armstrong asserted in comments that the tolerance permitted on rim widths to be used with a given size of tire is a significant source of variability. The agency lacks any corroborative information with respect to this previously unrecognized problem, but will address the issue as another potential source of variability as efforts continue to complete research on treadwear testing variability.

Grade assignment practices. There are significant differences among the tire manufacturers in the procedures they use to translate treadwear test results into grades. These differences arise partially from the differing degree of conservatism that the various manufacturers exercise in selecting a grade for a group of tires so as to ensure that the performance of all tires in the group exceed that grade as required by Part 575 (See discussion above).

Uniroyal Petition

On January 21, 1983, Uniroyal petitioned the agency to make three significant changes to the treadwear test procedures. These changes involve a new procedure for running CMT's, the rotation of candidate tires through each wheel position in a four-car convoy, and a doubling of the break-in period.

The agency has completed its preliminary review of this petition and, in view of the pendency of the current proceeding, has also taken it into account as if it were a supplementary filing to the docket.⁵

Under the Uniroyal petition, CMT's would no longer be run in the same convoys as candidate tires, but in a separate convoy using CMT's exclusively. The CMT's would be rotated through

each position in the CMT convoy. This procedure is claimed to substantially reduce vehicle and driver related sources of variability, while reducing costs. However, its validity depends upon the accuracy of Uniroyal's conclusion that the course environment factors measured by the CMT process do not produce rapidly changing treadwear effects, i.e., that the course environment effect on treadwear changes slowly, if at all.

Similarly, the rotation of candidate tires through each position in the test convoys is claimed by Uniroyal to greatly reduce driver and vehicle related variability for those tires. All vehicles in a convoy would be nominally identical. No front wheel drive vehicles could be used due, according to Uniroyal, to "load distribution problems." Uniroyal does not state how it would deal with the problem of declining number of rear wheel drive models being produced, and the difficulty in matching all tire lines with the limited number of those models.

Finally, Uniroyal found that the break-in effect for new tires occurred beyond the 800-mile period currently specified in the regulations. It stated that establishing a longer period would provide a more accurate estimate of treadwear rates.

NHTSA regards Uniroyal's petition as further evidence of the necessity for suspending the treadwear provisions of UTQGS while the agency conducts research and testing to determine the feasibility of reducing variability to more acceptable levels. Uniroyal has revealed yet another previously unidentified factor, barometric pressure, apparently capable of contributing significantly to the variability of test results. Although Uniroyal has proposed several changes which it believes would substantially reduce certain sources of variability, it does not suggest how other factors identified in its petition are to be addressed.

Those factors are barometric pressure, temperature, and wet road surfaces. Uniroyal supplied information indicating that the manner

⁵The disposition at this time of the pending notice of rulemaking does not, of course, affect the pendency of this petition before the agency, since only a suspension of the UTQGS is involved. The petition will thus be treated both as a comment to the current proposal and as a petition directed toward the modification of the suspended portion of the UTQGS and a request for their reinstatement as so modified.

in which temperature differences affect treadwear is more complicated than previously supposed. While some compounds wear more rapidly as temperature increases, Uniroyal reported the example of a tire which wore more rapidly as temperature decreased. Further, the degree of temperature affect was substantial. While Uniroyal's testing showed that one family of tires was only slightly affected by an eight-degree average temperature difference, that same difference caused a 20 percent change in wear rate for another family of tires. Further, Uniroyal noted that wet road surfaces could significantly affect the rate of treadwear and admitted that some allowance must be made for this phenomenon, but didn't indicate how that might be accomplished.

Much of the work done by Uniroyal in support of its proposal is similar to the agency's ongoing research, and it may be that the agency's efforts will lead to the development of test procedures similar to those suggested by Uniroyal. However, Uniroyal's work does not obviate the need for NHTSA to complete its own research and testing and make its own judgments about the changes that might be made to the test procedures. The agency cannot now conclude that Uniroyal's proposal would reduce test variability to acceptable levels. Much more research and testing would be necessary before the agency could even consider proposing to adopt those or any other significant changes.

Not only would the agency need to address the significance of the failure of Uniroyal's proposals to address certain sources of variability, but it would also need to examine the implications of Uniroyal's proposals which in some cases go well beyond those suggested by Uniroyal in its petition. For example, Uniroyal's proposal for rotating candidate tires through each of 16 wheel positions on test convoys would necessitate a doubling of the mileage driven by treadwear testing convoys from 6,400 miles to 12,800 miles (16 x 800). The additional expense and time necessary to conduct such extended testing would be substantial.

Further, although Uniroyal urges the making of substantial and fundamental changes to the treadwear test procedures and the theory underlying those procedures, it argues, without providing the basis for that argument, that there

would not be any necessity for retesting all tires in accordance with the modified procedures. Uniroyal apparently contemplates a marketplace in which some tires that were tested and graded under the existing, inadequate procedures are offered for sale side-by-side with others that are tested under new, revised procedures. Thus, Uniroyal would allow the continued dissemination of misleading treadwear information.

In the agency's judgment, the need to make these types of substantial and fundamental changes would render wholesale retesting and suspension unavoidable. The inescapable conclusion from the necessity of making these changes is that the grades generated under the existing procedures are unreliable and should not be presented to the public as a basis for choosing between alternative tires. Further, since the grades that would be assigned to a particular tire if tested under the current and new procedures would differ, the grades would be inherently incompatible. As a matter of responsibility to the consumer and of fairness, the agency could not contemplate the simultaneous use of two fundamentally different yardsticks to measure the treadwear performance of tires.

To avoid this situation, all tires would have to be retested and regraded. To provide time for the completion of these activities and to ensure that substantial numbers of tires graded under the existing procedures are not still in the marketplace when the tires graded under the new ones are introduced, a suspension of the treadwear testing requirements would be necessary.

Inadequacy of Alternatives

NHTSA considered several alternative courses of action in reaching its decision. In addition to suspending the treadwear grading provisions of Part 575, the agency considered rescinding them. NHTSA also considered retaining the provisions intact while it conducted its research and attempted to determine whether modifications to the test procedures and grade assignment practices could reduce variability to acceptable levels for UTQGS purposes.

Rescission. Several commenters argued that the problems with the treadwear grading program

were so substantial and intractable that rescission of the treadwear provisions was the only appropriate step for the agency to take at this time. While the agency believes that the problems now identified with respect to the UTQGS treadwear ratings are extensive and serious, that some of them can be addressed only after substantial research, and that some or all may not be fully solved even then, it is convinced there is a substantial possibility that its planned research could eventually lead to amendments that would reduce identified treadwear test result variability to acceptable levels. For example, if the agency were able to develop an appropriate procedure for rotating all tires among the cars in a test convoy, the contribution of vehicle and driver effects to test result variability might be greatly reduced. Similarly, the agency's development and adoption of statistical procedures that would bring uniformity to the translation of test results into grades might contribute significantly to reliable treadwear grading.

In such a case, any remaining variability could more confidently be able to be considered attributable to the inherent complexity of tires themselves. At that stage, a failure to attain significant improvements in the repeatability or reproducibility of tests might well force the agency to the conclusion that no grading system based on measured and projected treadwear could be possible.

Precisely because of the levels of uncertainty now understood to exist as a result of test result variability, however, the agency is not now able to assess whether or not this will likely be the case. Absent some further evidence on this point, and taking into account the positive benefits to the consumer and the orderly working of the market place which a properly functioning UTQGS treadwear system would produce, the agency is unwilling to rescind the program of treadwear rating entirely at this time.

Continue treadwear grading and make improvements in treadwear grading process as they are developed. While conceding that there are variability problems, several commenters argued that the treadwear grades are still sufficiently useful to warrant their retention. They argued further that the agency should simply proceed to make available changes to the

treadwear testing procedures and adopt other changes as they are developed. One commenter argued that if the treadwear grading information were more accurate than the information which previously existed in the marketplace, the agency was obligated to continue treadwear grading.

NHTSA believes that the critical issue is in this case not merely whether the treadwear grading provisions are currently fulfilling their statutory objective, that of assisting consumers to make informed choices in purchasing new tires, but of equal or greater importance whether such provisions may to the contrary be affirmatively frustrating the achievement of that objective. As interpreted by the 6th Circuit Court of Appeals, the UTQGS provisions in section 203 of the Act do not contemplate "theoretical perfection" in providing such assistance. *Goodrich I*, at 1189. It calls only for "reasonably fair and reasonably reliable grading procedures." *Id.* The agency believes that this is an appropriate statement of the principal underlying test of certainty which the procedures should satisfy. Procedures which fail to meet that test will tend inappropriately to increase the sales of some tires and decrease those of other tires through inaccurately representing the relative performance of either or both.

In the agency's view, it appears that the current procedures fail to meet that reasonableness test on several counts. Such procedures are not reasonably reliable because of the excessive magnitude of the overall variability.

Moreover, the grades produced under the treadwear grading procedures are not merely imperfect, they appear to be affirmatively misleading.

These problems are not minor. They do not affect only those tires which differ moderately in performance. As noted above in the discussion of the overall variability and reliability problem, the rank reversals produced by the procedures can be substantial and are not uncommon. Tires which are significantly superior to others in performance may be graded significantly below those tires, and vice versa. Tires whose test results show performance differences of up to 100 points may be assigned the same grade.

Thus, while some consumers might be aided in choosing between some tires, particularly those

with very substantial differences (greater than 100 points) in treadwear performance, there appears to be a significant likelihood that consumers choosing among closer performing tires will be misled. The agency believes that most consumers fall into the latter category. As noted above, the threshold considerations of tire size and tire construction type should lead most persons considering the purchase of a new tire to look at a universe of potential candidate tires for purchase whose treadwear grades differ by significantly less than 100 points. Accordingly, it appears that the treadwear grading procedures are neither reasonably fair to the tire manufacturers nor reasonably reliable in guiding those consumers who will in fact be purchasing tires for a given vehicle.

The agency believes that the unreasonableness of the level of reliability of the current treadwear grading procedures is compounded by the possibility that many of the identified sources of variability, and thus the overall level of variability, might eventually be able to be significantly reduced, after a period of research and testing, at costs that are not prohibitive.

The agency regulatory evaluation discusses a wide range of possible changes that the agency believes could ultimately reduce test-induced variability to more acceptable levels. Among these are requirements for calibration of alignment equipment, tighter specifications for alignment, load distribution, tire-rim width matchings and CMT composition, prohibition against information feedback, standardization of equipment calibration and tread measurement procedures, limitations on driver acceleration rates and cornering techniques, limitations on tire temperature during tread depth measurement, standardization or elimination of deer guards, standardized statistical procedure for grade assignment, and rotation of candidate and CMT's tires among test cars. The actions which appear at this point to hold the greatest potential for improving the reliability of the grades are adoption of the grade assignment procedure, rotation of the tires, more precise specification of wheel of alignment, and specification of the composition of CMT's.

The relative importance of many of these factors is currently unknown. As a result, it is not possible to determine or assess what actual result

in improved repeatability may be achievable, and how or at what level such an improved result might be determined to be acceptable. However, the agency believes that together such factors contribute substantially to the variability of treadwear test results and unreliability of the resulting grades. The agency's research efforts are expected to provide information about the relative importance of individual sources of variability and the degree to which each source can be controlled.

The agency expects that its research and testing will also provide an indication of the cost of implementing controls on these factors. Based on the costs of the current procedures, the agency has no current basis for concluding whether the costs associated with effective controls would be reasonable either separately or collectively. The current cost of treadwear testing is an average of \$.09 per tire. Based on indications from Goodyear that the retail markups for manufacturing costs may be 100 percent, that testing cost would have an \$.18 retail price effect, against a retail price of \$40 to \$70 for a new tire. Thus, for example, a doubling of testing expenses would bring the retail price effect of testing costs up to an average of only \$.36 per tire, a presumptively reasonable economic impact in and of itself.

As to the suggestion that the agency immediately commence to make changes in the treadwear testing procedures and make other changes as they are developed, the agency emphasizes that its research and testing have not proceeded sufficiently to enable it to determine either precisely how to define and implement the individual changes or which of those changes will make enough to a contribution to reducing overall variability to warrant adoption. The agency does not believe that the few currently acknowledged options would make a significant change in the overall level of variability. Identifying the range of necessary and appropriate changes will require iterative testing, given the interplay of the many sources of variability.

The issue of adopting an appropriate statistical procedure to standardize the assignment of grades bears special mention. Although the agency has already proposed such a procedure (46 F.R. 10429, February 2, 1981), commenters on that proposal pointed out a variety of shortcomings, particularly with respect to its

failure to properly account for undergrading. No commenter in the present rulemaking proceeding has suggested that the procedure as proposed in February 1981 be adopted at this time. The agency is continuing its analysis of the extent and nature of the changes which might be made to the proposal.

The agency does not agree with the suggestion by a public interest group that the mere possibility that the current treadwear grading information may be better than pre-UTQGS information on treadwear would justify continuation of treadwear grading during the period of any further review. In NHTSA's judgment, it is not clear whether and to what extent the UTQGS treadwear information would in fact be superior to any or all information previously available for distinguishing between tires on the basis of expected tread life. To the degree that the UTQGS system is arguably superior in format and direct comparability among tire lines or manufacturers, however, such apparent advantage derives entirely from those aspects of the system which the agency has found to be most flawed: the accuracy and validity of the UTQGS value as expressed in the grade. Stated differently, it is precisely that aspect of the UTQGS which distinguishes it from market claims of manufacturers which also introduces the clear probability that false information is being disseminated by or under the auspices of the government itself. The probable objective falsity of at least some of the information now being disseminated through UTQGS converts the clarity and apparent simplicity of the UTQGS reporting format from an asset to its most damaging liability. Fully cognizant of the view expressed by this commenter that some information, or a less than perfect-functioning system, is better than no information or no system at all, the agency cannot agree. The agency concludes that the government has a superior duty not to participate in such an effort to the probable detriment of consumers, who have every reason to demand, and must necessarily be expected to assume, that such participation implies and connotes, a higher level of certainty than the agency can now find in this well-intentioned effort. Given the shortcomings of the UTQGS system as now understood, price differentials and information voluntarily supplied

by the manufacturers as to probable treadwear performance may be as useful to consumers as the current grades.⁶

After weighing the possible benefits of the current grades against the potentially extensive problems created by those grades in their effects on consumers and tire manufacturers, NHTSA concludes that the appropriate course of action is suspension pending completion of its research and testing program.

The agency believes that continuing to require the tire manufacturers to comply with the treadwear grading requirements in the interim is not appropriate, because of the above discussed impossibility of enforcing those requirements in an objective way. NHTSA noted in its proposal that the wide variability in its compliance test results prevented the agency from concluding with any certainty whether tires were incapable of achieving the grades assigned to them. Commenters on the proposal did not controvert the agency's statements on this point.

In the agency's opinion, requiring the tire manufacturers and consumers to continue to bear the costs of treadwear testing during the time necessary to complete the research and testing concerning test procedure improvements would be unreasonable and unwarranted since the treadwear grading program is apparently neither reasonably fair to the tire manufacturers nor reasonably reliable as a guide to consumers. Although the cost per tire is not large, those costs total approximately \$10 million annually.

Amendments Adopted by This Notice

This notice adopts several amendments relating to the treadwear grading provisions of Part 575. Most important, it adopts a suspension of those provisions effective upon the date that this notice is published in the *Federal Register*.

⁶To compound the agency's dilemma on this point, the number of consumers potentially aided by treadwear grading information, and thus the number of consumers potentially misled by an invalid result, is apparently fairly limited. According to information submitted by Uniroyal at the public meeting, only 30 percent of consumers surveyed by them even knew about the UTQGS information, after their promotional efforts, and only 60 percent of those consumers stated they would plan to use that information in making their next tire purchase. Thus, only 18 percent of consumers are potentially benefited, or potentially misled, by the treadwear information.

On that date, manufacturers will no longer be required to submit treadwear grading information to this agency or to disseminate it to consumers through moldings on the side of new tires, paper labels on the treads on new tires, or consumer information materials. The only information that would be required to be submitted or disseminated on or after that date would be traction and temperature resistance grading information.

The agency believes there is ample justification for an immediate effective date. The suspension relieves a restriction and will aid in ending as quickly as is reasonably practicable the possibility that consumers will be misled by the treadwear grading information.

The agency is not requiring that manufacturers immediately cease disseminating treadwear information already printed or embodied on tires or tire molds, through the means formerly required by Part 575. Such a requirement would be impracticable. The greatest problem is associated with the molding of treadwear information on the tires. Discontinuation of that practice would necessitate making changes to the molds being used to produce new tires. Specifically, the manufacturers would have to fill in the indentations used to print the word "TREADWEAR" and the appropriate grade on the sidewall of each new tire. The total cost to the tire industry of making those changes to all molds would be approximately \$11 million. Instead of requiring that all molds be changed simultaneously, the agency is requiring that all tires produced in molds manufactured after (180 days after publication in the *Federal Register*), use a format which provides for the molding of only traction and temperature resistance grades on new tires.

Although the manufacturers could cease printing labels and consumer information materials containing treadwear information almost immediately, they are confronted with the problem of existing inventories of labels and materials containing that information. The agency has decided to allow the manufacturers to exhaust those inventories. The agency expects that after the effective date of this suspension, the labels and materials printed and used by the manufacturers to comply with the UTQGS provisions of Part 575 will not contain that

information. The continued printing of labels and materials that set forth the treadwear grades without revealing the suspension of the treadwear requirements, or the absence of any participation by the government in procedures to use similar tests or measurement systems as a basis for warranties or other forms of representation as to treadwear expectancy, would be doubly misleading, i.e., it could be misleading as to the relative performance of tires, but also would be misleading as to the current existence of a government sanctioned system for grading treadwear.

The agency believes that the publicity given this notice will minimize the likelihood that consumers will be misled as a result of the continued molding of treadwear information on some new tires and the continued dissemination for a relatively short period of treadwear information by means of labels and other materials. Probable media coverage of the agency's conclusions in taking this action should reduce the extent of any consumer reliance on them. Further, consumers would be even less likely to rely on the grades after the existing inventories of those labels and materials are exhausted. After then, only the grade would appear on the tire. There would not be any explanatory information concerning the development or meaning of the grade. As the molds are replaced, even the treadwear grade would disappear from the tire, during the pendency of this suspension.

Status of Research

As NHTSA noted in its proposal, it has begun several research activities aimed at reducing the variability of treadwear test results. The agency is proceeding diligently to complete these activities. One program discussed above would attempt to establish the relationship between treadwear, tire inflation pressure, and load. The program to develop this relationship is partially completed, with final results expected by the end of February. If such a relationship could be established, it could aid future research to determine the effects of rotating tires through all positions in test car convoys. Rotating tires in this fashion would tend to minimize the variability that is caused by differences in

vehicles and in driver techniques. A contract to test the validity of the rotation concept is expected to be awarded by late spring of this year.

Another program is aimed at establishing the effect of reducing tolerances on permitted test vehicle loading configurations, wheel alignment, driver techniques, and tread depth measurement techniques. A contract for this program is expected to be awarded soon.

A third program will attempt to quantify the individual sources of treadwear test variability

through a statistical analysis of existing enforcement data. This research program has already begun and should be completed by the end of February.

Research planned for the future includes an attempt to achieve greater accuracy in test equipment, to specify test vehicle maintenance procedures, and to account for differences in the testing and tread depth measurement environment. A contract for this work is expected to be awarded by late summer of this year.

Issued on February 1, 1983.

Raymond A Peck, Jr.
Administrator
48 F. R. 5690
February 7, 1983

PREAMBLE TO AN AMENDMENT TO PART 575

Customer Information Regulations; Uniform Tire-Quality Grading

[Docket No. 80-14; Notice 8]
[Docket No. 25; Notice 54]

ACTION: Final rule.

SUMMARY: This notice amends the Uniform Tire Quality Grading Standards (UTQGS) by revising the procedure used to establish tire loads under which temperature-resistance tests are conducted. This amendment is being issued to make test loads under the temperature-resistance test consistent with test loads specified for the high-speed test in Federal Motor Vehicle Safety Standard (FMVSS) 109. It is anticipated that this amendment will assure that UTQGS temperature-resistance tests and FMVSS 109 high-speed tests may, to the maximum possible extent, be conducted together.

DATE: This amendment is effective July 1, 1984. Certain minor technical amendments in the notice are effective immediately on publication.

SUPPLEMENTARY INFORMATION: On December 17, 1981, NHTSA amended FMVSS 109, which establishes performance requirements for new automobile tires, by deleting the tire tables in Appendix A of that standard. Information in these tables was previously used, among other purposes, to specify tire test loads under the UTQGS. Therefore, with the deletion of the tire tables of FMVSS 109, it was necessary to establish alternative procedures for determining UTQGS test loads. Interim procedures were established by NHTSA on June 15 and August 12, 1982, in 47 FR 25930 and 34990, and public comment was invited on the adopted technical approaches. On August 19, 1982, the agency issued a notice of proposed rulemaking, inviting further public comment on other possible approaches to be used in specifying test loads under the UTQGS. See 47 FR 36260.

This notice establishes these procedures in final form.

The UTQGS establish procedures for testing tires to evaluate their traction, temperature resistance, and tread-wear performance. (On February 7, 1983, NHTSA suspended the tread-wear portion of the UTQGS, pending the completion of research intended to determine the causes of the high levels of test variability found in tread-wear test results, and to reduce that variability. (See 48 FR 5690.)) The test procedures specify loads to be placed on the tire. Those loads differ for each of the three types of tests. Prior to the deletion of the FMVSS 109 tire tables, temperature-resistance tests were conducted at the maximum load specified in those tables for a tire pressure 8 pounds per square inch (psi) below the tire's maximum inflation pressure. Tread-wear tests were conducted at 85 percent of the load for temperature-resistance testing. Traction tests were conducted at 85 percent of the maximum load specified in the tire tables for tire pressures of 24 psi or 180 kilopascals, as appropriate.

With the deletion of the tire tables, the agency developed a range of numerical factors which relate a tire's maximum load rating, as stated on the tire's sidewall, to the appropriate test load. Rather than relying on the tables, manufacturers or others conducting tests under the UTQGS would simply multiply the maximum load by the factor to determine the test load. This procedure resulted in at most a 10-pound change in the load at which tests were conducted, for all but a small number of tires. For these remaining tires, the agency provided that tests would be conducted at the same load as was done prior to June 15 (relying on the tire tables), until July 1, 1984. After that date, test loads would be determined by us-

ing the load factors.

Shortly after the load-factor procedure was established the Rubber Manufacturers Association and the Cooper Tire Company raised objections to it. These parties pointed out that prior to the deletion of the tire tables, a single test could be used to demonstrate compliance with high-speed requirements under FMVSS 109 and temperature-resistance testing under the UTQGS. However, after the deletion of the tire tables, slightly different loads would be specified for those two purposes. (When the tire tables were deleted, NHTSA specified a single test-load factor of 88 percent of the tire's maximum load for high-speed testing under FMVSS 109.)

On August 19, 1982, NHTSA issued a notice of proposed rulemaking, inviting comment on methods for restoring equivalent load specifications for purposes of high-speed testing under FMVSS 109 and temperature-resistance testing under the UTQGS. The agency proposed three possible methods for achieving this result, and requested that commenters present any other alternatives they felt appropriate. The three NHTSA alternatives were:

(1) To amend the UTQGS temperature-resistance test by deleting the load factors and specifying a single 88-percent factor, as was done with FMVSS 109.

(2) To amend the FMVSS 109 high-speed test by deleting the 88-percent factor and adopting the series of load factors used in the UTQGS temperature-resistance test.

(3) To amend FMVSS 109 and the UTQGS by relying on load information published by industry standardization organizations such as the Tire and Rim Association and The European Tyre and Rim Technical Organization. This approach would be much the same as the procedure previously followed by the agency in relying on the FMVSS 109 tire tables.

Virtually all comments received on the agency's notice of proposed rulemaking recommended adopting the third alternative, since it is the closest to past practice and would assure that test data derived under the pre-June 15 procedures would still be valid. Also, some tire manufacturers felt this option would minimize the "load range creep" phenomenon, in which tire manufacturers were encouraged by vehicle manufacturers to increase incrementally the load rating of a tire, thus permitting the use of a smaller, less

expensive tire for a given automobile. These increases could ultimately result in overloaded tire operation. The tire manufacturers felt that the existence of tabulated load information would discourage the load creep phenomenon. On the other hand, the European Tyre and Rim Technical Organization favored the first alternative (testing at 88 percent of maximum load), due to the simplicity of that approach.

NHTSA has concluded that the first alternative is preferable, and is herein amending the UTQGS accordingly. That alternative has the advantage of being the simplest to use, and has been shown to work well in FMVSS 109. The agency is concerned that adoption of alternative 3 could result in the reinstatement of NHTSA tire tables. Information on tires not listed by one of the standardization organizations would be submitted to NHTSA under that alternative. However, commenters requested that information on such tires be published by NHTSA to make it available to all interested parties, thereby resulting in new tire tables, albeit on a smaller scale. The possibilities also exist of inconsistent data entries for tires appearing in more than one table and omissions of certain tires from all tables. The undesirability of this unwieldy system is clear and the disadvantages of the continued reliance on tire tables was discussed fully in the notices involving the deletion of the FMVSS 109 tire tables.

With regard to the load range creep phenomenon, the agency does not agree that the third alternative would discourage such actions to any greater degree than would the other alternatives. Under the third option, all a manufacturer would have to do to change a tire's load rating would be to submit new information to a standardization organization. Further, the agency has ample authority to deal with this problem and will take appropriate action to prevent such actions where safety would be jeopardized.

In the case of the second option, amending FMVSS 109 to adopt varying load factors would disrupt testing programs under that standard which have worked well for the past year using the 88-percent load criterion. Further, adopting the varying load factors is slightly more complex than using the single 88-percent factor. Therefore, the agency considers option 1 to be the preferable alternative.

Adoptive alternative 1 will produce no changes in tire testing under FMVSS 109. However, the

Rubber Manufacturers Association points out that adoption of this alternative will increase tire test loads for UTQGS purposes by from 1 to 3 percent for certain tires.

For the vast majority of currently produced tires (p-metric sizes with maximum inflation pressure of 240 kilopascals), the increase in test load is approximately 1.6 percent. An increase in load of this small a magnitude is insufficient to affect temperature-resistance grades. Also, the majority of tires are graded "C" for temperature resistance, a grade which merely signifies minimum compliance with the high-speed test of FMVSS 109. Therefore, increasing the test loads for UTQGS temperature-resistance purposes (which should theoretically make that test more stringent) will not affect the grades of those tires. Therefore, the amendments promulgated herein should impact only a very small number of tires. To the extent that the adoption of identical test loads for the FMVSS 109 high-speed test and the UTQGS temperature-resistance test permits the two tests to be run together, this amendment will produce an overall reduction in testing costs.

This amendment is being made effective on July 1, 1984, to coincide with the effective date for test-load factors for traction and tread-wear testing for all tires, as specified in the August 2, 1982, Federal Register notice.

Two minor amendments are also being promulgated in this notice for which, due to their technical nature, the agency finds good cause for making effective immediately. The first of these adds three size designations to table 2A of the UTQGS, as requested by the Japanese Automobile Tire Manufacturers Association. This addition will avoid (until July 1, 1984) having to test these tires at significantly different test loads than those specified through the FMVSS 109 tire tables. The second technical amendment clarifies that the traction-test pavement-wetting procedure is that specified in the 1979 version of American Society for Testing and Materials Method E 274.

Since this rule should not cause any significant change in implementation of the UTQG regula-

tion, NHTSA has determined that this proceeding does not involve a major rule within the meaning of Executive Order 12291 or a significant rule within the meaning of the Department of Transportation regulatory procedures. Further, there are no significant economic impacts of this action, so that preparation of a full regulatory evaluation is unnecessary.

The agency has also considered the impacts of this rule in accordance with the Regulatory Flexibility Act. I certify that this action will not have a significant economic impact on a substantial number of small entities. As noted above, this action will make essentially no change in the implementation of the UTQG regulation.

NHTSA has concluded that this action will have essentially no environmental consequences and therefore that there will be no significant effect on the quality of the human environment.

Part 575—CONSUMER INFORMATION REGULATIONS

In consideration of the foregoing, 49 CFR Part 575 is amended as follows:

1. Section 575.104(g)(6) is revised to read as follows:

* * * * *

(g) * * * * *

(6) Press the tire against the test wheel with a load of 88 percent of the tire's maximum load rating as marked on the tire sidewall.

2. Section 575.104(h)(1) is revised to read as follows:

(h) *Determination of test load.* To determine test loads for purposes of paragraphs (e)(2)(iii) and (f)(2)(viii), follow the procedure set forth in paragraphs (h)(2) through (5) of this section.

3. Table 2 of section 575.104 is amended by deleting the words "and temperature resistance" from the heading of the middle column of the table.

4. Table 2A of section 575.104 is amended by adding the following new entries at the bottom of the table:

Tire size designation	Temp resistance Max. pressure			Traction	Tread-wear Max. pressure		
	32	36	40		32	36	40
5.20-14	695	785	855	591	591	667	727
165-15	915	1015	1105	779	779	863	939
185/60 R 13	845	915	980	719	719	778	833

5. The references to "ASTM Method E 274-70" in sections 575.104(f)(1)(iii) and (f)(1)(iv) are deleted and replaced by "ASTM Method E 274-79."

Issued on March 5, 1984.

Diane K. Steed
Administrator

48 FR 8929
March 9, 1984

PREAMBLE TO AN AMENDMENT TO PART 575

Consumer Information Regulations Operation of Utility Vehicles on Paved Roadways (Docket No. 82-20; Notice 2)

ACTION: Final rule.

SUMMARY: This final rule adds a new requirement to the *Consumer Information Regulations*, applicable to "utility vehicles", i.e., multipurpose passenger vehicles which have a short wheelbase and special features for occasional off-road use. Some of these special features cause utility vehicles to handle and maneuver differently from ordinary passenger cars under certain driving conditions. A driver who is unaware of the differences and who makes sharp turns or abrupt maneuvers when operating utility vehicles on paved roads may lose control of the vehicle or rollover. To inform drivers of the handling differences between utility vehicles and passenger cars, this amendment requires manufacturers to place a prescribed sticker on the windshield, dashboard or some other prominent location of the vehicle to alert operators. In addition, the new regulation requires manufacturers to include information in the vehicle *Owner's Manual* concerning the proper method of on- and off-road driving for utility vehicles.

DATES: This amendment is effective September 1, 1984.

SUPPLEMENTARY INFORMATION: This notice amends the *Consumer Information Regulations* (49 CFR 575) to add a new requirement applicable to "utility vehicles"—multipurpose passenger vehicles (49 CFR 571.3) which have a short wheelbase and special features for occasional off-road operation. This new regulation addresses a safety concern resulting from a possible lack of owner awareness about the proper handling and operation of utility vehicles. These vehicles have features which cause them to handle and maneuver differently than ordinary passenger cars under certain on-pavement driving conditions. Those features include: short wheelbase, narrow track,

high ground clearance, high center of gravity, stiff suspension system and, often, four-wheel drive. Examples of utility vehicles in current production include: AMC Jeeps, Chevrolet Blazer, Ford Bronco, Dodge Ram Charger, Toyota Land Cruiser, and the GMC Jimmy.

Because of the drivers' apparent unfamiliarity with the unique characteristics of these vehicles (their higher center of gravity, narrower track and stiffer suspensions), utility vehicles are more likely to go out of control or roll over than passenger cars during sharp turns or abrupt maneuvers on paved roads, especially at high speeds. Certain research studies appear to indicate that utility vehicles are disproportionately represented in rollover accidents than are passenger cars, and that the rates of death and disabling injury per accident could be twice as high for utility vehicles. (These studies are discussed more fully in this notice.)

In response to these factors, the agency issued a notice of proposed rulemaking on December 30, 1982 (47 FR 58323) to require a new consumer information regulation which would require manufacturers to alert utility vehicle drivers of the unique handling characteristics of these vehicles. As noted in that proposal, the agency believes that the differences in safety statistics and apparent performance with regard to utility vehicles are likely influenced by the lack of awareness by utility vehicle drivers concerning the operational characteristics of these vehicles, especially under conditions approaching the limits of vehicle performance. The occurrence of accidents at observed rates makes it clear that operators do not understand or appreciate the need for adjusting their driving habits to coincide with physical differences between utility vehicles and ordinary passenger cars.

The proposed amendment to the *Consumer Information Regulations* specified a prescribed sticker which manufacturers would be required to place in a prominent vehicle location to alert drivers concerning the special handling characteristics of utility vehicles. Additionally, the proposed regulation specified that manufacturers would be required to include information in the vehicle *Owner's Manual* concerning the proper method of handling and maneuvering these vehicles when driven on paved roads.

There were twenty comments to the notice of proposed rulemaking. Nearly all of these supported promulgation of the proposed new regulation, in principle. However, many commenters did not accept the agency's basis for the rulemaking and nearly all of the comments recommended various changes. The following is a discussion of the major comments, along with agency's response and final conclusions.

Basic Premise of the New Regulation

The proposal cited a study conducted by the Highway Safety Research Institute of the University of Michigan which found that utility vehicles rollover at a rate at least five times higher than that experienced by the average passenger car ("On Road Crash Experience of Utility Vehicles", see NHTSA Docket 82-20). In addition, the proposal noted that NHTSA fatal accident report data indicate that on a statistical basis, given a rollover accident, occupants are more likely to be killed in utility vehicles than in passenger cars (probability twice as high). Several manufacturers took strong exception to the Michigan study and challenged its scientific accuracy in certain regards, citing statements by the study's author that it was not a definitive project. Although these manufacturers did not oppose the proposed new regulation, they strongly objected to using the cited research as support for the regulation. Several manufacturers also stated that the proposal focused too narrowly on the physical characteristics of utility vehicles and failed to take into account the driver and environmental factors which affect the safety operation of these vehicles.

The agency did not intend to imply that it is only the unique physical characteristics of utility vehicles which are responsible for the great number of accidents in these vehicles. The basic premise of the new regulation, as evidenced by

statements in the proposal, is that drivers are apparently unaware of the unique handling characteristics of these vehicles as compared to ordinary passenger cars, and that this coupling of unique vehicle attributes and lack of awareness is apparently a large part of the problem.

Regarding the research cited in the proposal, the agency also did not intend to imply that further study would not be advantageous or that the Michigan study is an exhaustive, definitive statement concerning the actual accident experience of utility vehicles. However, the agency does believe that the information from the Michigan study, together with NHTSA's own data and other research cited below, is sufficiently reliable to indicate that utility vehicles are involved in a substantial number of accidents which appear to be related to their unique handling characteristics, of which their operators may not be fully aware.

In addition to the research mentioned in the proposal, the agency also notes the following information which has been submitted to the Docket concerning this proceeding: "A Comparison of the Crash Experience of Utility Vehicles, Pickup Trucks and Passenger Cars," Reinfurt, et al., Highway Safety Research Center, University of North Carolina, September 1981; "Analysis of Fatal Rollover Accidents in Utility Vehicles," S. R. Smith, NHTSA, February 1982; "Insurance Losses Personal Injury Protection Coverage, Passenger Cars, Vans, Pickups, and Utility Vehicles, 1979-1981 Models," HLDI, 1-18-1, September 1982. These studies also indicated significant rollover accident experience with utility vehicles. While it may be true that these studies do not quantify the contributions of the various possible causes of this accident experience (vehicle characteristics, driver characteristics, vehicle use, environmental factors, etc.), the agency believes that this research does indicate a serious problem which should be brought to the attention of vehicle owners and which can be alleviated by the dissemination of information to alert vehicles owners and drivers.

Application

Several commenters requested changes and clarifications in the definition of "utility vehicle" as set forth in the proposal's application section. The proposal specified the following:

“This Section applies to multipurpose passenger vehicles which have special features for occasional off-road operation (‘utility vehicles’).”

Commenters noted that the utility vehicles at issue typically have a wheelbase of 110 inches or less and recommended that this specification be added to the definition so that other vehicles are not inadvertently included in the regulation’s application. Manufacturers were particularly concerned that certain vehicles such as long wheel base utility trucks like the General Motors “Suburban” line, motor homes and multi-use recreational vehicles would be included even though they do not have the same rollover propensities as utility vehicles. The Insurance Institute for Highway Safety argued that the application of the rule should be limited to those vehicles most likely to present rollover concerns. The agency generally agrees with these concerns. As noted in the proposal, the vehicles which are intended to be covered are those with relatively short wheelbases, narrow tracks, high ground clearances, high centers of gravity and stiff suspensions. The proposal also mentioned four-wheel drive as a characteristic of utility vehicles. While four-wheel drive is typically a characteristic of those vehicles, it was mentioned in the proposal only because it is descriptive of the majority of vehicles at issue. Four-wheel drive in and of itself, however, has very little to do with the rollover propensities involved in this rulemaking, and the agency did not intend to include a vehicle simply because it had four-wheel drive if it did not also have the characteristics which necessitate alerting drivers to special handling methods.

After reviewing these comments and information concerning the vehicles at issue, the agency has determined that the definition should include a 110-inch wheel base specification in order to segregate those vehicles which are disproportionately involved in rollover accidents. Thus, as specified in this new regulation, utility vehicles are multipurpose passenger vehicles which have a wheel base of 110 inches or less and special features for occasional off-road operation (which may or may not include four-wheel drive).

One manufacturer recommended that the new regulation also apply to four-wheel drive light pickup trucks (GVWR of 8,500 pounds or less) as well as to utility vehicles. The manufacturer did

not supply any information, however, indicating that the same accident experience occurs with respect to light pickup trucks. Moreover, data before the agency do not indicate that this vehicle class has a different rollover experience than ordinary passenger cars. Therefore, the fact that certain pickup trucks have four-wheel drive does not seem to be sufficient reason for including this vehicle type in the standard’s application. As noted earlier, there is no indication that four-wheel drive alone leads to the rollover propensities which are the subject of this rulemaking action. The agency will continue to monitor the accident experience of these vehicles, however, to determine if they should be included in the standard at some time in the future.

Sticker Location

The proposal preceding this new regulation specified that manufacturers shall affix a sticker to “the instrument panel, windshield frame or in some other location in each vehicle prominent and visible to the driver”, to alert drivers concerning the special handling characteristics of utility vehicles. Several commenters requested that this requirement specifically include the driver’s sun visor as an acceptable location for the required sticker. One commenter stated that the warning should be of a more permanent nature than a sticker affixed to the windshield or instrument panel. That commenter stated that, if the sticker is located on the instrument panel, it should be behind the plastic lens so that it cannot be removed, arguing that the sticker should remain permanently affixed so that subsequent vehicle owners are made aware of “the vehicle’s sensitivity to certain maneuvers.”

The agency considers the driver’s sun visor to be a “prominent” location in a vehicle, and is modifying the language of this requirement to specifically mention that vehicle location. The agency agrees that the sticker should be of a permanent nature, but does not believe that it is necessary at this time to require the sticker to be placed, for example, behind the plastic lens of the instrument panel. There is no wish to place design restrictions on manufacturers, but the agency does intend for the sticker to be permanently affixed in a prominent position and readily visible to drivers. Stickers similar to the placard required in FMVSS 110 would be considered adequate.

Sticker and Manual Language

A majority of the commenters recommended clarification and changes in the prescribed language for the warning sticker and information in the vehicle *Owner's Manual*. The proposal specified that the sticker shall have the language prescribed "or similar language", and included the following caveat:

"The language on the sticker required by this paragraph may be modified as is desired by the manufacturer to make it appropriate for a specific vehicle design, to ensure that consumers are adequately informed concerning the unique propensities of a particular vehicle model."

As proposed, this caveat was not applicable to the language required in the vehicle *Owner's Manual*. Numerous commenters requested that this flexibility be allowed for the *Owner's Manual* as well. One commenter stated that there is no way the sticker can "ensure" consumers are adequately informed. One commenter requested that manufacturers be allowed to place the required information in any section of their *Owner's Manual* they choose, rather than in the "introduction" and "on-pavement" driving sections as prescribed in the proposal. Several commenters also suggested that the word "rollover" be specifically included in the required warnings, on the basis that "loss of control" does not sufficiently describe the hazard.

The agency agrees that language flexibility may be useful for the *Owner's Manual* as well as for the prescribed sticker, in order to ensure that consumers are adequately informed concerning the unique characteristics of a particular vehicle design. That modification is made in this notice. The agency believes that the objection to use of the word "ensure" in the specified caveat is a matter of semantics since the agency's intent is that manufacturers make every attempt to adequately inform its customers. It was for this reason that the language flexibility is being allowed. The agency also agrees that use of the word "rollover" in the sticker and *Owner's Manual* might more accurately describe the possible consequences of sharp turns or abrupt maneuvers than the phrase "loss of control" used alone. Accordingly, that word is added to the language specified in this notice. Finally, the agency agrees that manufacturers should be allowed to place the required "on-

pavement" driving information in any prominent location of their *Owner's Manual* they desire, rather than only in a section specifically labeled "on pavement driving". However, the agency believes that the specified introductory statement must be included in the Manual's introduction (or preface) so that any person consulting the *Manual* will be aware that driving guidelines are included in the *Manual*.

One commenter requested that the required information be allowed in a supplement to the *Owner's Manual*, i.e., a separate pamphlet. The agency has no objections to additional, or comprehensive supplements which further describe driving methods and operating procedures for utility vehicles (one manufacturer currently provides such a Supplement). However, the agency believes that the two prescribed (or similar) statements should be placed in the general *Owner's Manual* since some operators might be more likely to consult the *Manual*, which includes all information concerning their vehicles, than they would supplements. Further, the required statements are short and should not be onerous to manufacturers.

Effective Date

The proposal specified that the new regulation, if promulgated, would become effective 60 days after publication of a final rule. Several manufacturers stated that their *Owner's Manuals* are typically updated only at the beginning of a new model year and that longer than 60 days is needed to comply with the requirements of the regulation. After considering these comments, the agency has concluded that the new regulation should become effective September 1, 1984, coincidental with the typical introduction of new models. This is longer than the 60-days leadtime specified in the proposal and should allow all manufacturers sufficient time to comply with the requirements.

NHTSA has examined the impacts of this new regulation and determined that this notice does not qualify as a major regulation within the meaning of *Executive Order 12291* or as a significant regulation under the Department of Transportation regulatory policies and procedures. The agency has also determined that the economic and other impacts of this rule are so minimal that a regulatory evaluation is not required. The prescribed sticker and additional information required in the vehicle *Owner's Manual* will result in only minimal costs

for vehicle manufacturers and will not likely result in any cost increase for consumers.

The agency also considered the impacts of this rule under the precepts of the *Regulatory Flexibility Act*. I hereby certify that the regulation will not have a significant economic impact on a substantial number of small entities. As just discussed, the cost of the required sticker and information will be extremely small. Accordingly, there will be virtually no economic effect on any small organiza-

tions or governmental units which purchase utility vehicles. Moreover, few, if any, vehicle manufacturers would qualify as small entities under the Act.

Issued on May 7, 1984.

Diane K. Steed
Administrator
49 F.R. 20016
May 11, 1984

PREAMBLE TO AN AMENDMENT TO PART 575

Consumer Information Regulations Operation of Utility Vehicles on Paved Roadways [Docket No. 82-20; Notice 3]

ACTION: Final rule, response to petitions for reconsideration.

SUMMARY: This final rule responds to petitions for reconsideration filed by American Motors Corporation and Subaru of America, Inc., with regard to the agency's requirement that manufacturers of utility vehicles inform drivers of those vehicles of the propensity of such vehicles to rollover. American Motors and Subaru pointed out in their petitions that the scope of this requirement includes certain passenger car derivatives such as the AMC Eagle and the Subaru four-wheel drive vehicles which do not have the operating characteristics which were the focus of the rule. Therefore, the agency is herein clarifying the regulations to exempt passenger car derivatives.

EFFECTIVE DATE: This amendment is effective September 1, 1984.

SUPPLEMENTARY INFORMATION: On May 11, 1984, NHTSA amended its Consumer Information Regulations (49 CFR 575) to add a new requirement applicable to "utility vehicles"—multipurpose passenger vehicles (49 CFR 571.3) which have a short wheelbase (110 inches or less) and special features for occasional off-road operation. See 49 FR 20016. This new regulation addresses a safety concern resulting from a possible lack of owner awareness about the proper handling and operation of utility vehicles have features which causes them to handle and maneuver differently than ordinary passenger cars under certain on-pavement driving conditions. Those features include: short wheelbase, narrow track, high ground clearance, high center of gravity, stiff suspension

system and, often, four-wheel drive. Examples of utility vehicles in current production which were cited in the agency's final rule include: AMC Jeeps, Chevrolet Blazer, Ford Bronco, Dodge Ram Charger, Toyota Land Cruiser, and the GMC Jimmy.

On June 11, 1984, the agency received petitions for reconsideration of the utility vehicle labeling rule from American Motors Corporation and Subaru of America, Inc. Both manufacturers pointed out that although the preamble to the agency's final rule indicated that the rule was intended to apply to a class of vehicles with attributes which might tend to increase the likelihood of vehicle rollover (high center of gravity, narrow track, stiff suspension, etc.), the actual language of the rule applied to certain vehicles without these attributes. In particular, these manufacturers were concerned that the labeling requirements would apply to their four-wheel drive vehicles which are derived from passenger cars, i.e., the American Motors Eagle and the Subaru four-wheel drive station wagons, sedans, and Brat. Both manufacturers requested that the agency clarify the scope of the rule to exclude these vehicles.

Since the American Motors and Subaru vehicles in question are certified as multipurpose passenger vehicles under 49 CFR Part 567, have a wheelbase of 110 inches or less and have four wheel drive, they would fall within the "utility vehicle" definition in the Consumer Information Regulations, and would therefore be subject to the rollover warning label requirements. However, the manufacturers are correct in pointing out that the main thrust of the agency's May 11 rule was to regulate the more traditional types of utility vehicles, such as the Jeep CJ series and the Toyota Land Cruiser.

To assess the appropriateness of subjecting the Eagle and Subaru model lines to the labeling requirements, the agency analyzed its accident data to determine the frequency of involvement in fatal rollover accidents for various types of vehicles. Fatality data were obtained from the agency's Fatal Accident Reporting System, while vehicle registration information was obtained from R. L. Polk data. The rollover rate for the Eagle is much lower than that for the more traditional utility vehicles, and is, in fact, lower than that for all passenger cars. This data strongly supports the American Motors argument that the Eagle should not be subject to the labeling rule. The case for the Subaru vehicles is less clear, since their rollover fatality rate is between that of passenger cars and the more traditional utility vehicles. However, the Subaru four-wheel drive vehicles have a rollover fatality rate which is virtually identical to that of their two-wheel drive counterparts, which are not subject to the labeling requirement, and is still only about ¼ that of more traditional utility vehicles. Subaru submitted data with its reconsideration petition indicating that the handling characteristics of the Subaru four-wheel drive vehicles are on a par with those of passenger cars, and superior to those of more traditional utility vehicles. Therefore, the agency is exempting passenger car derivative multipurpose passenger vehicles from the rollover labeling requirements. These vehicles are typically based upon a passenger car chassis, then modified to have certain attributes common to trucks or utility vehicles. The Subaru and Eagle vehicles are the only vehicles currently sold in the United States which fall within this exemption.

The amendments promulgated herein are effective September 1, 1984, to coincide with the effective date of the May 11 labeling rule. The agency finds good cause for making this amendment effective less than 180 days after publication. The amendment relieves an inappropriate restriction, avoiding the need to provide warning information in vehicles which do not pose an unusual risk of rollover.

NHTSA has examined the impacts of this new regulation and determined that this notice does not qualify as a major regulation within the meaning of Executive Order 12291 or as a significant regulation under the Department of Transportation regulatory policies and procedures. The agency has also determined that the economic and other impacts of this rule are so minimal that a regulatory evaluation is not required. The rule merely exempts a small number of vehicles from the labeling rule, which imposed minimal costs. The agency also considered the impacts of this rule under the precepts of the Regulatory Flexibility Act. I hereby certify that the regulation will not have a significant economic impact on a substantial number of small entities. The cost of the required sticker and information will be extremely small, and only a small number of vehicles are being exempted. Accordingly, there will be virtually no economic effect on any small organizations or governmental units which purchase utility vehicles. Moreover, few, if any, vehicle manufacturers would qualify as small entities under the Act.

In consideration of the foregoing, paragraph 575.105(b) is amended to read as follows:
§575.105 Utility Vehicles

(b) *Application.* This section applies to multipurpose passenger vehicles (other than those which are passenger car derivatives) which have a wheelbase of 110 inches or less and special features for occasional off-road operation ("Utility vehicles").

Issued on August 6, 1984.

Diane K. Steed
Administrator

49 FR 32069
August 10, 1984

PREAMBLE TO AN AMENDMENT TO PART 575

Uniform Tire Quality Grading Standards Effective Dates for Reimplementation of Treadwear Grading

[Docket No. 25; Notice 58]

ACTION: Final rule.

SUMMARY: This rule sets forth the effective dates for the reimplementation of the treadwear grading requirements under this agency's Uniform Tire Quality Grading Standards (UTQGS). Those requirements were suspended after the agency found high levels of variability in treadwear test data and grade assignment practices. The United States Court of Appeals for the District of Columbia Circuit vacated the agency's suspension of the treadwear grading requirements on April 24, 1984.

In response to the court, NHTSA published a notice on August 13, 1984, proposing dates on which tires would again be required to comply with the treadwear grading requirements. Subsequently, the agency learned that there were some problems with reimplementing treadwear grading for bias belted tires by the proposed dates. Therefore, the agency published a notice on September 12, 1984, asking for public comment on what effect, if any, this newly discovered information should have on the proposed schedule for reimplementing treadwear grading for bias belted tires.

Despite these agency actions to reinstate treadwear grading, the U.S. Court of Appeals issued an order on September 27, 1984, finding NHTSA in violation of its April 24 order, and directing the agency to either reinstate the treadwear grading requirements in full "forthwith" or to apply to that court for a modification of the mandate and provide a reasonably prompt reimplementation schedule. NHTSA filed an application for a modification of the mandate on October 11, 1984. On October 31, 1984, the U.S. Court of Appeals granted NHTSA's application and ordered NHTSA to reimplement

treadwear grading in accordance with the schedule proposed by NHTSA in its October 11 filing. That same schedule is set forth in this rule.

DATES: In the case of bias ply tires, requirements that treadwear information be included on paper labels affixed by tire manufacturers to tire treads and for the submission of consumer information brochures to NHTSA for review are reimplemented effective December 15, 1984. Those brochures are required to be distributed to prospective purchasers by tire dealers effective January 15, 1985. Requirements regarding the molding of treadwear grades on tire sidewalls become effective again on May 15, 1985.

In the case of bias belted tires, requirements that treadwear information be included on paper labels and for the submission of the consumer information brochures to NHTSA for review are reimplemented effective March 1, 1985. The brochures must be distributed to prospective purchasers effective April 1, 1985. The requirements regarding the molding of treadwear grades on tire sidewalls become effective again on August 1, 1985.

In the case of radial tires, requirements that treadwear information be included on paper labels and for the submission of the consumer information brochures to NHTSA for review are reimplemented effective April 1, 1985. The brochures must be distributed to prospective purchasers effective May 1, 1985. The treadwear grades must be molded on the sidewall of all new radial tires manufactured on or after September 1, 1985.

In the case of vehicle manufacturers, the requirements to include treadwear grading information in the vehicle consumer information are reimplemented effective September 1, 1985.

The amendments made to the UTQGS by this rule are effective December 19, 1984. This action is taken to permit those manufacturers which choose to do so to comply with the treadwear grading requirements before the mandatory reimplementation dates listed above.

SUPPLEMENTARY INFORMATION: NHTSA suspended treadwear grading requirements under the UTQGS at 48 FR 5690, February 7, 1983. This action was announced after the agency found high levels of variability in treadwear test results and in the grade assignment practices of the various tire manufacturers. This variability resulted in a substantial likelihood that treadwear information being provided to the public under this program would be misleading, i.e., that the assigned grades could, in many instances, incorrectly rank the actual treadwear performance of different tires.

On April 24, 1984, the United States Court of Appeals for the District of Columbia Circuit vacated the agency's suspension of the treadwear grading requirements in *Public Citizen v. Steed*, 733 F.2d 93. NHTSA interpreted the court's action as requiring the agency to reimplement the treadwear grading requirements at the earliest reasonable time. To comply with this interpretation of the court order, NHTSA published a notice of proposed rulemaking at 49 FR 32238, August 13, 1984. That proposal set forth the following dates for reimplementing treadwear grading requirements:

AUGUST 13 SCHEDULE

	Bias Ply and Bias Belted Tires	Radial Tires
Tire manufacturers complete testing	November 15, 1984	June 15, 1985
Affix paper labels and submit brochures to NHTSA for review	December 15, 1984	July 15, 1985
Distribute brochures to the public	January 15, 1985	August 15, 1985
Modify all molds to include treadwear	May 15, 1985	December 15, 1985
Include treadwear grading in vehicle manufacturer's consumer information booklet	September 1, 1985	

The reason for proposing different reimplementation dates for bias ply and bias belted tires, on the one hand, and radial tires, on the other, was the need to procure new course monitoring tires (CMT's, for the radial tires. As of that date, NHTSA believed that its existing supply of bias ply and bias belted CMT's would be adequate for testing those tire types. This fact would allow the manufacturers to begin their testing very quickly, which would in turn allow the treadwear grading requirements to be reimplemented more quickly.

However, shortly after publication of that notice, the agency determined that its existing supply of bias belted CMT's showed unacceptably high levels of variability, and concluded that it would be inappropriate to use such tires as CMT's. A notice announcing these determinations was published at 49 FR 35814, September 12, 1984. This notice asked for public comment on what effect, if any, this newly discovered information would have on the dates proposed for the reimplementation of treadwear grading for bias belted tires.

Despite these agency actions to reimplement treadwear grading, the U.S. Court of Appeals issued an order on September 27, 1984, finding the agency in violation of the court's April 24 order. The court gave the agency a choice of either immediately reinstating treadwear grading in full, or, within 14 days of September 27, applying to the court for a modification of its earlier order and providing the court with a reasonably prompt schedule for reimplementing the treadwear grading requirements.

In accordance with this order, NHTSA applied for a modification of the court's April 24 mandate on October 11, 1984. This application was accompanied by a proposed schedule for reimplementing treadwear grading and an affidavit in support thereof. The schedule which the agency proposed to the court is shown on the next page.

This schedule was the same as that proposed in the August 13 notice for reimplementing treadwear grading for vehicle manufacturers and for bias ply tires. However, it accelerated the reimplementation of treadwear grading by 3 1/2 months from what had been proposed for radial tires in the August 13 notice, and postponed the proposed dates for bias belted tires by 2 1/2 months. In formulating this revised schedule, NHTSA considered all nine comments received on the August 13 notice, and the one comment it

PROPOSED SCHEDULE

	Bias Ply Tires	Bias Belted Tires	Radial Tires
Tire manufacturers complete testing	November 7, 1984	February 1, 1985	March 1, 1985
Affix paper labels and submit brochures to NHTSA for review	December 15, 1984	March 1, 1985	April 1, 1985
Distribute brochures to the public	January 15, 1985	April 1, 1985	May 1, 1985
Modify all molds to include treadwear	May 15, 1985	August 1, 1985	September 1, 1985
Include treadwear grading in vehicle manufacturer's consumer information booklet		September 1, 1985	

received on the September 12 notice. The agency received an additional comment regarding the September 12 notice on October 12, the comment closing date for that notice. That additional comment was not considered by the agency in preparing its October 11 application.

The court issued an order on October 31, 1984, granting NHTSA's application for a modification of the court's earlier mandate, and ordered the agency to reimplement treadwear grading according to the schedule proposed by the agency in its October 11 application. This final rule implements the court's October 31 order.

Comments received on previous notices. As noted above, all but one of the comments received in response to the agency's August 13 and September 12 notices were considered while the agency formulated the revised schedule for reimplementing treadwear grading which was submitted to the court on October 11. What follows is a brief explanation of the agency's response to the more significant comments.

The petitioners in the U.S. Court of Appeals submitted their motion to enforce judgment, which they filed with the court, as a comment to the agency on its August 13 proposed schedule. The essential allegation of that motion was that the August 13 schedule was not reasonably prompt. NHTSA responded to this allegation in considerable detail in the application and affidavit in support thereof filed with the court on October

11. Rather than repeat this lengthy response herein, this rule incorporates by reference the application and affidavit filed October 11 as the agency response to petitioners' comments. Copies of the application and affidavit are available in Docket No. 25, Notice 58, and any interested persons are advised to contact the Docket Section to obtain a copy of those documents.

Several tire manufacturers commented that the August 13 notice was unclear as to whether the agency would permit tire manufacturers to modify their molds to show treadwear grading information prior to the dates by which they were required to modify all their molds. These manufacturers stated that they wanted to modify some of their molds before the effective dates when they had to have all of their molds modified. This issue arises because of amendments made to the UTQGS in connection with the agency's suspension of the treadwear grading requirements. Since NHTSA had concluded that there was a substantial likelihood that treadwear information would be misleading, the UTQGS were amended to prohibit the sidewalls of tires from showing any treadwear grades. As long as that prohibition, contained in 49 CFR §575.104(i)(2)(ii), remains in effect, tire manufacturers may not legally begin converting their molds to show the treadwear grades on the sidewalls of their tires.

NHTSA wishes to encourage the manufacturers to reimplement the treadwear grading require-

ments as expeditiously as possible, to comply with the decision in *Public Citizen v. Steed*, supra. The agency intended to allow manufacturers to implement any of the necessary steps, including not just the molding of the grades on the sidewall, but also paper labels and the submission and distribution of consumer information brochures, as soon as was feasible. If some requirements can be satisfied by a particular manufacturer prior to an effective date specified in this rule, it would serve no interest to prohibit that manufacturer from disseminating treadwear grading information to consumers. Hence, a manufacturer is permitted to comply with any of these reimplemented treadwear grading requirements in advance of the effective dates specified herein. These dates represent the agency's best judgment as to the earliest dates by which it would be reasonable to require *all* tires to again comply with the treadwear grading requirements. However, manufacturers may comply with the requirements of this notice sooner than the mandatory effective dates, if they wish. To make this intent more clear, a statement has been added to the DATES section to the effect that the amendments made by this rule take effect upon publication. This action immediately removes the prohibition on molding treadwear grades on the sidewalls of tires, which was a part of the action taken by NHTSA in connection with the decision to suspend treadwear grading.

Most tire manufacturers also indicated that they could meet the dates proposed in the August 13 notice for reimplementing treadwear grading for radial tires, albeit "with some difficulty". This notice accelerates that schedule by shortening the time available for the agency's completion of its tasks while retaining the proposed amount of time following these tasks for the manufacturers to achieve compliance. This acceleration was made possible as the result of CMT's being made available to the agency more quickly, and the agency accelerating its own testing. The time periods allowed to the manufacturers for completing each step of the reimplementation process (3 months for testing, 1 month to print paper labels and draft the consumer information brochure to be submitted to NHTSA for its review, 1 month to distribute the brochures to all dealers, and 6 months to modify all molds) will require the manufacturers to move expeditiously, but are reasonable for completing each of the needed steps.

One manufacturer asked for additional time in reimplementing treadwear grading for radial tires imported from other countries. The comment stated that there is a logistical problem in shipping the tires for testing into the U.S., clearing them through customs, shipping the tires to Texas for testing, conducting the tests and evaluating the data, printing the labels in the U.S. and shipping them overseas, and finally affixing the paper labels to the tires for sale before shipping them into the United States to be offered for sale. The comment concluded by requesting an additional 2 months period for affixing paper labels to imported radial tires, and for an additional 1 month to modify all molds to include the treadwear grade.

NHTSA considered these logistical problems. However, the agency believes that radial tires to be imported into the United States can be shipped early enough so that the tires will be in Texas for testing very early, since the foreign producers are well aware of the logistical burdens confronting them. The testing and analysis for these tires would then be among the first completed on radial tires. While the agency agrees that it is more difficult for manufacturers of imported tires to reimplement treadwear grading than manufacturers of domestic tires, the agency believes that the time allotted for reimplementing is feasible and reasonable for all manufacturers. Accordingly, the schedule set forth in this final rule establishes the same dates for compliance with radial tire treadwear grading requirements for both foreign- and domestically-produced tires.

The comments on the proposed dates for reimplementing treadwear grading for bias ply tires all indicated that those dates were feasible, and those dates have been adopted as proposed.

Three manufacturers asked in their comments for an additional month for testing bias belted tires. That would be the same period of time allotted for testing radial tires. The August 13 notice proposed to allow only 2 months for testing bias belted tires, since there are only about 350 bias belted tire designs. Radial tires, for which 3 months were proposed for testing, are produced in about 1,400 designs. Hence, the difference in the number of tires to be tested suggested to NHTSA that bias belted tire testing could be completed in less time than would be needed for radial tire testing. The commenters asking for additional testing time for bias belted tires did not provide any evidence that the proposed 2 months for

testing bias belted tires was insufficient. Absent such evidence, NHTSA has no basis for concluding that the proposed 2-month period for testing is insufficient. Accordingly, this final rule adopts the proposed 2-month testing period for bias belted tires.

The only comment addressing the proposed date for reimplementing treadwear grading requirements for vehicle manufacturers stated that the proposed September 1, 1985, date was acceptable as long as the agency had a final rule published by March 1, 1985. This rule is published well in advance of that date.

Impact analyses. NHTSA has determined that this final rule is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The treadwear grading is being reimplemented in its current form as a result of the court decision in *Public Citizen v. Steed*, supra, and the dates set forth herein for reimplementation were ordered to be established by the same court in its October 31, 1984, order. The agency is required to comply with those court orders. Most of the analysis in the regulatory evaluation which accompanied the agency's suspension of treadwear (Docket No. 25; Notice 52) is still applicable to this rule. In that regulatory evaluation, NHTSA estimated that the costs of treadwear grading were about \$10 million annually to tire manufacturers and brand name owners. That is equivalent to less than 6 cents per tire. These costs are well below the level for classifying a rule as a major action. A separate regulatory evaluation has not been prepared for this rule, because the costs and impacts of treadwear grading set forth in the regulatory evaluation accompanying the suspension of treadwear grading are still the agency's estimate of the effects of treadwear grading.

Pursuant to the Regulatory Flexibility Act, the agency has considered the impacts of this rule on small entities. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required. NHTSA concluded that few, if any, of the manufacturers and brand name owners are small entities. To the extent that any of these parties are small entities, the additional costs imposed by reimplementing treadwear grading for passenger-car tires are slightly less than 6 cents per tire (\$10

million total costs/178 million passenger car tires produced annually). This does not constitute a significant economic impact. Small organizations and small governmental units will be minimally affected in their tire purchases as a result of the minimal additional costs imposed by reimplementing treadwear grading. Further, those minimal costs will have minimal impacts on the costs and sales for any tire dealers which might qualify as small entities.

NHTSA has also considered the environmental impacts of this rule. While it is possible that reimplementation of treadwear testing may have some negative effects on the environment around the Texas test course in terms of increased fuel consumption and increased noise and air pollution, NHTSA has concluded that the environmental consequences of this rule are of such limited scope that they will clearly not have a significant effect on the quality of the human environment.

Effective date. As noted above, the amendments made by this rule are effective as of the date this rule is published in the *Federal Register*. NHTSA has taken this step so that the tire manufacturers and brand name owners who wish to reimplement any portion of the treadwear grading requirements in advance of the dates by which they are required to do so may follow that course of action. Prior to the effective date of these amendments, §575.104(i) prohibits manufacturers from molding treadwear grades on the sidewalls of tires. Manufacturers and brand name owners which are unable or unwilling to reimplement treadwear grading in advance of the mandatory compliance dates specified herein will not be affected by an immediate voluntary compliance date for these amendments, because they are not required to reimplement before the mandatory compliance dates. There is also a public interest in complying with the court orders as soon as possible. For these reasons, NHTSA has concluded that there is good cause for specifying an immediate effective date for the amendments made by this rule.

In consideration of the foregoing, 49 CFR §575.104 is amended as follows:

1. By revising paragraph (i) and adding new paragraphs (j), (k), and (l) to read as follows:

* * * * *

(i) *Effective dates for treadwear grading requirements for radial tires.*

(1) Treadwear labeling requirements of §575.104 (d)(1)(i)(B)(2) apply to tires manufactured on or after April 1, 1985.

(2) Requirements for NHTSA review of treadwear information in consumer brochures, as specified in paragraph 575.6(d)(2), are effective April 1, 1985.

(3) Treadwear consumer information brochure requirements of paragraph 575.6(c) are effective May 1, 1985.

(6) Treadwear sidewall molding requirements of §575.104(d)(1)(i)(A) apply to tires manufactured on or after September 1, 1985.

(j) *Effective dates for treadwear grading requirements for bias ply tires.*

(1) Treadwear labeling requirements of §575.104 (d)(1)(i)(B)(2) apply to tires manufactured on or after December 15, 1984.

(2) Requirements for NHTSA review of treadwear information in consumer brochures, as specified in paragraph 575.6(d)(2), are effective December 15, 1984.

(3) Treadwear consumer information brochure requirements of paragraph 575.6(c) are effective January 15, 1985.

(4) Treadwear sidewall molding requirements of §575.104(d)(1)(i)(A) apply to tires manufactured on or after May 15, 1985.

(k) *Effective dates for treadwear grading requirements for bias belted tires.*

(1) Treadwear labeling requirements of §575.104 (d)(1)(i)(B)(2) apply to tires manufactured on or after March 1, 1985.

(2) Requirements for NHTSA review of treadwear information in consumer brochures, as specified in paragraph 575.6(d)(2), are effective March 1, 1985.

(3) Treadwear consumer information brochure requirements of paragraph 575.6(c) are effective April 1, 1985.

(4) Treadwear sidewall molding requirements of §575.104(d)(1)(i)(A) apply to tires manufactured on or after August 1, 1985.

(l) *Effective date for treadwear information requirements for vehicle manufacturers.*

Vehicle manufacturer treadwear information requirements of §§575.6(a) and 575.104(d)(1)(iii) are effective September 1, 1985.

2. By deleting Figure 6.

Issued on December 14, 1984.

Diane K. Steed
Administrator

49 F.R. 49293
December 19, 1984

PREAMBLE TO AN AMENDMENT TO PART 575

Consumer Information Regulations; Vehicle Stopping Distance [Docket No. 83-09; Notice 2]

ACTION: Final rule.

SUMMARY: This rule amends the requirements of the Consumer Information Regulations by deleting the requirement that vehicle stopping distance information be provided to first purchasers of new passenger cars and motorcycles at the time the vehicle is delivered to the first purchaser. The agency has taken this action because the primary purpose of the consumer information is to permit prospective purchasers to obtain as much comparative information as possible *before* deciding which particular model to buy. Information provided *after* the consumer has purchased the vehicle cannot serve that purpose. Since NHTSA is unaware of any other value to the consumer being given stopping distance information after purchasing a new vehicle, this rule rescinds that requirement. Based on cost information provided by General Motors, the agency estimates that this action will save vehicle manufacturers over one million dollars annually.

EFFECTIVE DATE: This rule is effective July 24, 1987.

SUPPLEMENTARY INFORMATION: This rule amends the requirements of 49 CFR Part 575, *Consumer Information Regulations*, to delete the requirement that manufacturers of passenger cars and motorcycles provide stopping distance information to the first purchasers of their vehicles at the time of delivery of the new vehicle. The primary purpose underlying the requirement that vehicle manufacturers provide consumers with stopping distance information is to provide consumers with comparative information on different vehicles so that they can consider this information when deciding which new vehicle to purchase. Stopping distance information that is given to consumers after they have purchased a new vehicle does not serve this purpose.

Vehicle manufacturers have been required to provide stopping distance information to first

purchasers of new vehicles at the time of delivery of the vehicle ever since the original consumer information regulations were published at 34 FR 1246, January 25, 1969. At this time, however, it is not clear what benefits the agency believed first purchasers would derive from information provided to them after they had purchased the vehicle. The preamble to the 1969 rule requiring manufacturers to provide such information explained only that, "This regulation is intended to be the initial part of a comprehensive program to supply the consumer with information concerning safety and other performance characteristics of motor vehicles." 34 FR 1247. No further explanation was set forth in the final rule or any other document of how or why the agency believed it would be helpful to consumers to obtain stopping distance information for vehicles *after* they had purchased the vehicle. The agency is not aware of any empirical or analytical evidence that stopping distance information is or could be useful to consumers after they have purchased a new vehicle. Therefore, the requirement to provide this information to first purchasers is deleted from Part 575 by this rule.

Under the requirements as they existed before today's amendment, stopping distance information was required to be disseminated to consumers via three separate sources. First, §575.6(a) requires manufacturers to provide the first purchasers of new vehicles with stopping distance information at the time of delivery of the new vehicle. Second, §575.6(c) requires stopping distance information to be provided by each vehicle manufacturer to each of its dealers, so that prospective purchasers can examine the information in the dealer's showroom at no cost. Third, §575.6(d) requires the stopping distance information to be provided by each vehicle manufacturer to NHTSA, so that it can be made available to the public in NHTSA's Technical Reference Library and upon request.

General Motors Corporation (GM) filed a petition for rulemaking with the agency, in which GM asked that the requirements for vehicle manufac-

turers to disseminate stopping distance information about their vehicles be deleted altogether. GM asserted that the stopping distance information was not actually used by consumers, that it was not a meaningful comparison between different vehicles, and that dissemination of the stopping distance information was an unnecessary economic burden on the vehicle manufacturers. In response to this petition, NHTSA carefully reexamined the requirements that stopping distance information be disseminated to consumers via the three separate sources identified above.

As a result of this reexamination, NHTSA published a notice of proposed rulemaking (NPRM) on June 30, 1983. 48 FR 30166. This NPRM proposed to delete the requirement that manufacturers provide stopping distance information to the first purchasers of new vehicles, since this information does not become available to the consumer soon enough to serve the primary purpose of these consumer information regulations. However, the agency did not propose to delete the requirements that vehicle manufacturers provide stopping distance information to their dealers and to this agency. The agency stated in the NPRM that it did not agree with GM's assertion that the stopping distance information was not meaningful to consumers. While some manufacturers report that their vehicles stop exactly at the maximum stopping distance allowed under Standard No. 105, *Hydraulic Brake Systems* (49 CFR §571.105), most manufacturers reported that their vehicles stop in a shorter distance. The differences in reported stopping distance could be used by consumers to make comparative evaluations of the vehicles. Further, the NPRM noted that 14 percent of the dealerships surveyed by that company reported that they had been asked by consumers for stopping distance information. The NPRM stated that these requests "indicate that the information is being used by the public and NHTSA is reluctant to curtail the amount of information available to the public when that information is reliable and can be provided at a reasonable cost." 48 FR 30167. Based on GM's estimates of its own costs for providing stopping distance information to the three sources presently required by Part 575, NHTSA estimated total costs to vehicle manufacturers at \$266,000 if stopping distance information were required to be provided only to each dealer and this agency. This translates to less than 3 cents for each new car and motorcycle sold, and NHTSA tentatively adjudged this to be a reasonable cost for providing the information.

The NPRM also sought comments on the desirability of requiring vehicle manufacturers to

permanently affix a label to the vehicle, setting forth the stopping distance information. Such labeling would ensure that continuing availability of stopping distance information to subsequent purchasers of the vehicle. The current practice of putting stopping distance information in the owner's manual or in a separate consumer information booklet can result in the stopping distance information not being available to the subsequent purchasers of the vehicle.

After publication of this NPRM, NHTSA undertook research to gain a better understanding of consumer awareness of and interest in NHTSA's consumer information programs, and to learn if there were ways in which the consumer information programs could be made more useful to consumers. The final report is entitled "Consumer Attitudes Toward Consumer Information Programs," and is available in the General Reference section of Docket No. 83-09. This report indicated that most consumers are satisfied with the information available to them when purchasing a vehicle. There is, however, a small segment of car buyers who actively seek information about vehicles when making a purchase and would prefer that more information be made available. This segment's interest in the subject of stopping distance increases when they are informed that stopping distances for comparable vehicles may vary.

The agency received 12 comments on the NPRM. Nine of these 12 comments were submitted by vehicle manufacturers. Each of these manufacturers supported the proposal to delete the requirement that stopping distance information be provided to first purchasers at the time of delivery of a new vehicle. However, all nine of the vehicle manufacturers disagreed with the agency's decision to continue requiring stopping distance information to be provided to each of their dealers and to NHTSA.

Along with its petition, GM submitted a survey of 162 of its dealers. Of these 162 dealers, 140 had not received a single request for stopping distance information, while 22 (14 percent) had received such requests. The 22 dealers that received requests for stopping distance information received an average of five such requests each. In the NPRM, the agency stated, "The fact that 14 percent of the dealerships surveyed by GM received requests for stopping distance information indicates that the information is being used by the public and NHTSA is reluctant to curtail the amount of information available to the public when that information is reliable and can be provided at a reasonable cost." 48 FR 30167.

All nine of the commenting vehicle manufacturers stated in their comments that the public had shown little or no interest in stopping distance information. Most of these commenters questioned the agency's interpretation of the GM dealer survey, and suggested that sales-weighting of the survey results would show that very few consumers requested the information. GM stated that by adjusting the requests received by the number of potential purchasers passing through each dealership, NHTSA would conclude that less than 1/10 of 1 percent of prospective purchasers had requested stopping distance information. Volkswagen raised the same point in its comments. Suzuki Motor Co., Ltd. (Suzuki) provided a survey of 50 of its dealerships in its comments. Suzuki's survey showed that 30 of 50 dealers had no requests for the information, 13 of 50 had one percent or fewer of their customers ask for stopping distance information, 4 dealers had 5 percent of their customers ask for the information, and 3 dealers said that 10 percent of their customers asked for stopping distance information.

Admittedly, the GM and Suzuki surveys, as well as the agency's own research of this topic, show that most consumers do not request stopping distance information from dealers. However, NHTSA does not believe that consumer information requirements need to be justified by a majority vote of consumers. If majority use of information were the test, it seems likely that few, if any, consumer information requirements could pass this test. For instance, whether or not most consumers read the list of ingredients on processed food, the point of that consumer information requirement, as is the case for the stopping distance information requirements, is to permit those consumers that choose to do so to obtain useful comparative information on different products *before* deciding which of the products to purchase. The surveys submitted by the commenters and the agency's own research indicate that some consumers do use the information in this manner. The agency believes this number is not insignificant. NHTSA believes it would be inappropriate to curtail the amount of information available to these consumers simply because other consumers do not use this information when making their purchase decisions.

American Motors Corporation commented that there was no evidence that stopping distance information was actually used by consumers in making the purchase decision. Mercedes-Benz commented that it was doubtful that stopping distance information would be a decisive criterion for a consumer in choosing a particular car. As noted above, the agency's consumer research indicated that a

small minority of consumers are interested in stopping distance information. Some consumers asserted that stopping distance information could be used as an indicator for assessing the car as a whole, while others perceived stopping distance information as crucial information all by itself. These research findings do not directly contradict the assertions of either commenter. However, the findings do indicate that some consumers are interested in stopping distance information and that the information would be useful to those consumers when making their purchase decisions. Since this is the reason for requiring the information to be made available, NHTSA is not persuaded by the manufacturers' comments.

Several commenters stated that stopping distance information *as currently reported* is not useful to consumers. Volkswagen stated that the example offered in the NPRM of the differing reported stopping distances for the three largest U.S. automakers illustrated why the stopping distance information was not useful to consumers. The NPRM noted that the 1982 stopping distances reported by Ford and Chrysler showed that all of their domestically produced vehicles stop at exactly the maximum distance permitted by Standard No. 105, *Hydraulic Brake Systems* (49 CFR §571.105), while GM reported that its vehicles stopped on average in about 5 percent less than the maximum permissible distance.

First, Volkswagen stated its doubts that both Ford and Chrysler build all of their cars to stop exactly at the limit prescribed by Standard No. 105. Instead, Volkswagen stated that the reported stopping distances do not reflect the actual performance of the vehicles, but are "very conservative estimates." Volkswagen stated that the companies have a very strong incentive to overstate the actual stopping distances, so as to minimize consumer complaints that the car does not perform up to expectations. By being "conservative," Volkswagen stated that the manufacturers avoid consumer complaints, but also dilute the usefulness of the stopping distance information for comparative purposes. Hence, Volkswagen concluded that the requirement to provide stopping distance information should be rescinded altogether.

NHTSA does not agree with Volkswagen's premise that most manufacturers will follow this practice of reporting conservative estimates. For 1986, Ford and Chrysler were the only manufacturers that reported that their vehicles stopped at the limit specified in Standard No. 105. The other 16 manufacturers reported some value under that limit. Additionally, two manufacturers have in-

cluded stopping distance information in some of their television advertising during the past two years. This indicates either that those manufacturers believe that stopping distance information is an aspect of vehicle performance in which some consumers are interested or that stopping distance is indicative of the image they are trying to achieve for their vehicles. In either case, the advertising strategy of these manufacturers uses stopping distance information to distinguish the performance of one vehicle from another to try to influence consumers. Thus, no matter how plausible the Volkswagen premise sounds, it is simply not borne out by the facts.

Even if the premise were true, it is not clear to the agency why the commenter concluded that the requirement to report stopping distance information should be rescinded for all manufacturers, since some manufacturers have chosen not to report useful stopping distance information. To the contrary, it seems more responsible to conclude that some steps should be taken to encourage all manufacturers to report more representative stopping distance information. Indeed, it is possible that the marketplace itself will force manufacturers to report more representative stopping distance information, if the aforementioned advertising campaigns are effective. Alternatively, the agency could "market" the facts about stopping distance: stopping distance is an important safety attribute of a vehicle, not all comparable vehicles perform equally, and good driving skills become better when combined with better braking performance. By trying to get all manufacturers to provide more representative stopping distance information to consumers, the agency would better achieve its goal of informing consumers of performance differences in cars. If the agency rescinded the stopping distance requirements altogether, it would have simply abandoned that goal.

The Automobile Club of Southern California (ACSC) also directed its comments towards the practice of some vehicle manufacturers just publishing the limits allowed under Standard No. 105 as the stopping distance for all of their vehicles. ACSC commented that disseminating such information is not useful to consumers, and recommended that Standard No. 105 be reevaluated by the agency to determine if the results obtained according to Standard No. 105's test procedures are sufficiently accurate and useful as probable indices of the braking performance for the vehicles tested. This comment was probably based on the erroneous assumption that vehicle manufacturers are required to report the actual stopping distances measured under Standard No. 105 as the stopping

distance information under Part 575. Instead, Part 575 requires only that vehicle manufacturers report stopping distance values that can be *met or exceeded* by the group of vehicles in question. Those manufacturers that have chosen to report the Standard No. 105 stopping distance limit for all their vehicles have chosen a value that can be *exceeded* by the overwhelming majority of vehicles. If a regulatory change were chosen as the means for addressing this problem, it could be accomplished by amending Part 575 without changing the test procedures in Standard No. 105.

As stated earlier, Volkswagen commented on the NPRM's example that the 1982 stopping distance information reported by the three largest U.S. auto manufacturers showed that two of the three reported that all their vehicles stopped in the maximum distance allowed by Standard No. 105, while the other manufacturer reported that its vehicles generally stopped in a distance that was 5 percent less than the maximum allowed under Standard No. 105. According to Volkswagen, the 5 percent shorter stopping distance was "inconsequential" and "certainly not a good reason to purchase a vehicle." This comment misunderstands the purpose of the consumer information regulations. Under these regulations, manufacturers of new vehicles are required to provide consumers with pertinent safety information about the particular vehicles they might purchase. Thus, whether or not a 5 percent stopping distance difference is a good reason to choose a particular vehicle, it is a decision to be made by consumers and making such information available to consumers is the underlying purpose of the consumer information regulations.

American Motors Corporation stated its opinion that a consumer information program is not needed for stopping distance, because Standard No. 105 already specifies performance requirements for vehicle stopping distance. What is omitted from this argument is that Standard No. 105, like all of the Federal motor vehicle safety standards, merely establishes minimum levels of performance necessary for safe operation of vehicles on the public roads. The amount by which a vehicle exceeds those minimum levels, if any, is still relevant and useful information for consumers contemplating the purchase of that vehicle. Therefore, NHTSA does not find this argument persuasive.

After considering all the comments received, this agency has decided to amend Part 575 to incorporate the proposed actions with respect to the dissemination of stopping distance information. Vehicle manufacturers are no longer required to provide stopping distance information to the first

purchasers of new vehicles at the time of delivery of the vehicle. As noted in the NPRM, the purpose of requiring the dissemination of the stopping distance information is to provide consumers with relevant safety information on the different vehicle models they are considering purchasing. Requiring such information to be provided to consumers *after* they have just purchased a new vehicle does not serve this purpose. As explained at the beginning of this preamble, NHTSA is unaware of any other purpose that would be served by providing stopping distance information to consumers after they have purchased a new vehicle. No commenters disagreed with this proposed determination, or suggested some purpose that would be served by providing stopping distance information after a consumer has purchased a new vehicle.

On the other hand, the agency believes that the requirements to disseminate stopping distance information to each dealer and to this agency could serve the above-described intended purpose. Moreover, this purpose can be served while imposing minimal burden and cost on the vehicle manufacturers.

The National Automobile Dealers Association (NADA) indicated its support for the changes proposed in the NPRM. However, NADA asked that, in conjunction with the proposed amendments, the agency retain the requirements that manufacturers provide the stopping distance information to dealers free of charge and in sufficient quantity. NHTSA did not propose to amend those requirements, and has not changed them in this rule. Therefore, this rule will not result in any increase in burden for the dealers.

The NPRM asked for comments on the desirability of requiring the stopping distance information to be permanently labeled on vehicles, so as to ensure its availability for subsequent purchasers of the vehicles. One commenter, an individual, supported this idea, stating that it was "obvious that labels with stopping distance information would be best for consumers."

All of the other commenters that addressed this topic opposed the idea for a number of reasons. The motorcycle manufacturers stated that there is almost no place to put another label on a motorcycle. They believed that if stopping distance information requirements were to be retained for first purchasers, the manufacturers should be allowed to continue printing it in the owner's manuals. Several passenger car manufacturers stated that proper maintenance of the vehicle was a far more significant factor in a vehicle's braking performance for subsequent purchasers than was its braking performance when it was delivered to

the first purchaser. GM commented that requiring permanent labels to disseminate stopping distance information would cost manufacturers twice as much as requiring the information to appear in owner's manuals.

The agency sought comments on this topic to learn if there was an effective and inexpensive way to make stopping distance information available to prospective purchasers of used vehicles, in the same way that such information is available to prospective purchasers of new vehicles. If the information could be used for comparative purposes by persons shopping for a used car, NHTSA was considering proposing a requirement that stopping distance information be permanently affixed to new vehicles.

However, the agency agrees with the comments stating that maintenance of a particular vehicle would have the greatest impact on that particular vehicle's braking performance. This gives rise to the possibility that subsequent purchasers could be misled by the stopping distance information labeled on a vehicle. For instance, a vehicle with very good braking performance when it was new may subsequently exhibit very poor braking performance because of inadequate maintenance by the owner. A person purchasing the vehicle might be led to believe that the braking performance was still very good, because of the stopping distance label. NHTSA believes that any labeling requirement for stopping distance information would give rise to this potential misuse. Accordingly, the agency has no plans to propose adopting a stopping distance labeling requirement.

As explained above, the agency has concluded that no purpose was served by the requirement that vehicle manufacturers provide first purchasers with stopping distance information at the time of delivery of the new vehicle. The amendment made by this rule will relieve vehicle manufacturers of this unnecessary restriction, without lessening the information available to potential purchasers *before* they make a final purchase decision. Accordingly, the agency finds for good cause that this final rule should become effective immediately upon publication in the *Federal Register*, instead of 30 days after publication as is generally required by 5 U.S.C. 553(d).

In consideration of the foregoing, 49 CFR Part 575 is amended as follows:

1. The authority citation for Part 575 is revised to read as set forth below and the authority sections following §§575.6, 575.7, and 575.104 are removed.

AUTHORITY: 15 U.S.C. 1392, 1401, 1407, 1421, and 1423; delegation of authority at 49 CFR 1.50.

Issued on July 20, 1987

2. 49 CFR §575.6(a) is amended by revising the first sentence to read as follows:

§575.6 Requirements.

(a) At the time a motor vehicle is delivered to the first purchaser for purposes other than resale, the manufacturer of that vehicle shall provide to the purchaser, in writing and in the English language, the information specified in §§575.103 and 575.104 of this part that is applicable to that vehicle and its tires.

Diane K. Steed
Administrator

52 F.R. 27806
July 24, 1987

PREAMBLE TO AN AMENDMENT TO PART 575

Consumer Information Regulations (Docket 88-04; Notice 2)

ACTION: Final rule

SUMMARY: This notice amends Standard No. 109, *New Pneumatic Tires*, to include an additional maximum inflation pressure, 340 kPa, in the Standard. Before the effective date of this rule, the Standard requires that the maximum permissible inflation pressure for each tire must be either 32, 36, 40 or 60 psi, or 240, 280 or 300 kPa. The European Tyre and Rim Technical Organization (E.T.R.T.O.) submitted a petition for rulemaking requesting the inclusion of the 340 kPa pressure. After evaluating the petition and comments on the proposal, NHTSA has decided to include 340 kPa as a permissible inflation pressure.

EFFECTIVE DATE: June 20, 1988

SUPPLEMENTARY INFORMATION: Until the effective date of this rule, Standard No. 109, *New Pneumatic Tires*, requires that the maximum permissible inflation pressure for each tire must be 32, 36, 40 or 60 psi, or 240, 280 or 300 kPa. The standard specifies differing test criteria depending upon the maximum permissible inflation pressure.

The European Tyre and Rim Technical Organization (E.T.R.T.O.) submitted a petition for rulemaking requesting the inclusion of an additional inflation pressure, 340 kPa, in Standard No. 109. The petitioner stated that its members are receiving requests with increasing frequency from vehicle manufacturers for reinforced tires at an inflation pressure higher than 300 kPa, for purposes of safety and optimum vehicle handling. The requests for these tires are primarily for station wagons. E.T.R.T.O. requested that a pressure of 340 kPa be added, so that the standard inflation pressure for reinforced tires (280 kPa) can be increased for special performance requirements with no increase in tire load capacity.

On January 18, 1988, NHTSA published a notice of proposed rulemaking to allow a new maximum permissible tire inflation pressure. (53 FR 936.) NHTSA addressed petitions raising almost identical issues in 1978. As discussed in the January 18, proposal, the 300 kPa maximum pressure for non-reinforced tires was added to the standard in response to those petitions. The relationship of the 300 kPa non-reinforced

tire to the standard inflation pressure (240 kPa) non-reinforced tire is analogous to that of the 340 kPa reinforced tire to the 280 kPa reinforced tire. Thus, NHTSA tentatively concluded that the 340 kPa tire pressure should be added to Standard No. 109 for the same reasons the 300 kPa pressure was added. The agency explained its reason in detail in the January 18 proposal.

The agency received comments from Chrysler Motors Corporation, General Motors Corporation, General Tire, and Volkswagen of America. Each commenter endorsed the proposal. NHTSA is adopting the proposed changes for the reasons expressed in the proposal.

Further, the agency is issuing a conforming amendment to Table 1, 49 CFR 575.104, *Uniform Tire Quality Grading Standards*, to set out the 340 kPa maximum permissible inflation pressure. The agency inadvertently neglected to propose the Table 1 amendment when NHTSA issued the proposed rule. Without such an amendment, NHTSA could not conduct compliance testing for UTQGS of tires with a 340 kPa maximum inflation pressure. The agency finds that there is good cause for amending Table 1 without notice and comment because the amendment adds no new substantive requirement for tires with a 340 kPa maximum inflation pressure.

The agency finds that there is good cause for making this final rule effective in less than 180 days because the amendment relieves a restriction, and permits the sale of tires that can provide better performance without any negative impact on safety.

Impact Assessments

The agency has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291, nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The amendments do not impose new requirements for current tires, but instead permit a new category of tire. Since the new tires can provide better performance, the amendments will result in consumer benefits.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on

small entities. I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The agency believes that few of the tire manufacturers qualify as small businesses. Any tire manufacturers that do qualify as small businesses might benefit to a small extent by being permitted to produce these new tires. Small non-profit organizations and small governmental units are affected by the final rule only to the extent that they purchase motor vehicles. These small entities may benefit to a small extent if they purchase vehicles with these new tires.

The agency has analyzed this action under principles and criteria of Executive Order 12612, and has determined that this final rule does not have sufficient Federalism implications to warrant preparing a Federalism Assessment.

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the rule does not have any significant impact on the human environment.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Parts 571 and 575 are amended as follows:

Section 571.109 [Amended]

S4.2.1(b) is revised to read as follows:

(b) Its maximum permissible inflation pressure

shall be either 32, 36, 40 or 60 psi, or 240, 280, 300 or 340 kPa.

S4.2.2.2 is revised to read as follows:

S4.2.2.2 *Physical dimensions.* The actual section width and overall width for each tire measured in accordance with S5.1, shall not exceed the section width specified in a submission made by an individual manufacturer, pursuant to S4.4.1(a) or in one of the publications described in S4.4.1(b) for its size designation and type by more than:

(1) (For tires with a maximum permissible inflation pressure of 32, 36, or 40 psi) 7 percent, or

(2) (For tires with a maximum permissible inflation pressure of 60 psi or 240, 280, 300, or 340 kPa) 7 percent or 0.4 inch, whichever is larger.

S4.3.4 is revised to read as follows:

S4.3.4 If the maximum inflation pressure of a tire is 240, 280, 300, or 340 kPa, then:

(a) Each marking of that inflation pressure pursuant to S4.3(b) shall be followed in parenthesis by the equivalent inflation pressure in psi, rounded to the next higher whole number; and

(b) Each marking of the tire's maximum load rating pursuant to S4.3(c) in kilograms shall be followed in parenthesis by the equivalent load rating in pounds, rounded to the nearest whole number.

Tables I-A, I-B and I-C of Appendix A are revised to read as follows:

Table II of Appendix A is revised to read as follows:

Table 1 of PART 575 is amended to read as follows:

571.109—Appendix A

Table I-A For Bias Ply Tires With Designated Section Width of 6 Inches and Above

Cord Material	Maximum permissible inflation						
	32 lb/in ²	36 lb/in ²	40 lb/in ²	240 kPa	280 kPa	300 kPa	340 kPa
Rayon (in-lbs)	1,650	2,574	3,300	1,650	3,300	1,650	3,300
Nylon or polyester (in-lbs) . . .	2,600	3,900	5,200	2,600	5,200	2,600	5,200

571.109—Appendix A

Table I-B For Bias Ply Tires With Designated Section Width Below 6 Inches

Cord Material	Maximum permissible inflation						
	32 lb/in ²	36 lb/in ²	40 lb/in ²	240 kPa	280 kPa	300 kPa	340 kPa
Rayon (in-lbs).....	1,000	1,875	2,500	1,000	2,500	1,000	2,500
Nylon or polyester (in-lbs)...	1,950	2,925	3,900	1,950	3,900	1,950	3,900

571.109—Appendix A

Table I-C For Radial Ply Tires

Size Designation	Maximum permissible inflation						
	32 lb/in ²	36 lb/in ²	40 lb/in ²	240 kPa	280 kPa	300 kPa	340 kPa
Below 160 mm (in-lbs).....	1,950	2,925	3,900	1,950	3,900	1,950	3,900
160 mm or above (in-lbs)....	2,600	3,900	5,200	2,600	5,200	2,600	5,200

571.109—Appendix A

Table II—Test Inflation Pressures

Maximum permissible inflation pressure	32 lb/in ²	36 lb/in ²	40 lb/in ²	60 lb/in ²	240 kPa	280 kPa	300 kPa	340 kPa
Pressure to be used in tests for physical dimensions, bead unseating, tire strength, and tire endurance	24	28	32	52	180	220	180	220
Pressure to be used in test for high-speed performance	30	34	38	59	220	260	220	260

Issued on May 11, 1988

Diane K. Steed
Administrator
53 F.R. 17950
May 19, 1988

PREAMBLE TO AN AMENDMENT TO PART 575—CONSUMER INFORMATION

Vehicle Owner's Manual (Docket No. 88-13; Notice 2) RIN 2127-AC72

ACTION: Final Rule.

SUMMARY: This final rule amends the Consumer Information Regulations to require vehicle manufacturers to include information in the owner's manual for each vehicle about NHTSA's toll-free Auto Safety Hotline and its defect investigation and remedy and recall authority. This requirement will allow NHTSA to obtain more information, more expeditiously about potential safety-related defects and noncompliances with safety standards.

EFFECTIVE DATE: September 1, 1990.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1987, Motor Voters, a consumer organization interested in motor vehicle safety, petitioned the agency to require manufacturers of passenger vehicles to include information about NHTSA in the vehicle owners' manuals. Specifically, the petitioner requested that the agency require information advising owners about NHTSA's safety defect authority and urging them to contact the agency about potential safety defects in their vehicles. To facilitate contacting the agency, the petitioner requested that the agency require manufacturers to include the toll-free telephone number of the Auto Safety Hotline and the agency's address. The petitioner suggested that the message explain that while the agency has authority to investigate defects and order recall and remedy campaigns, it does not become directly involved in the dealings of a particular consumer with a manufacturer of a motor vehicle regarding a defect in that vehicle.

Notice of Proposed Rulemaking

In response to the petition, on November 10, 1988, NHTSA published a notice of proposed rulemaking (NPRM) proposing to amend title 49 CFR Part 575, *Consumer Information Regulations*. (53 FR 45527). The NPRM explained that the National Traffic and Motor Vehicle Safety Act ("Vehicle Safety Act." 15 U.S.C. 1381 *et seq.*) requires manufacturers of motor vehicles and motor vehicle equipment to recall and remedy vehicles and equipment that are determined

by the manufacturer or NHTSA to contain either a safety-related defect or a failure to comply with a Federal motor vehicle safety standard issued under the Vehicle Safety Act. The NPRM further noted that the agency's most important source of data used to identify defects which relate to motor vehicle safety is the consumer complaints made by persons calling the agency's toll-free Auto Safety Hotline. In 1987, the agency received 332,659 calls on the Hotline, of which 75 percent concerned alleged defects or recall information. In addition, over 15,092 of these Hotline callers followed by up completing and returning to NHTSA detailed Vehicle Owner Questionnaires which were mailed by the agency to callers reporting defects and seeking recall information. The NPRM also noted that a longstanding agency goal is to enhance publication of the Auto Safety Hotline and to improve the process of getting information from consumers about potential safety defects. The NPRM explained the agency's plans to publicize the Hotline through public service announcements in the media, through consumer and corporate safety offices, in telephone books, and through programs with State transportation agencies.

NHTSA tentatively concluded that the inclusion of the requested information in each owner's manual would be an important addition to NHTSA's public information campaign to increase consumer awareness of the Hotline and the agency's efforts to strengthen its defect investigation activities. The agency stated its tentative belief that including the Hotline number in owners' manuals would put that number in the hands of millions of motor vehicle purchasers at virtually no additional cost. Moreover, the NPRM noted that since owners typically refer to their manuals periodically throughout the ownership of their vehicles, especially when they are experiencing vehicle problems, the Hotline number printed in the manuals would be seen many times. The agency stated that inclusion of the Hotline number in manuals would be particularly important for new car owners, since it would produce a higher volume of calls about potential safety defects earlier in a vehicle's life. The agency believed that this

would be particularly important to detect defects in newly introduced models.

The NPRM accordingly proposed to amend section 575.6 of the Consumer Information Regulations to require motor vehicle manufacturers to include information about NHTSA's recall and remedy authority and about the Auto Safety Hotline in the owner's manual. The agency proposed requiring that all new motor vehicles, not just "passenger vehicles," be subject to the proposed amendment. The agency explained that facilitating owner reporting of potential safety defects would be important for all types of motor vehicles. The agency also made minor changes in the information requirements requested in the petition.

The proposed amendment required a manufacturer to state in each owner's manual that consumers may contact NHTSA if they believe that their vehicle contains a safety defect. The proposed amendment also required that the manuals include the toll-free Hotline telephone number and agency address. Finally, the proposed amendment required that manufacturers include in the manuals a statement about the agency's authority to order a safety recall if it finds that a safety defect exists in a group of vehicles.

Comments and The Agency's Response

NHTSA received 24 comments in response to the NPRM. Commenters included 15 automotive manufacturers and automotive affiliates; four academic, medical, and insurance groups; and five consumers and consumer organizations. The agency considered all these comments in developing this final rule.

General Comments

American Honda, American Insurance Association (AIA), Cagiva Motorcycle of North America, Children's Mercy Hospital, the National Consumers League (NCL), the University of Maryland's Center for Business and Public Policy, US Public Interest Research Group ("US Pirg"), and several citizens favored the proposal. US Pirg stated that the proposal would be a cost-effective and efficient way to improve consumer awareness of the Hotline. NCL commented that this measure would further the agency's need to receive information about safety defects so that the agency can protect the consumer.

On the other hand, Chrysler, Ford, General Motors (GM), General Tire, Mercedes, Michelin, the Motor Vehicle Manufacturers Association (MVMA), the National Automobile Dealers Association (NADA), Navistar, Volkswagen and Volvo opposed the proposal. NADA stated that there was no need for the rule and suggested NHTSA reevaluate the proposal. MVMA similarly commented that there was no safety need for this requirement. Ford, Michelin,

MVMA, Chrysler, General Tire, GM, and Volkswagen elaborated that the proposal was unnecessary, might adversely affect customer manufacturer relations, delay corrective action, and overburden the agency's resources to respond to calls. Mercedes stated that the proposal would give consumers the false impression that they could receive immediate action related to their problems and that resolution of the problem would be delayed. Volvo commented that the rule would not be in the best interests of the vehicle owners, who would be better served by contacting the manufacturer rather than NHTSA.

Upon considering these comments in light of current trends in consumer awareness, NHTSA concludes that the benefits of increasing the availability of information about consumer remedies support the inclusion of information about the agency in the owner's manuals. Calls to the Hotline decreased from about 332,000 in 1987 to 252,000 in 1988, a reduction of about 24 percent. In turn, receipt of Vehicle Owner's Questionnaires decreased from about 15,000 in 1987 to about 12,000 in 1988. The agency believes that this new information will increase consumer awareness about the Hotline and the agency's defect investigation activities, especially for newly introduced models, and thus will improve the agency's information about potential safety defects and noncompliances. The agency is accordingly adopting the proposals. The increased dissemination of information about NHTSA will enable the agency to identify, investigate, and resolve potential problems more rapidly, because the agency will have a more extensive and more timely data base for analyzing owners' experiences with a given problem.

Chrysler, MVMA, and Volkswagen disagreed with the statement in the NPRM that the Hotline was the agency's most important source of data used to identify safety-related defects. Although the commenters are correct in noting that many recalls are initiated by manufacturers based on their own tests and field evaluations, the statement referred to NHTSA's own investigations, which continue to influence a high percentage of the total vehicles recalled and which rely heavily on consumer contacts through the Hotline.

Message's Language

The NPRM proposed to require the following message in the owner's manual:

If you believe that a vehicle or item of motor vehicle equipment (such as tires, lamps, etc.) has a potential safety-related defect, you may notify the National Highway Traffic Safety Administration (NHTSA). You may either call toll free at 800-424-9393 (or 366-0123 in Washington, D.C.) or write Administrator, NHTSA, 400

Seventh Street, S.W., Washington D.C. 20590. NHTSA investigates alleged safety-related defects and may order a recall and remedy campaign if it finds that a safety defect exists in a group of vehicles and the manufacturer does not voluntarily conduct a recall and remedy campaign. However, NHTSA does not become directly involved in the dealings between a particular consumer and a vehicle manufacturer regarding a defect in the consumer's vehicle.

Mercedes and other manufacturers commented that this proposed language would hinder their relationship with their customers by delaying the correction of vehicle problems and by providing the unrealistic expectation that NHTSA can remedy the problem. According to these commenters, a consumer should contact the manufacturer before contacting the agency because the manufacturer is in a better position to actually remedy a safety related defect.

In response to this comment, NHTSA iterates that requiring this message will help to publicize the Auto Safety Hotline and NHTSA's related activities. The agency believes that NHTSA might lose valuable information from owners if the message did not initially focus on the agency's information collection responsibilities. For instance, in order for NHTSA to react quickly to reports of a defect trend, it is necessary for the agency to receive the information as soon as possible. The agency believes that this invitation for early consumer communication to NHTSA will also encourage manufacturers to act quickly to address consumer concerns. The agency further notes that even if NHTSA is contacted first, a manufacturer still will become aware of a problem because the agency will notify them about these complaints.

NHTSA nevertheless agrees with the commenters that the public should be instructed to also contact the manufacturer. Therefore, the agency has revised the message to state that a consumer should also contact the manufacturer or its designate (e.g., its authorized dealer) to resolve safety-related or other problems with the vehicle. In addition, the final rule explains NHTSA's authority and limitations more clearly. NHTSA believes that these modifications will increase the effectiveness of the message.

The agency emphasizes that NHTSA's message is mandatory, and thus a manufacturer cannot modify or otherwise vary it. Nevertheless, the agency notes that a manufacturer may place additional language elsewhere in the owner's manual encouraging a vehicle owner to contact them, provided that this additional information is not included in the message required by NHTSA and does not otherwise dilute the content of the required message.

GM suggested that the message be written in a

"plain English" style. After reexamining the proposal's wording, NHTSA agrees with GM that to increase the final rule's effectiveness, the message should be written in an easily understood style. Accordingly, the final rule adopts more simplified wording whenever such wording does not misstate the legalities or realities of NHTSA's defect investigation and recall and remedy program.

Volkswagen commented that listing examples of equipment would result in consumers overreporting those items of equipment. In response to this comment, NHTSA has decided to eliminate these examples in the required message. The agency agrees with Volkswagen that including examples might bias the reporting and thus provide an inaccurate record of overall complaints about equipment. Accordingly, the final rule deletes reference to "tires, lamps, etc."

Several commenters noted that the proposed message should include more information than the NPRM proposed. The American Insurance Association (AIA) and Gillis and Associates stated that the final rule should contain information about other NHTSA activities such as drunk driving and odometer fraud. The NCL commented that NHTSA should expand the message to inform consumers that they should contact other consumer organizations such as the Better Business Bureau. NADA suggested that the required message should state that consumers should initially refer to the warranty booklet's section concerning dispute resolution and then contact the manufacturer.

After reviewing these comments, NHTSA has decided to include a general statement that a consumer can "get other information about motor vehicle safety from the Hotline." Nevertheless, the agency believes that the final rule should not include detailed information about NHTSA's other consumer protection matters. The agency notes that the principal purpose of this rule is to disseminate information about the Auto Safety Hotline and NHTSA's defect investigation authority which will lead to the increased reporting of potential safety defects and noncompliances with safety standards. The agency further notes that the rule is not intended as an all-encompassing source of consumer information. NHTSA believes that if the message were required to address all the agency's activities and consumer protection, then the most important information about this rulemaking (the Hotline and NHTSA's defect investigation authority) would be obscured.

The agency notes that upon contacting the Auto Safety Hotline, the caller will receive information about NHTSA's other activities. As for consumer protection information (e.g., warranty information), NHTSA notes

that this type of activity is beyond the agency's statutory mandate.

Applicability of Requirement

Motor Voter's petition requested that NHTSA require "passenger vehicle manufacturers" to include information about the Hotline and the agency's defect investigation authority. The NPRM expanded the applicability of this requirement to "all new motor vehicles," reasoning that "facilitating owner reporting of potential safety defects is important for all types of motor vehicles."

US Pirg agreed with NHTSA's decision to expand the requirement's applicability to all motor vehicles. The Truck Trailer Manufacturers Association (TTMA) commented that the rule would create problems for small truck trailer manufacturers, some of which currently do not provide an owner's manual.

After reviewing these comments, NHTSA concludes that the final rule should be applicable to all motor vehicles, because any vehicle type may experience a safety-related defect. However, to accommodate a manufacturer that does not provide an "owner's manual," as defined in section 572.2(c) of the final rule, the rule provides that the manufacturer may provide the information in a separate one-page document to be included with the sales documents. In other words, a manufacturer must include the required information in the owner's manual if it provides one, or in a separate document if it provides no manual.

Placement of Information

The NADA suggested that a manufacturer be given the option of including the required information in the warranty booklet rather than in the owner's manual, claiming that consumers would more likely look in the warranty booklet for assistance with defect matters. GM stated that the manufacturer was in the best position to determine placement of the required information, suggesting that this information be placed in its "Warranty and Owner Assistance Information" booklet. GM stated that a manufacturer should not be required to place this information in the owner's manual.

After reviewing these comments, NHTSA has determined that the manufacturer must include this information in the owner's manual. The agency believes that requiring the information to be placed in the owner's manual will promote uniformity among manufacturers. In addition, NHTSA notes that placing the information in the warranty book would be less effective because the warranty lasts for a finite time (often much less than the life of the vehicle), after which a vehicle owner would have little reason to retain the book. In contrast, many manufacturers state in the owner's manual that this

document should stay with the vehicle for its life, even if it is sold. Thus, it is more likely that a vehicle's owner or owners will retain the owner's manual for a longer time period than the warranty booklet. The agency notes that a manufacturer may place this information in any additional document provided that it includes this information in the owner's manual.

The agency is aware that manufacturers refer to such documents by many terms, including "Owner's Guide," "Owner's Handbook," or "Operating Instructions." Accordingly, the final rule expressly defines an "owner's manual" in section 575.2(c) as "the document which contains the manufacturer's comprehensive vehicle operating [and maintenance] instructions, and which is intended to remain with the vehicle for the life of the vehicle."

Several organizations commented about the placement of this information within the owner's manual. Volvo Truck stated that a manufacturer should have discretion about where it places the information. Volkswagen stated that this information be placed near the information on customer assistance. Gillis and the Center for Business and Policy did not suggest a specific location in the manual but noted that the agency should require that a manufacturer refer to it in the table of contents. US Pirg suggested that the agency require the information to be placed in a prominent location such as the front or back cover to prevent a manufacturer from "bury(ing)" it. NCL stated that the agency should specify the location to reduce reporting discrepancies. It suggested in order of preference that the information be placed opposite the first page of the table of contents, on the inside front cover, in the text preceding the maintenance schedule, or on the inside back cover.

After reviewing these comments, NHTSA agrees with Volvo Truck that a manufacturer should be given discretion about where it places the information. The agency believes that requiring the table of contents to include reference to the Hotline will adequately ensure that vehicle owner's will see this information. Accordingly, section 575.6(a)(2)(B) of the final rule also requires that the table of contents in the owner's manual specify the location of the information about NHTSA. In particular, the heading must be entitled "Reporting Safety Defects" and include the corresponding page number to effectively alert consumers and to provide uniformity as to the heading.

Two commenters offered their views on the type size. Volvo GM Heavy Truck requested that the type size be left to the manufacturer's discretion. NCL commented that the rule should specify a minimum point size for the type. It further stated that NHTSA should specify a minimum amount of space not less than one-half page for this information.

NHTSA has concluded that to be easily readable the required message must be written in letters and

numbers not smaller than 10 point type, and has incorporated that requirement in the final rule. The agency notes that the point type size is consistent with the labeling requirements in S5.5.2 of Standard No. 213. The agency concludes that it is superfluous to specify a minimum page length because the final rule specifies the type size and the message itself.

Effective Date

The NPRM proposed that the rule would become effective "180 days after the publication of the final rule." Several manufacturers requested that the effective date coincide with the start of the model year to avoid unnecessary costs that would result in reprinting manuals during the middle of a model year. American Honda suggested that the effective date coincide with the change in model year. Volvo GM Heavy Truck requested that the effective date be changed to "January 1, or at the option of the manufacturer, the time of model year change-over." Cagiva, which changes its motorcycle models every two to four years, requested an effective date that would "allow us adequate lead time to incorporate the regulatory language" at the start of its model run. Chrysler recommended an effective date of the "first day of September occurring 180 days after publication of the final rule." Navistar requested an effective date of 270 days after the final rule's publication. US Pirc noted that the agency should "act promptly."

After reviewing these comments, NHTSA determines that the effective date will be September 1, 1990, which typically is the beginning of a model year for most vehicles. The agency believes that this effective date will allow the timely inclusion of this information at little or no cost to the manufacturers.

Cagiva requested that the final rule allow it to exhaust its supply of already printed manuals, explaining that its model runs may extend up to four years. A manufacturer whose models run for more than one year may comply with the final rule by placing an add-on-sticker on its existing manuals, until this supply is exhausted. The agency believes that this will ensure that consumers receive the information while minimizing the costs related to this rule for manufacturers like Cagiva.

Section 575.2(c) is amended by adding the following definition of "Owner's manual" after the definition for "Maximum loaded vehicle weight" and before the definition for "Skid number":

(c) *Definitions used in this part.*

* * * * *

"Owner's manual" means the document which contains the manufacturer's comprehensive vehicle

operating and maintenance instructions, and which is intended to remain with the vehicle for the life of the vehicle.

* * * * *

Section 575.6(a) is revised by redesignating the existing language as Section 575.6(a)(1), and adding a new Section 575.6(a)(2), to read as follows:

§575.6 *Requirements.*

(a)(1) * * *

(2)(A) At the time a motor vehicle manufactured on or after September 1, 1990 is delivered to the first purchaser for purposes other than resale, the manufacturer shall provide to the purchaser, in writing in the English language and not less than 10 point type, the following statement in the owner's manual, or, if there is no owner's manual, on a one-page document:

"If you believe that your vehicle has a defect which could cause a crash or could cause injury or death, you should immediately inform the National Highway Traffic Safety Administration (NHTSA) in addition to notifying [INSERT NAME OF MANUFACTURER].

If NHTSA receives similar complaints, it may open an investigation, and if it finds that a safety defect exists in a group of vehicles, it may order a recall and remedy campaign. However, NHTSA cannot become involved in individual problems between you, your dealer, or [INSERT NAME OF MANUFACTURER.]

To contact NHTSA, you may either call the Auto Safety Hotline toll-free at 1-800-424-9393 (or 366-0123 in the Washington D.C. area) or write to: NHTSA, U.S. Department of Transportation, Washington, D.C. 20590. You can also obtain other information about motor vehicle safety from the Hotline."

(2)(B) The manufacturer shall specify in the table of contents of the owner's manual the location of the statement in 575.6(a)(2)(A). The heading in the table of contents shall state "Reporting Safety Defects."

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Issued on: November 21, 1989

Jeffrey R. Miller
Acting Administrator

54 F.R. 48745
November 27, 1989



PREAMBLE TO AN AMENDMENT TO PART 575

Consumer Information Regulations Uniform Tire Quality Grading Standards (Docket No. 25; Notice 62) RIN 2127-AB21

ACTION—Final Rule.

SUMMARY: The Uniform Tire Quality Grading Standards (UTQGS) require that manufacturers and brand name owners of passenger car tires provide consumers with information about the relative performance of a tire in terms of treadwear, traction, and temperature resistance. This notice amends the treadwear grading procedures by adopting four proposals that are intended to reduce the variability of the test results and simplify the calculations related to treadwear grades. First, the rule requires the wheel alignment of a test vehicle to be set more precisely based on the vehicle manufacturer's alignment specifications. Second, the rule amends the requirements related to tire rotation so that each tire in a test convoy is driven on each wheel position on each vehicle for the same distance. Third, the rule permits the use of a simplified treadwear grading method so that tire tread depth measurements may be taken twice rather than nine times, fourth the rule replaces the previous practice of assigning grades in 10-point intervals to reflect the differences in treadwear with a new practice of assigning grades in 20-point intervals.

EFFECTIVE DATE: These amendments are December 15, 1990 except the amendment on the grading interval is effective one year after the publication of the final rule.

SUPPLEMENTARY INFORMATION:

I. Background Information

Section 203 of the National Traffic and Motor Vehicle Safety Act ("Vehicle Safety Act") requires the Secretary of Transportation to prescribe a "uniform quality grading system for motor vehicle tires." As explained in that section, the purpose of this system is to "assist the consumer to make an informed choice in the purchase of motor vehicle tires." The agency has specified these requirements in the Uniform Tire Quality Grading Standards (UTQGS) regulation (49

CFR § 575.104), which requires that manufacturers or brand name owners of passenger car tires provide consumers with information about their tires' relative performance in terms of treadwear, traction, and temperature resistance.

The primary purpose of the treadwear grades is to aid consumers in the selection of new tires by informing them of the relative amount of expected tread life for each tire offered for sale. This allows the tire purchaser to compare passenger car tires based on tread life. Although these treadwear grades are not intended to be used to predict the actual mileage that a particular tire will achieve, they must be reasonably accurate to help consumers predict the relative tread life.

The treadwear grades are based on the test results of tires traveling 6,400 miles over a single, predetermined course on public roads near San Angelo, Texas. These grades represent a comparative rating of treadwear on tested tires. For example, a tire graded 180 would last one and a half times as long on the government course as a tire graded 120. The relative performance of tires, however, depends on the actual conditions of their use and may depart significantly from the norm due to variations in driving habits, service practices, and differences in road characteristics and climate.

Since the treadwear upon which the grades are based occurs under outdoor road conditions, any comparison between candidate tire performances must involve a standardization of results by correction for the particular environmental conditions of each test. Accordingly, the treadwear performance of a candidate tire is measured by comparing its wear rate with that of a "course monitoring tire" (CMT) run in the same test conditions. The treadwear of the CMT reflects changes in course severity due to factors such as road surface wear and environmental conditions and is used to adjust the measured treadwear of the candidate tire.

Under the current regulations, each test convoy consists of one rear-wheel-drive passenger car with four CMTs and up to three other rear-wheel-drive passenger cars with the candidate tires of the same construction type. 49 CFR § 575.104(e)(1)-(2). Candidate tires on the same axle must be of the identical manufacturer and line, but front tires on a test vehicle may differ from rear tires as long as all four are of the same size designation. After a two circuit (800 mile) break-in period, the initial tread depth of each tire is determined by averaging the depth measures in each groove at six equally spaced points. After each 800 miles of the test, each tire's tread depth is measured again in the same manner, the tires are rotated on the car, the order of the cars in the convoy is changed, and the wheel alignments are readjusted if necessary to come within the ranges of the vehicle manufacturer's specifications. At the end of the 16-circuit test, each tire's overall wear rate is calculated from the tread depths measured after each interval by using the regression line technique in Appendix C of § 575.104.

NHTSA has long been concerned with variability in the treadwear test results and grades. Less variability in treadwear test results will provide consumers with more precise information on relative tread life of different tires. To the extent that the variability in treadwear results is reduced, the treadwear grades calculated from them will provide consumers with more accurate information. Accordingly, the agency has examined possible means to reduce the variability of treadwear. These studies indicate that differences in treadwear are caused by variability in such factors as tire pressure, loading, wheel alignment and suspension, vehicle make and model, the impact of different driver characteristics, tire rotation, and environmental factors such as temperature, presence of moisture, and season.

II. Notice of Proposed Rulemaking

The agency issued a notice of proposed rulemaking on January 19, 1989 (54 FR 2167), which proposed four methods that the agency tentatively concluded would make the treadwear grades more representative by reducing the variability or simplifying the calculations related to these grades. First, it proposed to require the wheel alignment of the test vehicle to be set at the midpoint of the permissible range specified by the manufacturer. Second, it proposed to amend the rotation provisions to require convoys to contain four cars so that each tire would be driven on each wheel position on each vehicle for the same distance throughout the convoy. Third, it proposed to simplify the treadwear grading method so that tire tread depth measurements would be taken only after the break-in period and at the conclusion of the test. Fourth, it proposed to replace the current practice of assigning grades in 10-point intervals to reflect differences in

treadwear with a new practice of assigning grades in 20-point intervals. Each proposal will be discussed in detail later in the notice.

Comments to NPRM

In response to the NPRM, NHTSA received comments from the Rubber Manufacturers Association (RMA), the European Tyre and Rim Technical Organization (ETRTO), the Japanese Automobile Tire Manufacturers' Association (JATMA), and Standards Testing Laboratories (STL). The agency considered all the comments in developing this final rule and addresses the significant ones below. For the convenience of the reader, this rule uses the NPRM's organization and format.

III. Amendments to the UTQGS Treadwear Requirements

A. Wheel Alignment Specifications

The current UTQGS provisions require the evaluator to "adjust wheel alignment to that specified by the vehicle manufacturer" after the break-in period and after each 800 miles. (575.104(e)(2)(iv)). Because manufacturers typically specify a permissible range for each Alignment factor, this means, in practice, that wheel alignment factors such as toe-in, caster, and camber currently may vary by as much as 1/8 inch. [Toe-in is the degree to which the front wheels turn in so that their forward radii are closer together. Caster is the tilting of the steering axis either forward or backward from the vertical. Camber is the inward or outward tilting of the front wheels from the vertical.]

The NPRM proposed to require a test vehicle's wheel alignment for toe-in, caster, and camber be set at the midpoint of the permissible range specified by the vehicle manufacturer. The agency tentatively concluded that a requirement that precisely specified wheel alignment would serve to reduce the variability of treadwear grades. This proposal was based on a 1983 study by the Southwest Research Institute which determined that a range of 1/8 inch between permissible wheel alignment settings resulted in a variance of as much as 14 percent in the average wear rate for three convoys. ("An Evaluation of the Effects of Load and Pressure on Tire Treadwear." SRI, Docket 00-25-GR-256, DOT HS-806 456, June 1983).

In its comment, RMA recommended that "realistic tolerances be established for each of the alignment settings." Similarly, STL stated that maintaining alignment at the midpoint of the permissible range would, at times, be impossible to achieve. Even if possible to achieve, it commented that such a requirement would raise costs unreasonably.

NHTSA notes that the purpose of the amendment is to reduce variability by prescribing exact alignment

settings rather than a range. Thus, allowing a "tolerance." (i.e., a permissible range of variation) is contrary to the purpose of this amendment. Furthermore, based on NHTSA's actual experiences with wheel alignment, the agency believes that setting precise alignment settings, while difficult, is nonetheless feasible. Once wheel alignment is set, it can be checked and maintained throughout a convoy test. The current procedure requires wheel alignment to be adjusted at the beginning of the test and after each 800 miles. The amendment does not alter the number of alignments but does require greater precision. Even so, because it typically takes less than twenty minutes per car to measure and adjust wheel alignment, the increase in costs, if any, are minimal. ETRTO commented that even though setting the test vehicle's wheel alignment at the midpoint of the manufacturer's specified range would reduce variability of tread wear grades, they believed that the vehicle manufacturer's procedures for setting wheel alignment must be followed. In response to ETRTO's comment and after additional review of practices related to wheel alignment, NHTSA has decided to modify its proposal. The agency notes that vehicle manufacturers sometimes specify nominal settings that are not at the midpoint. For instance, Ford has specified the camber setting for its Crown Victoria to be at a nominal setting of $-1/2$ inch with a minimum setting of $-3/4$ inch and maximum setting at $+1/4$ inch. The agency believes that because a vehicle manufacturer is uniquely situated to prescribe the proper use of its vehicles, its procedures should be followed in setting wheel alignment. Thus, the agency is modifying the final rule to address those cases in which the vehicle manufacturer specifies a nominal setting that is not at the midpoint of the specified range. As amended, the requirements related to wheel alignment in section 575.104(e)(2) provide that the midpoint will be used, unless the manufacturer specifies another setting, in which case the manufacturer's setting will be used. As a practical matter, the agency notes that most testing organizations align wheel settings to the middle of the manufacturer's specifications, or to the nominal setting for caster, camber, and toe-in. Thus, this amendment will formalize current testing and enforcement practices and establish a uniform procedure for all contractors to follow.

B. Tire Rotation Among Convoy Vehicles

The current UTQGS provisions require that tires be rotated to each wheel position on a given passenger car in a test convoy. (575.104(e)). However, tires are not required to be rotated to the other cars in a convoy.

NHTSA proposed amending the treadwear grading provisions to require that tires be rotated among the four passenger cars composing a test convoy. As proposed, each tire would occupy each of the four wheel

positions on each of the four cars in a convoy for 400 miles. The agency believed that this proposal would help to eliminate variability in treadwear grades caused by tires being tested on different cars. The proposal was designed to reduce variability caused by driver and vehicle factors that affect the treadwear rates because each tire would be exposed to the same factors at each wheel position on each car in the convoy. The NPRM cited a study which attributed a 30-percent difference between the highest and lowest treadwear rates to factors other than the qualities of the tires themselves. (see "Analysis of Course Monitoring Tires on Vehicles of Different Makes." NHTSA. Docket 00-25-GR-269. June 1988). Based on the study, NHTSA tentatively concluded that this proposal would significantly reduce the variability in treadwear grades resulting from the test car and driver factors.

Several commenters stated that the proposal would be infeasible and create hardships to the testing organizations. RMA stated that the large number of tire and wheel sizes would make the proposal "impossible to achieve." ETRTO stated that the proposal would be restrictive because each vehicle in a convoy would have to be the same type to allow the wheels to be interchangeable. RMA and ETRTO also commented that the proposal would result in a great deal of expense because CMTs would be needed in virtually every size from 13 inch to 17 inch diameters. JATMA similarly believed that the proposal would result in restricting treadwear testing to a single tire size. STL and ETRTO were concerned that the proposal would result in significant cost increases but failed to provide cost data to support this claim. Like RMA, STL stated that the proposal would force testing companies to increase their fleet sizes to accommodate different four-car convoys for each tire size. STL was also concerned that it would be more difficult to get tires for a given test.

NHTSA disagrees with the commenters' concerns about the feasibility and the cost of the proposal to require tire rotation among cars in the test convoy. The agency believes that even though the amendment will require that each vehicle must be able to accommodate all of the tires within the convoy regardless of size, this requirement is necessary to reduce the effects of driver and vehicle variability. The agency does not believe it will be a significant hardship to the industry. The agency notes that manufacturers have established an industry practice in which they test 14-inch tires and apply the test results to grade both 14-inch and 15-inch tires. As a result, approximately 85 percent of the treadwear tests are conducted on 14-inch tires. As for the remaining 15 percent of tires, the agency acknowledges that evaluators will have to test 13-inch and 16-inch tires. However, the agency believes that the manufacturers can minimize the effects of this requirement through planning and coordination. As an option

to running separate convoys for each tire size, it is possible to use versatile vehicles that can be equipped with tires of different sizes. The agency further notes that tires of a certain diameter but of differing tire widths could be part of a four-car convoy because such tires are interchangeable. Similarly, NHTSA does not foresee the amendment resulting in any significant changes in the number of cars in treadwear test convoys, since 89 percent of the convoys in 1988 were composed of four cars.

NHTSA anticipates only a minimal cost impact from the rotation of tires among cars in a treadwear test convoy. The agency expects that the amendment will result in a marginal labor cost increase of approximately \$20 per vehicle, which represents only 0.7 percent of the current test cost of \$2,750 per vehicle. As for costs associated with the size of a testing organization's vehicle fleet, the agency acknowledges that the amendment may require a testing laboratory to acquire a greater variety of test vehicles for its overall fleet. However, the overall vehicle fleet size will be essentially the same because the miles per vehicle will be unchanged. Thus, the long-term impact of this amendment is to affect the mix of vehicle types and not the overall size of vehicle fleets.

Conversely, the agency anticipates several cost savings and other benefits as a result of this amendment. Most importantly, NHTSA believes that this amendment will further reduce variability by serving as an impetus for UTQGS testing organizations to standardize the type of vehicles selected for the majority of its convoys. It should also serve to reduce the number of convoys, increase the number of candidate tires to be tested by each convoy, and result in a cost savings since the ratio of CMTs to candidate tires will likely be smaller since four car test convoys will be the norm. In addition, the revision to the test procedures will allow radial CMTs to be used in all tests since the tires will be rotated among convoy vehicles in sets of four. Thus, there will be no problem with mixing tires of different construction types on any convoy vehicle. As a result, bias or bias-belted CMTs will no longer be needed.

In response to RMA's concern that some tire and wheel assemblies are so unique to a single vehicle (e.g., the Chevrolet Corvette, which specifies P275/40ZR17 front and P315ZR17 rear tires) as to preclude their use on any other vehicle, NHTSA notes that similar problems occur under the existing rotation requirements. For instance, the vehicle on which the Corvette's 17-inch tires were recently tested had to be modified, because of loading problems. Nevertheless, to reduce the potential hardships of testing tires used on unique vehicles, the agency has modified the final rule to permit two-car convoys along with four-car convoys. Thus, if tires used on unique vehicles need to

be tested, only two rather than four cars will have to be modified or leased to test the tires used on such vehicles. The agency notes that tire rotation in a two-car convoy will still require each tire to be tested on each wheel position for the same distance. Therefore, the agency expects that non-tire sources of variability will be similarly reduced in both two-car and four-car convoys.

NHTSA agrees with STL's comment that if different vehicle types are included within a convoy, vehicle weights may have to be adjusted when tires are rotated to a different type of vehicle. Nevertheless, the agency notes that such a situation poses similar problems under the current requirements, which permit candidate tires of different brands or tire lines to be on each axle. Thus, the only significant difference under the amendment will be that tire rotation will be to other vehicles rather than on one vehicle. In addition, as the agency explained above, any requirement that results in an increased standardization of vehicle types in a test convoy is beneficial because it helps to reduce variability.

RMA recommended that NHTSA run one radial CMT convoy each testing day to uniformly define environmental and road surface variations. Under this suggestion, candidate tires would be run in separate convoys of one to four vehicles. RMA stated that its suggestion would have the advantage of requiring only one size and type of CMT.

NHTSA notes that under both the present procedure and the proposal, four CMT tires must accompany the candidate tires in each convoy. This procedure serves to limit the effects of the non-tire sources of variability such as the driver, the test vehicle, and environmental factors. For instance, over the 6,400 mile course, variability caused by changes in weather and the time of day affect treadwear. Therefore, it is essential that the CMTs accompany each convoy to monitor the conditions uniquely affecting that particular convoy.

After reviewing the proposal in light of the comments, NHTSA continues to believe that requiring rotation of tires to each wheel position of each car in a test convoy will limit the effects of vehicle and driver variability. Along with the factors considered in the NPRM, the agency has determined that rotating tires among convoy cars reduces the coefficient of variation for treadwear to 3 percent from the 10 percent level experienced under the current requirement. Accordingly, the notice amends section 575.104(e) to require tires to be rotated among convoy vehicles so that each tire is at each wheel position in the test convoy for the same distance. As mentioned above, in response to RMA's concern about the testing of tires used with unique vehicles, the agency has modified the final rule to permit convoys containing either two or four cars.

C. Simplification of the Treadwearing Grading Procedure

NHTSA also proposed to simplify the grading procedures for measuring tread depth nine times during the 6.400 mile test. Accordingly, an evaluator using a four-car convoy must make 4,320 measurements (the number of cars in a convoy (four) times the number of tires on each car (four) times the grooves on each tire (five) times equally spaced points on each groove (six) times the number of measurements due to tire rotation (nine)). After making these 4,320 measurements, the evaluator must calculate the measured treadwear rate by making a regression analysis of tread depth versus mileage.

NHTSA proposed amending the treadwear grading procedures to reduce the number of tread depth measurements from 9 to 2: after the break-in period and at the end of the testing. The proposal would thus reduce the total measurements from the current 4,320 to 960 measurements.

The agency tentatively concluded that the proposal simplifying the method of measuring tread depth would provide sufficient data to determine treadwear for several reasons. First, since wear rates are essentially linear, only two points are needed to establish the slope of tread wear. Second, an agency study determined that treadwear grades obtained by the simplified two-point method were not significantly different from the nine-point method. ("Treadwear Grade Comparison Between Standard and Simplified Methods," NHTSA, Docket 00-25-GR-270, June 21, 1988]. Third, it noted that the calculation of tires' treadwear rates would also be simplified because a simple arithmetical formula would be used to calculate treadwear rather than the currently required regression analysis.

RMA, ETRTO, JATMA, and STL opposed the proposal to change the treadwear measurement procedures. RMA claimed that the simplified grading method would result in increased variability. It further stated that recording intermediate measures provides a check against errors and treadwear anomalies. ETRTO objected to the simplified method claiming that the grades obtained by the simplified grading method would differ significantly from the current grading procedure. JATMA also favored the current grading practice because the regression analysis is "highly precise."

In response to RMA's specific criticism that variability would increase under the simplified grading method, the agency used both methods to calculate treadwear grades. These calculations indicated that the differences between the two methods were not statistically significant. In the few situations where grade calculations did differ, the differences were typically within the 10-point round off increment. Thus, the differences between the two grading methods would

have little, if any, effect on the final grade determination.

In response to RMA's and JATMA's arguments supporting the need for intermediate measurements, the agency notes that its experience with the two-point method is that it accurately measures treadwear without the need for intermediate measurements. The agency wishes to emphasize that the simplified "two-point" grading method is in some respects a misnomer because each data point is actually the average of 30 measurements per tire (five grooves on a tire times six equally spaced points on a groove). Each of the 30 measurements per tire should be the same or only slightly different for that tire; if they differ significantly, the treadwear for that tire will be remeasured. In addition, under the simplified grading measure, the evaluator is still required to inspect for treadwear anomalies when the tires are rotated. Similarly, the tire is immediately inspected if a vehicle experiences an event which may adversely affect treadwear such as hitting an obstacle or hard braking. Thus, even without intermediate measurements, the simplified procedure will still allow for detection of any significant treadwear anomalies.

NHTSA disagrees with ETRTO's comment that "valuable technical data" will be lost if the simplified two-point method is substituted for the nine-point method. While intermediate measurements may provide some information about the trend the treadwear is taking, the agency does not believe that this information is of sufficient importance to warrant requiring the intermediate measurements. The agency further notes that a tire manufacturer or test facility can take the intermediate measurements, if it finds such information worthwhile.

ETRTO stated that because treadwear is non-linear, the grades obtained by the simplified method will differ significantly from the current procedure. The agency agrees that while treadwear is not perfectly linear for radial tires, the differences in terms of assigning treadwear grades will not be significant. In the agency's view, the critical issue is not whether treadwear is perfectly linear but whether the two Methods yield approximately the same grades for radial tires. The agency study cited earlier found that the treadwear grades for radial tires by either the simplified two-point method or the present method are not significantly different. In view of this finding, the agency has determined that the simplified treadwear grading procedure serves as a reasonable measure of radial tire treadwear.

JATMA and STL commented that the regression analysis would be a more precise way to approximate a linear function than the two-point arithmetical formula. NHTSA disagrees with this contention based on its study comparing the two methods. The agency

conducted an evaluation of treadwear testing at the San Angelo test center which showed tread life to be linear for the initial readings of radial tires. However, as the mileage increased, treadwear for radial tires became nonlinear and in fact wear rate decreased. See: "Uniform Tire Quality Grading Course Monitoring," Southwest Research Institute, DOT Institute, DOT-HS 802-526. Because treadwear is not perfectly linear for radial tires, an increase in the number of data points will not improve the precision of the estimated slope for wear. In fact, because the treadwear rate decreases with mileage, the slope based on the two end points is a better projection of the overall tread life for a radial tire than the current method.

After reviewing the comments, NHTSA has decided to permit but not require the simplified treadwear grading method. The agency continues to believe that the simplified grading method will provide representative treadwear grades, while simplifying the test procedures, reducing costs, and reducing the complexity of the calculations. Nevertheless, given that the industry prefers the existing more burdensome grading method, that the proposal was offered as a replacement that is comparable to but not superior to the existing test, and that the agency is aware of no compelling reason to eliminate the more complex procedure, the agency has decided to permit evaluators to rely on it as an alternative. Consequently, section 575.104(e)(2)(ix) permits both the present procedure and the simplified procedure. The manufacturer will be required to identify the method used when the tire grade data are submitted to the agency for compliance verification.

D. Increase Treadwear Grade Interval From 10 TO 20 Points

In determining the treadwear grade to be assigned to a tire, the evaluator currently expresses the projected mileage for a candidate tire as a percentage of 30,000 miles, rounded off to the next lowest 10 percentage points (575.104(e)(ix)(F)). For example, a tire with a projected mileage of 21,000 miles would be graded 70, as would a tire with a projected mileage of 23,000 miles. A tire with a projected mileage of 24,000 miles would be graded 80. Under this 10-point scale, each single grade level interval (i.e., 80 vs. 70) represents a difference of 3,000 miles in projected tread life on the test course.

As explained in the NPRM, the 10-unit scale was designed when most tires were of bias or bias-belted construction. Tires of those constructions generally have projected mileages between 20,000 and 40,000 miles; thus the 3,000 mile difference in projected tread life for each grade interval represents between 7.5 and 15 percent of a tire's projected tread life. In earlier rulemakings, NHTSA determined that this was the

proper percentage difference for treadwear grades. In contrast, radial tires, which now comprise approximately 91 percent of the new passenger car tire market, usually have projected treadlife of approximately 60,000 miles., thus the 3,000 mile difference in projected tread life for each grade interval represents approximately 5 percent of a radial tire's projected tread life. Based on these considerations, the agency proposed to increase treadwear grades to 20-point intervals.

The agency proposed that, if adopted, this amendment of the treadwear grade interval would become effective one year after publication of the final rule. (The three other proposals would become effective 30 days after publication of the final rule.) The agency proposed this longer leadtime because it believed that tire manufacturers would need more than 30 days to recompute the grades of some of their existing tire lines, print new labels and brochures with the changed tire grades, and change their molds to show the changed grades on the sidewall of those tires.

RMA and ETRTO commented that the proposal to increase the grade interval to 20 points would provide no benefit to consumers but would result in significant costs to the tire manufacturers. RMA estimated that the cost of mold reworking and relabeling for treadwear grades of 90, 110, 130 etc. would exceed \$2 million. JATMA and ETRTO noted that if the agency adopted the proposal for radial tires, it still should continue to use the 10-point interval for bias and bias-belted tires. Alternatively, RMA suggested that radial tires should have a 10-point increment up to a grade of 300 and 20 points above 300.

After reviewing the comments, the agency has decided to adopt the 20-point interval, as proposed. Since the passenger car tire market is now comprised predominantly of radial tires whose treadwear grades typically run above 200, with many approaching 300, the 10-point interval has become less relevant to a consumer's buying decision. For instance, it would be unlikely for a consumer to view the difference between a 290 tire and a 280 tire as significant. In addition, the normal variation of treadlife inherent among tires within given tire lines means that the 10-point interval, which represents intervals of only 5 percent, might convey information that was not useful and even misleading to consumers. Given the agency's goal of having a treadwear scale that allows for reasonable comparisons among tire lines, without unduly emphasizing the precision of the measurement, the agency has decided to adopt the 20-point treadwear grade interval.

The agency also disagrees that the amendment to increase the grade interval to 20 points will significantly increase costs. First, 68 percent of tire lines currently correspond to the proposed 20-point interval

(200 220, 240 etc.) Thus, only the remaining 32 percent of the tire lines need to have the treadwear grade reassigned. Even these tire lines need not be retested, since a manufacturer may lower a grade (e.g., from 210 to 200). Moreover the one year leadtime should further reduce the cost impact given that molds are typically refurbished each year, labels are typically exhausted within six months to one year, and brochures are updated and distributed to dealers on an annual basis.

NHTSA has decided to reject the suggestion that the treadwear grade interval remain at 10-point intervals for bias and bias-belted tires. As noted above, such tires are currently a very small segment of the total passenger car tire market. In the last few years, only two bias-belted tire convoys and one bias-ply convoy have been run at the San Angelo UTQGS test course. Thus, a separate grade interval for non-radial tires is not needed and would be contrary to the agency's goal to standardize treadwear grading procedures. To effectuate such standardization of treadwear grades, the agency must select a single grade interval. Because the vast majority of passenger car tires are and will increasingly be of radial construction, the agency has decided to replace the 10-point interval with the 20-point interval.

NHTSA is also rejecting RMA's suggestion to have a 10-point scale until a treadwear grade of 300 and then a 20-point scale over 300. The agency believes that such a dual scale would unnecessarily complicate treadwear grading without providing any significant benefit. Based on the above considerations, the agency has determined that the 20-point scale should apply to all treadwear grades, not just to grades above 300.

In response to RMA's comment that existing radial tires graded prior to the effective date need not be regraded thus precluding the need to remark thousands of tire molds, the agency notes that the rule will not require tires with treadwear grades molded before the effective date to be remolded. Nevertheless, given 575.104(d)(1)'s molding and labeling requirements in relation to 575.104(d)(2)(i)'s new requirement that "treadwear grades shall be in multiples of 20. (e.g., BO. 120, 160)." the rule will require the treadwear grade to be remolded and relabeled when the one year lead-time expires (see also the grading requirement in 575.104(e)(2)(ix)(F)). This leadtime should be adequate to exhaust existing inventories. As for regrading, a manufacturer can avoid hardship by merely grading the tire to the next lower 20-point interval (e.g., a tire with a raw grade of "131" would be assigned a treadwear grade of "120" rather than "130.") Of course, if the manufacturer retests such tires and wishes to change the grade, the 20-point interval will apply.

Miscellaneous Considerations:

RMA suggested that the agency should consider alternative test vehicles to include light trucks and front-wheel-drive vehicles. STL also commented that front-wheel-drive vehicles and pickup trucks should be used as test vehicles. The agency notes that whether to use non-passenger cars or front-wheel-drive cars is beyond the scope of the rulemaking.

STL stated that specific instructions would be helpful on those tires which have directional tread designs. The agency notes that unusual tire features, such as directional tread design, are generally accommodated by making appropriate modifications in the test procedures. For example tire depth measurements are taken at more points around the tire for those with two or three grooves. For directional tires, rotation could be limited to one side or the tire could be remounted on the rim when rotated to the other side of the vehicle.

Economic and Other Impacts

NHTSA has analyzed this rule and determined that it is 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 believes that a full regulatory evaluation is not required because the rule will have only minimal economic impacts. The agency believes that there will be no significant additional costs related to the first amendment because it merely entails changes to the current testing procedures. Although the second amendment will result in additional labor costs and initial costs related to obtaining CMTs, these costs are minimal and may be offset by the savings resulting from the third amendment. As for tire rotation, the test procedure had required tires be rotated after the first 400 miles, at the completion of break-in (800 miles), and seven times thereafter in 800-mile increments, or a total of nine times during the 6,400 mile test. Under the second amendment, tires will be rotated 17 times, thus adding to the time and cost of testing. Specifically, 16 tires will be removed from the four vehicles in the convoy and rotated to different wheel or vehicle positions every 400 miles, after break-in. According to agency staff in San Angelo, this operation generally takes two people approximately 30 minutes to complete or one labor-hour per convoy. Thus, this amendment will result in eight additional labor-hours per four vehicle test convoy. The number of convoys (each composed of four vehicles, which completed treadwear testing at San Angelo was 200 in 1986 and 174 in 1987. Accordingly, based on a two-year average from 1986 and 1987 (187 convoys) the amendment requiring eight additional tire rotations will add 1,496 labor hours to the test. Assuming a labor and overhead rate of \$10 per hour for tire changes, the increased cost will be \$14,960 per year.

As for the third amendment permitting a simplified treadwear grading method, the treadwear grading method had required tread-depth measurements for each tire at nine intervals during a test sequence. With this method, two people took approximately two hours to measure and record tread depth at each interval. However, under the simplified grading procedure, an evaluator need only measure and record two intervals per test sequence per convoy. This amendment thus permits seven fewer intervals, resulting in 28 fewer labor hours per convoy (seven intervals x two workers x two hours). Based on the two year average of 187 convoys, this amendment has the potential of resulting in an annual savings of 5,236 labor hours. Assuming a labor rate of \$10 per hour, permitting the simplified grading method has the potential to save \$52,360. Assuming evaluators adopt this simplified grading method the savings from this amendment will offset the \$14,960 additional cost from the second amendment requiring tire rotation among convoy vehicles.

The agency notes that the one-year leadtime for the fourth amendment to change the grade interval will ensure that there are no additional printing or similar costs.

In consideration of the foregoing, 49 CFR § 575.104. Uniform Tire Quality Grading Standards is amended as follows:

1. Section 575.104(d)(2)(i) is revised to read as follows:

(2) Performance—(i) Treadwear. Each tire shall be graded for treadwear performance with the word “TREADWEAR” followed by a number of two or three digits representing the tire’s grade for treadwear, expressed as a percentage of the NHTSA nominal treadwear value, when tested in accordance with the conditions and procedures specified in paragraph (e) of this section. Treadwear grades shall be in multiples of 20. (e.g., 80, 120, 160).

2. Section 575.104(e) is revised to read as follows:

(e) *Treadwear grading conditions and procedures*
(1) *Conditions*

(i) Tire treadwear performance is evaluated on a specific roadway course approximately 400 miles in length, which is established by the NHTSA both for its own compliance testing and for that of regulated persons. The course is designed to produce treadwear rates that are generally representative of those encountered by tires in public use. The course and driving procedures are described in Appendix A of this section.

(ii) Treadwear grades are evaluated by first measuring the performance of a candidate tire on the government test course, and then correcting the projected mileage obtained to account for environmental variations on the basis of the performance of the course monitoring tires run in the same convoy.

The course monitoring tires are made available by the NHTSA at Goodfellow Air Force Base, San Angelo, Texas, for purchase by any persons conducting tests at the test course.

(iii) In convoy tests, each vehicle in the same convoy, except for the lead vehicle, is throughout the test within human eye range of the vehicle immediately ahead of it.

(iv) A test convoy consists of two or four passenger cars, each having only rear-wheel drive.

(v) On each convoy vehicle, all tires are mounted on identical rims of design or measuring rim width specified for tires of that size in accordance with 49 CFR 571.109, S4.4.1(a) or (b), or a rim having a width within -0 to $+0.50$ inches of the width listed.

(2) *Treadwear grading procedure.*

(i) Equip a convoy as follows: Place four course monitoring tires on one vehicle. Place four candidate tires with identical size designations on each other vehicle in the convoy. On each axle, place tires that are identical with respect to manufacturer and line.

(ii) Inflate each candidate and each course monitoring tire to the applicable pressure specified in Table 1 of this section.

(iii) Load each vehicle so that the load on each course monitoring and candidate tire is 85 percent of the test load specified in § 575.104(h).

(iv) Adjust wheel alignment to the midpoint of the vehicle manufacturer’s specifications, unless adjustment to the midpoint is not recommended by the manufacturer; in that case, adjust the alignment to the manufacturer’s recommended setting.

(v) Subject candidate and course monitoring tires to “break-in” by running the tires in the convoy for two circuits of the test roadway (800 miles). At the end of the first circuit, rotate each vehicle’s tires by moving each front tire to the same side of the rear axle and each rear tire to the opposite side of the front axle. Visually inspect each tire for any indication of abnormal wear, tread separation, bulging of the sidewall, or any sign of tire failure. Void the grading results from any tire with any of these anomalies, and replace the tire.

(vi) After break-in, allow the air pressure in the tires to fall to the applicable pressure specified in Table I of this section or for 2 hours, whichever occurs first. Measure, to the nearest 0.001 inch, the tread depth of each candidate and each course monitoring tire, avoiding treadwear indicators, at six equally spaced points in each groove. For each tire compute the average of the measurements. Do not measure those shoulder grooves which are not provided with treadwear indicators.

(vii) Adjust wheel alignment to the midpoint of the manufacturer's specifications. unless adjustment to the midpoint is not recommended by the manufacturer; in that case, adjust the alignment according to the manufacturer's recommended setting.

(viii) Drive the convoy on the test roadway for 6,400 miles.

(A) After each 400 miles, rotate each vehicle's tires by moving each front tire to the same side of the rear axle and each rear tire to the opposite side of the front axle. Visually inspect each tire for treadwear anomalies.

(B) After each 800 miles, rotate the vehicles in the convoy by moving the last vehicle to the lead position. Do not rotate driver positions within the convoy. In four-car convoys, vehicle one shall become vehicle two, vehicle two shall become vehicle three, vehicle three shall become vehicle four, and vehicle four shall become vehicle one.

(C) After each 800 miles, if necessary, adjust wheel alignment to the midpoint of the vehicle manufacturer's specification, unless adjustment to the midpoint is not recommended by the manufacturer; in that case, adjust the alignment to the manufacturer's recommended setting.

(D) After each 800 miles, if determining the projected mileage by the 9-point method set forth in (e)(2)(ix)(A)(1), measure the average tread depth of each tire following the procedure set forth in paragraph (e)(2)(vi).

(E) After each 1,600 miles, move the complete set of four tires to the following vehicle. Move the tires on the last vehicle to the lead vehicle. In moving the tires, rotate them as set forth in (e)(2)(viii)(A).

(F) At the end of the test measure the tread depth of each tire pursuant to the procedure set forth in paragraph (e)(2)(vi).

(ix)(A) Determine the projected mileage for each candidate tire either by the nine-point method of least squares set forth in (e)(2)(ix)(A)(1) and Appendix C or by the two-point arithmetical method set forth in (e)(2)(ix)(A)(2). Notify NHTSA about which of the alternative grading methods is being used.

(1) *Nine-Point Method of Least Squares.* For each course monitoring and candidate tire in the convoy, using the average tread depth measurements obtained in accordance with paragraph (e)(2)(vi) and (e)(2)(viii)(D) of this section and the corresponding mileages as data points, apply the method of least squares as described in Appendix C to this section to determine the estimated regression line of y on x given by the following formula:

$$y = a + \frac{bx}{1000}$$

Where:

y = average tread depth in mils

x = miles after break-in,

a = y intercept of regression line (reference tread depth) in mils, calculated using the method of least squares; and

b = the slope of the regression line in mils of tread depth per 1,000 miles, calculated using the method of least squares. This slope will be negative in value. The tire's wear rate is defined as the absolute value of the slope of the regression line.

(2) *Two-Point Arithmetical Method.* For each course monitoring and candidate tire in the convoy, using the average tread depth measurements obtained in accordance with paragraph (e)(2)(vi) and (e)(2)(viii)(F) of this section and the corresponding mileages as data points, determine the slope (m) of the tire's wear in mils of tread depth per 1,000 miles by the following formula:

$$m = 1000 \frac{(Y1 - Y0)}{(X1 - X0)}$$

Where:

Y0 = average tread depth after break-in, mils

Y1 = average tread depth at 6,400 miles, mils

X0 = miles (after break-in).

X1 = 6,400 miles of travel

This slope (m) will be negative in value. The tire's wear rate is defined as the slope (m) expressed in mils per 1000 miles.

(B) Average the wear rates of the four course monitoring tires as determined in accordance with paragraph (e)(2)(ix)(A) of this section.

(C) Determine the course severity adjustment factor by dividing the base wear rate for the course monitoring tires (see note below) by the average wear rate for the four course monitoring tires.

NOTE: The base wear rates for the course monitoring tires will be furnished to the purchaser at the time of purchase.

(D) Determine the adjusted wear rate for each candidate tire by multiplying its wear rate determined in accordance with paragraph (e)(2)(ix)(A) of this section by the course severity adjustment factor determined in accordance with paragraph (e)(2)(ix)(C) of this section.

(E) Determine the projected mileage for each candidate tire by applying the appropriate formula set forth below:

(1) If the projected mileage is calculated pursuant to (e)(2)(ix)(a)(1), then

$$\text{Projected mileage} = \frac{1000(a-62)}{b^1} + 800$$

Where:

a = y intercept of regression line (reference tread depth) for the candidate tire as determined in accordance with paragraph (e)(2)(ix)(A)(1) of this section.

b¹ the adjusted wear rate for the candidate tire as determined in accordance with paragraph (e)(2)(ix)(D) of this section.

(2) If the projected mileage is calculated pursuant to (e)(2)(ix)(a)(2), then:

$$\text{Projected mileage} = -\frac{1000 (Y_0 - 62)}{mc} + 800$$

Where

Y₀ = average tread depth after break-in, mils

mc = the adjusted wear rate for the candidate tires as determined in accordance with paragraph (e)(2)(ix)(D) of this section.

(F) Compute the percentage (P) of the NHTSA nominal treadwear value for each candidate tire using the following formula:

$$P = \frac{\text{Projected mileage} \times 100}{30,000}$$

Round off the percentage to to the nearest lower 20-point increment.

Issued on: November 9, 1990

Jerry Ralph Curry
Administrator

55 F.R. 47765
November 15, 1990

PREAMBLE TO AN AMENDMENT TO PART 575

Consumer Information Regulations

(Docket No. 90-042; Notice 2)

RIN 2127-AD21

ACTION: Final Rule.

SUMMARY: This notice amends Standard No. 109, *New Pneumatic Tires*, to permit passenger car tires with a maximum inflation pressure of 290, 330, 350, or 390 kPa, in response to a petition to allow the "CT" tire and rim (an inverted flange tire and rim system). The tire has run-flat capability. After evaluating the petition and comments to the proposal, NHTSA has concluded that the CT tire has the potential for increased safety, especially in the deflated condition, and may result in incidental benefits such as increased fuel efficiency. Conforming amendments have been made throughout Standard No. 109 and the Uniform Tire Quality Grading Standards to establish criteria suitable for tires with new pressures.

DATES: Effective date: The final rule is effective on December 31, 1990.

SUPPLEMENTARY INFORMATION:

Background

Federal Motor Vehicle Standard No. 109, *New Pneumatic Tires*, (49 CFR § 571.109) specifies tire dimensions and laboratory test requirements for bead unseating resistance, tire strength, tire endurance, and high speed performance; defines tire load ratings; and specifies labeling requirements for new pneumatic tires used on passenger cars.

Until the effective date of the amendments adopted in this rule, Standard No. 109 requires passenger car tires to have a maximum inflation pressure of either 32, 36, 40, or 60 psi (pounds per square inch), or 240, 280, 300, or 340 kPa (kiloPascals). These maximum inflation pressures are incorporated in Table I-C "Radial Ply Tires" and Table II, "Test Inflation Pressures," which are in Appendix A. In addition, Figure 1 specifies wheel sizes for tires relative to the tubeless tire bead unseating resistance tests in section S5.2.1. The Uniform Tire Quality Grading Standards ("UTQGS" at 49 CFR 575.104) sets forth similar requirements for maximum permissible inflation pressures for the testing procedures in Table 1, Table 2, and Table 2A.

A new pneumatic passenger car tire must comply with requirements for bead unseating, tire strength, tire endurance, and high speed endurance at a maximum permissible inflation pressure specified in Standard 109. The agency specifies a limited number of permissible maximum inflation pressures (or wheel sizes, in the case of the bead unseating test) to facilitate compliance testing.

On March 8, 1989, Continental AG, Daimler-Benz, and General Tire Inc. petitioned the agency to amend Standard No. 109 and the UTQGS to permit the use of a new tire and rim concept known as the "CT" tire. With this tire, the rim flanges point radially inward and the tire fits on the underside of the rim in a manner that encloses the rim flanges inside the air cavity of the tire. The amendments were necessary because the CT tire is usable only at maximum inflation pressures that were not specified in Standard No. 109. Accordingly, the petitioners requested the agency to amend the standard to include four new maximum inflation pressures—290, 330, 350, and 390 kPa. The petitioners stated that amending Standard No. 109 to permit the CT tire would result in an increased level of safety compared to conventional radial tires in cases of flats, significant under-inflation from gradual air loss, or blowouts from sudden air loss. They stated that unlike a conventional tire, a CT tire with a flat may still be driven safely at normal highway speeds for up to 200 miles. A driver therefore could travel to a service station instead of changing the flat tire in a dangerous or inconvenient setting. They also stated that unlike a conventional tire, a CT tire that is under-inflated or experiences sudden air loss would not result in any appreciable loss of control because the tire would not leave the rim. The petitioners stated that the requested amendment would result in incidental benefits, including allowing a vehicle to have larger brake, suspension, and anti-lock brake systems, shorter stopping distances, greater resistance to hydroplaning, better distribution of the tire footprint pressure, and increased fuel savings by reducing the overall vehicle weight. The petitioner's test and other data on the performance of the CT tire indicated that

Table 1.—Test Inflation Pressures

Maximum permissible inflation pressure for the following test:

<i>Test Type</i>	<i>lbs/in²</i>				<i>kPa</i>				<i>kPa (1)</i>			
	<i>32</i>	<i>36</i>	<i>40</i>	<i>60</i>	<i>240</i>	<i>280</i>	<i>300</i>	<i>340</i>	<i>290</i>	<i>330</i>	<i>350</i>	<i>390</i>
Treadwear test	24	28	32	52	180	220	180	220	230	270	230	270
Temperature resistance test	30	34	38	58	220	260	220	260	270	310	270	310
(1) For CT tires only												

Table 2¹

<i>Maximum Inflation Pressure</i>	<i>Multiplier to be used for treadwear testing</i>	<i>Multiplier to be used for traction testing</i>
32 lbs/in ² . . . . .	.851	.851
36 lbs/in ² . . . . .	.870	.797
40 lbs/in ² . . . . .	.883	.753
240 kPa . . . . .	.866	.866
280 kPa . . . . .	.887	.804
300 kPa . . . . .	.866	.866
340 kPa . . . . .	.887	.804
290 kPa (1) . . . . .	.866	.866
330 kPa (1) . . . . .	.887	.804
350 kPa (1) . . . . .	.866	.866
390 kPa (1) . . . . .	.887	.804

(1) For CT tires only

¹ Prior to July 1, 1984, the multipliers in the above table are not to be used in determining loads for the tire size designations listed below in Table 2A. For those designations, the load specifications in that table shall be used in UTQG testing during that period. These loads are the actual loads at which testing shall be conducted and should not be multiplied by the 85 percent factors specified for treadwear and traction testing.

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when properly inflated, would comply with Standard No. 109's performance requirements. They also tested the CT tire while in its deflated stage to determine whether the tire would leave the rim or come apart when driven through various maneuvers.

On February 14, 1990, the agency issued a notice of proposed rule making (NPRM) proposing to amend Standard No. 109 to include additional maximum inflation pressures for pneumatic tires on passenger cars (55 FR 5237). The NPRM summarized previous rulemakings in which the agency amended Standard No. 109 to permit additional maximum inflation pressures. (See 53 FR 17950, May 19, 1988, 53 FR 936, January 14, 1988; and (43 FR 8570, March 2, 1978; 43 FR 24310, June 5, 1978). In those earlier rulemakings, the agency determined that amending the standard's specifications for the maximum permissible inflation pressure was necessary to permit a new tire technology to carry a load comparable to that carried by tires already in compliance with the standard.

NHTSA decided to propose amending Standard No. 109 to permit tires with maximum inflation pressures of 290, 330, 350, or 390 kPa, after tentatively concluding that the CT tire had the potential for increased safety, especially in the deflated condition. The agency also tentatively concluded that allowing the CT tire might result in incidental benefits such as increased fuel efficiency. The notice proposed conforming amendments to Standard No. 109 and the Uniform Tire Quality Grading Standards (49 CFR 575.104) to establish test criteria suitable for tires with the new maximum inflation pressures.

NHTSA received comments from ETRTO, the Rubber Manufacturers Association (RMA), and five tire or motor vehicle manufacturers. All commenters favored the proposal. The agency therefore is adopting the proposed amendments for the reasons set forth in the NPRM.

In response to technical comments, the agency is modifying certain provisions in its UTQGS regulations relative to the inclusion of CT tires. NHTSA agrees with the petitioner's comment that the proposal's headings in Tables 1 and 2 of 49 CFR 575.104 do not best reflect temperature resistance testing under the UTQGS. The final rule therefore adopts more appropriate wording suggested in the petitioner's comments. The final rule also includes certain treadwear and traction testing multipliers to Table 2, which were inadvertently omitted in the NPRM.

The agency agrees with RMA's comment that the agency should not include the phrase "or equivalent" to 575.104(e)(2)(i) given that the tires on any one vehicle

should be of the same size designation and that the additional phrase would have added imprecision to UTQGS.

The agency has decided not to adopt RMA's request to amend 575.104(f)(2)(B) rather than (f)(2)(D)(viii)(sic) because the CT tire inflation pressures are for candidate tires subject to 575.104 (f)(2)(viii); while (f)(2)(B) refers to standard test tires.

NHTSA notes that section 103(c) of the Vehicle Safety Act requires that each order shall take effect no sooner than 180 days from the date the order is issued unless "good cause" is shown that an earlier effective date is in the public interest. The agency has concluded that there is "good cause" not to provide the full 180 day lead-in period given that this amendment will facilitate the introduction of certain tires without imposing any mandatory requirement on manufacturers. In addition, the public interest will be served by not delaying the introduction of tires that can provide better performance without having any negative impact on safety. Therefore, the agency has determined that there is good cause to set an effective date 30 days after publication of the final rule.

In consideration of the foregoing, 49 CFR Part 571 and 575 is amended as follows:

A new sentence is added to 575.104 (f)(2)(viii) immediately after the first sentence. The first sentence is being republished for the convenience of the reader.

* * * *

- (f) * * * *
- (2) * * * *

(viii) Prepare two candidate tires of the same construction type, manufacturer, line, and size designation in accordance with paragraph (f)(2)(i) of this section, mount them on the test apparatus, and test one of them according to the procedures of paragraph (f)(2)(ii) through (v) of this section, except load each tire to 85 percent of the test load specified in 575 104(h). For CT tires, the test inflation of candidate tires shall be 230 kPa.

- 11. Revised Table 1 of Part 575 follows.
- 12. Revised Table 2 of Part 575 follows.

Issued on : November 9, 1990.

Jeffrey R. Miller
Deputy Administrator

55 F.R. 49619
November 30, 1990



PREAMBLE TO AN AMENDMENT TO PART 575

Consumer Information Regulations; Uniform Tire Quality Grading Standards

(Docket No. 25; Notice 65)

RIN: 2127-AE-02

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This notice amends certain provisions of the Uniform Tire Quality Grading Standards (UTQGS), by rescinding the initial 30-day effective date concerning tire rotation in treadwear convoys and adopting a new effective date of September 1, 1993. Based on its further review, the agency has determined that the final rule provided insufficient leadtime to require tire rotation among vehicles in treadwear convoys. This notice also postpones the effective date for the provision regarding assigning treadwear grades in 20-point intervals until September 1, 1993. The agency believes that this additional leadtime will reduce the costs of this amendment. Finally, this notice responds to other issues raised in petitions for reconsideration by clarifying the amendment to the wheel alignment specification and denying a request to modify the simplified grading method.

EFFECTIVE DATES: The amendment in amendatory instruction 3 to § 575.104(e)(1) and (e)(2)(i)-(viii) is effective June 11, 1991, through August 31, 1993.

The amendments in amendatory instruction 3A to § 575.104(e)(1) and (e)(2)(i)-(viii) become effective on September 1, 1993. Tires manufactured before September 1, 1993, may comply with the post-September 1993 requirements for tire rotation among treadwear convoy vehicles.

The amendments to §§ 575.104(d)(2)(1) and 575.104(e)(2)(ix)(F) become effective on September 1, 1993.

SUPPLEMENTARY INFORMATION:

Background Information

Under the Uniform Tire Quality Grading Standards (UTQGS), manufacturers or brand name owners of passenger car tires are required to provide consumers with information about their tires' relative performance in terms of treadwear, traction, and temperature resistance (49 CFR §575.104). The primary purpose of the treadwear grades is to aid consumers in the selection of new tires by informing them of the rela-

tive amount of expected tread life for each tire offered for sale.

The treadwear grades are based on the test results of tires on vehicles traveling 6,400 miles over a predetermined outdoor course on public roads near San Angelo, Texas. In order to compare candidate tire performances measured at different times under different road conditions, there must be a correction of test results to account for the effects of the particular environmental conditions of each test. This correction is accomplished by including "course monitoring tires" (CMTs) in all treadwear test fleets. The treadwear of the CMT reflects changes in course severity due to factors such as road surface wear and environmental conditions. Differences between the wear rate of the CMT under the set of conditions experienced by test fleets versus a base wear rate (explained further later in this notice) for the CMT are used to adjust the measured treadwear of the candidate tires.

Until very recently, treadwear test convoys consisted of one rear-wheel-drive passenger car with four CMTs and up to three other rear-wheel-drive passenger cars with candidate tires of the same construction type (49 CFR §575.104(e)(1)-(2)). After each 800 miles of the test, each tire's tread depth was measured, the tires on each car were rotated to a different position on the same car, the order of the cars in the convoy was changed, and the wheel alignments were readjusted if necessary to bring them within the ranges of the vehicle manufacturer's specifications. At the end of the 16-circuit test, each tire's overall wear rate was calculated from the tread depths measured after each interval by using the regression line technique in Appendix C of §575.104. The tires were then assigned treadwear grades in 10-point intervals.

On January 19, 1989, NHTSA issued a notice of proposed rulemaking (NPRM), proposing four changes that the agency tentatively concluded would make treadwear grades more representative by reducing the variability or simplifying the calculations related to these grades (54 FR 2167). Less variability in treadwear test results would provide consumers with more precise information about relative tread life of different tires.

These proposals were adopted in a final rule issued on November 15, 1990 (55 FR 47765). First, the new rule amended the requirements about the wheel alignment of test vehicles so that they are set more precisely, based on the vehicle manufacturer's specifications. Second, the rule amended the requirements about tire rotation so that all tires, both candidate tires and CMTs, in a treadwear convoy are to be driven on each wheel position on each vehicle the same distance. Third, the rule amended the requirements to permit a simplified method for treadwear grading so that tire tread depth measurements may be taken twice instead of nine times. Fourth, it amended the requirements to replace the previous practice of assigning grades in 10-point intervals to reflect the differences in treadwear with a new practice of assigning grades in 20-point intervals. The first three amendments became effective on December 17, 1990. The fourth amendment was set to take effect on November 15, 1991.

Petitions for Reconsideration

In response to the final rule, the agency received petitions for reconsideration from the Rubber Manufacturers Association (RMA), Standards Testing Laboratories (STL), Texas Test Fleet, Long and Associates, and Smithers Scientific Services. This notice responds to the petitions for reconsideration.

Wheel Alignment Specification

The previous UTQGS provisions required wheel alignment to be adjusted, as specified by the vehicle manufacturer. Thus, alignment factors could vary with the range specified by the manufacturer. To reduce variability, the final rule prescribed exact alignment settings rather than a range.

In their petitions for reconsideration, Smithers and RMA commented that, because no alignment equipment can be perfectly accurate, all such equipment permit an allowable tolerance. Accordingly, they requested that the wheel alignment requirements be modified to account for this limitation by including the phrase "within the capability of the equipment used."

Upon reconsideration, the agency recognizes that vehicle alignment factors set to the mid-point of the manufacturer's specifications or to the manufacturer's recommended tolerance cannot be absolute, given the physical limitations of alignment machines. Despite these limitations, these settings can be made within the tolerances of the alignment machines. To accommodate this situation, the agency has decided to add the sentence—"In all cases, the setting is within the tolerance specified by the manufacturer of the alignment machine"—to the provisions that address wheel alignment (575.104(e)(2)(iv), (e)(2)(vii), and (e)(2)(viii)(C) and (D)).

Tire Rotation Among Convoy Vehicles

The previous UTQGS provisions required that tires be rotated to each wheel position on a given passenger

car in a treadwear test convoy (575.104(e)). However, tires were not required to be rotated to other cars in a convoy.

In the November 15, 1990 final rule, the agency amended 575.104(e) to require tires to be rotated among convoy vehicles so that each tire is at each wheel position in the test convoy for the same distance. The agency believed that this amendment would limit the effects of vehicle and driver variability. At the time, the agency believed that the amendment would be feasible and would not impose significant hardships, even for tires that were not 14 inches in diameter.

In their petitions for reconsideration, all the petitioners commented that the new rotation requirements would result in significant problems. Accordingly, the petitioners requested the agency to withdraw the new rotation requirements or delay the amendment's effectiveness until the agency can procure CMTs and make them available to UTQG testers. The petitioners stated that at present NHTSA did not have CMTs available in enough sizes and load carrying capacities to properly test all tire lines. In addition, Smithers, RMA, and STL argued that a delay was necessary to allow the agency time to establish base course wear rates for the new CMTs.

Upon reconsideration, the agency has determined that the December 17, 1990 effective date for the tire rotation requirements provided insufficient leadtime to require tire rotation among vehicles in treadwear convoys. In light of the arguments presented in the petitions, NHTSA has carefully reexamined the tire rotation amendment to determine an appropriate effective date. Based on this reexamination, the agency has decided to adopt an effective date of September 1, 1993. As the petitioners correctly noted, additional leadtime is necessary to avoid practicability problems which would arise from a short leadtime. Specifically, rotation of tires among all vehicles in a treadwear convoy requires the availability of CMTs of approximately the same size as the candidate tires. CMTs are specially manufactured tires whose wear rate is compared to the wear rate of the candidate tires to minimize variations in treadwear caused by factors other than the quality of the candidate tires. Along with the time needed to procure and produce CMTs, NHTSA normally makes two determinations about a new group of CMTs before making those CMTs available to manufacturers for use in testing. First, the agency ensures that the coefficient of variation (COV) for new CMTs does not exceed 5.0. Second, it determines the base course wear rate (BCWR) for new CMTs. The BCWR is necessary to allow persons testing candidate tires to adjust the wear rates of the candidate tires to reflect the severity of the environmental conditions encountered during the testing.

Contrary to the agency's determination in the final rule that the new rotation requirements could take

effect soon after the rule was published, the agency now believes that such an implementation date is impracticable, given the additional time necessary to procure and test CMTs in sizes other than the currently available 14-inch CMTs. Accordingly, the agency is adopting a September 1, 1993 effective date for the tire rotation requirements. The agency notes that tires manufactured before September 1, 1993 may comply with the new requirements. To minimize the disruption of the treadwear grading, the agency is immediately reinstating the requirements for treadwear convoys that were in effect before the recent amendments. In the meantime, the agency will begin to procure new CMTs and establish their new base course wear rates. The agency further notes that it will take no enforcement action regarding the requirements about rotation among treadwear convoy vehicles in effect between December 17, 1990 and the issuance of this notice.

This notice's regulatory text sets forth the complete "treadwear grading procedures and conditions" in 575.104(e) for both before and after September 1, 1993, except for the requirements in 574.105(e)(2)(ix) which remain essentially unchanged. Given the complexity of these requirements, the agency believes that this approach will facilitate making the amendments understandable to the reader.

Simplification of the Grading Procedure

The previous UTQGS provisions require the evaluator to measure tread depth nine times, resulting in 4,320 measurements, during the test. In the final rule, the agency amended 575.104(e) to permit the evaluator to measure tread depth either twice or nine times, thus resulting in the need for 960 rather than 4,320 measurements. The final rule explained that the simplified grading method will provide representative treadwear grades, while simplifying the test procedures, reducing costs, and reducing the complexity of the calculations.

In its petition for reconsideration, Smithers commented that the two-point method would result in increased variability and the issuance of an unneeded, additional report. It further stated that evaluators would still rely on the 9-point method and that no manufacturer would elect the two-point method unless it yielded a higher grade. Accordingly, Smithers requested that the nine-point method be mandatory.

After reviewing the treadwear grading procedures, the agency has decided to deny the petitioner's request to permit only the nine-point method. As explained in the final rule, because the grades determined by the simplified two-point method and the nine-point method are not significantly different, variability is not a problem. In addition, providing the optional two-point method permits a simplified test procedure, may reduce costs, and reduces the complexity of the calculations.

Increased Treadwear Grade Interval from 10 to 20 Points

The previous UTQGS provisions required that the projected mileage for treadwear grades be expressed in 10-point intervals (575.104(d)(2)(i), see also 575.104(e)(ix)(F)). In the November 15, 1990 final rule, the agency amended the provisions to require treadwear grades to be expressed in 20-point intervals. The agency believed that since most passenger car tires are of a radial design with significantly longer treadwear than bias and bias-ply tires, the 20-point interval is more relevant to consumer's buying decisions. The agency provided a one-year leadtime for this amendment, which was set to take effect on November 15, 1991.

In its petition for reconsideration, RMA requested that the amendment about the 20-point grade interval be withdrawn. In the alternative, the petitioner requested that for tire lines existing on December 17, 1990 with treadwear grades in multiples of 10, the agency should allow them to retain their current grade until the tire line is phased out of production or the grade is changed. The petitioner stated that applying the 20-point grade amendment to molds of currently existing tire lines would provide no benefit to consumers but would cause considerable costs and problems to manufacturers.

Upon reconsideration, the agency has determined that a longer leadtime is necessary to reduce the costs associated with the amendment. Accordingly, the agency is postponing the effective date of November 15, 1991 and adopting a new effective date of September 1, 1993. Based on statements in the petition, the agency now believes that without the additional leadtime, the amendment might result in considerable costs and problems to tire manufacturers without providing corresponding benefits to consumers sufficient to justify the burdens. In particular, the agency is concerned that the new grading requirements would require the restamping of thousands of tire molds and related consumer publications within an unreasonably short timeframe, potentially resulting in substantial costs and unjustified losses of production. Additionally, the agency notes that a significant number of tire lines are routinely phased-out or regraded over the course of three years. These difficulties can be substantially reduced by allowing additional leadtime. Therefore, the agency has decided to postpone the implementation of this provision until September 1, 1993.

Effective Date

Section 103(c) of the Vehicle Safety Act requires that each order shall take effect no sooner than 180 days or later than one year from the date the order is issued unless "good cause" is shown that an earlier or later effective date is in the public interest. After reevaluating the amendments in light of the petitions for

reconsideration, NHTSA believes that there is "good cause" to provide leadtime of less than 180 days for the modification of the wheel alignment requirements, since the amendment merely clarifies the provisions. For the same reason, there is "good cause" to make this provision effective within less than 30 days. The agency further believes that there is "good cause" to provide leadtime of more than one year for the other amendments. The additional leadtime to the rotation requirements should alleviate the practicability problems raised by the petitioners. The agency notes that tires manufactured before September 1, 1993 may comply with the new requirements. The additional leadtime to the provisions about 20-point intervals should significantly reduce the costs associated with that amendment.

In consideration of the foregoing, 49 CFR §575.104, Uniform Tire Quality Grading Standards is amended as follows:

1. Section 575.104(d)(2)(i) is revised to read as follows:

* * * * *

(2) Performance—(i) *Treadwear*. Each tire shall be graded for treadwear performance with the word "TREADWEAR" followed by a number of two or three digits representing the tire's grade for treadwear, expressed as a percentage of the NHTSA nominal treadwear value, when tested in accordance with the conditions and procedures specified in paragraph (e) of this section. On and before August 31, 1993, treadwear grades shall be in multiples of 10 (e.g., 80, 150). On and after September 1, 1993, treadwear grades shall be in multiples of 20 (e.g., 80, 120, and 160).

2. Section 575.104(e)(1) and (e)(2)(i) through (viii) are revised to read as follows:

(e) *Treadwear grading conditions and procedures*—*The following requirements in subsections (e)(1) and (e)(2)(i) through (viii) are effective from [INSERT DATE OF PUBLICATION] until August 31, 1993:*

(1) *Conditions*.

(i) Tire treadwear performance is evaluated on a specific roadway course approximately 400 miles in length, which is established by the NHTSA both for its own compliance testing and for that of regulated persons. The course is designed to produce treadwear rates that are generally representative of those encountered by tires of differing construction types. The course and driving procedures are described in Appendix A of this section.

(ii) Treadwear grades are evaluated by first measuring the performance of a candidate tire on the government test course, and then correcting the projected mileage obtained to account for environmental variations on the basis of the performance of the

course monitoring tires of the same general construction type (bias, bias-belted, or radial) run in the same convoy. The three types of course monitoring tires are made available by the NHTSA at Goodfellow Air Force Base, San Angelo, Tex., for purchase by any persons conducting tests at the test course.

(iii) In convoy tests, each vehicle in the same convoy, except for the lead vehicle, is throughout the test within human eye range of the vehicle immediately ahead of it.

(iv) A test convoy consists of no more than four passenger cars, each having only rear-wheel drive.

(v) On each convoy vehicle, all tires are mounted on identical rims of design or measuring rim width specified for tires of that size in accordance with 49 CFR 571.109, S4.4.1(a) or (b), or a rim having a width within -0 to $+0.50$ inches of the width listed.

(2) *Treadwear grading procedure*.

(i) Equip a convoy as follows: Place four course monitoring tires on one vehicle. On each other vehicle, place four candidate tires with identical size designations. On each axle, place tires that are identical with respect to manufacturer and line.

(ii) Inflate each candidate and each course monitoring tire to the applicable pressure specified in Table 1 of this section.

(iii) Load each vehicle so that the load on each course monitoring and candidate tire is 85 percent of the test load specified in §575.104(h).

(iv) Adjust wheel alignment to the midpoint of the vehicle manufacturer's specifications, unless adjustment to the midpoint is not recommended by the manufacturer; in that case, adjust the alignment to the manufacturer's recommended setting. In all cases, the setting is within the tolerance specified by the manufacturer of the alignment machine.

(v) Subject candidate and course monitoring tires to "break-in" by running the tires in the convoy for two circuits of the test roadway (800 miles). At the end of the first circuit, rotate each vehicle's tires by moving each front tire to the same side of the rear axle and each rear tire to the opposite side of the front axle. Visually inspect each tire for any indication of abnormal wear, tread separation, bulging of the sidewall, or any sign of tire failure. Void the grading results from any tire with any of these anomalies, and replace the tire.

(vi) After break-in, allow the air pressure in the tires to fall to the applicable pressure specified in Table 1 of this section or for 2 hours, whichever occurs first. Measure, to the nearest 0.001 inch, the tread depth of each candidate and each course monitoring tire, avoiding treadwear indicators, at six equally spaced points in each groove. For each tire compute the average of the measurements. Do not measure those shoulder grooves which are not provided with treadwear indicators.

(vii) Adjust wheel alignment to the midpoint of the manufacturer's specifications, unless adjustment to the midpoint is not recommended by the manufacturer; in that case, adjust the alignment according to the manufacturer's recommended setting. In all cases, the setting is within the tolerance specified by the manufacturer of the alignment machine.

(viii) Drive the convoy on the test roadway for 6,400 miles. After each 800 miles:

(A) Following the procedure set out in paragraph (e)(2)(vi) of this section, allow the tires to cool and measure the average tread depth of each tire.

(B) Rotate each vehicle's tires by moving each front tire to the same side of the rear axle and each rear tire to the opposite side of the front axle.

(C) Rotate the vehicles in the convoy by moving the last vehicle to the lead position. Do not rotate driver position within the convoy.

(D) Adjust the wheel alignment to the midpoint of the vehicle manufacturer's specification, unless adjustment to the midpoint is not recommended by the manufacturer; in that case, adjust the alignment to the manufacturer's recommended setting. In all cases, the setting is within the tolerance specified by the manufacturer of the alignment machine.

(E) If determining the projected mileage by the nine-point method set forth in (e)(2)(ix)(A)(1), measure the average tread depth of each tire following the procedure set forth in paragraph (e)(2)(vi) of this section.

(F) At the end of the test, measure the tread depth of each tire pursuant to the procedure set forth in paragraph (e)(2)(vi) of this section.

The following requirements in subsections (e)(1) and (e)(2)(i) through (viii) are effective on and after September 1, 1993 and may be used at the manufacturer's option before this date:

(e) Treadwear grading conditions and procedures—
(1) Conditions.

(i) Tire treadwear performance is evaluated on a specific roadway course approximately 400 miles in length, which is established by the NHTSA both for its own compliance testing and for that of regulated persons. The course is designed to produce treadwear rates that are generally representative of those encountered by tires in public use. The course and driving procedures are described in Appendix A of this section.

(ii) Treadwear grades are evaluated by first measuring the performance of a candidate tire on the government test course, and then correcting the projected mileage obtained to account for environmental variations on the basis of the performance of the course monitoring tires run in the same convoy. The course monitoring tires are made available by the NHTSA at Goodfellow Air Force Base, San Angelo, Tex., for purchase by any persons conducting tests at the test course.

(iii) In convoy tests, each vehicle in the same convoy, except for the lead vehicle, is throughout the test within human eye range of the vehicle immediately ahead of it.

(iv) A test convoy consists of two or four passenger cars, each having only rear-wheel drive.

(v) On each convoy vehicle, all tires are mounted on identical rims of design or measuring rim width specified for tires of that size in accordance with 49 CFR 571.109, S4.4.1(a) or (b), or a rim having a width within -0 to $+0.50$ inches of the width listed.

(2) Treadwear grading procedure.

(i) Equip a convoy as follows: Place four course monitoring tires on one vehicle. Place four candidate tires with identical size designations on each other vehicle in the convoy. On each axle, place tires that are identical with respect to manufacturer and line.

(ii) Inflate each candidate and each course monitoring tire to the applicable pressure specified in Table 1 of this section.

(iii) Load each vehicle so that the load on each course monitoring and candidate tire is 85 percent of the test load specified in §575.104(h).

(iv) Adjust wheel alignment to the midpoint of the vehicle manufacturer's specifications, unless adjustment to the midpoint is not recommended by the manufacturer; in that case, adjust the alignment to the manufacturer's recommended setting. In all cases, the setting is within the tolerance specified by the manufacturer of the alignment machine.

(v) Subject candidate and course monitoring tires to "break-in" by running the tires in the convoy for two circuits of the test roadway (800 miles). At the end of the first circuit, rotate each vehicle's tires by moving each front tire to the same side of the rear axle and each rear tire to the opposite side of the front axle. Visually inspect each tire for any indication of abnormal wear, tread separation, bulging of the sidewall, or any sign of tire failure. Void the grading results from any tire with any of these anomalies, and replace the tire.

(vi) After break-in, allow the air pressure in the tires to fall to the applicable pressure specified in Table 1 of this section or for 2 hours, whichever occurs first. Measure, to the nearest 0.001 inch, the tread depth of each candidate and each course monitoring tire, avoiding treadwear indicators, at six equally spaced points in each groove. For each tire compute the average of the measurements. Do not measure those shoulder grooves which are not provided with treadwear indicators.

(vii) Adjust wheel alignment to the midpoint of the manufacturer's specifications, unless adjustment to the midpoint is not recommended by the manufacturer; in that case, adjust the alignment according to the

manufacturer's recommended setting. In all cases, the setting is within the tolerance specified by the manufacturer of the alignment machine.

(viii) Drive the convoy on the test roadway for 6,400 miles.

(A) After each 400 miles, rotate each vehicle's tires by moving each front tire to the same side of the rear axle and each rear tire to the opposite side of the front axle. Visually inspect each tire for treadwear anomalies.

(B) After each 800 miles, rotate the vehicles in the convoy by moving the last vehicle to the lead position. Do not rotate driver positions within the convoy. In four-car convoys, vehicle one shall become vehicle two, vehicle two shall become vehicle three, vehicle three shall become vehicle four, and vehicle four shall become vehicle one.

(C) After each 800 miles, if necessary, adjust wheel alignment to the midpoint of the vehicle manufacturer's specification, unless adjustment to the midpoint is not recommended by the manufacturer; in that case, adjust the alignment to the manufacturer's recommended setting. In all cases, the setting is within the tolerance specified by the manufacturer of the alignment machine.

(D) After each 800 miles, if determining the projected mileage by the 9-point method set forth in (e)(2)(ix)(A)(1), measure the average tread depth of each tire following the procedure set forth in paragraph (e)(2)(vi) of this section.

(E) After each 1,600 miles, move the complete set of four tires to the following vehicle. Move the tires on the last vehicle to the lead vehicle. In moving the tires, rotate them as set forth in (e)(2)(viii)(A) of this section.

(F) At the end of the test, measure the tread depth of each tire pursuant to the procedure set forth in paragraph (e)(2)(vi) of this section.

* * * * *

4. Section 575.104(e)(2)(ix)(F) is revised to read as follows:

* * * * *

(F) Compute the percentage (P) of the NHTSA nominal treadwear value for each candidate tire using the following formula:

$$P = \frac{\text{Projected mileage}}{30,000} \times 100$$

On and before August 31, 1993, round off the percentage to the nearest lower 10-point increment. On and after September 1, 1993, round off the percentage to the nearest lower 20-point increment.

* * * * *

Issued on June 4, 1991

**56 F.R. 26769
June 11, 1991**

PREAMBLE TO AN AMENDMENT TO PART 575

Consumer Information Regulations; Uniform Tire Quality Grading Standards: Treadwear Test Course

(Docket No. 25; Notice 67)

RIN: 2127-AE-01

ACTION: Final rule.

SUMMARY: The Uniform Tire Quality Grading Standards (UTQGS) contain detailed testing procedures for generating consumer information about the treadwear, traction, and temperature resistance of passenger car tires. The treadwear grading procedures specify the specific test course along which treadwear convoys must travel to ensure uniformity among test grades. This rule amends the test course to account for potentially unsafe traffic patterns along the test route. The agency has concluded that the course change will not compromise the reliability of the treadwear grades.

EFFECTIVE DATES: December 16, 1991.

SUPPLEMENTARY INFORMATION:

The Uniform Tire Quality Grading Standards (UTQGS) set forth conditions and procedures in 49 CFR 574.104(e) for convoys used to generate treadwear data. Those data are in turn used to determine treadwear grades. The treadwear grades inform consumers about the amount of expected tread life for each tire offered for sale. This allows the tire purchaser to compare passenger car tires based on tread life. Although these treadwear grades are not intended to be used to predict the actual mileage that a particular tire will achieve, they must be sufficiently accurate to help consumers choose among tires based on their relative tread life.

On March 26, 1991, the agency proposed amending the specified roadway course on which treadwear convoys are required to be run (56 FR 12503). As a result of recent road improvements, the current course, as specified in Appendix A to the UTQGS, poses a significant safety problem to certain test convoys which must make a U-turn on a heavily travelled road. Accordingly, the agency proposed substituting a similar 3.6 mile portion to the test course at a more convenient location to help the adversely affected convoys avoid the U-turn. The agency tentatively determined that differences, if any, in the wear characteristics between the two alternate portions of the test course should have an insignificant effect on treadwear grades.

The agency received one comment to the proposal from Smithers Laboratory, which supported the proposal. No comments were received opposing the proposal. The agency therefore has decided to amend the treadwear test course, as proposed. Accordingly, test convoys may travel on an alternative 3.6 mile leg of the test course to avoid the unsafe traffic situation.

In consideration of the foregoing, 49 CFR §575.104, Uniform Tire Quality Grading Standards is amended as follows:

* * * * *

Eastern Loop. From junction of Loop Road 306 and FM388 (2), make right turn onto FM388 and drive east to junction with FM2334 (13). Turn right onto FM2334 and proceed south across FM765 (14) to junction of FM2334 and US87 (15). For convoys that originate at Goodfellow AFB, make U-turn and return to junction of FM388 and Loop Road 306 (2) by the same route. For convoys that do not originate at Goodfellow AFB, upon reaching junction of FM2334 and US87 (15), make U-turn and continue north on FM2334 past the intersection with FM388 to Veribest Cotton Gin, a distance of 1.8 miles beyond the intersection. Make U-turn and return to junction of FM2334 and FM388. Turn right onto FM388, proceed west to junction FM388 and Loop Road 306.

Northwestern Loop. From junction of Loop Road 306 and FM388 (2), make right turn onto Loop Road 306. Proceed onto US277, to junction with FM2105 (8). Turn left onto FM2105 and proceed west to junction with US87 (10). Turn right on US87 and proceed northwest to the junction with FM2034 near the town of Water Valley (11). Turn right onto FM2034 and proceed north to Texas 208 (12). Turn right onto Texas 208 and proceed south to junction with FM2105 (9). Turn left onto FM2105 and proceed east to junction with US277 (8). Turn right onto US277 and proceed south onto Loop Road 306 to junction with FM388 (2). For convoys that originate at Goodfellow AFB, turn right onto FM388 and proceed to starting point at junction of Ft. McKavitt Road and FM388 (1). For convoys that do not originate at Goodfellow AFB, do not turn right onto FM388 but continue south on Loop Road 306.

* * * * *

3. In 575.104, the Chart "KEY POINTS ALONG TREADWEAR TEST COURSE, APPROXIMATE MILEAGES, AND REMARKS" is revised to read as follows:

4. In 575.104, Figure 3 is amended to read as follows:

KEY POINTS ALONG TREADWEAR TEST COURSE, APPROX. MILEAGES, AND REMARKS ***

	Mileages	Remarks
1 Ft. McKavitt Road & . . . FM 388	0	
2 FM388 & Loop 306 * . . .	2	STOP
3 Loop 306 & US277	10	
4 Sonora	72	
5 US 277 & FM 189	88	
6 FM 189 & Texas 163	124	
7 Historical Marker (Camp Hudson)	143	U-TURN
4 Sonora	214	
3 Loop 306 & US 277	276	
2 FM 388 & Loop 306	283	
13 FM 388 & FM 2334 **	290	STOP
14 FM 2334 & FM 765	292	STOP
15 FM 2334 & US 87	295	U-TURN
14 FM 2334 & FM 765	298	STOP
13 FM 388 & FM 2334	300	STOP/YIELD/ BLINKING RED LIGHT
2 FM 388 & Loop 306	307	STOP/YIELD/ BLINKING RED LIGHT
8 US 277 & FM 2105	313	
9 FM 2105 & Texas 208	317	STOP
10 FM 2105 & US 87	320	STOP
11 FM 2034 & US 87	338	
12 FM 2034 & Texas 208	362	YIELD
9 FM 2105 & Texas 208	387	
8 FM 2105 & US 277	391	YIELD/STOP
2 FM 388 & Loop 306 *	398	
1 Ft. McKavitt Road & . . . FM 388	400	
16 Veribest Cotton Gin	1.8	U-TURN

* Convoys not originating at Goodfellow AFB will not traverse the leg of course.

** Convoys not originating at Goodfellow AFB will proceed to 16, Veribest Cotton Gin, Make U-turn and return to 13.

*** (56 F.R. 26769—June 11, 1991. Effective: September 1, 1993)

FIGURE 2

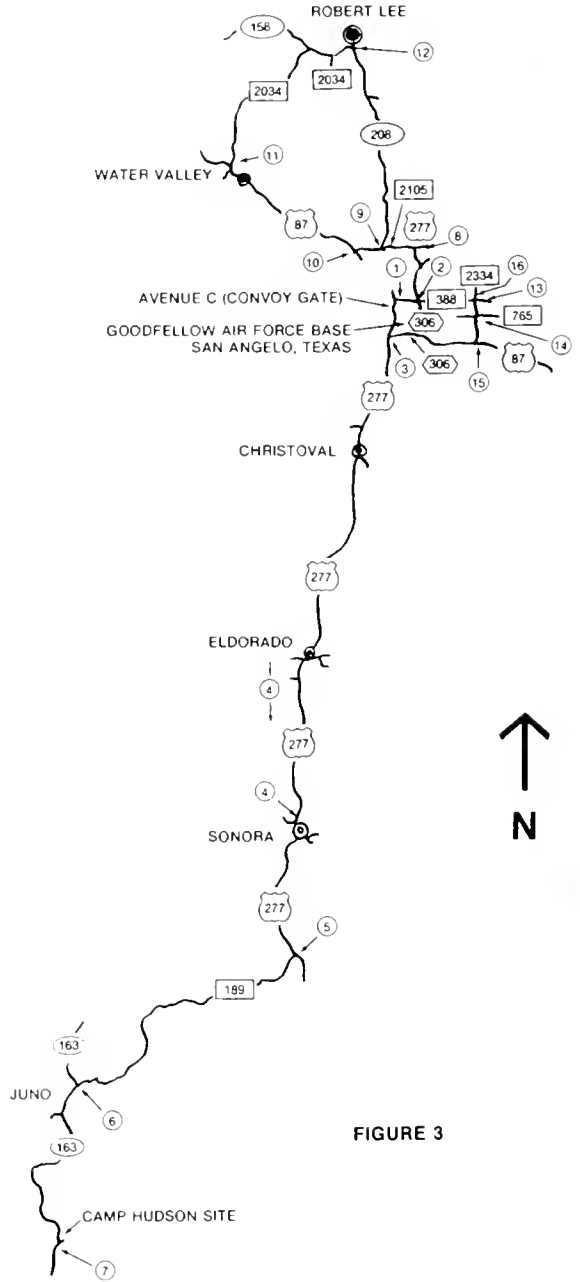


FIGURE 3

Issued on September 11, 1991.

56 F.R. 47011
September 17, 1991

PREAMBLE TO AN AMENDMENT TO PART 575

Consumer Information Regulations; Uniform Tire Quality Grading Standards: Vehicles in Treadwear Convoys

(Docket No. 25; Notice 66)

RIN: 2127-AD68

ACTION: Final rule.

SUMMARY: This rule amends the treadwear testing procedures in the Uniform Tire Quality Grading Standards (UTQGS) to permit the use of front-wheel-drive passenger cars and light trucks, vans, and multipurpose passenger vehicles. Prior to this amendment, the treadwear grading procedures only permitted testing of passenger car tires on rear-wheel-drive passenger cars. The agency concludes that the amendment will result in the use of test vehicles that more accurately reflect the types of vehicles currently being produced. The amendment will also provide treadwear evaluators with greater flexibility in obtaining vehicles.

EFFECTIVE DATES: This amendment becomes effective December 16, 1991.

SUPPLEMENTARY INFORMATION:

The Uniform Tire Quality Grading Standards (UTQGS) set forth procedures for treadwear testing in 49 CFR 575.104(e). The purpose of the treadwear grades is to aid consumers in the selection of new tires by informing them of the relative amount of expected tread life for each tire offered for sale. This allows the tire purchaser to compare passenger car tires based on tread life. Although these treadwear grades are not intended to be used to predict the actual mileage that a particular tire will achieve, they must be reasonably accurate to help consumers choose among tires based on their relative tread life.

On February 25, 1991, the agency proposed amending the treadwear grading procedures to permit treadwear convoys to consist of front-wheel-drive passenger cars and light trucks, vans and multipurpose passenger vehicles (MPVs) (or any combination thereof) (56 FR

7643). At the time of the proposal, the regulations specified that only rear-wheel-drive passenger cars could be used in the testing to determine treadwear grades (575.104(e)(1)(iv)). The reason for this limitation was that most vehicles used by consumers were of this type when the regulations were initially issued. Since then, the proportion of the rear-wheel-drive and front-wheel-drive vehicles has changed radically.

Approximately 80 percent of all model year 1989 passenger cars have front-wheel-drive. In addition, the overall light duty vehicle fleet includes a steadily increasing percentage of light trucks, vans, and other MPVs. Given these changes, the agency studies the feasibility of using front-wheel-drive cars and light trucks, vans, and MPVs for treadwear testing. The agency's analysis of data indicated that treadwear rates of tires tested on these vehicles were comparable to the treadwear rates on rear-wheel-drive passenger cars. Based on the foregoing, the agency proposed the amendment, believing that it would result in the use of test vehicles that more accurately reflect the types of vehicles being manufactured and would make it easier for test fleet operators to obtain vehicles. The amendment also changes the specified size of the test convoy from "no more than four passenger cars" to either "two or four passenger cars, light trucks, or MPVs."

The agency received no comments to the February proposal. The agency therefore has decided to amend the treadwear convoy requirements, as proposed. Accordingly, front-wheel-drive passenger cars and light trucks, vans, and MPVs may be used in treadwear convoys.

56 F.R. 57988
November 15, 1991



PART 575—CONSUMER INFORMATION

SUBPART A—GENERAL

§ 575.1 Scope.

This part contains Federal Motor Vehicle Consumer Information Regulations established under section 112(d) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1401(d)) (hereinafter “the Act”).

§ 575.2 Definitions.

(a) *Statutory definitions.* All terms used in this part that are defined in section 102 of the Act 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 571 of this subchapter (hereinafter “The Standards”) are used as defined in the Standards without regard to the applicability of a standard in which a definition is contained.

(c) *Definitions used in this part.*

“Brake power unit” means a device installed in a brake system that provides the energy required to actuate the brakes, either directly or indirectly through an auxiliary device, with the operator action consisting only of modulating the energy application level.

“Lightly loaded vehicle weight” means—

(1) For a passenger car, unloaded vehicle weight plus 300 pounds (including driver and instrumentation), with the added weight distributed in the front seat area.

(2) For a motorcycle, unloaded vehicle weight plus 200 pounds (including driver and instrumentation), with added weight distributed on the saddle and in saddle bags or other carrier.

“Maximum loaded vehicle weight” is used as defined in Standard No. 110.

“Maximum sustained vehicle speed” means that speed attainable by accelerating at maximum rate from a standing start for 1 mile.

“Owner’s manual” means the document which contains the manufacturer’s comprehensive vehicle operating and maintenance instructions, and which is intended to remain with the vehicle for the life of the vehicle. 54 F.R. 48745—November 27, 1989. Effective: September 1, 1990.]

“Skid number” means the frictional resistance measured in accordance with American Society for Testing and Materials Method E-274 at 40 miles per hour, omitting water delivery as specified in paragraph 7.1 of that Method.

§ 575.3 Matter incorporated by reference.

The incorporation by reference provisions of § 571.5 of this subchapter applies to this part.

§ 575.4 Application.

(a) *General.* Except as provided in paragraphs (b) through (d) of this section, each section set forth in Subpart B of this part applies according to its terms to motor vehicles and tires manufactured after the effective date indicated.

(b) *Military vehicles.* This part does not apply to motor vehicles or tires sold directly to the Armed Forces of the United States in conformity with contractual specifications.

(c) *Export.* This part does not apply to motor vehicles or tires intended solely for export and so labeled or tagged.

(d) *Import.* This part does not apply to motor vehicles or tires imported for purposes other than resale.

§ 575.5 Separability.

If any section established in this part or its application to any person or circumstances is held invalid, the remainder of the part and the application of that section to other persons or circumstances is not affected thereby.

§ 575.6 Requirements.

(a)(1) At the time a motor vehicle is delivered to the first purchaser for purposes other than resale, the manufacturer of that vehicle shall provide to that purchaser, in writing and in the English language, the information specified in §§ 575.103 and 575.104 of this part that is applicable to that vehicle and its tires. The document provided with a vehicle may contain more than one table, but the document must either (1) clearly and unconditionally indicate which of the tables apply to the vehicle with which it is provided, or (2) contain a statement on its cover referring the reader to the vehicle certification label for specific information concerning which of the tables apply to that vehicle. If the manufacturer chooses option (2), the vehicle certification label shall include such specific information.

Example 1: Manufacturer X furnishes a document containing several tables, which apply to various groups of vehicles that it produces. The document contains the following notation on its front page: "The information that applies to this vehicle is contained in Table 5." The notation satisfies the requirement.

Example 2: Manufacturer Y furnishes a document containing several tables as in Example 1, with the following notation on its front page:
 Information applies as follows:
 Model P. 6-cylinder engine—Table 1.
 Model P. 8-cylinder engine—Table 2.
 Model Q—Table 3.

This notation does not satisfy the requirement, since it is conditioned on the model or the equipment of the vehicle with which the document is furnished, and therefore additional information is required to select the proper table.

(b) At the time a motor vehicle tire is delivered to the first purchaser for a purpose other than resale, the manufacturer of that tire, or in the case of a tire marketed under a brand name, the brand name owner, shall provide to that purchaser the information specified in Subpart B of this part that is applicable to that tire.

(c) Each manufacturer of motor vehicles, each brand name owner of tires, and each manufacturer of tires for which there is no brand name owner shall provide for examination by prospective purchasers, at each location where its vehicles or tires are offered for sale by a person with whom the manufacturer or brand name owner has a contractual, proprietary, or other legal relationship, or by a person who has such a relationship with a distributor of the manufacturer or brand name owner concerning the vehicle or tire in question, the information specified in Subpart B of this part that is applicable to each of the vehicles or tires offered for sale at that location. The information shall be provided without charge and in sufficient quantity to be available for retention by prospective purchasers or sent by mail to a prospective purchaser upon his request. With respect to newly introduced vehicles or tires, the information shall be provided for examination by prospective purchasers not later than the day on which the

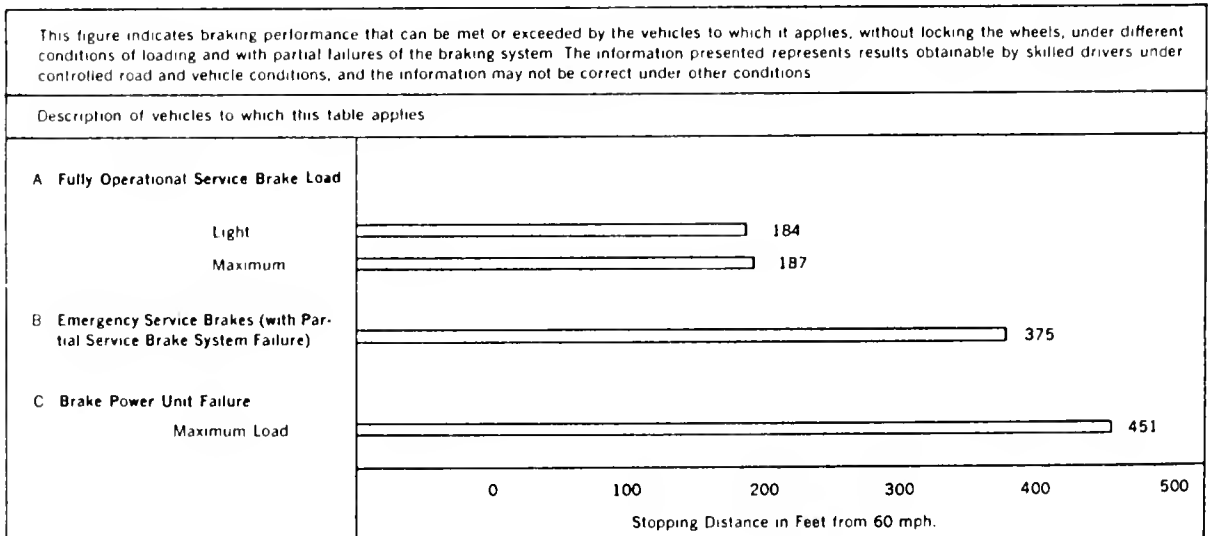


FIGURE 1

manufacturer or brand name owner first authorizes those vehicles or tires to be put on general public display and sold to consumers.

(d) (1) (i) Except as provided in paragraph (d) (1) (ii) of this section in the case of all sections of Subpart B, other than § 575.104, as they apply to information submitted prior to new model introduction, each manufacturer of motor vehicles shall submit to the Administrator 10 copies of the information specified in Subpart B of this part that is applicable to the vehicles offered for sale, at least 90 days before it is first provided for examination by prospective purchasers pursuant to paragraph (c) of this section. (2) In the case of § 575.104, and all other sections of Subpart B as they apply to post-introduction changes in information submitted for the current model year, each manufacturer of motor vehicles, each brand name owner of tires, and each manufacturer of tires for which there is no brand name owner shall submit to the Administrator 10 copies of the information specified in Subpart B of this part that is applicable to the vehicles or tires offered for sale, at least 30 days before that information is first provided for examination by prospective purchasers pursuant to paragraph (c) of this section.

(ii) Where an unforeseen pre-introduction modification in vehicle design or equipment results in a change in vehicle performance for a characteristic included in Subpart B of this part, a manufacturer of motor vehicles may revise information previously furnished under (d) (1) (i) of this section by submission to the Administrator of 10 copies of revised information reflecting the performance changes, at least 30 days before information on the subject vehicles is first provided to prospective purchasers pursuant to paragraph (c) of this section.

(2) In the case of § 575.104, and all other sections of Subpart B as they apply to post-introduction changes in information submitted for the current model year, each manufacturer of motor vehicles, each brand name owner of tires, and each manufacturer of tires for which there is no brand name owner shall submit to the Administrator 10 copies of the information specified in Subpart B of this part that is applicable to the vehicles or tires offered for sale, at least 30 days before it is first provided for examination by prospective purchasers pursuant to paragraph (c) of this section.

[(2)(A) At the time a motor vehicle manufactured on or after September 1, 1990 is delivered to the first purchaser for purposes other than resale, the manufacturer shall provide to the purchaser, in writing in the English language and not less than 10 point type, the following statement in the owner's manual, or, if there is no owner's manual, on a one-page document:

"If you believe that your vehicle has a defect which could cause a crash or could cause injury or death, you should immediately inform the National Highway Traffic Safety Administration (NHTSA) in addition to notifying [INSERT NAME OF MANUFACTURER].

If NHTSA receives similar complaints, it may open an investigation, and if it finds that a safety defect exists in a group of vehicles, it may order a recall and remedy campaign. However, NHTSA cannot become involved in individual problems between you, your dealer, or [INSERT NAME OF MANUFACTURER].

To contact NHTSA, you may either call the Auto Safety Hotline toll-free at 1-800-424-9393 (or 366-0123 in the Washington D.C. area) or write to: NHTSA, U.S. Department of Transportation, Washington, D.C. 20590. You can also obtain other information about motor vehicle safety from the Hotline.

(2)(B) The manufacturer shall specify in the table of contents of the owner's manual the location of the statement in 575.6(a)(2)(A). The heading in the table of contents shall state "Reporting Safety Defects." 54 F.R. 48745—November 27, 1989. Effective: September 1, 1990]

§ 575.7 Special vehicles.

A manufacturer who produces vehicles having a configuration not available for purchase by the general public need not make available to ineligible purchasers, pursuant to § 575.6(c), the information for those vehicles specified in Subpart B of this part, and shall identify those vehicles when furnishing the information required by § 575.6(d).

SUBPART B—CONSUMER INFORMATION ITEMS

§ 575.101 Vehicle stopping distance.

(a) *Purpose and scope.* This section requires manufacturers of passenger cars and motorcycles to provide information on vehicle stopping distances

under specified speed, brake, loading and pavement conditions.

(b) *Application.* This section applies to passenger cars and motorcycles manufactured on or after January 1, 1970.

(c) *Required information.* Each manufacturer shall furnish the information in (1) through (5) below, in the form illustrated in Figure 1, except that with respect to (2) and (3) below, a manufacturer whose total motor vehicle production does not exceed 500 annually is only required to furnish performance information for the loaded condition. Each motorcycle in the group to which the information applies shall be capable, under the conditions specified in paragraph (d), and utilizing the procedures specified in paragraph (e), of performing at least as well as the information indicates. Each passenger car in the group to which the information applies shall be capable of performing at least as well as the information indicates, under the test conditions and procedures specified in S6 and S7 of Standard No. 105-75 of this chapter (49 CFR 571.105-75) or, in the case of passenger cars manufactured before January 1, 1977, and at the option of the manufacturer, under the conditions specified in paragraph (d) of this section and the procedures specified in Paragraph (e) of this section.

If a vehicle is unable to reach the speed of 60 miles per hour (mph), the maximum sustained vehicle speed shall be substituted for the 60 mph speed in the requirements specified below, and in the presentation of information as in Figure 1, with an asterisked notation in essentially the following form at the bottom of the figure: "The maximum speed attainable by accelerating at maximum rate from a standing start for 1 mile." The weight requirements indicated in paragraphs (c)(2), (3), and (4) of this section are modified for the motorcycles (and at the option of the manufacturer, in the case of passenger cars manufactured before January 1, 1977) by the fuel tank condition specified in paragraph (d) (4) of this section.

(1) *Vehicle description.* The group of vehicles to which the table applies, identified in the terms by which they are described to the public by the manufacturer.

(2) *Minimum stopping distance with fully operational service brake system.* The minimum stopping distance attainable, expressed in feet,

from 60 mph, using the fully operational service brake system—

(i) In the case of a motorcycle, at lightly loaded and maximum loaded vehicle weight; and

(ii) In the case of a passenger car, at lightly loaded vehicle weight and at gross vehicle weight rating (GVWR), except for a passenger car manufactured before January 1, 1977, and tested, at the option of the manufacturer, under the conditions and procedures of paragraphs (d) and (e) of this section, which passenger car shall be tested at lightly loaded vehicle weight and at maximum loaded vehicle weight.

(3) *Minimum stopping distance with partially failed service brake system.* (Applicable only to passenger cars with more than one service brake subsystem.) The minimum stopping distance attainable using the service brake control, expressed in feet, from 60 mph, for the most adverse combination of GVWR or lightly loaded vehicle weight and partial failure as specified in S5.1.2 of Standard No. 105-75 of this chapter. However, a passenger car manufactured before January 1, 1977, and tested, at the option of the manufacturer, under the conditions and procedures of paragraphs (d) and (e) of this section, shall be tested at maximum loaded vehicle weight instead of GVWR.

(4) *Minimum stopping distance with in-operative brake power assist unit or brake power unit.* (Applicable only to passenger cars equipped with brake power assist unit or brake power unit.) The minimum stopping distance, expressed in feet, from 60 mph, using the service brake system, tested in accordance with the requirements of S5.1.3 of Standard No. 105-75 of this chapter. However, in the case of a passenger car manufactured before January 1, 1977, vehicle loading may, at the option of the manufacturer, be maximum loaded vehicle weight in place of the GVWR loading specified under S5.1.3 of Standard No. 105-75.

(5) *Notice.* The following notice: "This figure indicates braking performance that can be met or exceeded by the vehicles to which it applies, without locking the wheels, under different conditions of loading and with partial failures of the braking system. The information presented

represents results obtainable by skilled drivers under controlled road and vehicle conditions, and the information may not be correct under other conditions.”

(d) *Conditions.* The data provided in the format of Figure 1 shall represent a level of performance that can be equalled or exceeded by each vehicle in the group to which the table applies, under the following conditions, utilizing the procedures set forth in (e) below:

(1) Stops are made without lock-up of any wheel, except for momentary lock-up caused by an automatic skid control device.

(2) The tire inflation pressure and other relevant component adjustments of the vehicle are made according to the manufacturer’s published recommendations.

(3) For passenger cars, brake pedal force does not exceed 150 pounds for any brake application. For motorcycles, hand brake lever force applied 1¼ inches from the outer end of the lever does not exceed 55 pounds, and foot brake pedal force does not exceed 90 pounds.

(4) Fuel tank is filled to any level between 90 and 100 percent of capacity.

(5) Transmission is in neutral, or the clutch disengaged, during the entire deceleration.

(6) The vehicle begins the deceleration in the center of a straight roadway lane that is 12 feet wide, and remains in the lane throughout the deceleration.

(7) The roadway lane has a grade of zero percent, and the road surface has a skid number of 81, as measured in accordance with American Society for Testing and Materials (ASTM) Method E-274-70 (as revised July, 1974) at 40 mph, omitting the water delivery specified in paragraphs 7.1 and 7.2 of that Method.

(8) All vehicle openings (doors, windows, hood, trunk, convertible tops, etc.) are in the closed position except as required for instrumentation purposes.

(9) Ambient temperature is between 32°F and 100°F.

(10) Wind velocity is zero.

(e) *Procedures.*

(1) Burnish.

(i) Passenger cars. Burnish brakes once prior to first stopping distance test by conduct-

ing 200 stops from 40 mph (or maximum sustained vehicle speed if the vehicle is incapable of reaching 40 mph) at a deceleration rate of 12 fpsps in normal driving gear, with a cooling interval between stops, accomplished by driving at 40 mph for a sufficient distance to reduce brake temperature to 250°F, or for one mile, whichever occurs first. Readjust brakes according to manufacturer’s recommendations after burnishing.

(ii) Motorcycles. Adjust and burnish brakes in accordance with manufacturer’s recommendations. Where no burnishing procedures have been recommended by the manufacturer, follow the procedures specified above for passenger cars, except substitute 30 mph for 40 mph and 150° F for 250°F, and maintain hand lever force to foot lever force ratio of approximately 1 to 2.

(2) Ensure that the temperature of the hottest service brake is between 130°F and 150°F prior to the start of all stops (other than burnishing stops), as measured by plug-type thermocouples installed according to SAE Recommended Practice J843a, June 1966.

(3) Measure the stopping distance as specified in (c) (2), (3), and (4), from the point of application of force to the brake control to the point at which the vehicle reaches a full stop.

§ 575.102 [Reserved].

§ 575.103 Truck-camper loading.

(a) *Scope.* This section requires manufacturers of trucks that are capable of accommodating slide-in campers to provide information on the cargo weight rating and the longitudinal limits within which the center of gravity for the cargo weight rating should be located.

(b) *Purpose.* The purpose of this section is to provide information that can be used to reduce overloading and improper load distribution in truck-camper combinations, in order to prevent accidents resulting from the adverse effects of these conditions on vehicle steering and braking.

(c) *Application.* This section applies to trucks that are capable of accommodating slide-in campers.

(d) *Definitions.* “Camper” means a structure designed to be mounted in the cargo area of a

truck, or attached to an incomplete vehicle with motive power, for the purpose of providing shelter for persons.

“Cargo weight rating” means the value specified by the manufacturer as the cargo-carrying capacity, in pounds, of a vehicle, exclusive of the weight of occupants, computed as 150 pounds times the number of designated seating positions.

“Slide-in camper” means a camper having a roof, floor and sides, designed to be mounted on and removable from the cargo area of a truck by the user.

(e) *Requirements.* Except as provided in paragraph (f) of this section each manufacturer of a truck that is capable of accommodating a slide-in camper shall furnish the information specified in (1) through (5) below:

(1) A picture showing the manufacturer’s recommended longitudinal center of gravity zone for the cargo weight rating in the form illustrated in Figure 1. The boundaries of the zone shall be such that when a slide-in camper equal in weight to the truck’s cargo weight rating is installed, no gross axle weight rating of the truck is exceeded. Until October 1, 1973 the phrase “Aft End of Cargo Area” may be used in Figure 1 instead of “Rear End of Truck Bed”.

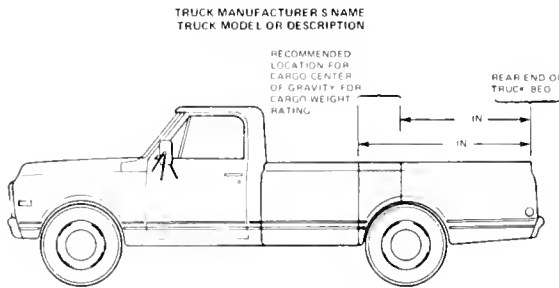


FIGURE 1 TRUCK LOADING INFORMATION

(2) The truck’s cargo weight rating.

(3) The statements: “When the truck is used to carry a slide-in camper, the total cargo load of the truck consists of the manufacturer’s camper weight figure, the weight of installed additional camper equipment not included in the manufacturer’s camper weight figure, the weight of camper cargo, and the weight of passengers in the camper. The total cargo load should not ex-

ceed the truck’s cargo weight rating and the camper’s center of gravity should fall within the truck’s recommended center of gravity zone when installed.” Until October 1, 1973 the phrase “total load” may be used instead of “total cargo load”.

(4) A picture showing the proper match of a truck and slide-in camper in the form illustrated in Figure 2.

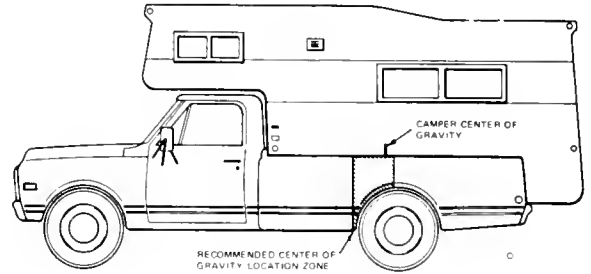


FIGURE 2 EXAMPLE OF PROPER TRUCK AND CAMPER MATCH

(5) The statements: “Secure loose items to prevent weight shifts that could affect the balance of your vehicle. When the truck camper is loaded, drive to a scale and weigh on the front and on the rear wheels separately to determine axle loads. Individual axle loads should not exceed either of the gross axle weight ratings (GAWR). The total of the axle loads should not exceed the gross vehicle weight rating (GVWR). These ratings are given on the vehicle certification label that is located on the left side of the vehicle, normally the dash, hinge pillar, door latch post, or door edge next to the driver. If weight ratings are exceeded, move or remove items to bring all weights below the ratings.”

(f) If a truck would accommodate a slide-in camper but the manufacturer of the truck recommends that the truck not be used for that purpose, the information specified in paragraph (e) shall not be provided but instead the manufacturer shall provide a statement that the truck should not be used to carry a slide-in camper.

§ 575.104 Uniform Tire Quality Grading Standards.

(a) *Scope.* This section requires motor vehicle and tire manufacturers and tire brand name owners to provide information indicating the relative performance of passenger car tires in the areas of treadwear, traction, and temperature resistance.

(b) *Purpose.* The purpose of this section is to aid the consumer in making an informed choice in the purchase of passenger car tires.

(c) *Application.* (1) This section applies to new pneumatic tires for use on passenger cars. However, this section does not apply to deep tread, winter-type snow tires, space-saver or temporary use spare tires, tires with nominal rim diameters of 10 to 12 inches, or to limited production tires as defined in paragraph (c)(2) of this section.

(2) "Limited production tire" means a tire meeting all of the following criteria, as applicable:

(i) The annual domestic production or importation into the United States by the tire's manufacturer of tires of the same design and size as the tire does not exceed 15,000 tires;

(ii) In the case of a tire marketed under a brand name, the annual domestic purchase or importation into the United States by a brand name owner of tires of the same design and size as the tire does not exceed 15,000 tires;

(iii) The tire's size was not listed as a vehicle manufacturer's recommended tire size designation for a new motor vehicle produced in or imported into the United States in quantities greater than 10,000 during the calendar year preceding the year of the tire's manufacturer; and

(iv) The total annual domestic production or importation into the United States by the tire's manufacturer, and in the case of a tire marketed under a brand name, the total annual domestic purchase or purchase for importation into the United States by the tire's brand name owner, of tires meeting the criteria of paragraphs (c)(2) (i), (ii), and (iii) of this section, does not exceed 35,000 tires.

Tire design is the combination of general structural characteristics, materials, and tread pattern, but does include cosmetic, identifying or other minor variations among tires.

(d) *Requirements.*

(1) *Information.*

(i) Each manufacturer of tires, or in the case of tires marketed under a brand name, each brand name owner, shall provide grading information for each tire of which he is the manufacturer or brand name owner in the manner set forth in paragraphs (d) (1) (i) (A) and (d) (1) (i) (B) of this section. The grades for each tire shall be only those specified in paragraph (d) (2) of this section. Each tire shall be able to achieve the level of performance represented by each grade with which it is

labeled. An individual tire need not, however, meet further requirements after having been subjected to the test for any one grade.

(A) Except for a tire line, manufactured within the first six months of production of the tire line, each tire shall be graded with the words, letters, symbols, and figures specified in paragraph (d) (2) of this section, permanently molded into or onto the tire sidewall between the tire's maximum section width and shoulder in accordance with one of the methods in Figure 1.

(B) (1) Each tire manufactured before October 1, 1980, other than a tire sold as original equipment on a new vehicle, shall have affixed to its tread surface in a manner such that it is not easily removable a label containing its grades and other information in the form illustrated in Figure 2, Part II, bearing the heading "DOT QUALITY GRADES." The treadwear grade attributed to the tire shall be either imprinted or indelibly stamped on the label adjacent to the description of the treadwear grade. The label shall also depict all possible grades for traction and temperature resistance. The traction and temperature resistance performance grades attributed to the tire shall be indelibly circled. However, each tire labeled in conformity with the requirements of paragraph (d)(1)(B)(2) of this section need not comply with the provisions of this paragraph.

(2) Each tire manufactured on or after October 1, 1980, other than a tire sold as original equipment on a new vehicle, shall have affixed to its tread surface so as not to be easily removable a label or labels containing its grades and other information in the form illustrated in Figure 2, Parts I and II. The treadwear grade attributed to the tire shall be either imprinted or indelibly stamped on the label containing the material in Part I of Figure 2, directly to the right of or below the word "TREADWEAR". The traction and temperature resistance performance grades attributed to the tire shall be indelibly circled in an array of the potential grade letters (ABC) directly to the right of or below the words "TRACTION" and "TEMPERATURE" in Part I of Figure 2. The words "TREADWEAR," "TRACTION," and "TEMPERATURE," in that order, may be laid out

vertically or horizontally. The text part of Part II of Figure 2 may be printed in capital letters. The text of Part I and the text of Part II of Figure 2 need not appear on the same label, but the edges of the two texts must be positioned on the tire tread so as to be separated by a distance of no more than one inch. If the text of Part I and the text of Part II are placed on separate labels, the notation "See EXPLANATION OF DOT QUALITY GRADES" shall be added to the bottom of the Part I text, and the words "EXPLANATION OF DOT QUALITY GRADES" shall appear at the top of the Part II text. The text of Figure 2 shall be oriented on the tire tread surface with lines of type running perpendicular to the tread circumference. If a label bearing a tire size designation is attached to the tire tread surface and the tire size designation is oriented with lines of type running perpendicular to the tread circumference, the text of Figure 2 shall read in the same direction as the tire size designation.

(ii) In the case of information required in accordance with § 575.6(c) to be furnished to prospective purchasers of motor vehicles and tires, each vehicle manufacturer and each tire manufacturer or brand name owner shall as part of that information list all possible grades for traction and temperature resistance, and restate verbatim the explanations for each performance area specified in Figure 2. The information need not be in the same format as in Figure 2. In the case of a tire manufacturer or brand name owner, the information must indicate clearly and unambiguously the grade in each performance area for each tire of that manufacturer or brand name owner offered for sale at the particular location.

(iii) In the case of information required in accordance with § 575.6(a) to be furnished to the first purchaser of a new motor vehicle, other than a motor vehicle equipped with bias-ply tires manufactured prior to October 1, 1979, and April 1, 1980, and a radial-ply tire manufactured prior to October 1, 1980, each manufacturer of motor vehicles shall as part of the information list all possible grades for traction and temperature resistance and restate verbatim the explanation for each performance area specified in Figure 2. The informa-

tion need not be in the format of Figure 2, but it must contain a statement referring the reader to the tire sidewall for the specific tire grades for the tires with which the vehicle is equipped.

(2) *Performance.*

(i) *Treadwear.* Each tire shall be graded for treadwear performance with the word "TREADWEAR" followed by a number of two of three digits representing the tire's grade for treadwear, expressed as a percentage of the NHTSA nominal treadwear value, when tested in accordance with the conditions and procedures specified in paragraph (e) of this section. [On and before August 31, 1993, treadwear grades shall be multiples of 10 (e.g., 80, 150). On and after September 1, 1993, treadwear grades shall be in multiples of 20. (e.g., 80, 120, and 160). (56 F.R. 26769—June 11, 1991. Effective: September 1, 1993)]

(ii) *Traction.* Each tire shall be graded for traction performance with the word "TRACTION," followed by the symbols C, B, or A (either asterisks or 5-pointed stars) when the tire is tested in accordance with the conditions and procedures specified in paragraph (f) of this section.

(A) The tire shall be graded C when the adjusted traction coefficient is either:

(1) 0.38 or less when tested in accordance with paragraph (f) (2) of this section on the asphalt surface specified in paragraph (f) (1) (i) of this section, or

(2) 0.26 or less when tested in accordance with paragraph (f) (2) of this section on the concrete surface specified in paragraph (f) (1) (i) of this section.

(B) The tire may be graded B only when its adjusted traction coefficient is both:

(1) More than 0.38 when tested in accordance with paragraph (f) (2) of this section on the asphalt surface specified in paragraph (f) (1) (i) of this section, and

(2) More than 0.26 when tested in accordance with paragraph (f) (2) of this section on the concrete surface specified in paragraph (f) (1) (i) of this section.

(C) The tire may be graded A only when its adjusted traction coefficient is both:

(1) More than 0.47 when tested in accordance with paragraph (f) (2) of this section on the asphalt surface specified in paragraph (f) (1) (i) of this section, and

(2) More than 0.35 when tested in accordance with paragraph (f) (2) of this section on the concrete surface specified in paragraph (f) (1) (i) of this section.

(iii) *Temperature resistance.* Each tire shall be graded for temperature resistance performance with the word "TEMPERATURE" followed by the letter A, B, or C, based on its performance when the tire is tested in accordance with the procedures specified in paragraph (g) of this section. A tire shall be considered to have successfully completed a test stage in accordance with this paragraph if, at the end of the test stage, it exhibits no visual evidence of tread, sidewall, ply, cord, innerliner or bead separation, chunking, broken cords, cracking or open splices as defined in § 571.109 of this chapter, and the tire pressure is not less than the pressure specified in paragraph (g) (1) of this section.

(A) The tire shall be graded C if it fails to complete the 500 rpm test stage specified in paragraph (g) (9) of this section.

(B) The tire may be graded B only if it successfully completes the 500 rpm test stage specified in paragraph (g) (9) of this section.

(C) The tire may be graded A only if it successfully completes the 575 rpm test stage specified in paragraph (g) (9) of this section.

(e) *Treadwear grading conditions and procedures.*— (1) *Conditions.* (i) Tire treadwear performance is evaluated on a specific roadway course approximately 400 miles in length, which is established by the NHTSA both for its own compliance testing and for that of regulated persons. The course is designed to produce treadwear rates that are generally representative of those encountered by tires in public use. The course and driving procedures are described in Appendix A to this section.

(ii) Treadwear grades are evaluated by first measuring the performance of a candidate tire on the government test course, and then correcting the projected mileage obtained to account for environmental variations on the basis of the performance of the course monitoring tires run in the same convoy. The course monitoring tires are made available by the NHTSA at Goodfellow Air Force Base, San Angelo, Tex., for purchase by any persons conducting tests at the test course.

(iii) In convoy tests each vehicle in the same convoy, except for the lead vehicle, is throughout the test within human eye range of the vehicle immediately ahead of it.

(iv) [A test convoy consists of two or four passenger cars, light trucks, or MVPs, each with a GVWR of 10,000 pounds or less. (56 F.R. 57988—November 15, 1991. Effective: December 16, 1991)]

(v) On each convoy vehicle, all tires are mounted on identical rims of design or measuring rim width specified for tires of that size in accordance with 49 CFR 571.109, § 4.4.1(a) or (b), or a rim having a width within -0 to +0.50 inches of the width specified.

(2) *Treadwear grading procedure.* (i) [Equip a convoy as follows: Place four course monitoring tires on one vehicle. Place four candidate tires with identical size designations on each other vehicle in the convoy. On each axle, place tires that are identical with respect to manufacturer and line.

(ii) Inflate each candidate and each course monitoring tire to the applicable pressure specified in Table 1 of this section.

(iii) Load each vehicle so that the load on each course monitoring and candidate tire is 85 percent of the test load specified in § 575.104(h).

(iv) Adjust wheel alignment to the midpoint of the vehicle manufacturer's specifications, unless adjustment to the midpoint is not recommended by the manufacturer; in that case, adjust the alignment to the manufacturer's recommended setting. In all cases, the setting is within the tolerance specified by the manufacturer of the alignment machine.

(v) Subject candidate and course monitoring tires to "break-in" by running the tires in convoy for two circuits of the test roadway (800 miles). At the end of the first circuit, rotate each vehicle's tires by moving each front tire to the same side of the rear axle and each rear tire to the opposite side of the front axle. Visually inspect each tire for any indication of abnormal wear, tread separation, bulging of the sidewall, or any sign of tire failure. Void the grading results from any tire with any of these anomalies, and replace the tire.

(vi) After break-in, allow the air pressure in the tires to fall to the applicable pressure specified in Table 1 of this section or for 2 hours, whichever occurs first. Measure, to the nearest 0.001 inch, the tread depth of each candidate and each course monitoring tire, avoiding treadwear indicators, at six equally spaced points in each groove. For each tire compute the average of the measurements. Do not measure those shoulder grooves which are not provided with treadwear indicators.

(vii) Adjust wheel alignment to the midpoint of the manufacturer's specifications, unless adjustment to the midpoint is not recommended by the manufacturer; in that case, adjust the alignment according to the manufacturer's recommended setting. In all cases, the setting is within the tolerance specified by the manufacturer of the alignment machine.

(viii) Drive the convoy on the test roadway for 6,400 miles.

(A) After each 400 miles, rotate each vehicle's tires by moving each front tire to the same side of the rear axle and each rear tire to the opposite side of the front axle. Visually inspect each tire for treadwear anomalies.

(B) After each 800 miles, rotate the vehicles in the convoy by moving the last vehicle to the lead position. Do not rotate driver positions within the convoy. In four-car convoys, vehicle one shall become vehicle two, vehicle two shall become vehicle three, vehicle three shall become vehicle four, and vehicle four shall become vehicle one.

(C) After each 800 miles, if necessary, adjust wheel alignment to the midpoint of the vehicle manufacturer's specification, unless adjustment to the midpoint is not recommended by the manufacturer; in that case, adjust the alignment to the manufacturer's recommended setting. In all cases, the setting is within the tolerance specified by the manufacturer of the alignment machine.

(D) After each 800 miles, if determining the projected mileage by the 9-point method set forth in (e)(2)(ix)(a)(1), measure the average tread depth of each tire following the procedure set forth in paragraph (e)(2)(vi) of this section.

(E) After each 1,600 miles, move the complete set of four tires to the following vehicle. Move the tires on the last vehicle to the lead vehicle. In moving the tires, rotate them as set forth in (e)(2)(viii)(A) of this section.

(F) At the end of the test, measure the tread depth of each tire pursuant to the procedure set forth in paragraph (e)(2)(vi) of this section.

(ix)(A) Determine the projected mileage for each candidate tire either by the nine-point method of least squares set forth in (e)(2)(ix)(A)(1) and Appendix C, or by the two-point arithmetical method set forth in

(e)(2)(ix)(A)(2). Notify NHTSA about which of the alternative grading methods is being used.

(1) *Nine-Point Method of Least Squares.* For each course monitoring and candidate tire in the convoy, using the average tread depth measurements obtained in accordance with paragraphs (e)(2)(vi) of this section and the corresponding mileages as data points, apply the method of least squares as described in Appendix C of this section to determine the estimated regression line of y on x given by the following formula:

$$y = a + \frac{bx}{1000}$$

where:

y = average tread depth in mils,

x = miles after break-in,

a = y intercept of regression line (reference tread depth) in mils, calculated using the method of least squares; and

b = the slope of the regression line in mils of tread depth per 1,000 miles, calculated using the method of least squares. This slope will be negative in value. The tire's wear rate is defined as the absolute value of the slope of the regression line.

(2) *Two-Point Arithmetical Method.* For each course monitoring and candidate tire in the convoy, using the average tread depth measurements obtained in accordance with paragraph (e)(2)(vi) and (e)(2)(viii)(F) of this section and the corresponding mileages as data points, determine the slope (m) of the tire's wear in mils of tread depth per 1,000 miles by the following formula:

$$m = \frac{1000 (Y_1 - Y_0)}{(X_1 - X_0)}$$

where:

Y_0 = average tread depth after break-in, mils

Y_1 = average tread depth at 6,400 miles, mils

X_0 = 0 miles (after break-in).

X_1 = 6,400 miles of travel

This slope (m) will be negative in value. tire's wear rate is defined as the slope (m) expressed in mils per 1000 miles.

(B) Average the wear rates of the four course monitoring tires as determined in accordance with paragraph (e)(2)(ix)(A) of this section.

(C) Determine the course severity adjustment factor by dividing the base wear rate for the course monitoring tires (see note below) by the average wear rate for the four course monitoring tires.

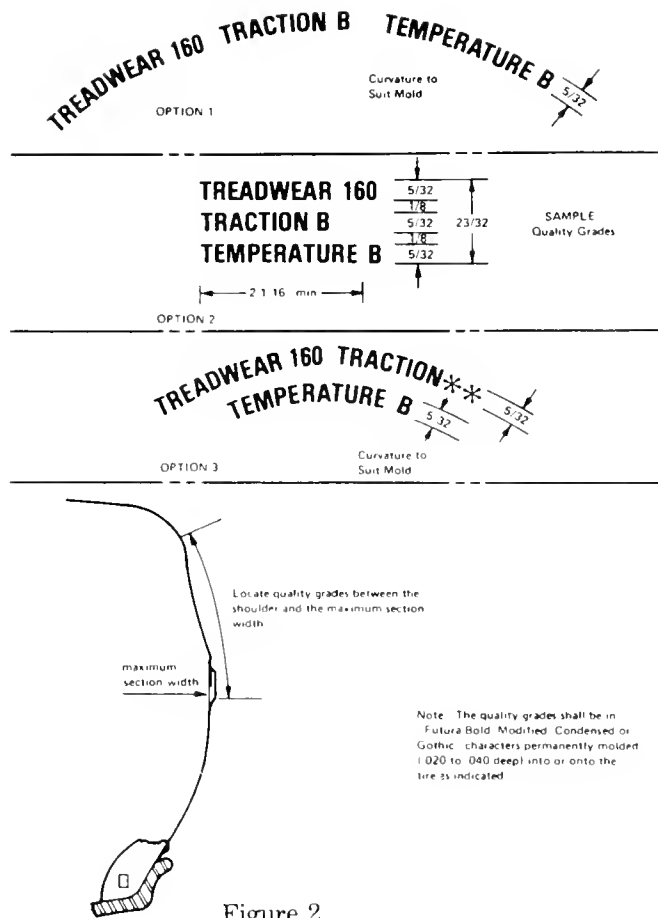


Figure 2

[Part 1] DOT Quality Grades

Treadwear

The treadwear grade is a comparative rating based on the wear rate of the tire when tested under controlled conditions on a specified government test course. For example, a tire graded 150 would wear one and a half (1½) times as well on the government course as a tire graded 100. The relative performance of tires depends upon the actual conditions of their use, however, and may depart significantly from the norm due to variations in driving habits, service practices, and differences in road characteristics and climate.

Traction

The traction grades, from highest to lowest, are A, B, and C, and they represent the tire's ability to stop on wet pavements as measured under controlled conditions on specified government test surfaces of asphalt and concrete. A tire marked C may have poor traction performance. **WARNING:** The traction grade assigned to this tire is based on braking (straightahead) traction tests and does not include cornering (turning) traction.

Temperature

The temperature grades of A (the highest), B, and C, representing the tire's resistance to the generation of heat and its ability to dissipate heat when tested under controlled conditions on a specified indoor laboratory test wheel. Sustained high temperature can cause the material of the tire to degenerate and reduce tire life, and excessive temperature can lead to sudden tire failure. The grade C corresponds to a level of performance which all passenger car tires must meet under the Federal Motor Vehicle Safety Standard No. 109. Grades B and A represent higher levels of performance on the laboratory test wheel than the minimum required by law. **WARNING:** The temperature grade for this tire is established for a tire that is properly inflated and not overloaded. Excessive speed, under-inflation, or excessive loading either separately or in combination, can cause heat buildup and possible tire failure.

[Part II] All Passenger Car Tires Must Conform to Federal Safety Requirements in Addition to These Grades.

NOTE: The base wear rates for the cou C monitoring tires will be furnished to the purchaser at the time of purchase.

(d) Determine the adjusted wear rate for each candidate tire by multiplying its wear rate determined in accordance with paragraph (e)(2)(ix)(A) of this section by the course severity adjustment factor determined in accordance with paragraph (e)(2)(ix)(C) of this section.

(E) Determine the projected mileage for each candidate tire by applying the appropriate formula set forth below:

(1) If the projected mileage is calculated pursuant to (e)(2)(ix)(a)(1), then

$$\text{Projected mileage} = \frac{1000 (a - 62)}{b'} + 800$$

where:

a = y intercept of regression line (reference tread depth) for the candidate tire as determined in accordance with paragraph (e) (2) (ix) (A) of this section.

b' = the adjusted wear rate for the candidate tire as determined in accordance with paragraph (e) (2) (ix) (D) of this section.

(2) If the projected mileage is calculated pursuant to (e)(2)(ix)(a)(2), then:

$$\text{Projected mileage} = \frac{1000 (Y_0 - 62)}{mc} + 800$$

where:

Y₀ = average tread depth after break-in, mils.

mc = the adjusted wear rate for the candidate tire as determined in accordance with paragraph (e) (2) (ix) (D) of this section.

(F) Compute the percentage (P) of the NHTSA nominal treadwear value for each candidate tire using the following formula:

$$P = \frac{\text{Projected Mileage}}{30,000} \times 100$$

On and before August 31, 1993, round off the percentage to the nearest lower 10% increment. [On and after September 1, 1993, round off the percentage to the nearest lower 20-point increment. (56 F.R. 26769—June 11, 1991. Effective: September 1, 1993)]

(f) *Traction grading conditions and procedures*—(1) *Conditions.* (i) Tire traction performance is evaluated on skid pads that are established, and whose severity is monitored, by the NHSTA both for its compliance testing and for that of regulated persons. The test pavements are asphalt and concrete surfaces constructed in accordance with the specifications for pads “C” and “A” in the “Manual for the Construction and Maintenance of Skid Surfaces,” National Tech-

nical Information Service No. DOT-HS-800-814. The surfaces have locked wheel traction coefficients when evaluated in accordance with paragraphs (f)(2)(i) through (f)(2)(vii) of this section of 0.50 ± 0.10 for the asphalt and 0.35 ± 0.10 for the concrete. The location of the skid pads is described in Appendix B of this section.

(ii) The standard tire is the American Society for Testing and Materials (ASTM) E 501 “Standard Tire for Pavement Skid Resistance Tests.”

(iii) The pavement surface is wetted in accordance with paragraph 3.5, “Pavement Wetting System,” of ASTM Method E 274-79, “Skid Resistance of Paved Surfaces Using a Full-Scale Tire.”

(iv) The test apparatus is a test trailer built in conformity with the specifications in paragraph 3, “Apparatus,” of ASTM Method E 274-79, and instrumented in accordance with paragraph 3.3.2 of that Method, except that “wheel load” in paragraph 3.2.2 and tire and rim specifications in paragraph 3.2.3 of that Method are as specified in the procedures in paragraph (f) (2) of this section for standard and candidate tires.

(v) The test apparatus is calibrated in accordance with ASTM Method F 377-74, “Standard Method for Calibration of Braking Force for Testing of Pneumatic Tires” with the trailer’s tires inflated to 24 psi and loaded to 1,085 pounds.

(vi) Consecutive tests on the same surface are conducted not less than 30 seconds apart.

(vii) A standard tire is discarded in accordance with ASTM Method E 501.

(2) *Procedure.* (i) Prepare two standard tires as follows:

(A) Condition the tires by running them for 200 miles on a pavement surface.

(B) Mount each tire on a rim of design or measuring rim width specified for tires of its size in accordance with 49 CFR 571.109, § 4.4.1(a) or (b), or a rim having a width within -0 to +0.50 inches of the width listed. Then inflate the tire to 24 psi, or, in the case of a tire with inflation pressure measured in kilopascals, to 180 kPa.

(C) Statically balance each tire-rim combination.

(D) Allow each tire to cool to ambient temperature and readjust its inflation pressure to 24 psi, or, in the case of a tire with inflation pressure measured in kilopascals, to 180 kPa.

(ii) Mount the tires on the test apparatus described in paragraph (f) (1) (iv) of this section and load each tire to 1,085 pounds.

(iii) Tow the trailer on the asphalt test surface specified in paragraph (f) (1) (i) of this section at a speed of 40 mph, lock one trailer wheel, and record the locked-wheel traction coefficient on the tire associated with that wheel between 0.5 and 1.5 seconds after lockup.

(iv) Repeat the test on the concrete surface, locking the same wheel.

(v) Repeat the tests specified in paragraphs (f) (2) (iii) and (f) (2) (iv) of this section for a total of 10 measurements on each test surface.

(vi) Repeat the procedures specified in paragraphs (f) (2) (iii) through (f) (2) (v) of this section, locking the wheel associated with the other tire.

(vii) Average the 20 measurements taken on the asphalt surface to find the standard tire traction coefficient for the asphalt surface. Average the 20 measurements taken on the concrete surface to find the standard tire traction coefficient for the concrete surface. The standard tire traction coefficient so determined may be used in the computation of adjusted traction coefficients for more than one candidate tire.

(viii) Prepare two candidate tires of the same construction type, manufacturer, line, and size designation in accordance with paragraph (f) (2) (i) of this section, mount them on the test apparatus, and test one of them according to the procedures of paragraph (f)(2)(ii) through (v) of this section, except load each tire to 85% of the test load specified in §575.104(h). [For CT tires, the test inflation of candidate tires shall be 230 kPa. (55 F.R. 49618—November 30, 1990. Effective: December 31, 1990)]

(ix) Compute a candidate tire's adjusted traction coefficient for asphalt (μ_a) by the following formula:

μ_a = Measured candidate tire coefficient for asphalt + 0.50

- Measured standard tire coefficient for asphalt

(x) Compute a candidate tire's adjusted traction coefficient for concrete (μ_c) by the following formula:

μ_c = Measured candidate tire coefficient for concrete + 0.35

- Measured standard tire coefficient for concrete

(g) *Temperature resistance grading.* (1) Mount the tire on a rim of design or measuring rim width specified for tires of its size in accordance with 49 CFR 571.109, § 4.4.1(a) or (b) CFR 571.109, § 4.4.1(a) or (b) and inflate it to the applicable pressure specified in Table 1 of this section.

(2) Condition the tire-rim assembly to any temperature up to 95°F for at least 3 hours.

(3) Adjust the pressure again to the applicable pressure specified in Table 1 of this section.

(4) Mount the tire-rim assembly on an axle, and press the tire tread against the surface of a flat-faced steel test wheel that is 67.23 inches in diameter and at least as wide as the section width of the tire.

(5) During the test, including the pressure measurements specified in paragraphs (g) (1) and (g) (3) of this section, maintain the temperature of the ambient air, as measured 12 inches from the edge of the rim flange at any point on the circumference on either side of the tire at any temperature up to 95°F. Locate the temperature sensor so that its readings are not affected by heat radiation, drafts, variations in the temperature of the surrounding air, or guards or other devices.

(6) Press the tire against the test wheel with a load of 88 percent of the tire's maximum load rating as marked on the tire sidewall.

(7) Rotate the test wheel at 250 rpm for 2 hours.

(8) Remove the load, allow the tire to cool to 95°F or for 2 hours, whichever occurs last, and readjust the inflation pressure to the applicable pressure specified in Table 1 of this section.

Table 1.—Test Inflation Pressures

Maximum permissible inflation pressure for the following test:

[Test]	lbs/in ±				kPa				[kPa (1)]			
	32	36	40	60	240	280	300	340	290	330	350	390
[Treadwear test].....	224	28	32	52	180	220	180	220	230	270	230	270
Temperature resistance test]....	30	34	38	58	220	260	220	260	270	310	270	310]

[(1) For CT tires only]

[(55 F.R. 49618—November 30, 1990. Effective: December 31, 1990)]

(9) Reapply the load and without interruption or readjustment of inflation pressure, rotate the test wheel at 375 rpm for 30 minutes, and then at successively higher rates in 25 rpm increments, each for 30 minutes, until the tire has run at 575 rpm for 30 minutes, or to failure, whichever occurs first.

(h) *Determination of test load.* [(1) To determine test loads for purposes of paragraphs (e) (2) (iii) and (f) (2) (viii), follow the procedure set forth in paragraphs (h) (2) through (5) of this section.

(2) Determine the tire's maximum inflation pressure and maximum load rating both as specified on the tire's sidewall.

(3) Determine the appropriate multiplier corresponding to the tire's maximum inflation pressure, as set forth in Table 2.

(4) Multiply the tire's maximum load rating by the multiplier determined in paragraph (3). This is the tire's calculated load.

(5) Round the product determined in paragraph (4) (the calculated load) to the nearest multiple of ten pounds or, if metric units are used, 5 kilograms. For example, 903 pounds would be rounded to 900 and 533 kilograms would be rounded to 535. This figure is the test load.

Table 2'

<i>Maximum Inflation Pressure</i>	<i>Multiplier to be use for treadwear testing</i>	<i>Multiplier to be used for traction testing</i>
32 lbs/in ² . . . . .	.851	.851
36 lbs/in ² . . . . .	.870	.797
40 lbs/in ² . . . . .	.883	.753
240 kPa . . . . .	.866	.866
280 kPa . . . . .	.887	.804
300 kPa . . . . .	.866	.866
340 kPa . . . . .	.887	.804
290 kPa (1) . . . . .	.866	.866
330 kPa (1) . . . . .	.887	.804
350 kPa (1) . . . . .	.866	.866
390 kPa (1) . . . . .	.887	.804

(1) For CT tires only]

¹ Prior to July 1, 1984, the multipliers in the above table are not to be used in determining loads for the tire size designations listed below in Table 2A. For those designations, the load specifications in that table shall be used in UTQG testing during that period. These loads are the actual loads at which testing shall be conducted and should not be multiplied by the 85 percent factors specified for treadwear and traction testing.

(55 F.R. 49618—November 30, 1990. Effective: December 31, 1990)]

Table 2A

<i>Tire Size Designation</i>	<i>Temp Resistance</i>			<i>Traction</i>	<i>Treadwear</i>		
	<i>Max Pressure</i>				<i>Max Pressure</i>		
	<i>32</i>	<i>36</i>	<i>40</i>		<i>32</i>	<i>36</i>	<i>40</i>
145/70 R13	615	650	685	523	523	553	582
155/70 R13	705	740	780	599	599	629	663
165/70 R13	795	835	880	676	676	710	748
175/70 R13	890	935	980	757	757	795	833
185/70 R13	990	1040	1090	842	842	884	926
195/70 R13	1100	1155	1210	935	935	982	1029
155/70 R14	740	780	815	629	629	663	693
175/70 R14	925	975	1025	786	786	829	871
185/70 R14	1045	1100	1155	888	888	935	982
195/70 R14	1155	1220	1280	982	982	1037	1088
155/70 R15	770	810	850	655	655	689	723
175/70 R15	990	1040	1090	842	842	884	927
185/70 R15	1100	1155	1210	935	935	982	1029
5.60-13	725	810	880	616	616	689	748
5.20-14	695	785	855	591	591	667	727
165-15	915	1015	1105	779	779	863	939
185/60 R13	845	915	980	719	719	778	833

[(i) *Effective dates for treadwear grading requirements for radial tires.*

(1) Treadwear labeling requirements of §575.104 (d)(1)(i)(B)(2) apply to tires manufactured on or after April 1, 1985.

(2) Requirements for NHTSA review of treadwear information in consumer brochures, as specified in paragraph 575.6(d)(2), are effective April 1, 1985.

(3) Treadwear consumer information brochure requirements of paragraph 575.6(c) are effective May 1, 1985.

(4) Treadwear sidewall molding requirements of §575.104(d)(1)(i)(A) apply to tires manufactured on or after September 1, 1985.

(j) *Effective dates for treadwear grading requirements for bias ply tires.*

(1) Treadwear labeling requirements of §575.104 (d)(1)(i)(B)(2) apply to tires manufactured on or after December 15, 1984.

(2) Requirements for NHTSA review of treadwear information in consumer brochures, as specified in paragraph 575.6(d)(2), are effective December 15, 1984.

(3) Treadwear consumer information brochure requirements of paragraph 575.6(c) are effective January 15, 1985.

(4) Treadwear sidewall molding requirements of §575.104(d)(1)(i)(A) apply to tires manufactured on or after May 15, 1985.

(k) *Effective dates for treadwear grading requirements for bias belted tires.*

(1) Treadwear labeling requirements of §575.104 (d)(1)(i)(B)(2) apply to tires manufactured on or after March 1, 1985.

(2) Requirements for NHTSA review of treadwear information in consumer brochures, as specified in paragraph 575.6(d)(2), are effective March 1, 1985.

(3) Treadwear consumer information brochure requirements of paragraph 575.6(c) are effective April 1, 1985.

(4) Treadwear sidewall molding requirements of §575.104(d)(1)(i)(A) apply to tires manufactured on or after August 1, 1981.

(l) *Effective date for treadwear information requirements for vehicle manufacturers.*

Vehicle manufacturer treadwear information requirements of §575.6(a) and 575.104(d)(1)(iii)

are effective September 1, 1985. (49 F.R. 49293—December 19, 1984. Effective: see Preamble to Docket No. 25; Notice 58)]

§ 575.105 Utility Vehicles.

(a) *Purpose and scope.* This section requires manufacturers of utility vehicles to alert drivers that the particular handling and maneuvering characteristics of utility vehicles require special driving practices when those vehicles are operated on paved roads.

(b) *Application.* This section applies to multipurpose passenger vehicles (other than those which are passenger car derivatives) which have a wheelbase of 110 inches or less and special features for occasional off-road operation (“Utility vehicles”).

(c) *Required information.* Each manufacturer shall prepare and affix a vehicle sticker as specified in paragraph 1 of this subsection and shall provide in the vehicle Owner’s Manual the information specified in paragraph 2 of this subsection.

(1) A sticker shall be permanently affixed to the instrument panel, windshield frame, driver’s side sun visor, or in some other location in each vehicle prominent and visible to the driver. The sticker shall be printed in a typeface and color which are clear and conspicuous. The sticker shall have the following or similar language:

This is a multipurpose passenger vehicle which will handle and maneuver differently from an ordinary passenger car, in driving conditions which may occur on streets and highways and off road. As with other vehicles of this type, if you make sharp turns or abrupt maneuvers, the vehicle may rollover or may go out of control and crash. You should read driving guidelines and instructions in the Owner’s Manual, and WEAR YOUR SEATBELTS AT ALL TIMES.

The language on the sticker required by paragraph (1) and in the Owner’s Manual, as required in paragraph (2), may be modified as is desired by the manufacturer to make it appropriate for a specific vehicle design, to ensure that consumers are adequately informed concerning the unique propensities of a particular vehicle model.

(2)(i) The vehicle Owner’s Manual shall include the following statement in its introduction:

As with other vehicles of this type, failure to operate this vehicle correctly may result in loss

of control or an accident. Be sure to read "on-pavement" and "off-road" driving guidelines which follow.

(ii) The vehicle Owner's Manual shall include the following or similar statement:

Utility vehicles have higher ground clearance and a narrower track to make them capable of performing in a wide variety of off-road applications. Specific design characteristics give them a higher center of gravity than ordinary cars. An advantage of the higher ground clearance is a better view of the road allowing you to anticipate problems. They are

not designed for cornering at the same speeds as conventional 2-wheel drive vehicles any more than low-slung sports cars are designed to perform satisfactorily under off-road conditions. If at all possible, avoid sharp turns or abrupt maneuvers. As with other vehicles of this type, failure to operate this vehicle correctly may result in loss of control or vehicle rollover.

§575.106 Deleted.

**34 F.R. 8112
May 23, 1969**

APPENDIX A

Treadwear Test Course and Driving Procedures

INTRODUCTION

The test course consists of three loops of a total of 400 miles in the geographical vicinity of Goodfellow AFB, San Angelo, Texas.

The first loop runs south 143 miles through the cities of Eldorado, Sonora, and Juno, Texas, to the Camp Hudson Historical Marker, and returns by the same route.

The second loop runs east over Farm and Ranch Roads (FM) and returns to its starting point.

The third loop runs northwest to Water Valley, northeast toward Robert Lee and returns via Texas 208 to the vicinity of Goodfellow AFB.

ROUTE

The route is shown in Figure 3. The table identifies key points by number. These numbers are encircled in Figure 3 and are in parentheses in the descriptive material that follows.

Southern Loop

The course begins at the intersection (1) of Ft. McKavitt Road and Paint Rock Road (FM 388) at the northwest corner of Goodfellow AFB.

Drive east via FM 388 to junction with Loop Road 306 (2). Turn right onto Loop Road 306 and proceed south to junction with US 277 (3). Turn onto US 277 and proceed south through Eldorado and Sonora (4), continuing on US 277 to junction with FM 189 (5). Turn right onto FM 189 and proceed to junction with Texas 163 (6). Turn left onto Texas 163, proceed south to Camp Hudson Historical Marker (7) and onto the paved shoulder. Reverse route to junction of Loop Road 306 and FM 388 (2).

Eastern Loop

From junction of Loop Road 306 and FM 388 (2), make right turn onto FM 388 and drive east to junction with FM 2334 (13). Turn right onto FM 2334 and proceed south across FM 765 (14) to junction of FM 2334 and US 87 (15). For convoys that originate at Goodfellow AFB, make U-turn and return to junction of FM 388 and Loop Road 306 (2) by the same route. For convoys that do not originate at Goodfellow AFB, upon reaching junction of FM 2334 and US 87 (15), make U-Turn and continue north on FM 2334 past the intersection with FM 388 to Veribest Cotton Gin, a distance of

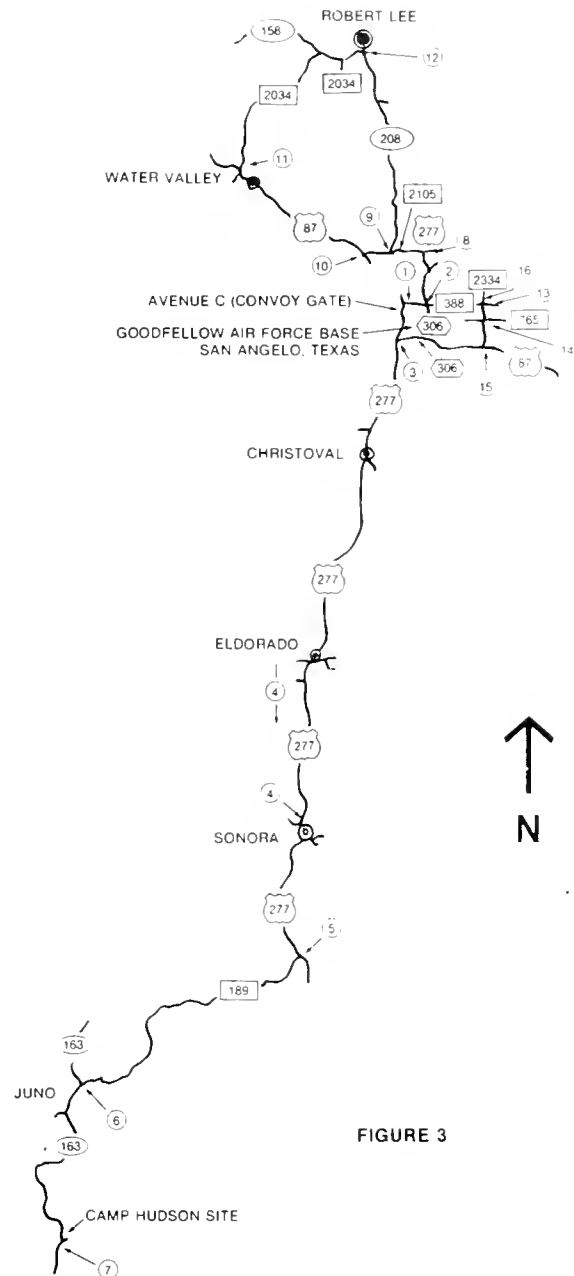


FIGURE 3

Amended: (56 F.R. 47011—September 17, 1991)

1.8 miles beyond the intersection. Make U-turn and return to junction of FM 2334 and FM 388. Turn right onto FM 388, proceed west to junction FM 388 and Loop Road 306.

Northwestern Loop

From junction of Loop Road 306 and FM 388 (2), make right turn onto Loop Road 306. Proceed onto US 277, to junction with FM 2105(8). Turn left onto FM 2105 and proceed west to junction with US 87 (10). Turn right on US 87 and proceed northwest to the junction with FM 2034 near the

town of Water Vally (11), turn right onto FM 2034 and proceed north to Texas 208 (12). Turn right onto Texas 208 and proceed south to junction with FM 2105 (9). Turn left onto FM 2105 and proceed east to junction with US 277 (8). Turn right onto US 277 and proceed south onto Loop Road 306 to junction with 388 (2). For convoys that originate at Goodfellow AFB, turn right onto FM 388 and proceed to starting point at junction of Ft. McKavitt Road and FM 388 (1). For convoys that do not originate at Goodfellow AFB, do not turn right onto FM 388, but continue south on Loop Road 306.

DRIVING INSTRUCTIONS

The drivers shall run at posted speed limits throughout the course unless an unsafe condition arises. If such condition arises, the speed should be reduced to the maximum safe operating speed.

BRAKING PROCEDURES AT STOP SIGNS

There are a number of intersections at which stops are required. At each of these intersections a series of signs is placed in a fixed order as follows:

Sign Legend

- Highway Intersection 1000 (or 2000) Feet
S T O P A H E A D
- Junction X X X
- Direction Sign (Mereta→)
S T O P or Y I E L D

PROCEDURES

1. Approach each intersection at the posted speed limit.
2. When abreast of the S T O P A H E A D sign, apply the brakes so that the vehicle decelerates smoothly to 20 mph when abreast of the direction sign.
3. Come to a complete stop at the S T O P sign or behind any vehicle already stopped.

Key Points Along Treadwear Test Course, Approximate Mileages, and Remarks ***

	<i>Mileages</i>	<i>Remarks</i>
1 Ft. McKavitt Road & . . . FM 388	0	
2 FM388 & Loop 306 * . .	2	TOP
3 Loop 306 & US277	10	
4 Sonora	72	
5 US 277 & FM 189	88	
6 FM 189 & Texas 163 . .	124	
7 Historical Marker (Camp Hudson)	143	U-TURN
4 Sonora	214	
3 Loop 306 & US 277 . . .	276	
2 FM 388 & Loop 306 . . .	283	
13 FM 388 & FM 2334 ** .	290	STOP
14 FM 2334 & FM 765 . . .	292	STOP
15 FM 2334 & US 87	295	U-TURN
14 FM 2334 & FM 765 . . .	298	STOP
13 FM 388 & FM 2334 . . .	300	STOP/YIELD/ BLINKING RED LIGHT
2 FM 388 & Loop 306 . . .	307	TOP/YIELD/ BLINKING RED LIGHT
8 US 277 & FM 2105	313	
9 FM 2105 & Texas 208 . .	317	STOP
10 FM 2105 & US 87	320	STOP
11 FM 2034 & US 87	338	
12 FM 2034 & Texas 208 . .	362	YIELD
9 FM 2105 & Texas 208 . .	387	
8 FM 2105 & US 277	391	YIELD/STOP
2 FM 388 & Loop 306 * . .	398	
1 Ft. McKavitt Road & . . FM 388	400	
16 Veribest Cotton Gin . . .	1.8	U-TURN

* Convoys not originating at Goodfellow AFB will not traverse the leg of course.

** Convoys not originating at Goodfellow AFB will proceed to 16, Veribest Cotton Gin, Make U-turn and return to 13.

*** (56 F.R. 47011—September 17, 1991. Effective: December 16, 1991)]

FIGURE 2

PREAMBLE TO PART 576—RECORD RETENTION
(Docket No. 74-31; Notice 1)

This notice establishes an immediate temporary requirement for retention by motor vehicle manufacturers of records concerning malfunctions that may be related to motor vehicle safety.

By a separate notice published today, 39 FR 30048, the NHTSA proposes to establish permanent requirements for the retention of records by manufacturers. The proposed rule would require motor vehicle manufacturers to retain for 5 years all records in their possession relating to failures, malfunctions, or flaws that could be a causative factor in accidents or injuries. These records are needed in agency investigations of possible defects related to motor vehicle safety, or of nonconformity to the safety standards and regulations. A fuller discussion of the proposal is contained in that notice.

The NHTSA finds it important that existing records and those that may be generated or acquired while this rulemaking is under consideration not be disposed of prior to the permanent effectiveness of the rule. In order to maintain the status quo, therefore, this rule is issued to be

effective immediately upon posting for public inspection at the *Federal Register*. For the reasons stated, pursuant to 5 U.S.C. 553(b), notice and public procedure thereon with respect to this interim notice are found to be impracticable and contrary to the public interest. This rule in its present form will be effective only until action is taken upon the proposed permanent rule issued concurrently.

In light of the foregoing, a new Part 576, *Record Retention*, is added to Title 49, Code of Federal Regulations.

Effective date: August 15, 1974.

AUTHORITY: Sec. 108, 112, 113, 119, Pub. L. 89-563, 80 Stat. 718, 15 U.S.C. 1397, 1401, 1402, 1407; delegation of authority at 49 CFR 1.51.

Issued on August 13, 1974.

James B. Gregory
Administrator
39 F.R. 30045
August 20, 1974

PART 576—RECORD RETENTION
(Docket No. 74-13; Notice 1)

Sec.

576.1 Scope.

576.2 Purpose.

576.3 Application.

576.4 Definitions.

576.5 Basic Requirement.

576.6 Records.

576.7 Retention.

576.8 Malfunctions Covered.

§ 576.1 Scope. This part establishes requirements for the retention by motor vehicle manufacturers of complaints, reports, and other records concerning motor vehicle malfunctions that may be related to motor vehicle safety.

§ 576.2 Purpose. The purpose of this part is to preserve records that are needed for the proper investigation, and adjudication or other disposition, of possible defects related to motor vehicle safety and instances of nonconformity to the motor vehicle safety standards and associated regulations.

§ 576.3 Application. This part applies to all manufacturers of motor vehicles, with respect to all records generated or acquired after August 15, 1969.

§ 576.4 Definitions. All terms in this part that are defined in the Act are used as defined therein.

§ 576.5 Basic Requirements. Each manufacturer of motor vehicles shall retain as specified in § 576.7 all records described in § 576.6 for a period of 5 years from the date on which they were generated or acquired by the manufacturer.

§ 576.6 Records. Records to be retained by manufacturers under this part include all documentary materials, films, tapes, and other information-storing media that contain information concerning malfunctions that may be related to motor vehicle safety. Such records include, but are not limited to, communications from vehicle users and memoranda of user complaints; reports and other documents related to work performed under, or claims made under, warranties; service reports or similar documents from dealers or manufacturer's field personnel; and any lists, compilations, analyses, or discussions of such malfunctions contained in internal or external correspondence of the manufacturer.

§ 576.7 Retention. Duplicate copies need not be retained. Information may be reproduced or transferred from one storage medium to another (*e.g.*, from paper files to microfilm) as long as no information is lost in the reproduction or transfer, and when so reproduced or transferred the original form may be treated as a duplicate.

§ 576.8 Malfunctions covered. For purposes of this part, "malfunctions that may be related to motor vehicle safety" shall include, with respect to a motor vehicle or item of motor vehicle equipment, any failure or malfunction beyond normal deterioration in use, or any failure of performance, or any flaw or unintended deviation from design specifications, that could in any reasonably foreseeable manner be a causative factor in, or aggravate, an accident or an injury to a person.

39 F.R. 30045
August 20, 1974

PREAMBLE TO PART 577—DEFECT NOTIFICATION

(Docket No. 72-7; Notice 2)

This notice establishes a new regulation covering notifications of motor vehicle safety defects and nonconformity to safety standards. The notice proposing these regulations was published May 17, 1972 (37 F.R. 9783).

The regulation is intended to improve the response of owners in vehicle notification campaigns. Data which the NHTSA has been receiving on the completion rates of notification campaigns show a wide range of completion rates, with campaigns involving newer vehicles, and more serious safety problems, having higher completion rates than others. In many campaigns, however, the rate is alarmingly low.

An examination of the notifications sent by manufacturers reveals wide disparity in emphasis. Although precise evaluation of the impact of notification letters is difficult, due to its being largely subjective, the NHTSA is of the opinion that many notifications have tended to deemphasize the safety problems involved. Some of these notification letters are questionably within the requirements of the National Traffic and Motor Vehicle Safety Act, and litigation on a case by case basis to improve them is practicable. These regulations are intended to ensure that all notification letters contain sufficient information, as determined by NHTSA, to properly notify purchasers.

The regulation applies to manufacturers of incomplete and complete motor vehicles, and motor vehicle equipment. In the case of vehicles manufactured in two or more stages, compliance by any one of the manufacturers of the vehicle is considered compliance by all. This provision is based on similar language in the Defect Reports regulation (Part 573 of this chapter), and is included in response to comments received.

The regulation requires the notification to contain substantially the information specified in

the proposal. It requires each notification to begin with a statement that it is sent pursuant to the requirements of the National Traffic and Motor Vehicle Safety Act. The NHTSA did not concur with comments to the effect that the inclusion of this statement would not promote the purpose of the regulation. The regulation requires the notification to state that the manufacturer, or the National Highway Traffic Safety Administrator, as the case may be, has determined that a defect relating to motor vehicle safety (or a noncompliance with a motor vehicle safety standard) exists in the vehicle type, or item of motor vehicle equipment, with which the notification is concerned. When the manufacturer (or the Administrator) has, as part of his determination, also found that the defect may not exist in each such vehicle or equipment item, he may include a statement to that effect. The NHTSA has decided to allow such statements based on comments that many defects in fact do not exist in each vehicle or equipment item of the group whose owners are notified.

The manufacturer must also describe the defect, evaluate the risk it poses to traffic safety, and specify measures which the recipient should take to have it remedied. In each case, the regulation requires information which the NHTSA has determined will meet these objectives. In describing the defect, the manufacturer must indicate the vehicle system or particular items of equipment affected, describe the malfunction that may occur, including operating conditions that may cause it to occur, and precautions the purchaser should take to reduce the likelihood of its occurrence. In providing that the vehicle system affected be mentioned, the regulation reflects comments to the effect that listing each particular part involved would be too technical to be useful to most consumers.

In evaluating the risk to traffic safety, the manufacturer must indicate if vehicle crash is the potential result, and whatever warning may occur. Where vehicle crash is not the potential result, the manufacturer must indicate the general type of injury which the defect can cause. Although many comments protested that it was impossible to predict a specific type of injury, the NHTSA believes that manufacturers can easily foresee the general type of injury, such as asphyxiation, that can result from those defects which are not expected to result in crashes.

In stating measures to be taken to repair the defect, the requirements differ in the case where the manufacturer's dealers repair the vehicle free of charge to the purchaser, where the manufacturer merely offers to pay for the repair, and where he refuses to pay for the repair. The purpose of this distinction is to provide information sufficient to have adequate repairs made in each case.

Where the manufacturer's dealers repair the vehicle free of charge, the notification must include a general description of the work involved, the manufacturer's estimate of when his dealers will be supplied with parts and instructions, and his estimate of the time reasonably necessary to perform the labor involved in correcting the defect. The agency's position is that consumers are entitled to know approximately when their cars will be repaired and how much labor is needed in order for the repair to be made. The NHTSA realizes that dealers frequently retain vehicles longer than the actual work involved, due to difficulties in scheduling repairs. However, manufacturers are free to impart this information to consumers under the regulation. Some comments objected to requiring manufacturers to provide information on when replacement parts will be available, on the basis that manufacturers cannot know, at the time a notification is issued, precisely when parts deliveries will be made to dealers. To include this information, it is argued, would therefore delay the issuance of the notification. The NHTSA has modified the proposed language to allow manufacturers to "estimate" when corrective parts will be available. The estimate would be based on the manufacturer's knowledge at the time the notification is sent, thereby eliminating any reasons for delay.

When manufacturers do not provide for repairs to be made by dealers, the notification is required to contain, in addition, full lists of parts and complete instructions on making the repairs. The regulation also requires the manufacturer to recommend, generally, where the vehicle should be repaired, and manufacturers are free to make general and specific recommendations. This requirement reflects the intent of the proposal that manufacturers who believe particular repairs may require special expertise should indicate that fact to purchasers.

When the manufacturer does not offer to pay for repairs, he must, in addition, include full cost information on necessary parts. The notice would have required the retail cost of all parts, and information on labor charges of the manufacturer's dealers in the general area of the purchaser. In response to comments, the cost information is limited to the suggested retail price of parts. Manufacturers have indicated they do not set actual prices of parts, but do have suggested list prices. With respect to labor charges, manufacturers have indicated that labor charges vary, and that requiring them to ascertain exact charges would delay issuance of notifications. The NHTSA believes these comments to be well-founded, and has dropped the proposed requirements regarding labor charges. Consumers will still have information on costs of parts, and time necessary for repairs to be performed, from which they can obtain a fair idea of the cost of a repair.

The regulations prohibit the notification from stating or implying that the problem is not a defect, or that it does not relate to motor vehicle safety. Moreover, in those cases where the notification is sent pursuant to the direction of the Administrator, it cannot state or imply that the manufacturer disagrees with the Administrator's finding. Many comments opposed these requirements on the basis that they unconstitutionally limited manufacturers' freedom of speech. The NHTSA emphatically rejects this contention. Notification letters are not intended to serve as forums where manufacturers can argue that problems are not safety-related or dispute the Administration's findings. Their purpose is to unambiguously and adequately induce owners to remedy a potentially hazardous situation. The

NHTSA is of the opinion that there is ample precedent that allows the Federal government to require manufacturers to warn purchasers in a particular manner that certain products they manufacture may be hazardous. If a manufacturer does not believe that his condition is a safety-related defect, he is not required by law to notify owners at all. It is only when he determines that a defect exists that he must notify in accordance with the regulations. Similarly, when the Administrator has made the finding that a certain product is defective, the manufacturer can administratively and judicially challenge this determination as provided in the National Traffic and Motor Vehicle Safety Act before sending a notification.

The NHTSA received other objections to the proposed requirements. Numerous tire manufacturers argued that parts of the regulation dealing with repairs of defects are inappropriate when applied to them, since repairs generally meant replacement. Certain manufacturers of lighting equipment argued that notification requirements should not apply to them at all. The NHTSA disagrees with both of these contentions. In the case of tire manufacturers, the NHTSA believes that the requirements can be followed. If the repair of a defective tire entails its replacement, this can certainly be stated within the regulatory scheme. Similarly, lighting equipment manufacturers are responsible for defects to the same extent as manufacturers of other equipment. The NHTSA rejects completely the argument that no lighting failures can be considered safety-related because of the millions of lights that burn out every year without resulting in accidents. The question in each case is not whether a failure may occur, but whether a defect exists, and whether the defect may cause a hazardous situation to arise.

The notice of proposed rulemaking would have prohibited manufacturers from making statements contemporaneous with the notification that disagreed with its conclusions. This proposal has not been adopted. After careful consideration, the NHTSA has determined that its inclusion is probably unnecessary. The agency's position is that if notification letters clearly and unambiguously describe and evaluate defects in accordance with this regulation, other statements

by manufacturers will not normally affect reactions of consumers.

Certain comments requested that manufacturers be allowed to state in the notification that it does not constitute an admission of liability or wrongdoing. The regulation does not preclude the making of such statements, as the agency has concluded that their inclusion will not significantly deter owners from having repairs made.

One comment suggested that the notification be required to contain a postage-free card by which consumers could notify manufacturers when vehicles had been sold or otherwise disposed of. While the NHTSA believes this practice would be advantageous in improving notification campaigns, it has concluded that such a requirement would be outside the scope of the regulation, which is limited to notifications to first purchasers and warranty holders.

Certain comments objected to the regulations on the ground that they prescribed a rigid format in an area where each case must be treated separately, and thus where flexibility was required. The NHTSA has modified to some extent the proposed restrictions on format. Manufacturers are free, within the limits established, to compose notifications to fit each case. As issued, these regulations do not require rigid, inflexible letters (only the first two sentences must contain specific statements in a set order), but require that manufacturers include certain important items of information. It is hoped that manufacturers in meeting these requirements will provide required information in easily understandable form.

In light of the above, a new Part 577, "Defect Notification" is added to Chapter V of Title 49, Code of Federal Regulations, to read as set forth as below.

Effective date: March 26, 1973. Because these requirements are not technical in nature, and do not require lead times for compliance, good cause exists, and is hereby found, for an effective date less than 180 days from the day of issuance.

Issued on January 17, 1973.

Douglas Toms
Administrator

38 F.R. 2215
January 23, 1973

PREAMBLE TO AMENDMENT TO PART 577—DEFECT NOTIFICATION

(Docket No. 72-7; Notice 3)

This notice responds to petitions for reconsideration of the Defect Notification regulations, published January 23, 1973 (38 FR 2215). Petitions were received from the Firestone Tire and Rubber Company, Chrysler Corporation, the Motor and Equipment Manufacturers' Association, and the Recreational Vehicle Institute. A petition was also received from the Wagner Electric Company. Although not received within 30 days of the regulation's publication (49 CFR 553.35), it has been considered in the preparation of this notice. Insofar as this notice does not grant the requests of the petitioners, they are hereby denied.

The Firestone Tire and Rubber Company has petitioned for reconsideration of section 577.6, "Disclaimers", which prohibits manufacturers from starting or implying that the notification does not involve a safety related defect. Firestone requested that the provision, for Federal Constitutional reasons, be dropped from the rule. This request is denied. The NHTSA does not believe, for the reasons set forth in the notice of January 23, 1973 (38 FR at 2216), that the provision is violative of the Constitution.

Chrysler Corporation has requested that the phrase, "his dealers" be modified in section 577.4(e)(1)(ii), which requires the manufacturer to estimate the date by which his dealers will be supplied with corrective parts and instructions. It argues that the phrase "his dealers" could be interpreted to mean all dealers, regardless of whether all of the manufacturer's dealers are involved in the campaign. This request is denied. Neither section 113 of the Safety Act nor the regulation require a notification campaign to extend to all of the manufacturer's dealers, whether or not they have any involvement in a particular campaign. The NHTSA does not believe that the phrase "his dealers", when read in context, means all of the manufacturer's dealers.

Chrysler also asks that special requirements be specified for the notification of "noncompliance non-operational defects", citing as an example the improper placement of the VIN plate under Motor Vehicle Safety Standard No. 115. Chrysler states that existing provisions of the regulation dealing with malfunctions (specifically 577.4(c)(2), (c)(3), (c)(4)), and evaluating the risk to traffic safety (sections 577.4(d), (d)(1), (d)(1)(i), (d)(1)(ii), (d)(2)) are not pertinent to these defects. This request is denied. The NHTSA does not believe that separate requirements for notification of the type of defect described by Chrysler are either necessary or desirable. If a particular defect does not involve a malfunction, to be in compliance with the regulation a manufacturer should, in response to the appropriate provisions of the regulation, indicate that to be the case. The NHTSA believes this approach will notify purchasers of the defect as effectively as separate, more specific requirements. The NHTSA does not agree that the relationship to safety of these types of defects should not be evaluated in notification letters, similarly to other defects.

The Motor and Equipment Manufacturers Association (MEMA) objects to the requirements of sections 577.4(e)(2)(vi) and 577.4(e)(3)(vi) that the manufacturer recommend whom the purchaser should have perform necessary repair work, and requests that these provisions be deleted. MEMA argues that the requirement is anti-competitive in that it sanctions the steering of consumers to vehicle dealerships for repairs, to the detriment of the independent repair industry, even when the manufacturer does not pay for the repair. MEMA argues that original equipment replacement parts are frequently more expensive than competitively produced parts, resulting in added costs to owners. It argues also that limiting repairs to dealers precludes the use

Effective: April 17, 1973

of the full domestic repair industry, which should be utilized fully given the magnitude of recent notification campaigns.

While the NHTSA appreciates the concern of this association in not being precluded from a large market, the NHTSA believes the requirement as issued to be consistent with the National Traffic and Motor Vehicle Safety Act and the need for motor vehicle safety. The NHTSA has, in issuing the requirement, indicated that manufacturers should indicate to purchasers when special expertise may be necessary to correct defects. The repairs in issue do not involve normal maintenance, but constitute defects whose proper repair is essential to the safety of the nation's highways. Frequently these repairs involve a higher degree of expertise and familiarity with a particular vehicle than that required to perform normal maintenance. If such expertise will more likely be found at dealerships, in the view of the vehicle manufacturer, the NHTSA believes that opinion should be imparted to purchasers.

Moreover, even if the NHTSA deleted the requirement the manufacturer could if he desired, consistently with the regulation, recommend a repair facility. The NHTSA would not prohibit the making of such a recommendation, for it is responsive to the statutory requirement that the notification contain a statement of the measures to be taken to repair the defect (15 U.S.C. 1402(c)). Moreover, the argument that the regulation stifles competition does not appear to have merit. In the event the manufacturer does not bear the cost of repair, the regulation (§ 577.4(e)(3)(i)) requires the manufacturer to provide the purchaser with the suggested list price of repair parts. As a consequence, purchasers will be provided with information with which they can "shop", with full knowledge, for the least expensive repair facilities. The petition is accordingly denied.

The Recreational Vehicle Institute (RVI) has petitioned that the requirements of both section 577.4(a), requiring an opening statement that the notification is sent pursuant to the Act, and section 577.6, prohibiting disclaimers, be deleted. RVI argues such requirements may result in delay by manufacturers in determining that defects

exist, forcing the use of administrative and legal procedures before purchasers are notified. The agency cannot accept the position that the notification should be diluted because of possible evasion by manufacturers. The NHTSA believes that the need that notification letters fully inform purchasers outweighs the possible problems caused by manufacturers delaying their notifications to purchasers until forced to notify them. The request is denied.

RVI points out that section 577.4 seems to assume that defects will be evidenced by some form of mechanical failure. It asks, therefore, whether a safety-related defect can exist where proper corrective action to avoid an occurrence or possible occurrence is appropriate maintenance or operational use. RVI also requests, if NHTSA adheres to its present position regarding these issues, that it undertake rulemaking to define "safety related defect". For the following reasons, these requests are denied. There is no intent in the regulation to limit the concept of safety related defects to those involving mechanical failures. As stated above, in reply to the petition from Chrysler, non-mechanical defects can be the basis of defect notification, and purchasers can be fully notified of them under the present regulatory scheme. Moreover, the NHTSA believes any attempt to precisely define safety related defect would be ill-advised. Whether a defect exists depends solely on the facts of each particular situation. The fact that such determinations may encompass a wide variety of factual situations, and may consequently be difficult to make, does not mean that it is necessary, desirable, or even possible to replace the decision with a simple formula. The NHTSA believes, on the contrary, that the relatively broad definition of defect contained in the Safety Act is best suited to the wide variety of defective conditions that may arise.

RVI has also pointed out that references to a manufacturer's dealers in section 577.4(e), specifying measures to be taken to repair the defect, overlook the fact that manufacturers' dealers may not always provide service facilities, or that manufacturers may use service facilities other than dealers. The NHTSA agrees with RVI, and has therefore modified the provisions of that

section to include "other service facilities of the manufacturer", as well as his dealers.

RVI requested that the regulation be amended to permit compliance by either a component manufacturer or a vehicle manufacturer, when the defect involves a specific component. RVI also requested that compliance be permitted by either the vehicle alterer or the complete vehicle manufacturer in cases involving altered vehicles. The regulations do not prohibit the sending of notification letters by persons other than the vehicle manufacturer. Accordingly, no modification of the regulation is called for. However, manufacturers who do utilize the services of others in meeting requirements still bear the ultimate responsibility for compliance with the regulation under the National Traffic and Motor Vehicle Safety Act.

The Wagner Electric Company has requested that the provisions of the regulation regarding manufacturers of motor vehicle equipment (excluding tires) be reconsidered in light of the fact that, under present marketing procedures, it is difficult or impossible for such manufacturers to notify jobbers, installers, dealers, or consumers. The notification required by the regulation is directed at the notification sent to retail purchasers and not that sent to distributors or dealers of the manufacturer. The notification of the latter is subject only to the statutory provision

of section 113 of the Safety Act (15 U.S.C. 1402). Moreover, manufacturers of equipment (other than tires) who do not have the names of first purchasers are not required to notify them either under the National Traffic and Motor Vehicle Safety Act or the regulation. There is consequently no need for modification of the regulation for the reasons presented by Wagner, and its request is accordingly denied.

In light of the above, Part 577 of Title 49, Code of Federal Regulations, "Defect Notification", is amended

Effective date: April 17, 1973. These amendments impose no additional burdens on any person, and serve only to clarify the application of existing requirements to specific situations. Accordingly, notice and public procedure thereon are unnecessary, and good cause exists for an effective date less than thirty days from the day of publication.

(Sec. 108, 112, 113, 119, Pub. L. 89-563, 80 Stat. 718 as amended, sec. 2, 4, Pub. L. 91-265, 84 Stat. 262 (15 U.S.C. 1397, 1401, 1402, 1408); delegation of authority at 49 CFR 1.51)

Issued on April 10, 1973.

James E. Wilson
Acting Administrator

38 F.R. 9509
April 17, 1973

PREAMBLE TO AMENDMENT TO PART 577—DEFECT NOTIFICATION

(Docket No. 74-42; Notice. 2)

This notice amends 49 CFR Part 577, *Defect Notification*, to require that bilingual notification be sent to owners in certain cases, and to clarify the wording manufacturers are required to use to indicate their determination that a safety-related defect exists.

A notice of proposed rulemaking on this subject was published on November 25, 1974, (39 F.R. 41182) and an opportunity afforded for comment. The Center for Auto Safety had questioned the efficacy of defect notification campaigns in Puerto Rico conducted in the English language since the primary language of that Commonwealth is Spanish. A National Highway Traffic Safety Administration (NHTSA) survey in Puerto Rico confirmed that there was a need for bilingual defect notification. It was proposed that whenever the address of the purchaser is in either the Commonwealth of Puerto Rico or the Canal Zone the notification be sent in both the English and Spanish languages.

The notice also proposed clarifying § 577.4(e)(1) so that the second paragraph of a notification letter could no longer be written to reflect a manufacturer's belief that the cause of a defect is an item other than that which he manufactured.

Only Chrysler Corporation and Firestone Tire and Rubber Company commented on bilingual notification. Both stated that it was not necessary for the Canal Zone. Firestone also felt that the requirement to translate the notification would delay its mailing, and voiced the belief that NHTSA must express the exact wording in Spanish for § 577.4(a) and (b). Chrysler commented that it had been providing bilingual notification to owners of automobiles purchased in Puerto Rico but that extensive and burdensome data-processing reprogramming would be required to identify owners of vehicles originally

purchased on the mainland and later taken to Puerto Rico.

The NHTSA believes that the language problem is a significant factor in the below-average response to notification campaigns in Puerto Rico, and that owner response rate to campaigns in the Canal Zone will improve if notifications are provided in Spanish as well as English. Information from the Census Bureau indicates that more than 50% of the residents of each area speak Spanish as their primary language. Translation may delay mailing to these areas a few days, but this is deemed inconsequential compared with the benefits to be derived by an improved response to campaigns. This agency does not consider that it need specify the exact wording in Spanish of § 577.4(a) and (b). If it appears that manufacturers are providing ambiguous statements it will consider the matter further. Finally, since section 153(a)(1) of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1413(a)(1), requires notification to be sent to the person who is registered under State law as the owner of the vehicle to be campaigned, Chrysler's comments on reprogramming of data do not appear to have merit.

This notice also amends § 577.4(b)(1), which presently requires the second sentence of the notification to state that the manufacturer has determined that a defect which relates to motor vehicle safety exists in its motor vehicles or motor vehicle equipment. Certain notification letters have characterized the defect as existing in a vehicle or item of equipment not manufactured by the manufacturer making the determination. The intent of the section is that a manufacturer of motor vehicles would state its determination that the defect exists in the motor vehicle it manufactures, while a manufacturer of motor vehicle equipment would state its de-

Effective: September 14, 1975

termination that the defect exists in the motor vehicle equipment it manufactures. If the manufacturer believes the cause of the defect to be an item other than that which he manufactured, that information can be imparted in the other parts of the notification, but not in the second paragraph where the content is specifically prescribed.

Kelsey-Hayes Company and Skyline Corporation commented on the proposal to clarify § 577.4(b)(1). Both objected to it, feeling that the present regulation is adequate and that the mandatory statement may be prejudicial. However, in the opinion of this agency, manufacturers with limited experience in composing notification letters have in many cases misinterpreted

§ 577.4(b)(1). Clarification of the sentence should eliminate mistakes.

In consideration of the foregoing, Part 577 of Title 49, Code of Federal Regulations, *Defect Notification*, is amended. . . .

Effective date: September 14, 1975.

(See. 108, 112, 113, 119, Pub. L. 89-563, 80 Stat. 718; sec. 2, 4, Pub. L. 91-265, 84 Stat. 262 (15 U.S.C. 1397, 1401, 1402, 1407); delegation of authority at 49 CFR 1.51.)

Issued on June 10, 1975.

James B. Gregory
Administrator

40 F.R. 25463
June 16, 1975

PREAMBLE TO AMENDMENT TO PART 577—DEFECT NOTIFICATION

(Docket No. 75-10; Notice 2)

This notice amends 49 CFR Part 577, "Defect Notification," to conform to §§ 151 through 160 of the National Traffic and Motor Vehicle Safety Act (the Act) (Pub. L. 93-492, 88 Stat. 1470, October 27, 1974; 15 U.S.C. 1411-1420).

The amendments of Part 577 were published as a notice of proposed rulemaking in the *Federal Register* on May 6, 1975 (40 FR 19651). Approximately 30 comments were received from vehicle and equipment manufacturers, equipment distributors, trade associations representing these groups, and the Center for Auto Safety. The National Motor Vehicle Safety Advisory Council did not take a position on this proposal. Interested persons are advised that NHTSA Dockets 75-30 (Defect and Noncompliance Responsibility), 75-31 (Petitions for Hearing on Notification and Remedy of Defects or Failure to Comply), and 74-7 (Defect and Noncompliance Reporting) are relevant to the subject matter of this rulemaking.

The agency is amending its earlier notification procedures to reflect the major expansion of manufacturer responsibilities under the Motor Vehicle and Schoolbus Safety Amendments of 1974 to notify vehicle and equipment owners or purchasers of noncompliances with safety standards and of defects that relate to motor vehicle safety (hereinafter referred to as defects), chief of which is that remedy shall be without charge in most cases.

The new regulation specifies the content, timing, and form of notification that complies with the requirements set forth in § 153 of the Act. Distinctions among notifications that arise under different circumstances are set forth in detail. Provisions concerning disclaimers in the notification and conformity to the statutory requirements are carried over from the former Part 577.

Comments on the proposal were generally in agreement with the revision of the regulation, in recognition that the revision reflects responsibilities already a matter of law. Several questions were raised with regard to the authority for or wisdom of specific provisions of the proposed regulation, and these are discussed below.

Motor vehicle manufacturers and the Motor Vehicle Manufacturers Association (MVMA) expressed strong support for modification of the statutory definitions of "original equipment" and "replacement equipment" that allocate responsibility for notification and remedy between vehicle and equipment manufacturers. The agency has issued a separate proposal to redistribute responsibility (40 FR 56930, December 5, 1975) which addresses the issues raised. Resolution of that proposal will be responsive to the issues raised by the MVMA and vehicle manufacturers. To simplify any future action in this area, the two terms are no longer set forth in Part 577.

In the definitions section of the regulation, the phrase "in good faith" has been added to the definition of "first purchaser" to conform to its meaning under § 108(b)(1) of the Act.

The Recreational Vehicle Industry Association (RVIA) requested that vehicle alterers be permitted to meet (assume) the obligations of manufacturers for notification and remedy on a voluntary basis. Without notice and opportunity for comment on this idea, the agency does not consider it wise to modify the regulation as suggested by the RVIA.

NOTIFICATION PURSUANT TO A MANUFACTURER'S DETERMINATION

Section 151 of the Act provides that a manufacturer who determines in good faith that a defect or noncompliance exists in its products

“shall furnish notification to the Secretary and to owners, purchasers, and dealers in accordance with section 153, and he shall remedy the defect or failure to comply in accordance with section 154.”

Section 577.5 of Part 577 provides for manufacturer-initiated notifications in accordance with § 151. The section specifies, among other things, that a statement appear in the notification that the manufacturer has determined that a defect or noncompliance exists in identified vehicles or equipment. An additional statement may be made to indicate that the problem may not exist in each such vehicle or item of equipment. The MVMA and American Motors Corporation (AMC) believed that a better approach would be to state that the defect or noncompliance exists in some, but not all, vehicles or items of equipment (if such is the case), and that an owner should bring his vehicle in for inspection in any case. The agency does not believe that either the MVMA or AMC has an expertise in this area and declines to adopt the suggested modification.

Paragraph (e) of § 577.5 requires a clear description of the defect or noncompliance, including, among other things,

(e) ***

(2) A description of any malfunction that may occur. The description of a noncompliance with an applicable standard shall include the difference between the performance of the noncomplying vehicle or item of replacement equipment and the performance specified by the standard;

The MVMA viewed the phrase “any malfunction” as overbroad and ambiguous, in that a manufacturer would be held to correctly anticipate a malfunction, whether or not related to safety or the noncompliance. The agency agrees that such a description would go beyond the purpose of the notification and therefore has narrowed somewhat the language proposed.

Vehicle manufacturers and the MVMA argued that the second sentence of paragraph (e)(2) should be deleted because an exact description of the difference in performance due to noncompliance would be too technical for comprehension by most owners, require extensive and expensive

testing in some cases that would delay notification, and be the basis for a technical violation of the regulation. The agency believes that the description is valuable to vehicle or equipment owners in understanding the noncompliance, but agrees that a detailed description could delay notification unnecessarily. Accordingly, the phrase “in general terms” is added to modify the required description.

The Center for Auto Safety (the Center) believed that the statement required by (e) to minimize the chances of an accident before remedy failed to mention prior warnings that the vehicle’s operating characteristics might offer. While prior warning is adequately covered by the “evaluation of risk” statement made regarding the possibility of vehicle crash (paragraph (f)(1)(ii)), the agency has added a comparable requirement to paragraph (f)(2) (that covers “non-crash” type defects and non-compliances).

The Specialty Equipment Manufacturers Association objected that any evaluation of the risk to motor vehicle safety would be speculative and therefore was unjustified. This requirement, however, is based on the specific requirement of § 153(a) of the Act, and cannot be eliminated.

The Center believed that the evaluation of risk to motor vehicle safety is a discretionary statement that need not be made by a manufacturer. This is not the case. Section 577.5 is a requirement that the information (b) through (g) be listed and, under paragraph (f), the evaluation must either describe the crash hazard or be a description of the “general type of injury to occupants, or [others], that can result.”

Paragraph (g) of § 577.5, dealing with measures to be taken by the owner, proved to be the greatest source of comments on the proposal. The paragraph is divided into subparagraphs dealing with notification of remedy without charge and notification of remedy for which the manufacturer will charge. This distinction is based on § 154(a)(4) of the Act which limits the “remedy without charge” to vehicles or equipment first purchased no more than 8 years (3 years in the case of tires) before notification in accordance with §§ 151 or 152.

Paragraph (g)(1) specifies requirements both for notification when the remedy must be under-

taken and also notification when the manufacturer voluntarily decides to remedy without charge. The MVMA and General Motors (GM) felt that manufacturers undertaking voluntary remedy should not be subjected to the same notification requirements as those manufacturers required to remedy. The agency distinguishes between the separate duties of notification and remedy, however, and notes that the notification requirements of § 153 of the Act contain no exceptions for older vehicles and equipment. The MVMA's abbreviated list of requirements for a voluntary remedy do not fulfill the requirements of § 153. For example, § 153(a)(2) requires that the notification contain an evaluation of the risk to motor vehicle safety.

It is the agency's philosophy that a manufacturer undertaking a remedy should provide the same information to the owner whether or not the remedy is undertaken voluntarily. In this way, an owner will be apprised of the information necessary to make informed decision. Also, events beyond the manufacturer's control will not be able to negate the remedy without agency or manufacturer's knowledge. For these reasons, the agency does not modify the requirements as suggested.

Aside from the general suitability of paragraph (g)(1)'s requirements for a voluntary remedy, manufacturers raised more specific questions about the separate provisions.

International Harvester Company (IH) asserted with regard to paragraph (g)(1)(i) that no basis existed for the exception of replacement equipment from the right to refund as a means of remedy. In the agency's view, § 154(2)(B) of the Act clearly limits the remedy for items of replacement equipment to either repair or replacement.

IH objected to the requirements that the earliest date for repair set under paragraph (g)(1)(ii) be premised on anticipated receipt by dealers of necessary parts for repair. The company pointed out that some repair parts would not typically be forwarded to a dealer for repair until a specific request has arisen. The agency would like to clarify that the "earliest date" can be established as a certain number of days following inspection of the defective or noncomply-

ing vehicle. Thus a manufacturer need only calculate the time that it would take to get the parts to the dealer following an inspection and then state that the earliest date for repair will follow the date of inspection by that amount.

AMC argued that the requirement for a general description of the work and amount of time involved in a repair without charge by the manufacturer's dealer exceeded the authority of the Act and is unnecessary when the manufacturer undertakes repair. The same argument was made with regard to paragraphs (g)(1)(v) and (vi). The agency disagrees, and notes that the specific authority listed in § 153(a) is "in addition to such other matters as the Secretary may prescribe by regulation." As for the need for a general description, it is concluded that the owner would value knowledge of the time involved and the nature of the repair that is involved, to correctly weigh the gravity of the problem. Correspondingly, the offer of replacement or refund is more helpful to the owner if it includes the detail that has been specified.

In paragraph (g)(1)(iv), the MVMA asked for parallelism with the construction of paragraph (g)(1)(iii). It is accomplished by the addition of "or its dealers" following the word "manufacturer." IH suggested the addition of "authorized service centers" to the list, but this is unnecessary in view of the NHTSA's interpretation of "dealer" to include an authorized service center.

The Center, Mack Trucks, and Crane Carrier Corporation (CCC) commented on paragraph (g)(1)(iv)'s requirement that the method or basis for a manufacturer's assessment of depreciation be specified. The two manufacturers suggested use of a retailer's price guide as the basis. The Center suggested that a method for determination of depreciation be devised by a panel of industry, government, and consumer representatives. The legislative history indicates that retailer price guides should not be the sole criterion, and thus the Mack and CCC recommendations are not adopted. Until there is some indication that the manufacturers' chosen methods of assessment are unreasonable, the agency does not consider it necessary to exercise its authority in this area, and the Center's suggestion is also not adopted.

The greatest objections were raised regarding the statement advising an owner how to inform the NHTSA if he believes that the notification or remedy is inadequate, or that the remedy was untimely or not made in accordance with the notification. PACCAR, AMC, Chrysler, GM, IH, the RVIA, and the MVMA considered the statement to be, in some respects, beyond the agency's statutory authority and not contemplated by Congress. As earlier noted, § 153 is prefaced by a general grant of authority to the agency to specify the contents of the notification.

The agency has considered the objections, in any case, particularly in view of the decision to require the same notification in the case of voluntary and mandatory remedy notices. It is concluded that modification of the statements to reflect the exact terms of § 154(a)(6) is appropriate.

Manufacturers objected to the language of paragraph (g)(1)(vii)(C) that invites owner complaints if a remedy is not effected within a reasonable period. The agency considers timeliness to be an aspect of whether a manufacturer has failed or is unable to provide a remedy as specified in § 153(a)(6) of the Act. The agency does agree that remedy by replacement or refund should not be limited to the first 60 days, since it might follow a failure to repair within that 60-day period. In conforming to § 154(b)(1), the agency substitutes "tender" for "first attempt." Also reference to extension by the Administrator of the 60-day repair period has been added to paragraph (g)(1)(vii)(C)(1).

GM suggested that an additional statement be made to owners, advising them of recourse available with the manufacturer if the dealer's response is unsatisfactory. The agency considers this desirable but, without the benefit of notice and opportunity for comment, declines to make this addition. Paragraph (g)(1), of course, only sets forth what the manufacturer "shall include" in its notification, and it may make such additional statements as it deems necessary.

There was no comment on the second part of § 577.5 that deals with manufacturer notices in which remedy without charge is not required and is not volunteered. Accordingly, the paragraph is adopted as proposed.

NOTIFICATION PURSUANT TO ADMINISTRATOR'S DETERMINATION

Section 577.6 provides for Administration-ordered notifications in accordance with § 152. Paragraphs (a), (b), and (c) set forth requirements for the three types of notification contemplated by the Act. Manufacturers made no comment on the requirements for notification ordered by the Administrator in the first instance, and paragraph (a) is accordingly made final as proposed.

PACCAR objected to provisional notification as placing an unreasonable burden on the manufacturer, rendering any court decision in its favor meaningless. Section 155(b) of the Act clearly contemplates such an order, however, and the regulations consequently do provide for it.

Comments were received on the proposed content of the provisional notification. The MVMA pointed out that the requirement in paragraph (b)(2) should be clarified to permit a statement that the defect or non-compliance may not occur in all the described vehicles. The agency agrees and adds a paragraph similar to § 577.5(d).

With regard to the proposed paragraph (b)(4), the MVMA asked that reference to a "United States District Court" be broadened to "the Federal courts" and that the statement make clear that the NHTSA and not the court is ordering provisional notification. The agency concurs in these clarifications and they are made where appropriate in the final rule.

The requirements of paragraphs (b)(5), (6), and (7) provide for a description of the Administrator's determination, his evaluation of the hazard, and the recommended measures to avoid unreasonable hazard resulting from the defect or noncompliance. Fiat requested that the description, evaluation, and recommended measures be provided by the NHTSA. As specified in the requirements, it is the "Administrator's stated basis" that must be described, and the measures "stated in his order" that must be listed. The agency intends to include in each order a description, evaluation, and list of measures that permit quotation or paraphrase by the manufacturer.

Chrysler and the MVMA asked that a manufacturer be permitted more latitude to explain

its position than provided for in paragraph (b) (8). The agency has considered this request, and concludes that extensive advocacy of the manufacturer's position would detract from the intent of the provisional notification to put the owner on notice of potential problems. The Chrysler and MVMA suggestion is therefore not adopted.

In the required statement dealing with availability of remedy and reimbursement in the event the court upholds the Administrator's determination (paragraph (b) (9)), Chrysler argued that the suggestion of reimbursement would generate poor customer relations if a repair were sought or undertaken during pendency of a court proceeding in which the manufacturer prevailed. The agency is aware of the possibility for some misunderstanding but is certain that the provisional notification was intended by the Congress to encourage owners to consider repair or other corrective action while the manufacturer contests the determination. For this reason, the notice of possible reimbursement remains in the regulation. The first statement in (b) (9) (i) has been clarified in one minor respect.

The MVMA requested that the phrase "for repair" be substituted for "in repairing" to permit manufacturers to make clear that reimbursement would only cover the repairs that were reasonable and necessary to correct the defect or noncompliance. The NHTSA believes that the term "reasonable and necessary" makes clear what repairs would be reimbursed should the court uphold an Administrator's determination.

The MVMA asked, and the agency agrees, that the reimbursement statement be qualified by the limitations that appear in the statute.

Paragraph (b) (10) requires a statement whether, in the manufacturer's opinion, a repair of the defect or noncompliance is possible. GM asked that "feasible" be substituted for "possible" and the agency makes the change in agreement that it more clearly reflects the judgement made by a manufacturer in choosing its preferred remedy. The MVMA and Chrysler made the more basic objection that (b) (10) assumes that a defect or noncompliance exists prior to the court's ruling, and that it requires unjustified effort to develop repair parts and facilities before a decision is reached on the validity of the Ad-

ministrator's determination. The agency is of the view that the level of detail specified is justified in these cases and necessary to fulfill the purpose of provisional notification contemplated by Congress. The agency has modified the wording to make clear that reimbursement for expenses are limited to those necessary and reasonable for repair.

With regard to proposed paragraph (b) (12), the MVMA asked that only notification and not remedy be mentioned. There will be a discussion of remedy in the notification, however, and the owner should be encouraged to inquire further as to this aspect of the notification.

Firestone and the Automotive Parts and Accessories Association felt that the regulations should apply to the agency and that it should be required to advise the owner, purchaser, and dealer in the event its determination is not upheld by the courts. The statutory scheme being implemented by Part 577 concerns manufacturer obligations under §§ 151 through 160 of the Act to notify and remedy safety problems in vehicles. The agency does not consider an expansion of the regulations beyond this purpose as appropriate. Nothing, of course, prevents the manufacturer from making such a notice to the owner or others.

Paragraph (c) of § 577.6 deals with final notification following a court decision in the Administrator's favor, and it is adopted, with corrections similar to those made in the other sections. Because the MVMA objected to reference to being "upheld in a proceeding in a United States District Court" as the basis for the post-litigation order, the agency has substituted the language of the Act. Also, reference to "a date" on which provisional notification was ordered is corrected to "the date" to reflect that it will in all cases be a specific date.

TIME AND MANNER OF NOTIFICATION

The major problem with regard to the time and manner of notification concerned the statutory requirement (§ 153(c) (1)) that notification be,

§ 153 * * *

(c) * * *

(1) in the case of a motor vehicle, by first class mail to each person who is registered

under State law as the owner of such vehicle and whose name and address is reasonably ascertainable by the manufacturer through State records or other sources available to him;

PACCAR, Volkswagen, and IH expressed their doubts that all State records would be available or that alternative services would provide timely information. The agency has incorporated the statutory requirements in this regulation word-for-word and, on that basis, declines to modify it. As for the suggestion that "reasonably ascertainable" be defined, it is the agency's view that the phrase is only given meaning by the separate factual situations that arise. The agency cannot agree with PACCAR that records are not "reasonably ascertainable" simply by virtue of delay in retrieving them.

Sheller-Globe Corporation asked if certified mail would be considered the equivalent of first class mail for meeting the requirements. As a school bus manufacturer, Sheller-Globe wanted certainty of notification to school districts and other customers. The NHTSA does not consider them equivalent in view of relevant legislative history. Congress considered the U.S. Postal Service regulation that prohibits forwarding of certified mail and they concluded that first class mail would be a superior means of obtaining notification.

With regard to the maximum times permitted for issuance of notification, the Center asked that the period be reduced to 30 days in the case of all Administration-ordered notifications. Some manufacturers asked that the 30-day period for provisional notification be expanded to 60 days. B.F. Goodrich stated that notification letters cannot be printed in advance of actual mailing, because the date for earliest remedy must be included in the letter. The agency has weighed the conflicting views, and concludes that a 60-day period is justified for administration-ordered recalls. The provisional notification requirement is amended accordingly.

IH suggested that public notice of defects or noncompliances in items of replacement equipment would be adequate, and that notice to the most recent purchaser should be optional. The

agency has simply conformed its regulation to the statutory requirements of § 153(c).

OTHER MATTERS

The MVA suggested that the disclaimer section of the regulation could be clarified by an additional paragraph permitting manufacturer statements that a notification does not "constitute an admission by the manufacturer that it has been guilty of negligence or other wrong doing." The agency views this statement as exactly the type of disclaimer that could contribute to a reader's decision not to take action in response to notification and accordingly declines to adopt the MVMA recommendation.

With regard to the MVMA concern that technical violations of the regulations not be pursued as a violation of the Act under § 577.9, the agency expects to continue to enforce the Act and its regulations in a reasonable manner, calculated to avoid arbitrariness or irrationality.

After-market equipment manufacturers and their associations expressed the view that the notification scheme was unworkable for notice to equipment purchasers, that wear of parts in normal use conflicted with the concept of safety-related defects, and that the 8-year period for remedy without charge was too long. Also, the establishment of a cut-off based on the date of retail sale appeared impractical, because records of these transactions are not maintained. As a response, the agency notes that the regulation conforms to the statute's language and clearly expressed Congressional intent. Experience to date with the requirements does not demonstrate that they are in fact unworkable. The issues of improper installation and remanufactured parts were not addressed by the statute, and resolution of these issues will require some experience with situations as they arise.

The RVIA asked that the agency exercise its authority to require the submission to manufacturers by dealers of the names and addresses of purchasers. The agency takes this recommendation under advisement but, as it is beyond the scope of Part 577, does not act on it in this notice.

In consideration of the foregoing, Part 577, "Defect Notification," of Title 49, Code of Fed-

Effective: June 28, 1977

eral Regulations, is renamed "Defect and Non-compliance Notification" and is amended to read as set forth below.

Effective date: June 28, 1977.

(Secs. 108, 112, 119, Pub. L. 89-563, 80 Stat. 718; Sec. 102, 103, 104, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1397, 1401, 1407, 1411-1420; delegation of authority at 49 CFR 1.50)

Issued on December 22, 1976.

John W. Snow
Administrator

41 F.R. 56813
December 30, 1976

PREAMBLE TO AN AMENDMENT TO PART 577

Defect and Noncompliance Notification (Docket No. 80-17; Notice 1)

ACTION: Final rule.

SUMMARY: This notice amends the defect and non-compliance notification regulation to require that manufacturers include the agency's toll free Auto Safety Hotline number in their defect and non-compliance notification letters. The amendment is being made to provide a means of easy access to the agency by consumers who may have complaints about the recall and remedy of their vehicles or equipment. Since it is a minor technical amendment, it is being made effective immediately without notice or opportunity for comment.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT:

Mr. James Murray, Office of Defects Investigation, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, 202-426-2840

SUPPLEMENTARY INFORMATION: This notice makes a minor technical amendment to Part 577, Defect and Noncompliance Notification, to require manufacturers conducting recall campaigns to include the agency's toll free Auto Safety Hotline number in the notification letters.

Existing notification letters are required to state that a consumer may contact the agency if he or she feels that remedy of a defect or non-compliance is not being made without charge or in a reasonable time. Manufacturers also frequently include their address and a toll free number that consumers can call to complain to the manufacturer about the status of a remedy. The agency believes that the use of manufacturer toll free numbers is a good idea and has decided that the agency's toll free number should also be included

in the letter. This will provide easy access for consumers to the agency for reporting any complaints concerning the recall or remedy of their vehicles. It also will provide timely information to our Enforcement office pertaining to the compliance with our regulations by the manufacturers.

Since this is a minor technical amendment and will result in little impact upon manufacturers, the agency finds for good cause shown that it is in the interest of safety to make the amendment effective immediately without notice and opportunity for comment.

In consideration of the foregoing, Title 49 of the Code of Federal Regulations, Part 577, Defect and Noncompliance Notification, is amended by revising the introductory sentence in paragraph 577.5(g)(1)(vii) to read as follows:

(vii) A statement informing the owner that he or she may submit a complaint to the Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 or call the toll free Auto Safety Hotline at 800-426-9393 (Washington, D.C. area residents may call 426-0123), if the owner believes that—

* * * *

The principal authors of this notice are Mr. James Murray of the Office of Defects Investigations and Roger Tilton of the Office of Chief Counsel.

Issued on January 14, 1981.

Joan Claybrook
Administrator

46 FR 6971
January 22, 1981

PART 577—DEFECT AND NONCOMPLIANCE NOTIFICATION

(Docket No. 72-7; Notice 2)

Sec.

577.1 Scope.

577.2 Purpose.

577.3 Application.

577.4 Definitions.

577.5 Notification pursuant to a manufacturer's determination.

577.6 Notification pursuant to the Administrator's determination.

577.7 Time and manner of notification.

577.8 Disclaimers.

577.9 Conformity to statutory requirements.

AUTHORITY: Secs. 108, 112, 119, Pub. L. 89-563; 80 Stat. 718; Secs. 102, 103, 104, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1397, 1401, 1408, 1411-1420; delegations of authority at 49 CFR 1.51 and 49 CFR 501.8)

§ 577.1 Scope.

This part sets forth requirements for notification to owners of motor vehicles and replacement equipment about the possibility of a defect which relates to motor vehicle safety or a non-compliance with a Federal motor vehicle safety standard.

§ 577.2 Purpose.

The purpose of this part is to ensure that notifications of defects or noncompliances adequately inform and effectively motivate owners of potentially defective or noncomplying motor vehicles or items of replacement equipment to have such vehicles or equipment inspected and, when necessary, remedied as quickly as possible.

§ 577.3 Application.

This part applies to manufacturers of completed motor vehicles, incomplete motor vehicles, and replacement equipment. In the case of vehicles manufactured in two or more stages, compliance by either the manufacturer of the incomplete vehicle, any subsequent manufacturer, or the manufacturer of affected replacement equipment shall be considered compliance by each of those manufacturers.

§ 577.4 Definitions.

For purposes of this part:

“Act” means the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 15 U.S.C. 1391 et seq.

“Administrator” means the Administrator of the National Highway Traffic Safety Administration or his delegate.

“First purchaser” means the first purchaser in good faith for a purpose other than resale.

“Owners” include purchaser.

§ 577.5 Notification pursuant to a manufacturer's determination.

(a) When a manufacturer of motor vehicles or replacement equipment determines that any motor vehicle or item of replacement equipment produced by him contains a defect which relates to motor vehicle safety, or fails to conform to an applicable Federal motor vehicle safety standard, he shall provide notification in accordance with paragraph (a) of § 577.7, unless the manufacturer is exempted by the Administrator (pursuant to section 157 of the Act) from giving such notification. The notification shall contain the information specified in this section. The information required by paragraphs (b) and (c) of this section shall be presented in the form and order specified. The information required

by paragraphs (d) through (g) of this section may be presented in any order. Notification sent to an owner whose address is in either the Commonwealth of Puerto Rico or the Canal Zone shall be written in both English and Spanish.

(b) An opening statement: "This notice is sent to you in accordance with the requirements of the National Traffic and Motor Vehicle Safety Act."

(c) Whichever of the following statements is appropriate:

(1) "(Manufacturer's name or division) has determined that a defect which relates to motor vehicle safety exists in (identified motor vehicles, in the case of notification sent by a motor vehicle manufacturer; identified replacement equipment, in the case of notification sent by a replacement equipment manufacturer);" or

(2) "(Manufacturer's name or division) has determined that (identified motor vehicles, in the case of notification sent by a motor vehicle manufacturer; identified replacement equipment, in the case of notification sent by a replacement equipment manufacturer) fail to conform to Federal Motor Vehicle Safety Standard No. (number and title of standard)."

(d) When the manufacturer determines that the defect or noncompliance may not exist in each vehicle or item of replacement equipment, he may include an additional statement to that effect.

(e) A clear description of the defect or noncompliance, which shall include—

(1) An identification of the vehicle system or particular item(s) of motor vehicle equipment affected.

(2) A description of the malfunction that may occur as a result of the defect or noncompliance. The description of a noncompliance with an applicable standard shall include, in general terms, the difference between the performance of the noncomplying vehicle or item of replacement equipment and the performance specified by the standard;

(3) A statement of any operating or other conditions that may cause the malfunction to occur; and

(4) A statement of the precautions, if any, that the owner should take to reduce the chance that the malfunction will occur before the defect or noncompliance is remedied.

(f) An evaluation of the risk to motor vehicle safety reasonably related to the defect or noncompliance.

(1) When vehicle crash is a potential occurrence, the evaluation shall include whichever of the following is appropriate:

(i) A statement that the defect or noncompliance can cause vehicle crash without prior warning; or

(ii) A description of whatever prior warning may occur, and a statement that if this warning is not heeded, vehicle crash can occur.

(2) When vehicle crash is not a potential occurrence, the evaluation must include a statement indicating the general type of injury to occupants of the vehicle, or to persons outside the vehicle, that can result from the defect or noncompliance, and a description of whatever prior warning may occur.

(g) A statement of measures to be taken to remedy the defect or noncompliance, in accordance with paragraph (g)(1) or (g)(2) of this section, whichever is appropriate.

(1) When the manufacturer is required by the Act to remedy the defect or noncompliance without charge, or when he will voluntarily so remedy in full conformity with the Act, he shall include—

(i) A statement that he will cause such defect or noncompliance to be remedied without charge, and whether such remedy will be by repair, replacement, or (except in the case of replacement equipment) refund, less depreciation, of the purchase price.

(ii) The earliest date on which the defect or noncompliance will be remedied without charge. In the case of remedy by repair, this date shall be the earliest date on which the manufacturer reasonably expects that dealers or other service facilities will receive necessary parts and instructions. The manufacturer shall specify the last date, if any,

on which he will remedy tires without charge.

(iii) In the case of remedy by repair through the manufacturer's dealers or other service facilities:

(A) A general description of the work involved in repairing the defect or non-compliance; and

(B) The manufacturer's estimate of the time reasonably necessary to perform the labor required to correct the defect or non-compliance.

(iv) In the case of remedy by repair through service facilities other than those of the manufacturer or its dealers:

(A) The name and part number of each part that must be added, replaced, or modified;

(B) A description of any modifications that must be made to existing parts which shall also be identified by name and part number;

(C) Information as to where needed parts will be available;

(D) A detailed description (including appropriate illustrations) of each step required to correct the defect or noncompliance;

(E) The manufacturer's estimate of the time reasonably necessary to perform the labor required to correct the defect or non-compliance; and

(F) The manufacturer's recommendations of service facilities where the owner should have the repairs performed.

(v) In the case of remedy by replacement, a description of the motor vehicle or item of replacement equipment that the manufacturer will provide as a replacement for the defective or noncomplying vehicle or equipment.

(vi) In the case of remedy by refund of purchase price, the method or basis for the manufacturer's assessment of depreciation.

(vii) A statement informing the owner that he or she may submit a complaint to the Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 or call the toll-free Auto Safety Hotline at 800-424-9393 (Washington D.C. area residents may call 426-0123), if the owner believes that—

(A) The manufacturer, distributor, or dealer has failed or is unable to remedy the defect or noncompliance without charge.

(B) The manufacturer has failed or is unable to remedy the defect or noncompliance without charge—

(1) (In the case of motor vehicles or items of replacement equipment, other than tires) within a reasonable time, which is not longer than 60 days in the case of repair after the owner's first tender to obtain repair following the earliest repair date specified in the notification, unless the period is extended by the Administrator.

(2) (In the case of tires) after the date specified in the notification on which replacement tires will be available.

(2) When the manufacturer is not required to remedy the defect or noncompliance without charge and he will not voluntarily so remedy, the statement shall include—

(i) A statement that the manufacturer is not required by the Act to remedy without charge.

(ii) A statement of the extent to which the manufacturer will voluntarily remedy, including the method of remedy and any limitations and conditions imposed by the manufacturer on such remedy.

(iii) The manufacturer's opinion whether the defect or noncompliance can be remedied by repair. If the manufacturer believes that repair is possible, the statement shall include the information specified in paragraph (g) (1) (iv) of this section, except that—

(A) The statement required by paragraph (g) (1) (iv) (A) of this section shall also indicate the suggested list price of each part.

(B) The statement required by paragraph (G) (1) (iv) (C) of this section shall also indicate the manufacturer's estimate of the date on which the parts will be generally available.

§ 577.6 Notification pursuant to Administrator's determination.

(a) *Manufacturer-ordered-notification.* When a manufacturer is ordered pursuant to section 152 of the Act to provide notification of a defect or noncompliance, he shall provide such notification in accordance with §§ 577.5 and 577.7, except that the statement required by paragraph (c) of § 577.5 shall indicate that the determination has been made by the Administrator of the National Highway Traffic Safety Administration.

(b) *Provisional notification.* When a manufacturer does not provide notification as required by paragraph (a) of this section, and an action concerning the Administrator's order to provide such notification has been filed in a United States District Court, the manufacturer shall, upon the Administrator's further order, provide in accordance with paragraph (b) of § 577.7 a provisional notification containing the information specified in this paragraph, in the order and, where specified, the form of paragraphs (b) (1) through (b) (12) of this section.

(1) An opening statement: "This notice is sent to you in accordance with the requirements of the National Traffic and Motor Vehicle Safety Act."

(2) Whichever of the following statements is appropriate:

(i) "The Administrator of the National Highway Traffic Safety Administration has determined that a defect which relates to motor vehicle safety exists in (identified motor vehicles, in the case of notification sent by a motor vehicle manufacturer; identified replacement equipment, in the case of notification sent by a replacement equipment manufacturer);" or

(ii) "The Administrator of the National Highway Traffic Safety Administration has determined that (identified motor vehicles, in the case of notification sent by a motor vehicle manufacturer; identified replacement equipment, in the case of notification sent by a replacement equipment manufacturer) fail to conform to Federal Vehicle Safety Standard No. (number and title of standard)."

(3) When the Administrator determines that the defect or noncompliance may not exist in each such vehicle or item of replacement equipment, the manufacturer may include an additional statement to that effect.

(4) The statement: "(Manufacturer's name or division) is contesting this determination in a proceeding in the Federal courts and has been required to issue this notice pending the outcome of the court proceeding."

(5) A clear description of the Administrator's stated basis for his determination, as provided in this order, including a brief summary of the evidence and reasoning that the Administrator relied upon in making his determination.

(6) A clear description of the Administrator's stated evaluation as provided in his order of the risk to motor vehicle safety reasonably related to the defect or noncompliance.

(7) Any measures that the Administrator has stated in his order should be taken by the owner to avoid an unreasonable hazard resulting from the defect or noncompliance.

(8) A brief summary of the evidence and reasoning upon which the manufacturer relies in contesting the Administrator's determination.

(9) A statement regarding the availability of remedy and reimbursement in accordance with paragraph 9(i) or 9(ii) below, whichever is appropriate.

(i) When the purchase date of the vehicle or item of equipment is such that the manufacturer is required by the Act to remedy without charge or to reimburse the owner for reasonable and necessary repair expenses, he shall include—

(A) A statement that the remedy will be provided without charge to the owner if the Court upholds the Administrator's determination.

(B) A statement of the method of remedy. If the manufacturer has not yet determined the method of remedy, he shall indicate that he will select either repair, replacement with an equivalent vehicle or item of replacement equipment, or (except

in the case of replacement equipment) refund, less depreciation, of the purchase price; and

(C) A statement that, if the Court upholds the Administrator's determination, he will reimburse the owner for any reasonable and necessary expenses that the owner incurs (not in excess of any amount specified by the Administrator) in repairing the defect or noncompliance following a date, specified by the manufacturer, which shall not be later than the date of the Administrator's order to issue this notification.

(ii) When the manufacturer is not required either to remedy without charge or to reimburse, he shall include—

(A) A statement that he is not required to remedy or reimburse, or

(B) A statement of the extent to which he will voluntarily remedy or reimburse, including the method of remedy if then known, and any limitations and conditions on such remedy or reimbursement.

(10) A statement indicating whether, in the manufacturers opinion, the defect or noncompliance can be remedied by repair. When the manufacturer believes that such remedy is feasible, the statement shall include:

(i) A general description of the work and the manufacturer's estimate of the costs involved in repairing the defect or noncompliance;

(ii) Information on where needed parts and instructions for repairing the defect or noncompliance will be available, including the manufacturer's estimate of the day on which they will be generally available;

(iii) The manufacturer's estimate of the time reasonably necessary to perform the labor required to correct the defect or noncompliance; and

(iv) The manufacturer's recommendations of service facilities where the owner could have the repairs performed, including (in the case of a manufacturer required to reimburse if the Administrator's determination is upheld in the court proceeding) at least

one service facility for whose charges the owner will be fully reimbursed if the Administrator's determination is upheld.

(11) A statement that further notice will be mailed by the manufacturer to the owner if the Administrator's determination is upheld in the court proceeding; and

(12) An address of the manufacturer where the owner may write to obtain additional information regarding the notification and remedy.

(c) *Post-litigation notification.* When a manufacturer does not provide notification as required in paragraph (a) of this section and the Administrator prevails in an action commenced with respect to such notification, the manufacturer shall, upon the Administrator's further order, provide notification in accordance with paragraph (b) of § 577.7 containing the information specified in paragraph (a) of this section, except that—

(1) The statement required by paragraph (c) of § 577.5 shall indicate that the determination has been made by the Administrator and that his determination has been upheld in a proceeding in the Federal courts; and

(2) When a provisional notification was issued regarding the defect or noncompliance and the manufacturer is required under the Act to reimburse—

(i) The manufacturer shall state that he will reimburse the owner for any reasonable and necessary expenses that the owner incurred (not in excess of any amount specified by the Administrator) for repair of the defect or noncompliance of the vehicle or item of equipment on or after the date on which provisional notification was ordered to be issued and on or before a date not sooner than the date on which this notification is received by the owner. The manufacturer shall determine and specify both dates.

(ii) The statement required by paragraph (g)(1)(vii) of § 577.5 shall also inform the owner that he may submit a complaint to the Administrator if the owner believes that the manufacturer has failed to reimburse adequately.

(3) If the manufacturer is not required under the Act to reimburse, he shall include—

(i) A statement that he is not required to reimburse, or

(ii) When he will voluntarily reimburse, a statement of the extent to which he will do so, including any limitations and conditions on such reimbursement.

§ 577.7 Time and manner of notification.

(a) The notification required by § 577.5 shall—

(1) Be furnished within a reasonable time after the manufacturer first determines the existence of a defect which relates to motor vehicle safety, or of a noncompliance.

(2) Be accomplished—

(i) In the case of a notification required to be sent by a motor vehicle manufacturer, by first class mail to each person who is registered under State law as the owner of the vehicle and whose name and address are reasonably ascertainable by the manufacturer through State records or other sources available to him. If the owner cannot be reasonably ascertained, the manufacturer shall notify the most recent purchaser known to the manufacturer.

(ii) In the case of a notification required to be sent by a replacement equipment manufacturer—

(A) By first class mail to the most recent purchaser known to the manufacturer, and

(B) (Except in the case of a tire) if determined by the Administrator to be necessary for motor vehicle safety, by public notice in such manner as the Administrator may determine after consultation with the manufacturer.

(iii) In the case of a manufacturer required to provide notification concerning any defective or noncomplying tire, by first class or certified mail.

(b) The notification required by any paragraph of § 577.6 shall be provided:

(1) Within 60 days after the manufacturer's receipt of the Administrator's order to provide the notification, except that the notification shall be furnished within a shorter or longer period if the Administrator incorporates in his order a finding that such period is in the public interest; and

(2) In the manner and to the recipients specified in paragraph (a) of this section.

§ 577.8 Disclaimers.

(a) A notification sent pursuant to § 577.5 or § 577.6 regarding a defect which relates to motor vehicle safety shall not, except as specifically provided in this part, contain any statement or implication that there is no defect, that the defect does not relate to motor vehicle safety, or that the defect is not present in the owner's vehicle or item of replacement equipment.

(b) A notification sent pursuant to § 577.5 or § 577.6 regarding a noncompliance with an applicable Federal motor vehicle safety standard shall not, except as specifically provided in this part, contain any statement or implication that there is not a noncompliance or that the noncompliance is not present in the owner's vehicle or item of replacement equipment.

§ 577.9 Conformity to statutory requirements.

A notification that does not conform to the requirements of this part is a violation of the Act.

38 F.R. 2215
January 23, 1973

PREAMBLE TO PART 579—DEFECT AND NONCOMPLIANCE RESPONSIBILITY

(Docket No. 75-30; Notice 2)

This notice issues a new regulation, Part 579, *Defect and Noncompliance Responsibility*. The purpose of the regulation is to allocate between motor vehicle and equipment manufacturers the responsibilities under the 1974 Motor Vehicle and Schoolbus Safety Amendments for recalling and remedying defective or noncomplying motor vehicles and equipment. The regulation makes tire manufacturers responsible for original equipment tires as well as tires sold as replacement equipment. Otherwise, the regulation adopts the responsibility scheme in the 1974 Amendments. With this notice, the agency defers final action on its proposal concerning the responsibilities of original equipment manufacturers that supply equipment to five or more vehicle manufacturers. Effective date: September 30, 1978.

Addresses: Petitions for reconsideration should refer to the docket number and be submitted to: Room 5108, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

For further information contact:

Mr. James Murray, Office of Defects Investigation, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-2840).

This notice issues a new regulation, Part 579, *Defect and Noncompliance Responsibility*. A notice of proposed rulemaking was published on December 5, 1975 (40 F.R. 56930) proposing some reallocation between motor vehicle and equipment manufacturers of the responsibilities for safety-related defects and noncompliances with safety standards. These responsibilities include the duty to notify purchasers of any safety-related defects or noncompliances with safety standards and to make remedy without charge to the purchaser. Currently, the allocation of defect and noncompliance responsibility is governed by section 159(2) of the National Traffic

and Motor Vehicle Safety Act of 1966, as amended, (the Act) (15 U.S.C. 1419(2)).

The Act authorizes the agency to allocate equitably responsibility for defects and noncompliances between equipment and vehicle manufacturers. The substance of the agency's 1975 NPRM was to shift the burdens of compliance somewhat from the vehicle to the equipment manufacturer. As the NPRM on this issue stated, the legislative history of the Act indicates that the Congress intended for the agency to ensure that its defect and noncompliance regulations reflect the realities of the relationship between equipment and vehicle manufacturers.

Comments were received from equipment and vehicle manufacturers and from their representatives. All comments were considered. The Vehicle Equipment Safety Commission did not submit comments.

General Motors Corporation suggested that section 579.1 be changed to indicate that the regulation applies only to Part B of the Act, Discovery, notification, and remedy of motor vehicle defects, not to Part A, General provisions. Since this regulation exercises the authority granted by section 159 of the Act and that section specifically states that it applies only to Part B of the Act, the agency has incorporated GM's recommended change.

The Midland Ross Corporation suggested that the agency add several minor definitions to the list of definitions. They suggested, for example, that the agency define phrases such as "an item of motor vehicle equipment," and "an item of defective or noncomplying equipment."

With respect to "motor vehicle equipment," the agency notes that the term is defined in the Act at section 102(4). Since the agency does not intend to alter that definition, the term is not defined in this section.

“Defective and noncomplying equipment” also does not require definition for purposes of this section, since “noncomplying equipment” obviously means equipment that does not comply with an applicable Federal motor vehicle safety standard. “Defective equipment,” on the other hand, cannot be defined in a fashion that would be appropriate for all cases. Whether equipment is defective in a manner that requires action under the Act would depend upon the type of the equipment involved as well as the nature and extent of the defect. As such, “defective” is a legal determination made on a case-by-case basis and the term, therefore, cannot be absolutely defined in advance.

Many manufacturers complained about NHTSA’s definition of “original equipment.” The Eaton and Bendix Corporations, for example, indicated that they thought NHTSA had violated its authority to issue regulations with respect to this term. They suggested that section 159 does not grant sufficient latitude for the agency to alter the Act’s definitions to the extent found in the regulation. The agency disagrees. The language in section 159, “Except as otherwise provided in regulations of the Secretary,” and the legislative history of that section very clearly permit the agency to modify the definitions of section 159 of the Act if the agency determines that it would be in the interest of an equitable distribution of enforcement responsibilities upon the various manufacturers. In this instance, the agency has determined that the minor definitional changes included in this regulation will better meet the needs of both the agency and the manufacturers for efficient recalls and remedies.

Several commenters questioned the term “express authorization” as it is used in Part 579.4 (a) (2). The agency stated in the NPRM preamble that express authorization was not limited to written authorization and that “any type of express authorization given by the vehicle manufacturer for the installation of equipment should be sufficient to make the manufacturer responsible for that equipment.” The preamble went on to state that “what constitutes adequate authorization will depend upon the facts of each case.” Since the issuance of the preamble, nothing has occurred that leads to a simplified defini-

tion of the term “express authorization.” Therefore, the agency declines to adopt a definition for this term and restates that it depends upon the circumstances of each case.

Several commenters indicated that proposed paragraph (1) under section 579.4(a) was overbroad in that it required a vehicle manufacturer to be responsible for equipment manufactured by him even when that equipment was not installed by him or at his direction. NHTSA agrees with these commenters and has deleted paragraph (1) from that section and renumbered the section accordingly.

Section 579.4(b) defines “replacement equipment” to include tires. The commenters on this paragraph, Goodyear and Firestone, agreed with this definition. They stated that they thought it appropriate for tire manufacturers to be responsible for defects and noncompliances in their equipment.

With respect to the application of this regulation to the tire manufacturers, several misunderstandings occurred. Fruehauf Corporation indicated that the fabricating manufacturer of a tire should be the one responsible for the recall of those tires and not the brand name owner. The agency has held the brand name manufacturer responsible in the past for tire identification and recordkeeping (Part 574). The Act in section 159(1) holds brand name owners of tires responsible for defects and noncompliances by specifying that the brand name owner shall be deemed the manufacturer of the tires. The agency sees no reason to alter this established pattern of responsibility. However, a fabricating manufacturer and brand name manufacturer might establish by contract that the fabricating manufacturer would conduct all notification and recall campaigns.

In the preamble to the NPRM, the agency erroneously stated that tire manufacturers were required to retain the names and addresses of the owners of vehicles upon which their tires were mounted as original equipment. Tire manufacturers pointed out that this was inaccurate. Part 574 requires tire manufacturers to retain lists of people to whom their tires were sold, including vehicle manufacturers. The vehicle manufacturer would have the names of the owners of the

vehicles upon which potentially defective or non-complying tires were mounted and, if necessary, would supply that list to a tire manufacturer undertaking a recall campaign.

Proposed Part 579.5(a) and (b) received very few comments. Commenters to these provisions suggested only minor modifications in their language. GM and the Motor Vehicle Manufacturers Association suggested that the term "safety-related" be added to both sections before defect to indicate that manufacturers only had responsibilities for such defects. Under the Act, manufacturers need only recall and remedy defects that are in fact determined to be safety-related. Accordingly, the agency agrees with the commenters and amends the language of the section accordingly.

GM stated that the last part of paragraph (a) of proposed section 579.5 is unnecessary. That part of the sentence that read "installed on or in the vehicle at the time of its delivery to the first purchaser" is identical to the sentence in section 579.4(a) that defines original equipment. Therefore, its inclusion at this point is redundant and unnecessary. The agency has modified the section by the deletion of that portion of the sentence.

NHTSA is publishing this regulation without taking final action on proposed section 579.5(c), and is modifying 579.5(a) to delete all reference to paragraph (c). Paragraph (c) would have placed defect and noncompliance responsibilities upon equipment manufacturers that supplied

equipment to five or more vehicle manufacturers. This action is being taken without making any substantive determination on the merits of paragraph (c). A subsequent notice will deal with that paragraph and the comments thereon. However, due to the delay in the issuance of this Part and mindful of the fact that the modified definitions are important to the agency's enforcement scheme, NHTSA has determined that it is in the interest of efficiency to adopt the definitions sections of this regulation as proposed with some minor modifications, while retaining a responsibility section that basically retains the same responsibility provisions as the Act.

The agency has reviewed this regulation with respect to its potential costs and other impacts and has determined that any costs or other impacts will be minimal.

Accordingly, Title 49 of the Code of Federal Regulations is amended by the addition of Part 579

(Secs. 103, 108, 112, 113, Pub. L. 89-563, 80 Stat. 718, Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1392, 1397, 1401, 1411-1420; delegation of authority at 49 CFR 1.50.)

Issued on August 24, 1978.

Joan Claybrook
Administrator

43 F.R. 38833-38834
August 31, 1978

PART 579—DEFECT AND NONCOMPLIANCE AND RESPONSIBILITY

Sec.

579.1 Scope.

579.2 Purpose.

579.3 Application.

579.4 Definitions.

579.5 Defect and noncompliance responsibility.

§ 579.1 Scope.

This part sets forth the responsibilities under Part B of the Act of manufacturers for safety-related defects and noncompliances with Federal motor vehicle safety standards in motor vehicles and items of motor vehicle equipment.

§ 579.2 Purpose.

The purpose of this part is to facilitate the notification of owners of defective and non-complying motor vehicles and items of motor vehicle equipment, and the remedy of defective and noncomplying vehicles and items of equipment, by equitably reapportioning the responsibility for safety-related defects and noncompliances with Federal motor vehicle safety standards among manufacturers of motor vehicles and motor vehicle equipment.

§ 579.3 Application.

This part applies to all manufacturers of motor vehicles and motor vehicle equipment.

§ 579.4 Definitions.

(a) "Original equipment" means an item of motor vehicle equipment (other than a tire) which was installed in or on a motor vehicle at the time of its delivery to the first purchaser if—

(1) The item of equipment was installed on or in the motor vehicle at the time of its delivery to a dealer or distributor for distribution; or

(2) The item of equipment was installed by the dealer or distributor with the express authorization of the motor vehicle manufacturer.

(b) "Replacement equipment" means—

(1) Motor vehicle equipment other than original equipment as defined in paragraph (a) of this section; and

(2) Tires.

(c) "The Act" means the National Traffic and Motor Vehicle Safety Act of 1966, as amended.

§ 579.5 Defect and noncompliance responsibility.

(a) Each manufacturer of a motor vehicle shall be responsible for any safety-related defect or any noncompliance determined to exist in the vehicle or in any item of original equipment.

(b) Each manufacturer of an item of replacement equipment shall be responsible for any safety-related defect or any noncompliance determined to exist in the equipment.

43 F.R. 38835
August 31, 1978

PREAMBLE TO PART 580—ODOMETER DISCLOSURE REQUIREMENTS

(Docket No. 72-31; Notice 2)

The purpose of this notice is to establish a regulation that will require a person who transfers ownership in a motor vehicle to give his buyer a written disclosure of the mileage the vehicle has traveled. The regulation carries out the directive of section 408(a) of the Motor Vehicle Information and Cost Savings Act, Public Law 92-513, 86 Stat. 947, and completes the provisions of the Act under Title IV, Odometer Requirements.

The regulation was first proposed in a notice published in the *Federal Register* on December 2, 1972 (37 F.R. 25727). As a result of numerous comments on the proposal, the regulation as issued today differs in some respects from its initial form.

As stated in the proposal, the agency's goals were to link the disclosure statement as closely as possible to the documents required for transfer of ownership, so that buyers and sellers would know of the need for disclosure, and to do so in a manner that would not introduce an additional document into motor vehicle transactions. The agency therefore proposed the use of the certificate of title as the document for odometer disclosure.

Upon review of the comments, it became evident that in most jurisdictions it would not be feasible to use the title certificate to convey odometer information. The main drawback to its use lies in the prevalence of state laws providing that if a vehicle is subject to a lien, the title is held by the lienholder. As a result, it appears that in a majority of cases private parties selling motor vehicles do not have possession of a certificate of title, and convey their interest by other means.

In those States that permit the owner of a vehicle subject to a lien to retain the title, the

lienholder will be unable to make the odometer disclosure on the title if he attempts to sell the vehicle after repossession. In many States, furthermore, the title certificate is not large enough to contain an adequate odometer disclosure, and the existing data processing and filing equipment would not accommodate an enlarged certificate.

There appears to have been some apprehension that the Federal government intended to compel the States to amend their certificates of title. The Act does not, however, confer any authority over the States in this regard. Even if the regulation were to require transferor disclosure on the title, the States could decline to provide a form for disclosure on the title. This voluntary aspect of the States' participation is a further impediment to the use of the title certificate.

After review of the problems created by the use of the certificate of title, the agency has decided that the purposes of the Act are better served by prescribing a separate form as the disclosure document in most cases. Section 580.4 has been amended accordingly. To avoid the need for duplicate State and Federal disclosures in States having odometer disclosure laws or regulations, the section permits the State form to be used in satisfaction of the Federal requirement, so long as it contains equivalent information and refers to the existence of a Federal remedy.

It should be noted that although the certificate of title is no longer required to be used for disclosure, it can still be used as the disclosure document if it contains the required information and if it is held by the transferor and given by him to the transferee. The basic concept is that the disclosure must be made as part of the transfer, and not at some later time.

In addition to the changes from the proposal represented by the change from the certificate of title to a separate form, there are other differences from the proposal in the regulation. For purposes of convenience, the following discussion treats the amended sections in sequence.

In section 580.3, the proposed definition of transferor might in some jurisdictions include a person who creates a security interest in a vehicle. This type of transaction was not intended to be regulated, and the definitions have been amended accordingly.

In section 580.4, in addition to the changes discussed above, other modifications have been made. In response to a comment suggesting that the disclosure would be made after the purchaser had become committed to buying the vehicle, the order of § 580.4(a) has been rearranged to specify that the odometer disclosure is to be made before the other transfer documents are executed.

The items listed under § 580.4(a) have been increased to allow for additional identification of the vehicle and owner that would be necessary on a separate disclosure document. If the disclosure is a part of another document, however, § 580.4(a)(1) provides that items (2) through (4) need not be repeated if found elsewhere in the document. A number of comments noted that the items under (a) might often be redundant.

A new paragraph (b) has been inserted in § 580.4 to require a reference to the sanctions provided by the Act. No specific form is required, but the inclusion of such a statement is considered essential to notify the transferee of the reason why he is being given the odometer information.

The former paragraph (b) of § 580.4 has been renumbered as (c), and the alternative methods for odometer disclosure discussed above are found as paragraphs (d) and (e).

A new section, § 580.5, Exemptions, has been added in response to a number of comments that objected to the application of the requirements to categories of vehicles for which the odometer is not used as a guide to value. Buses and large trucks, for example, are routinely driven hundreds of thousands of miles, and their main-

tenance records have traditionally been relied on by buyers as the principal guide to their condition. The NHTSA is in agreement with the position taken by Freightliner, White, and the National Association of Motor Bus Operators, and has therefore created an exemption for larger vehicles. The exemption applies to vehicles having gross vehicle weight ratings of more than 16,000 pounds.

A second category of exempt vehicles has been created for antique vehicles, whose value is a function of their age, condition, and scarcity, and for which the odometer mileage is irrelevant. A third exempt category consists of vehicles that are not self-propelled, such as trailers, most of which are not equipped with odometers.

Several vehicle manufacturers stated that the proposal would require them to give disclosure statements to their distributors and dealers, and that such a requirement would be both burdensome and pointless. Upon consideration of the nature of manufacturer-dealer transactions, it has been decided to exempt transfers of new vehicles that occur prior to the first sale of the vehicle for purposes other than resale.

The odometer disclosure form set forth in § 580.6 has been reworded to make it clearer. Space for additional information about the vehicle and owner has been included so that the vehicle will be readily identifiable if the disclosure statement becomes separated from the other transfer documents. In accordance with the instructions of the Act, the transferor is directed to state that the mileage is unknown if he knows that the actual mileage differs from the mileage shown on the odometer. Although several comments suggested that the true mileage, if known, should be stated, such a statement is not provided for in the Act and would not afford the buyer with reliable information about the vehicle.

The effective date proposed in the notice was to have been six months after issuance. Two States, perhaps under the impression that they were required to change their forms, requested an additional six months. Other comments, notably that of the National Automobile Dealers Association, urged an immediate effective date in order to make the disclosure requirements coin-

Effective: March 1, 1973

cide with the effectiveness of the other parts of Title IV of the Act. Upon consideration of the important contribution the disclosure requirements make to the effectiveness of the Act's other provisions, it has been decided that an effective date earlier than six months after issuance is advisable.

Accordingly, the regulation is to become effective March 1, 1973. Although it is likely that most private persons will remain unaware of the disclosure requirements for some time after March 1, 1973, a person who does not know of the requirement will not have "intent to defraud" under section 409(a) of the Act and will therefore not be subject to liability solely because he has failed to make the required statement. The persons most immediately affected by the disclosure requirements are commercial enterprises such as dealers and wholesalers, and of these the

largest group, represented by NADA, has already indicated its desire for an early effective date. The earlier effective date is therefore considered appropriate.

In consideration of the foregoing, a new Part 580, Odometer Disclosure Requirements, is added to Title 49, Code of Federal Regulations, to read as set forth below.

Issued under the authority of section 408(a) of the Motor Vehicle Information and Cost Savings Act, P.L. 92-513, 86 Stat. 947, and the delegation of authority at 49 C.F.R. 1.51.

Issued on January 23, 1973.

Douglas W. Toms,
Administrator.

38 F.R. 2978
January 31, 1973

PREAMBLE TO PART 580—ODOMETER DISCLOSURE REQUIREMENTS

(Docket No. 77-03; Notice 2)

This notice amends the odometer disclosure statement that must be executed upon each sale of a motor vehicle. The former statement often proved confusing and was sometimes used in a misleading manner. The amended statement is clearer and less likely to be misused.

Effective date: January 1, 1978.

For further information contact:

Kathleen DeMeter, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-1834).

Supplementary information: The disclosure statement is required by 49 CFR Part 580, Odometer Disclosure Requirements, a regulation issued by the National Highway Traffic Safety Administration (NHTSA) to implement the requirements of the Motor Vehicle Information and Cost Savings Act (Pub. L. 92-513, as amended by Pub. L. 94-364; 15 U.S.C. 1901-1991). The regulation, which has been in effect since March 1, 1973, requires each transferor of a motor vehicle to give the transferee a written statement attesting to the accuracy of the vehicle's odometer.

Experience with the regulation has shown several respects in which it should be improved. In response to a petition for rulemaking submitted by the National Automobile Dealers Association, and in recognition of the need for improvements in the disclosure statement, the NHTSA issued a notice on February 9, 1977 (42 F.R. 9045) which proposed changes in the form and content of the odometer disclosure statement.

Differences between proposed and final rule. The final rule differs from the proposed rule in several respects. The notice had proposed to require the disclosure form to include the last license plate number, State and year. In view of the number of commenters who stated that this

information was not needed to identify a vehicle or to trace a vehicle's history, the agency has decided to delete this requirement from the final rule.

The notice proposed a substantial enlargement of the disclosure form, including a certification that the odometer was either not altered, or altered for repair or replacement purposes only. This certification had been proposed in response to the NADA petition, and drew few critical comments. Two commenters raised Fifth Amendment questions concerning these additional boxes. The Department of Health, Education, and Welfare's Office of Consumer Affairs noted that these alternative certifications might give rise to possible violations of the transferor's right against self-incrimination since a willful false certification may amount to an admission of a violation of the Act. The NHTSA, however, believes that no Fifth Amendment problem could arise. In cases dealing with this issue the Supreme Court has held that where the dominant purpose of a record-keeping requirement is to compel criminals to keep incriminating records, the statute is invalid and the 5th Amendment may be invoked. However, where the record-keeping requirements have an independent purpose and do not involve a selective group which is inherently suspect of criminal activities, the statute is valid and the 5th Amendment may not be invoked. All businessmen, as well as all consumers, who sell automobiles would be required to execute odometer disclosure statements. Statements are not required only of those individuals who are most often found to tamper with odometers. The primary purpose of a statement is to inform a potential buyer of the car's mileage so that he may have an index to the condition and value of the vehicle. The fact that individuals who tamper with vehicle odometers would be executing in-

Effective: January 1, 1978

criminating records is not the dominant purpose of this requirement. Consequently, these provisions will be retained in the final rule with one minor change suggested by a commenter. In view of the fact that these certifications actually involve three separate statements, instead of two as indicated in the NPRM, the NHTSA had decided to divide the second certification into two: first, that the odometer was altered and the mileage is identical to that before repair; and second, that the odometer was altered and reset to zero, with a statement of the mileage on the original odometer or the odometer before repair.

Several commenters suggested that the transferee's name and address should be provided in a disclosure statement, in addition to his signature. This would provide a useful tool in tracing the vehicle's history and consequently, the NHTSA has decided to require that this information be included.

With the gradual conversion to the metric system now going on in the United States, the regulation has also been changed to provide for odometer readings that are expressed in kilometers where the vehicle records the distance traveled in metric units.

The bulk of the comments received were favorable. The primary objection was that the proposed final effective date of April 15, 1977, did not allow adequate time for new forms to be prepared and printed. In addition, it would have increased costs because it would not have allowed sufficient time for stocks of the present form to be depleted. In response to these comments, the agency has adopted an effective date of January 1, 1978.

One of the original goals of NHTSA was to link the disclosure statement as closely as possible to the documents required for transfer of ownership, so that buyers and sellers would know of the need for disclosure. To accomplish this goal in a manner that would not introduce an additional document into motor vehicle transactions, the agency proposed to use the certificate of title as the document for odometer disclosure.

The comments to that initial proposal persuaded the agency that providing the odometer reading on the title would not be feasible as the

sole method of disclosure. NHTSA still believes, however, that placing odometer information on the certificate of title will be useful both to consumers and to law enforcement officials. This belief is substantiated by a recent resolution of the National Association of Attorneys General, which endorsed odometer information on State certificates of title as the most effective means to ensure a permanent record of the mileage history of a motor vehicle, and by the development by the American Association of Motor Vehicle Administrators of model procedures for the disclosure of odometer information on vehicle titles. Such a record would be easily accessible to governmental enforcement agencies as well as prospective purchasers of used motor vehicles.

The notice of February 7, 1977, proposed to allow the use of a State document containing odometer disclosure information if the State document contained "all" of the information required on the Federal form. A comment from the Attorney General of Ohio pointed out that it would be difficult for States to include "all" of the odometer information on their titles because of the limited space available. Consequently, NHTSA has decided to revise § 580.4(f) to accommodate those States that provide odometer information on their titles by establishing a procedure under which States can have their titles approved for use as odometer disclosure statements. In view of the utility of titles and their limited space, the procedure would permit shortening the odometer provisions on the title where necessary. Although a shorter disclosure might sacrifice clarity to a degree, the agency regards this as an acceptable price for gaining the benefits of a combined title and odometer disclosure.

States that wish to have their certificates of title satisfy the Federal odometer disclosure requirements must meet the basic provisions of the Federal requirement, with the following exceptions:

(1) The citation to the Federal law may be deleted in favor of a reference to State law. The reference provisions could then state that "Federal and State regulations require you to state the odometer mileage upon transfer of ownership. (Citation to State law instead of Federal law)."

(2) The initial statement of the odometer reading and the following alternate certifications should be included on the title. States may, however, condense that information as long as none of the certifications are lost. An example of such condensation could be "I certify to the best of my knowledge that the odometer reading is ----- and reflects the actual mileage of the vehicle described herein or (check if applicable).

1. The amount of mileage stated is in excess of 99,999 miles, or

2. The odometer reading is not the actual mileage."

3. The transferee's signature must still appear on the title but it need not expressly indicate acknowledgement of receipt of the disclosures.

4. The certification that the odometer was either not altered or altered for repair or replacement purposes may be deleted.

All deviations on the certificate of title from the Federal requirements must be approved by the NHTSA prior to the use of State titles as substitutes for the Federal form. The exceptions noted above are to be used by the States only as guides in preparing conforming titles. In order for the citizens of a State to use the certificate of title as their odometer disclosure form, the Administrator of the State Department of Motor Vehicles must first request an exemption from the provision of the disclosure requirement by submitting such request in writing with a copy of the proposed certificate of title. The NHTSA will then notify the Administrator of its decision to accept or refuse the request and the reasons for its decision. Upon receipt of the NHTSA's acceptance of the request for an exemption, the State may proceed with a campaign to notify consumers, dealers and distributors of such acceptance. It shall be the State's responsibility to publicize that its title may be used in place of the odometer disclosure statement.

Additional comments. One commenter asked whether there would be specifications for size. There are none, with the understanding that all print should be legible to the naked eye. Another commenter suggested that section 580.4(c)(3) be changed to add the word "believed" so that the

reading would be "I hereby certify that to the best of my knowledge the odometer reading as stated above is believed NOT to be the actual mileage. . . ." NHTSA considers this addition unnecessary because the certification already states "to the best of my knowledge."

A commenter proposed that the form should be amended to say that the names and addresses of prior owners are available from a State agency. NHTSA has determined that this should not be added. The addresses are not available from some State agencies and such a provision would therefore be of limited utility. Another addition that was suggested was to add a reference to the minimum damages and attorneys fees available under the Federal law. This was proposed to alert consumers to the fact that certain impediments to enforcement, such as the expense of lawyers and proof of actual damages, are removed by the Act. These references, like any other additions desired by the States or transferors, may be added, but will not be required due to space limitations and to a determination that they are not necessary if there is sufficient publicity of the law.

An individual commented that the seller should be allowed to estimate the amount of mileage difference and explain the error. There is certainly no prohibition against a seller doing so, but NHTSA sees no benefit to be gained in requiring this. A buyer can, and certainly should, request such information, but anyone who has violated the Act will, nonetheless, not provide a truthful statement of the mileage difference or the reason for that difference. The result could be that a buyer is unknowingly led into reliance on this false statement, whereas an independent check of his own could have produced the truth.

It was suggested that positive introductory statements be used for the certification sections. The commenter noted that in its experience, when a positive introductory statement is lacking, the seller fails to check any box. Its proposal would modify the statement as follows: "I ----- state that the odometer now reads ----- miles and I hereby certify that to the best of my knowledge the odometer reading as stated above reflects the actual mileage of the vehicle

Effective: January 1, 1978

described below, unless one of the following statements is checked.

(1) I hereby certify that the odometer reading reflects the amount of mileage in excess. . . .”

(2) I hereby certify that to the best of my knowledge the odometer reading as stated above is NOT . . .”

The NHTSA has not experienced the failure to check a box when a positive introductory statement is lacking and consequently, will retain the statement in the proposed rule. Should it become evident that a positive introductory statement is needed, further rulemaking will be undertaken. It should be noted that the form suggested by this commenter would significantly shorten the length of this provision, thus it would be an acceptable alternative only where the odometer disclosure is on the certificate of title.

A suggestion was made to provide a notice that an auxiliary odometer had been used in the vehicle. The auxiliary odometer would interrupt the operation of the regular odometer and cause it to register less than the vehicle's actual mileage. The seller would therefore be required by the present language of the regulation to notify the buyer of the odometer error. In view of this, NHTSA considers it unnecessary to refer specifically to an auxiliary odometer.

It was also suggested that the owner of a vehicle be allowed to replace or adjust the odometer to reflect actual mileage. The commenter noted that occasionally odometers jump ahead 10, 20, or 30 thousand miles and if the odometer cannot be altered to read the actual mileage instead of the mileage on the odometer before repair or replacement, the trade-in value would be drastically decreased to the harm of the owner. NHTSA believes that the few cases in which the odometer malfunctions and rolls forward too fast are too slight to justify this provision. Such a provision would create a loophole for those who wanted to roll back their odometer and then claim that it

was rolling over too fast and they had to fix it by moving it backward. Anyone whose odometer did jump could replace or repair the odometer, set it to zero so that a buyer would not be misled by the odometer reading, and upon sale provide a statement to the buyer that the mileage is NOT actual and that the actual mileage is less than that shown on the odometer or on the repair or replacement sticker. More importantly, it should be noted that the repair and replacement provisions, wherein the owner is required to reset the odometer to the mileage before repair or replacement or to zero, are part of the Motor Vehicle Information and Cost Savings Act (section 407(a)). Consequently, they are not susceptible to change by NHTSA, but only by Congress.

Requests by commenters that odometer readings be required on registration forms, that statements be required to be retained, and that manufacturers be required to furnish 6 digit odometers are not applicable to this rulemaking action. It should be noted that a retention requirement for odometer disclosure statements will be issued soon and that a proposed rule requiring tamper-proof odometers which indicate when they have exceeded 100,000 miles or kilometers was issued on December 7, 1976. The proposed effective date of the latter rule is September 1, 1979.

In consideration of the foregoing, Part 580, Odometer Disclosure Requirements is amended. . .

The lawyer principally responsible for this rule is Kathleen DeMeter.

(Sec. 408, Pub. L. 92-513, 86 Stat. 962, as amended by Pub. L. 94-364, 90 Stat. 983 (15 U.S.C. 1988); delegation of authority at 49 CFR 501.8(i).)

Issued on July 25, 1977.

Joan Claybrook
Administrator

42 F.R. 38906-38908
August 1, 1977

PREAMBLE TO PART 580—ODOMETER DISCLOSURE REQUIREMENTS

(Docket No. 77-06; Notice 2)

The Secretary of Transportation is authorized by the Motor Vehicle Information and Cost Savings Act to specify requirements for retention of odometer statements by dealers and distributors of motor vehicles. This notice prescribes the manner in which this information should be retained. The intended effect of this regulation is to afford the government and aggrieved parties documentation necessary to prove a violation of the Act, and to pinpoint exactly where the violation occurred.

Effective date: March 9, 1978.

For further information contact:

Kathleen DeMeter, Office of Chief Counsel,
National Highway Traffic Safety Administration,
400 Seventh Street, SW., Washington,
D.C. 20590 (202-426-1834).

Supplementary information: The Motor Vehicle Information and Cost Savings Act (Pub. L. 92-513, 86 Stat. 947-963, 15 U.S.C. 1901-1999) directed the Secretary of Transportation to issue regulations to require each transferor of a motor vehicle to give the transferee a written statement of the mileage shown on the vehicle's odometer and to advise the transferee if the mileage shown on the odometer was known to be different from the vehicle's actual mileage. A regulation was issued pursuant to section 408 of the Act to prescribe the manner of disclosure (49 CFR Part 580), but the Secretary chose not to exercise the authority given him under subsection 408(a) to specify the manner in which such information was to be retained.

The 1976 amendments to the Act (Pub. L. 94-364, 90 Stat. 981) conferred extensive investigative powers upon the Secretary. One effect of these new powers is to enhance the value of a record retention requirement as an investigatory tool. The disclosure statement plays an impor-

tant role in the investigation of odometer tampering and fraud. In order to prove that an odometer has been rolled back or otherwise tampered with in violation of the Act, it must be possible to ascertain the amount of actual mileage the vehicle has been driven. An effective way of discovering this information is by examining previous odometer mileage statements required to be executed by all owners in the chain of title.

To enhance the ability of the statement to protect all future transferees a notice of proposed rulemaking (NPRM) was issued on November 1, 1977, which would not only require the dealers and distributors to retain for four years the statements issued to them but would also require them to retain for four years a copy of each statement which they issued. Such retentions would afford the government and aggrieved parties the necessary documentation to prove a violation of the Act, and also to pinpoint exactly where that violation occurred. All of the comments submitted in response to the NPRM have been considered and the most significant ones are discussed below.

The final rule is almost identical to the NPRM. The NPRM proposed that odometer mileage statements be retained in chronological order. The final rule permits mileage statements to be retained in an order appropriate to the business requirements of each dealer and distributor. A majority of commenters objected to the chronological order provision. A number of other methods of filing were suggested, such as by vehicle identification number and alphabetical order by the customer's last name. Due to the wide variety of methods of filing presently used, the NHTSA believes that a single mandated method of filing would result in unnecessary cost and duplication. Therefore, the new section permits dealers and distributors to retain odometer mileage statements in a manner consistent with their

Effective: March 9, 1978

existing recordkeeping procedures. The section requires that however the recordkeeping system is organized, it must permit a systematic retrieval of odometer statements.

One commenter suggested that a longer lead-time was necessary to accommodate changes in filing procedures. However, since recordkeeping requirements need not be changed, there should be no lead time problems.

Several commenters objected to the scope of the rule. There appeared to be some confusion among the commenters as to whether the rule applied to insurance companies, manufacturers and financial institutions. The final rule applies to all dealers and distributors of motor vehicles. A "dealer" is defined in section 402 of the Act as "any person who has sold 5 or more motor vehicles in the past 12 months to purchasers who in good faith purchase such vehicles for purposes other than resale." A "distributor" is defined in the same section as "any person who has sold 5 or more vehicles in the past 12 months for resale." Given these definitions, a manufacturer would be a "distributor." However, § 580.5 of Title 49, Code of Federal Regulations specifically exempt manufacturers who sell vehicles to dealers from the requirements of executing disclosure statements. Section 583.7 of this final rule has been reworded to make it clear that only those "dealers" and "distributors" who are required to execute disclosure statements must retain them. Financial institutions and insurance companies do

not fall within any of the exemptions set forth in § 580.5, so they must execute and retain the statements unless the transfers involve vehicles that are so badly damaged that they cannot be returned to the road. In such transfers, the agency has ruled that the damaged vehicles are no longer "motor vehicles" for purposes of the disclosure regulations.

In light of the foregoing, Part 580, Odometer Disclosure Requirements, of Title 49, Code of Federal Regulations, is amended as set forth below.

The lawyer principally responsible for this rule is Kathleen DeMeter.

The rule does not require any persons to create additional records or to alter their business practices apart from keeping records they might once have discarded. In view of the expected benefits to the Department's enforcement program, it is found for good cause that the rule may be issued with an immediate effective date.

(Secs. 408, 414, Pub. L. 92-513, 86 Stat. 947, as amended Pub. L. 94-364, 90 Stat. 981 (15 U.S.C. 1988, 1990(d)); delegation of authority at 49 CFR 1.50(f).).

Issued on March 7, 1978.

Joan Claybrook
Administrator

43 F.R. 10921-10922
March 16, 1978

PREAMBLE TO AMENDMENT TO PART 580—ODOMETER DISCLOSURE REQUIREMENTS

(Docket No. 77-06; Notice 4)

ACTION: Final rule.

SUMMARY: This notice allows States to use an abbreviated odometer disclosure statement on all motor vehicle ownership documents. The existing regulation permitted the shortened form to be used merely on the certificate of title. The purpose of this expansion is to increase State usage of odometer disclosure statements.

DATE: The effective date is the date of publication in the Federal Register.

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: Section 408 of the Motor Vehicle Information and Cost Savings act (15 U.S.C. 1988) requires each transferor of a motor vehicle to provide to the transferee a written disclosure of the distance travelled by the vehicle. 49 CFR Part 580 prescribes the information to be included on the disclosure statement. On August 1, 1977, NHTSA amended the odometer disclosure statement (42 FR 38906). The amended statement is clearer than the former statement and less likely to be misused, but it is also longer.

NHTSA has urged the States to include the odometer statement on the title. Six States had included the original statement. In commenting on the longer statement, several States observed that the title, with its size limitations, presented more problems with inclusion of the odometer statement than did other documents relating to the transfer and ownership of motor vehicles. Because of this, the 1977 amendment specifically allowed a shortened form to be used on certificates of title, but not on other ownership documents.

On May 7, 1979, the NHTSA issued a notice of proposed rulemaking in which it granted a petition

by the American Association of Motor Vehicle Administrators (AAMVA) to amend the Federal odometer disclosure requirements to allow the abbreviated form to be used on ownership documents other than the certificate of title (44 FR 28032). The AAMVA emphasized that many of the State documents used to evidence ownership of motor vehicles are too small to accommodate the additional information required. They argued that States should not have to rely on separate odometer forms for these transfers but should be allowed to use the shortened form on all documents which evidence ownership, not only on the certificate of title.

Seven States responded to the notice of proposed rulemaking. Comments were received from the motor vehicle departments in Virginia, Washington, Delaware, Wisconsin, New Jersey, Texas, and Oregon. Most comments were favorable. The Virginia Division of Motor Vehicles asked that the short form be acceptable on all applications for title. The more State documents that contain mileage information the more difficult it will be for odometer rollbacks to go undetected. Consequently, the NHTSA encourages the use of the short form on applications for title as well as certificates of title.

Washington and Wisconsin suggested respectively that the introductory paragraph citing the Federal law be deleted or shortened due to document size limitations. The August 1, 1977, amendment to the disclosure form noted that a reference to State law may be substituted for the citation to the Federal law.

Consistent with this interpretation, it is the agency's opinion that the actual law need not be cited if a warning statement appears such as that suggested by Washington, "Warning False Statements Violate Federal Law."

The Texas State Department of Highways and Public Transportation offered the only negative comments to the proposal. It argued that a purchaser who finances a motor vehicle could not execute a form on the certificate of title at the time of sale because the certificate is held by a bank or financial institution as security. Although the Texas comment illustrates the difficulties of trying to require the use of titles for odometer disclosure, the amendment is permissive and would not require Texas to change its practices in any way.

In accordance with Executive Order 12044, the regulation has been reviewed for environmental and economic impacts. It has been determined that the cost of implementing this regulation will be minimal. There are no additional requirements.

The regulation permits States to provide certain information on ownership documents but does not require them to do so. There are no environmental or other economic impacts, therefore, this regulation is not significant.

Issued on December 20, 1979.

Joan Claybrook
Administrator, National
Highway Traffic Safety
Administration

45 F.R. 784
January 3, 1980

PREAMBLE TO AN AMENDMENT TO PART 580

Odometer Disclosure Requirements

[Docket No. 81-13; Notice 2]

ACTION: Final rule.

SUMMARY: This rule amends 49 CFR Part 580 to exempt from the Odometer Disclosure Requirements all sales of new motor vehicles by a motor vehicle manufacturer directly to any agency of the United States. The purpose of this exemption, which is being issued pursuant to a petition by General Motors Corporation, is to relieve manufacturers of the burden of complying with this requirement.

EFFECTIVE DATE: December 20, 1982.

SUPPLEMENTARY INFORMATION: Since March 1, 1973, a regulation (49 CFR Part 580) has been in effect which requires the transferor of a motor vehicle to make written disclosure to the transferee concerning the odometer reading and its accuracy. This regulation lists four exceptions where the transferor need not disclose the vehicle's mileage.

On December 10, 1981, in response to a petition from General Motors Corporation, NHTSA published (46 F.R. 60482) a Notice of Proposed Rulemaking (NPRM) which proposed creating a fifth category of exempt transactions. That category consists of all sales in conformity with contractual specifications of motor vehicles by a manufacturer directly to any agency of the United States. GM noted that most of a vehicle manufacturer's transfers are already exempt from the disclosure requirements and this exemption would merely extend the existing exemption. GM stressed that the disclosure requirements were designed to protect consumers against odometer fraud in retail transactions. The conditions lending themselves

to fraud in the retail market are, GM argued, non-existent in manufacturer-to-government sales.

Two comments were received in response to the NPRM. Chrysler Corporation supported the proposed change without qualification. PACCAR, Inc. supported the concept of the additional exemption and the rationale behind it, but expressed reservations about the unsettled issue of NHTSA's authority to promulgate any exemption to the odometer disclosure regulation. PACCAR noted correctly that two Federal District Courts have invalidated the exemption for trucks over 16,000 GVWR on the basis that the NHTSA is not authorized to make any exemptions to the law.

Section 408 (a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1988) states that the Secretary of the Department of Transportation shall prescribe rules requiring transferors to give written mileage disclosures to transferees in connection with the transfer of ownership of a motor vehicle. It is the interpretation of NHTSA that this grant of rulemaking authority empowers the agency to also make exceptions to the requirement where it is shown that no mileage statement is necessary. NHTSA recognizes that there is a conflict between its interpretation of the Act and the interpretation of the United States District Courts for the Districts of Nebraska and Idaho. While these decisions are not binding precedent in other Federal courts, they may, however, be used as guidance and followed should the issue arise in the future with respect to the same or one of the other exemptions. Therefore, NHTSA has advised interested persons of the two court opinions and their conflict with the current language of the regulation and forewarned them

that the issue has not been resolved. NHTSA is proceeding with this rulemaking action on the basis that its interpretation is correct, but is also advising manufacturers to consult with their

legal counsel to determine what course of action will most effectively protect their legal rights.

Issued on October 5, 1982.

Raymond A. Peck, Jr.

Administrator

47 F. R. 51884

November 18, 1982

PREAMBLE TO AN AMENDMENT TO PART 580

Odometer Disclosure Requirements (Docket No. 87-09; Notice 4)

ACTION: Final rule

SUMMARY: This rule implements the Truth in Mileage Act of 1986 (Pub. L. 99-579). As required by that statute, this rule requires that the seller (or other transferor) of a motor vehicle must provide mileage disclosure on the title document or, if the title document does not include a space for mileage disclosure (during the phase-in period) or if the motor vehicle has not been previously titled, it requires that the seller or other transferor must make a written disclosure of mileage on a separate document. Also as required by the statute, this rule requires that title documents be manufactured or otherwise set forth by a secure process to deter counterfeiting and alteration; requires that, at the time of issue, the titles include the mileage disclosure; adds disclosure requirements for lessors and lessees; and adds a record retention requirement for lessors and auction companies. In addition, consistent with the statute, this rule amends the form and content of the odometer disclosure statement and sets forth the procedures that a State may follow in requesting technical assistance, extensions of time or approval of alternate State mileage disclosure requirements. Finally, this rule clarifies the definition of transferor and transferee in the current regulation and extends the current record retention requirement for dealers and distributors.

DATES: Sections 580.10, 580.11 and 580.12 shall be effective September 6, 1988. As provided by the statute, all other provisions are effective April 29, 1989.

SUPPLEMENTARY INFORMATION:

The Truth in Mileage Act of 1986

After hearing testimony that odometer fraud costs consumers hundreds of dollars per purchase, in excess of \$2 billion annually; that a significant part of this fraud involves high mileage, recent vintage vehicles; and that odometer fraud occurs frequently under conditions where cars have been sold through mass sales techniques such as auctions, Congress determined that, for the protection of consumers, legislation was needed to strengthen the provisions

of the current law with respect to disclosure of motor vehicle mileage when motor vehicles are transferred, and enacted the Truth in Mileage Act of 1986, Pub. L. 99-579. This Act amends Title IV of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. §§ 1981-1991. The Truth in Mileage Act (TIMA) requires that any transfer of ownership and any application for retitling or licensing of any transferred motor vehicle be accompanied by the title of the vehicle. The title must include a space for the mileage of the vehicle and be printed by secure process, or if not printed, be set forth by a secure system, in order to decrease the possibility of counterfeiting or altering titles. New applications for titles must be accompanied by the transferor's (seller's) title, and if that title contains a space for the transferor to disclose the vehicle's mileage, that information must be included and the statement must be signed and dated by the transferor.

The new law also requires the lessor of vehicles with long-term leases to advise his lessee that the lessee is required by law to disclose the vehicle's mileage to the lessor upon the lessor's transfer of ownership, and the penalty for noncompliance. In addition, the new law requires that auction companies establish and maintain records for at least four years following the date a vehicle is sold at the auction. The records must include the name of the most recent owner of the vehicle, the name of the buyer, the vehicle identification number and the odometer reading on the date the auction took possession of the vehicle.

Finally, the new law directs this agency to provide technical assistance at the request of any State to conform its laws to this rule and to the Truth in Mileage Act, and authorizes the agency to provide extensions of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the new Federal criteria. It also directs the agency to approve of alternate motor vehicle mileage disclosure requirements if they are consistent with the purposes of the new law.

The Notice of Proposed Rulemaking

In response to this statutory mandate, NHTSA published a notice of proposed rulemaking (NPRM) on July 17, 1987. 52 FR 27028 (1987). The NPRM

proposed to make mileage disclosure a condition of title and require that titles be set forth by a secure process, amend the form and content of the odometer disclosure statement, add disclosure requirements for lessors and lessees, extend the current record retention requirement for dealers and distributors and add a record retention requirement for lessors and auction companies. In addition, we proposed procedures that a State may follow in requesting technical assistance, extensions of time or approval of an alternative State mileage disclosure requirement. Finally, we proposed to clarify some aspects of the current regulation by redefining transferor and transferee and adding a definition of mileage.

The agency received numerous comments on the NPRM, representing the opinions of new and used car dealers, auto auctions, leasing companies, State motor vehicle administrators, and enforcement and consumer protection agencies involved in odometer enforcement. Each of these comments has been considered and the most significant points are addressed below.

The NPRM contained a detailed discussion of the provisions of the Truth in Mileage Act and explained the agency's rationale for proposing each of the requirements. This preamble follows a similar organizational format, to allow the reader to easily compare the two documents, with additional detail given to the disclosure requirements.

Definitions

To clarify that the liability for issuing a false odometer disclosure statement could be placed on a person acting as an agent for the owner of a vehicle, we proposed to amend the definition of the term "transferor" to include the transferor's agent. Similarly, we proposed to expand the definition of transferee to include the transferee's agent. One commenter stated that the proposed definitions were simple and straightforward and the National Automobile Dealers Association (NADA) supported the objective of the modifications to the extent that they will assist in the successful prosecution of wrongdoers who have avoided convictions based on a technicality. However, NADA and other commenters did express some concern.

Anglo American Auto Auction, Inc. (Anglo) feared that the definition of transferor may be misconstrued to require that every agent who participates in the transfer must complete an odometer statement and suggested that the definition be amended to include that "transferor" also "means any person, who as agent makes the disclosure of odometer information" required by the regulation. However, Anglo correctly noted that the definition of transferor and transferee, if properly construed, would not include salespersons or clerks who may play a role in the transfer process, but who, as a legal matter, do not actually transfer

the ownership of the vehicle. Since no other commenters misconstrued the definition and since we have the opportunity to clarify the definition of transferor in this preamble, we will not adopt Anglo's proposal.

The National Auto Auction Association (NAAA) asserted that the expansion of the definitions goes beyond the intent of the Motor Vehicle Information and Cost Savings Act ("Cost Savings Act") and the Truth in Mileage Act, and exceeds NHTSA's rule-making authority. NAAA noted that neither the Cost Savings Act nor the Truth in Mileage Act defines transferor and transferee; that transfer is defined in the Cost Savings Act; and that NHTSA was directed by the Cost Savings Act to promulgate rules concerning a written disclosure by the transferor to the transferee. NAAA argues that there is nothing in either statute which gives NHTSA the authority to define transferor and transferee. Furthermore, NAAA argues that an administrative agency cannot alter a duly enacted statute through the use of its own regulations and cannot distort plain and obvious statutory language.

As NAAA correctly notes, neither statute defines transferor and transferee. Furthermore, the legislative history of these statutes does not define these terms and Congress did not explicitly direct NHTSA to promulgate definitions of them. However, Congress directed NHTSA to prescribe rules requiring any transferor to give a written mileage disclosure to the transferee in connection with the transfer of ownership under section 408 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. § 1988. Implicit in this directive is the authority to define the terms. The District Court for the District of Columbia has held that where Congress has delegated certain interpretive powers, either explicitly or implicitly, the agency's interpretation should receive deference. Where neither the statute nor legislation history explicitly define a statutory term, an agency's interpretation must be accepted if it is "based on a permissible construction of the statute. . . ." *Pa. Public Utility Com'n v. United States*, 749 F.2d 841, 849 (D.C. Cir. 1984), citing *Chevron, U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 843 (1983). The definitions, as proposed, are consistent with the definition of "transfer" which is "to change ownership by purchase, gift, or any other means." 15 U.S.C. § 1982(2). Furthermore, rather than going beyond the legislative intent or distorting the statutory language, these definitions help to further the expressed Congressional intent of "establishing safeguards for the protection of consumers with respect to the sale of vehicles having altered odometers," 15 U.S.C. § 1981. It closes loopholes which have limited the Government's ability to prosecute certain violations of the odometer laws because of an ambiguity in the definition. (*See, U.S. v. Powell*, 806 F.2d 1421 (9th Cir.

1986)). Therefore, these definitions do not exceed NHTSA's statutory authority. Finally, in accordance with the Administrative Procedures Act, these definitions are promulgated pursuant to notice and comment. *See also*, 37 FR 25727 (1972); 38 FR 2978 (1973).

NAAA also objected to the proposed definitions because "this exposes a variety of persons to liability . . . who are not owners of the motor vehicles being transferred. In addition to including employees and independent contractors working for the transferor, this expanded definition would include any person using a power of attorney from the transferor, and frequently, that person not only has no knowledge regarding the accuracy of the odometer reading, but has no means of conducting an investigation to ascertain the accuracy of the odometer reading." NAAA asked that the definitions be limited to including employees working for the owner or authorized to transfer ownership of the motor vehicle. Further concern about the definition of transferor was expressed by a coalition of commenters, "the coalition," consisting of NADA, NAAA, the American Association of Motor Vehicle Administrators (AAMVA), the Automotive Trade Association Executives (ATAE), the American Car Rental Association (ACRA) and the National Independent Automobile Dealers Association (NIADA). The coalition asserted that those who accurately complete a transferor's mileage disclosure based on the transferor's secure power of attorney (a power of attorney that is set forth by a secure printing process or other secure process) should not be considered agents of the transferor and asked that these individuals be specifically excluded from the definition of transferor. However, the coalition did not include any rationale in support of its position. Similarly, the Texas Automobile Dealers Association proposed, without additional comment, that anyone who completes a disclosure statement on behalf of a transferor based upon a power of attorney should be excluded from the definition of transferor. We will not incorporate these suggestions into the final rule. Contrary to the assertion of NAAA, the expansion of the definitions does not expose more people to liability, but merely closes a loophole where defendants have escaped liability due to ambiguity in the current regulation. While the case law has limited the Government's ability to prosecute a company employee who falsely certifies odometer mileage on the ground that the employee is not a transferor (*see, U.S. v. Powell*, 806 F.2d 1421 (9th Cir. 1986)), we believe that where appropriate under general legal principles of agency, an employee or other agent of a principal should be liable for his actions and that a principal should be liable for the actions of its agents. With regard to whether a person has any "knowledge" concerning the accuracy of the reading, the Motor Vehicle Information and Cost Savings Act itself recognizes that in order to be found liable under the Act, a person must have

an intent to defraud for civil liability, or knowingly and willfully commit any act in violation of the Act to be convicted criminally. Through these definitions, we are stressing the importance of mileage. It is incumbent upon anyone acting as an agent, even those with a power of attorney, to obtain mileage information from the appropriate source. The definitions of transferor and transferee are adopted as proposed.

We proposed a definition of mileage for two reasons. First, the definition makes clear that there is a difference between mileage and odometer reading. Second, the proposed definition reflects the agency's position that a person may lawfully replace odometers which register kilometers with those that register miles traveled. No comments were received on this proposal and it is adopted in this final rule.

Definitions of lessee and lessor, consistent with the TIMA definition of leased motor vehicle, were proposed to clarify all references to these persons. The National Association of Fleet Administrators (NAFA) and PHH Group, Inc. (PHH) requested that the definition of lessee be expanded to include the agent for the lessee. PHH noted that expanding the definition of lessee would allow for flexibility since a lessee could be an entity other than the operator of the vehicle. NAFA noted that an expanded definition of lessee would be more flexible and would allow the lessee's drivers to sign the disclosure statements in accordance with current business practices. In addition, NAFA commented that the expanded definition would parallel the definitions of transferor and transferee. The agency agrees with the commenters and has expanded the definition of lessee to include the agent of the lessee, which is consistent with the definitions of transferor and transferee. Also, for consistency, the agency has expanded the definition of lessor to include the agent of the lessor.

In accordance with the Congressional intent to encourage new technologies which will provide increased security for titles, we proposed to broadly define the terms "secure printing process" and "other secure processes" as "any process which deters and detects counterfeiting and/or unauthorized reproduction and allows alterations to be visible to the naked eye." 3M requested that the definition be amended to read, in lieu of "visible to the naked eye," "easily detected under recommended viewing conditions." 3M stated that the definition, as proposed, could be interpreted to mean without the aid of a verification device and asserted that any verification process that precludes the use of a supporting device is too restrictive. We have not adopted 3M's suggestion. The intent of the Truth in Mileage Act is to provide a paper trail for the protection of consumers. Therefore, any alteration should be visible to the purchaser of a vehicle who would not routinely have the aid of a verification device. Furthermore, any alteration should be visible to title clerks reviewing titles prior to the is-

suance of new titles, and time constraints may prohibit clerks from examining every title with the aid of a verification device. We adopt the definition as proposed. However, we note that this definition does not preclude a State from utilizing any process which would include a verification device for additional document security.

Security for Motor Vehicle Titles

According to the new law, beginning on April 29, 1989, each State motor vehicle title must be set forth by a secure printing process or other secure process. To implement this statutory requirement, we proposed the addition of a new section 580.4 concerning the security of motor vehicle titles. To assist the States in their efforts to issue motor vehicle titles which comply with the requirements of the Truth in Mileage Act and this rule, Appendix A, consisting of a list of technologies that we proposed to deem to be secure processes, was included. Comments were requested on the appropriateness of the methods listed in Appendix A and on whether our final rule should contain a procedure by which a State could seek our concurrence in an alternative method of document security beyond those listed in the final rule.

The comments concerning the title and Appendix A were divergent. At one extreme, 3M suggested that NHTSA require the title be set forth by one of the secure processes listed in Appendix A and that Appendix A be amended to include all available security processes which would be ranked as to the level of security they provide. At the other extreme, AAMVA and several of its member jurisdictions commented that Appendix A is superfluous and unnecessarily limiting, and urged that it be deleted. They asserted that individual jurisdictions should remain free to utilize any processes, including new technologies, without having to secure approval from NHTSA. Other commenters suggested that security paper be added to Appendix A. One commenter urged the addition of a hologram. Another noted that intaglio printing with latent images is a combination of two features and explained that high resolution printing refers to how the original art was prepared.

To allow for maximum administrative discretion on the part of the States, we will not adopt 3M's suggestion to list and rank all secure processes. However, in lieu of deleting Appendix A, we have expanded and corrected it based on the comments received. Appendix A has been included to aid the States in the selection of a secure process and in no way limits the States or adds new requirements or restrictions beyond those listed in the rule itself. Furthermore, States are not required to seek our concurrence in an alternative method of document security beyond those listed in Appendix A. We defer to the States to establish specific standards on secure processes and will not limit the administrative discretion of the States.

However, if it becomes evident that the secure processes being used by the States fail to deter and detect counterfeiting and/or unauthorized reproductions and do not allow alterations to be visible to the naked eye, further rulemaking may have to be undertaken on the security of titles.

We also proposed as a requirement under this new section 580.4, that if a State allows subsequent reassignments of the vehicle to be recorded on a document other than the title itself, the document used to reassign title must be set forth by the same secure process. AAMVA and several of its member jurisdictions urged the agency to amend this requirement to read, rather than by the "same" secure process, by "a secure process." Arkansas asserted that it would be a financial burden for the State to use a reassignment document that incorporates the same secure process as its title. Other commenters were opposed to the proposal in its entirety. Texas, Vermont and the Arkansas Independent Auto Dealers Association cited cost burdens and indicated that the requirement was beyond the terms of the statute. Wisconsin, on the other hand, asked that NHTSA eliminate separate reassignment documents, noting that NHTSA expressed concern about issuing odometer disclosure statements on a separate piece of paper. In the alternative, Wisconsin suggested that if reassignments on a separate document are allowed, NHTSA should require the reassignment documents to bear control numbers and that the number be included on the title. Wisconsin also requested that NHTSA require the States to record the control numbers of the reassignment documents they give to each dealer and that each dealer keep a record of the reassignment document issued for each vehicle.

NHTSA has reconsidered its proposed requirement in response to these comments. While separate reassignment documents are not mentioned in the Truth in Mileage Act, they are often an integral part of the transfer process. Since reassignment documents are a logical extension of the title, requiring secure reassignment documents is a logical extension of the statutory requirement. Allowing secure titles to be transferred by a sheet of bond paper is incongruous. Therefore, the final rule requires secure reassignment documents. However, NHTSA has concluded that it can satisfy its statutory obligations and avoid unnecessary financial burdens upon the States by adopting the proposal of AAMVA and several of its member jurisdictions. Accordingly, the final rule has been changed to permit reassignment documents to be set forth by "a secure process" in lieu of the requirement that they be set forth by the same secure process as the title. By requiring reassignment documents to be secure, we hope to achieve deterrence of odometer fraud without the elimination of their use. Furthermore, although adopting Wisconsin's suggestion that secure reassignment documents be controlled may

lessen the incidence of odometer fraud, we have no explicit statutory authority to require that any title documents be controlled in the manner suggested by Wisconsin. We will not limit the administrative discretion of the States in this area even though we recognize that it is common practice to control secure documents. Nothing in the Act or this rule should be read as precluding a State from using control techniques on these documents.

Odometer Disclosure Requirements

A. Titles Issued by States

According to the new law, in addition to being secure, each State motor vehicle title must "indicate the mileage disclosure required to be made under subsection (a) . . ." 15 U.S.C. § 1988(d)(2)(A)(ii). Subsection (a) refers to the disclosure requirements promulgated by NHTSA. To implement this provision, paralleling the language of the statute, we proposed, "Each title, at the time it is issued to the transferee, must contain the mileage disclosed by the transferor when ownership of the vehicle was transferred. . . ."

Recognizing the importance of knowing whether the odometer reading on the title represents the actual distance a vehicle has traveled, Wisconsin proposed several qualifying notations or "brands" to include with the odometer reading. These brands would accompany the odometer reading on the face of the newly issued title. These proposed brands include: (1) ACTUAL MILEAGE; (2) MILEAGE EXCEEDS THE MECHANICAL LIMITS; (3) TRUE MILEAGE UNKNOWN; (4) EXEMPT FROM ODOMETER DISCLOSURE; and (5) ODOMETER TAMPERING VERIFIED. Wisconsin noted that AAMVA adopted a resolution (Resolution 19) at its 1987 International Conference in Washington, D.C., which states that "all jurisdictions include, in conjunction with the odometer reading which is to be recorded on the certificate of title, a notation that the recorded mileage is actual, not actual, or exceeds the mechanical limits."

Since the definition of mileage is "actual distance that a vehicle has traveled," the title must include a notation as to whether the odometer reading reflects the actual mileage, exceeds the mechanical limits or does not reflect the actual mileage. With regard to the brands proposed by Wisconsin, we do not adopt the brand "TRUE MILEAGE UNKNOWN." As we discussed in the preamble to the proposed rule, true mileage unknown does not take into account situations where although the odometer does not reflect the actual mileage, it is not unknown. 52 FR 27026 (1987). Therefore, the brand should read "NOT THE ACTUAL MILEAGE." With regard to the brand "EXEMPT FROM DISCLOSURE REQUIREMENTS," while NHTSA will not require this notation, States are not prohibited under this final rule from adopting it. Finally, with regard to the brand

"ODOMETER TAMPERING VERIFIED," we feel that this brand may lead to confusion upon subsequent sale of a vehicle because this statement is not included as part of the disclosure statement; however, States may use this brand in addition to the brand "NOT THE ACTUAL MILEAGE."

B. Disclosure on Title

With regard to the disclosure of mileage, we proposed that "[a]t the time of transfer of ownership of a motor vehicle, each transferor shall disclose the mileage to the transferee in writing on the title or on the document being used to reassign title." We invited comments on how titles could be made available to transferors where the vehicle is subject to a lien in order to meet the specific requirements of the law.

The majority of comments to the NPRM have centered around this provision. Several commenters endorsed this requirement. Wisconsin firmly declared that the vehicle documentation should accompany the vehicle itself, otherwise, the buyer's best efforts to protect himself are effectively limited to a quick visual inspection of the vehicle and the odometer. The National Association of Consumer Agency Administrators (NACAA) stated that having the title accompany the vehicle is the most efficient mechanism for achieving meaningful and accurate disclosure to consumers. The Massachusetts Registry of Motor Vehicles wholeheartedly supports the strict odometer disclosure and title transfer requirements of the proposed regulations. The National Odometer Enforcement Association passed a resolution supporting the proposed rule.

Other commenters either asked that NHTSA define "transfer of ownership" or proposed definitions of the term. The Virginia Independent Automobile Dealers Association opined that transfer of ownership is a process that begins when funds are received by the dealer and ends when the customer receives either the new title or the document necessary to secure new title. NAFA asked NHTSA to define transfer of ownership as the point in time when title changes hands. AAMVA expressed concern that this requirement would be interpreted to mean that the title be present at the time the vehicle itself is transferred. AAMVA noted that over forty jurisdictions allow the lienholder to hold title and that this requirement would result in extensive regulatory and/or legislative change. AAMVA noted that this would be inconsistent with Congress' intent that the Truth in Mileage Act would have minimal impacts on the States. Other commenters consistently stressed the burden upon transferors when the vehicles are under lien in States where the lienholder holds the title. The transferor could not obtain the title unless the lien is paid, and he may not be able to pay it off until he sells the vehicle. NIADA asserted that ". . . it is impossible in many situations for a dealer to conclude a transaction with the title present at the time of sale." Nu-

merous car dealers exclaimed that if dealers had to have titles when selling vehicles, burdensome and costly changes in their recordkeeping practices would result. The Credit Union National Association noted that its members expressed concern that if financial institutions were unable to retain titles, they may feel the necessity to curtail car lending programs. Senator J. James Exon, Representative Thomas J. Tauke and Representative John Bryant asserted that "Congress never intended to require odometer disclosures, which are currently made at the time of a sales transaction, to be placed upon, and made only through, the title document itself. Such a requirement would needlessly increase regulatory burdens and disrupt the purchase and sale of used automobiles, not only by dealers but also by individual consumers. Rather, Congress intended that the mileage recorded on the new title be consistent with the mileage disclosed when the buyer and seller signed the sales contract." Anglo summed up its concerns by stating that a requirement that the title be present at the time of initial sale is inappropriate because of the unnecessary disruption of the efficient operation of the used car vehicle market it would cause for individuals and automobile dealers alike.

To alleviate the burden that might result if NHTSA were to require the title to be present at the time of sale, the coalition urged the Agency to accept an "owner copy" title procedure. Under the owner copy title procedure, title sets consisting of a title and a designated owner copy would be set forth by a secure printing process or other secure process and each would contain an appropriate Federal odometer disclosure statement or statements. In cases where the initial transferor does not have possession of the title at the time of sale or trade-in, the coalition proposed that NHTSA shall permit the transferor to disclose the mileage on the designated owner copy provided that the disclosure statement is fully completed, dated, and signed by the transferor. The owner copy and all subsequent reassignments would be presented with any application for new title. In addition, the coalition suggested that if the transferor does not have either the owner copy or the title, NHTSA should permit the use of a special power of attorney, which would also be submitted at the time of application for new title.

Some commenters, aware of the suggestion of a two part title system, expressed concern over the expenses which might result from its implementation. Delaware stated that there would be costly form and programming changes.

NHTSA has carefully evaluated these comments in light of the Truth in Mileage Act, Congressional intent, policy considerations and investigative experience. To alleviate unnecessary cost burdens on the States and the automobile industry while continuing to provide a paper trail in accordance with the law

and Congressional intent, we have amended the language in the proposed regulation concerning the time of the disclosure. The words, "In connection with the transfer of ownership . . ." will replace "At the time of transfer of ownership . . ." as the introductory phrase of section 580.5(c).

In issuing interpretations of the Motor Vehicle Information and Cost Savings Act, NHTSA has stated that "transfer of ownership" is determined by State law. Therefore, we have not, now, attempted to define the phrase.

Furthermore, Congress noted that "[o]ne of the major barriers to decreasing odometer fraud is the lack of evidence or 'paper trail' showing incidence of roll-backs," and enacted Section 2 of the Truth in Mileage Act. Section 2 prohibits the licensing of any vehicle for use in any State unless the title which is issued by the State to the transferee following a transfer "contains a space for the transferee to disclose (in the event of a future transfer) the mileage at the time of such future transfer and to sign and date the disclosure." It also states that a motor vehicle may not be licensed for use in any State unless, if the transferor's title contains a space for a mileage disclosure, the disclosure is signed and dated by the transferor. Section 408(d) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. § 1988(d). Under these provisions, a disclosure must be made on the title. In the Committee Report accompanying the new law, Congress specifically noted that the amendments require that "any transfer of ownership or licensing of any vehicle be accompanied by the title of such vehicle." H.R. Rep. 833, 99th Cong., 2nd Sess., 18 (1986). We recognize that the remarks of Senator Exon and Representatives Bryant and Tauke differ from the Congressional intent set forth in this Committee Report. However, these comments were set forth in their letter to the Agency after the enactment of the statute, and although we have given their comments careful consideration, we note that postenactment statements of legislators have no probative weight in interpreting statutes and represent only the personal views of the legislators. *Bread Political Action Committee v. Federal Election Commission*, 455 U.S. 577 (1982); *Petry v. Block*, 697 F.2d 1169 (D.C. Cir. 1983). Additionally, if we were to adopt the comments of these legislators, there would continue to be a duplication of disclosure since there would be a separate odometer disclosure statement and the disclosure of odometer information on State titles because the majority of the States also require this information. In the regulatory evaluation prepared to analyze the details of this rule, NHTSA estimates that annual savings of \$2.6 million would result from the elimination of the separate odometer disclosure statement for used vehicle transfers.

We recognize that, under State laws, "transfer of ownership" may not occur at one point in time, but

is a process. Under this final rule, at some point during that process, the title, containing the disclosure statement completed and signed by the transferor, must be given to, and signed by, the transferee. The transferee may obtain the title in person or the title may be mailed to the transferee. We caution dealers and distributors who are required by this part to retain a copy of each odometer statement which they issue that, if they mail the title, they must ensure that they obtain a copy of the statement signed by the transferee in accordance with the record retention requirements of this part.

Under this requirement, the integrity of the paper trail has been maintained since the disclosure will be on the title and consumers will be able to see the disclosures and examine the titles for alterations, erasures or other marks. Furthermore, consumers will learn the names of previous owners that appear on the title.

We have not adopted the suggestion of the coalition to permit the use of a special power of attorney. A secure power of attorney would not allow transferees to see the actual title document, including the disclosures, and could easily be discarded. A forged substitute could then be submitted to the titling office. This final rule is flexible in permitting the disclosure in connection with the transfer of ownership and will not result in the burdens anticipated by the coalition.

NAAA argued that nothing in the Truth in Mileage Act requires that the title be the sole and exclusive means of making the full disclosure and that nothing prohibits the use of an odometer disclosure statement on a form separate from the title or reassignment forms. NHTSA agrees that the Act does not require the title to be the only means of making a disclosure. A seller may issue a separate odometer disclosure statement *in addition to* the one on the title. As we noted in the preamble to the proposed rule, dealers and distributors who elect to issue a disclosure statement in addition to the one on the title, must retain a copy of these separate disclosure statements, and a copy of the front and reverse sides of the title. Recognizing a doubled paperwork burden and resulting cost increases, NHTSA will not require a disclosure statement apart from the disclosure on the title.

C. Information Required to Be Disclosed

With regard to the information to be disclosed, the proposed section 580.5 continued to require certain information that the agency had already required and included some additional provisions. The proposal continued to require the transferor to sign the disclosure and to certify whether to the best of his knowledge the odometer reading reflects the vehicle's actual mileage. No comments were received on this proposal and it is adopted in the final rule.

We also proposed to continue to require the transferor to disclose whether the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit, while proposing to delete any reference to specific designed mechanical odometer limitations. NADA urged NHTSA to eliminate any requirement for the certification that the odometer reading reflects the amount of mileage in excess of the designed mechanical limit, stating that it is not required by the Act and it is redundant with the requirement that the transferor certify that the odometer reading does not reflect the actual distance a vehicle has traveled. The Minnesota Automobile Dealers Association (MADA) noted that in situations where the odometer has a mechanical limit of 99,999 and the vehicle has traveled in excess of 200,000 miles, there would be no way to indicate this since the language of the proposed regulation requires the transferor to certify if he knows "the odometer reading reflects the amount of mileage in excess of the mechanical limit." This rule does not adopt these suggestions. Knowing whether a vehicle has traveled over 100,000 miles is important in determining its condition and value.

Additionally, to allow someone with a vehicle that has traveled over 100,000 miles to merely certify that the odometer reading does not reflect the actual mileage permits unscrupulous transferors to make oral misrepresentations as to the vehicle's actual mileage. Furthermore, it is unusual for passenger vehicles to travel in excess of 200,000 miles. While trucks and buses register such high mileage, transferors of vehicles having a Gross Vehicle Weight Rating over 16,000 pounds are exempt from the disclosure requirements. If transferors of vehicles that have travelled in excess of 200,000 miles wish to issue a disclosure statement, they may make a line through the words "the amount of," or alternatively, add an additional statement that would indicate how much over the mechanical limit the reading is. The requirement that the transferor disclose whether the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer is adopted as proposed.

As an alternative to certifying that the mileage is actual or exceeds the mechanical limits, we proposed that if the odometer reading does not reflect the actual mileage and should not be relied upon, the transferor must continue to disclose this fact. We also proposed that this disclosure include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage. We received two comments about the warning notice. Delaware asserted that a warning notice would be burdensome because it would increase the required space on the reverse side of the title. From another perspective, NACAA applauded the addition of the warning notice which provides additional consumer

protection. NHTSA has adopted this requirement as proposed in the NPRM. The addition of a warning notice which may be as simple as "WARNING ODOMETER DISCREPANCY" will not increase the size of the title, but may appear in space which is normally available at the end of the certification statement. For an example of the spacing of the warning notice, see Appendices B and C.

In addition, we proposed to continue to require the transferee's signature. Although NHTSA has required the transferee's signature on the disclosure statement since 1977, we received many comments on this proposal because the disclosure will be, in many instances, on the title. NACAA, NADA and Comerica (an automobile leasing company) support this proposal. Other commenters had concerns. Arkansas asserted that requiring the signature of the transferee is neither expressed nor implied in the Truth in Mileage Act and is an "absolute misinterpretation of Section 2." Alabama stated that the purchaser is unavailable at the time the transaction is consummated and opposed this requirement.

Although the Truth in Mileage Act does not require the transferee's signature, it also was not intended to lessen the tools available to law enforcement officers in the enforcement of odometer laws. Again, we note that this is *not* a new proposal. Rather, it has been a requirement since 1977, authorized by the Motor Vehicle Information and Cost Savings Act. As noted in the preamble to the NPRM, NHTSA considers the transferee's signature to be essential because it is an acknowledgement that the purchaser is aware of the mileage or any problems with the odometer reading. The signature prevents the purchaser from later alleging that he was not informed of the mileage or that the mileage on the vehicle's odometer was different from that appearing on the odometer disclosure statement. Furthermore, the buyer's signature is important to investigative and prosecutorial efforts. Since we have expanded the period of time in which the mileage disclosure may be made, Alabama's concern has been addressed because, at some point in connection with the transfer of ownership, the purchaser will be available to sign the title.

Judging from the comments, some aspects of the proposed requirement for the transferee's signature were misunderstood. The Delaware Department of Motor Vehicles (Delaware) stated that the transferee should not be required to sign the disclosure statement if required to sign the document elsewhere. NHTSA agrees. If the transferee's signature is required to reassign title, and if the disclosure appears in the same section of the title as the reassignment, the title does not need to include another space for the transferee's signature. As NHTSA has said in the past, information concerning the disclosure need not be repeated if found elsewhere on the document. *See*

38 FR 2978 (1973). NAFA suggested that NHTSA consider adding a provision noting that an increase in mileage may have taken place prior to the signature of the transferee. NAFA was concerned that a "transferee may balk at attesting to" a disclosure statement if the odometer shows a higher reading. This final rule does not adopt NAFA's suggestion since the transferee does not attest to the disclosure statement, but rather acknowledges receipt of it.

We proposed to continue to require the transferor's current address, the vehicle's model and a reference to the Federal odometer law, including a statement of liability and penalties. Although the address, model and reference are required under the current regulation, they were the subject of some comments.

Noting that the disclosure would be on the title, Delaware feared that requiring the transferor's current address would increase the size of the title. As indicated by Appendix B, if the transferor's address is on the title, and normally it is on the face of the title, it does not have to be included again. Therefore, the titles should not increase in size and we have adopted the requirement for the transferor's current address as proposed.

With regard to the proposal to require a vehicle's model, Delaware asserted that many States do not include the model. Citing cost concerns, Delaware asked that a requirement for model apply to 1989 models and newer. The Oregon Department of Transportation Motor Vehicle Division (Oregon) noted that its legislature recently removed a model requirement from Oregon law relating to odometers. Oregon asserted that this information is obtainable through the Vehicle Identification Number (VIN) and should not be required to be listed separately.

Vehicle identifying information, including the model, is currently required so that the vehicle would be readily identifiable if the disclosure statement became separated from the other transfer documents. *See*, 38 FR 2979. This rationale is still valid since separate disclosure statements will continue to be issued by transferors of new vehicles which have not been previously titled and by transferors of vehicles titled on nonconforming titles during the phase-in period. Furthermore, the model helps individuals to verify the correctness of the VIN and two-thirds of the States already include the model on their titles. Therefore, we have adopted the proposal to require the model, which is consistent with the current regulation, into this final rule.

As for the reference to the Federal odometer law, we proposed that the disclosure statement "refer to the Motor Vehicle Information and Cost Savings Act and State law, where applicable, and shall state that incorrect information may result in civil liability and civil or criminal penalties." Delaware claimed that the wording is too lengthy and will never be read. NADA proposed to change this requirement to read

that "each document containing one or more odometer disclosures shall contain a statement in capital letters as follows: AN INACCURATE OR UNTRUTHFUL STATEMENT MAY MAKE YOU LIABLE FOR DAMAGES AND FOR CIVIL AND CRIMINAL PENALTIES UNDER APPLICABLE LAW." NADA's stated purpose in this proposal is to simplify the statement and make it more forceful. Requiring that it be stated only once on a multi-disclosure document will afford States the flexibility to combine titles with multi-assignment documents. NADA's proposal was supported by the coalition.

While we have not adopted NADA's proposal in form, we agree to simplify and strengthen the reference to the law and penalties. Therefore, the proposal is amended to require a reference to the "Federal odometer law" in lieu of the Motor Vehicle Information and Cost Savings Act. This is consistent with the agency's opinion that the actual law need not always be cited. 45 FR 784 (1980). For clarification, we have added a requirement that the reference indicate that "failure to complete," in addition to providing false information, will result in liability. To make the statement more forceful, references to "civil liability and civil or criminal penalties" will be amended to read "fines and/or imprisonment." To allow for flexibility for States and transferors, reference to State law is discretionary. Finally, if the required information appears once on the document, it does not have to be repeated.

Section 580.5, as proposed, differed from the current section 580.4 in the following ways. We proposed in section 580.5(f) that the transferee, in addition to signing the odometer disclosure statement, print his name. Recognizing that the printed name is helpful in the course of an investigation to identify the person signing the statement where signatures are difficult to read, NACAA supported the proposal. On the other hand, NADA asserted that the requirement for the transferee's printed name should be deleted as redundant with the proposed requirement for the transferee's name and current address, section 580.5(c). NHTSA agrees that in some instances the provisions may result in the same information. However, the transferee whose name and address are required under section 580.5(c) may be a dealer, corporation or other business entity. The signature of these transferees is the signature of the employee or agent acting in their behalf. The employee or agent would print his name. Therefore, the requirements of section 580.5(f) are not redundant and will be adopted as proposed.

In section 580.5(c) we also proposed that the odometer reading cannot include tenths of miles. NACAA and NADA supported this proposal and no comments were received in opposition to it. Therefore, we have adopted this proposal in the final rule.

In addition, we proposed to shorten the odometer disclosure form by eliminating the second set of certifications. No comments were received on this proposal and it is adopted in this final rule.

While no one commented on the elimination of the second set of certifications, we received several proposals for additional certifications. An individual suggested that in order to provide as much information as possible in a formal manner to the transferee, the disclosure statement should include the following: "Optional: the correct mileage is _____." While there is no prohibition against a seller providing this information, NHTSA sees no investigative or consumer benefit to be gained in adding this requirement which would outweigh the burden of including another statement on the title, in light of space limitations. A buyer can, and certainly should, request such information. Yet, anyone who has deliberately violated the odometer laws is likely to provide an untruthful statement. Therefore, NHTSA will not adopt this suggestion.

Another commenter suggested that a provision be added to require the transferor "to certify that the odometer was repaired or replaced, reset to zero, the mileage on the original odometer was _____, and that the mileage on the present odometer reflects the mileage on the vehicle in excess of that amount." The commenter asserted that this disclosure would allow sellers to explain the odometer discrepancy and create a paper trail as a backup to the notice posted on the left door frame. Without this statement, the commenter felt that unscrupulous sellers could repair or replace the odometer, then simply disclose that the odometer reading is not the actual mileage. Due to space limitations, we must reject this suggestion. Although a shorter disclosure might sacrifice clarity to a degree, NHTSA regards this as an acceptable price for gaining the benefit of combined title and disclosure. Note that there is no prohibition against the seller advising the purchaser of the reason for certifying that the odometer reading does not reflect the actual mileage.

While the proposed regulation sets forth the information which must be disclosed, it also includes, in Appendices B and C, sample forms which may be used. Appendix B is a sample disclosure form which a State may wish to include on its titles. Appendix C is a sample disclosure form which may be used if a vehicle has not been previously titled such as a new vehicle or a vehicle imported into the United States from a foreign country. 3M endorsed the inclusion of Appendices B and C and noted that they provide standard formats. 3M suggested that the placement of information relevant to security, section 580.5(c)(1)-(5), be located consistently in one position on the certificate of title and on other ownership documents. To allow the States the maximum admin-

istrative discretion possible, we will not adopt 3M's suggestion, but have included sample forms in appendices B and C to the final rule. These appendices have been changed from the appendices as proposed to conform to the requirements of the final rule. We wish to repeat that the purpose of these appendices is to serve as examples; they do not introduce new requirements or restrictions into the rule.

Recognizing that titles for vehicles issued prior to the enactment of a State law or regulation implementing the title requirements of the final rule may not contain all the information required by this rule, in section 580.5(g) we proposed that the written disclosure be executed as a separate form when the title does not conform to the final rule. NADA supported the use of a separate disclosure statement when "old," nonconforming titles are involved in the transfer. However, the Chairman of the Consumer Affairs and Protection Committee of the New York State Assembly feared that this section creates a loophole. Discussing the disclosure information on the title, he noted that "to be effective, this information should appear on the title itself, because this document *must* accompany each vehicle transfer, and is recorded by most state Departments of Motor Vehicles. This may mean instituting a phase-in period for all States to develop titles containing appropriate spaces." Rather than creating a loophole, section 580.5(g) recognizes the necessity of a phase-in period. As noted in the preamble to the NPRM, the Truth in Mileage Act does not say that motor vehicles can only be licensed if the transferee includes with the application the transferor's title which includes a disclosure. Rather, the law states that only ". . . if that title contains the space referred to in paragraph (2)(A)(iii). . ." would the transferor sign and date a disclosure statement. Therefore, section 580.5(g) is adopted in this final rule as proposed.

D. Power of Attorney

Prior to the issuance of the NPRM, NIADA asked whether a power of attorney could be granted so that the transferor could sign on behalf of the transferee to avoid any problems in making a disclosure on the title where the vehicle is subject to an existing lien. Although the proposed rule did not include a provision concerning powers of attorney, in the preamble to the proposed rules, we recognized that powers of attorney are necessary in transfers involving an incompetent or deceased owner. However, we emphasized that powers of attorney that allow the same person to sign a disclosure statement as both the transferor and transferee result in only one party to the transfer being aware of the previous mileage disclosures. This could jeopardize the integrity of the "paper trail" and defeat the purpose of the Act.

AAMVA agreed with our position, noting that where the transferee holds the power of attorney of

the transferor, the same party is signing the title as seller, to transfer ownership and to disclose mileage, and as the buyer. AAMVA stated that this situation is ripe for fraud if the person holding the power of attorney is intent on rolling back the vehicle's mileage. Several of AAMVA's member jurisdictions concurred in this position.

Wisconsin suggested that a new paragraph be added to section 580.5 providing that no person may sign a disclosure as both the transferor and transferee. Wisconsin also suggested that the additional paragraph provide that no transferor may give his power of attorney or otherwise appoint as the transferor agent, any agent or employee of the transferee for the purpose of executing an odometer disclosure statement.

An automobile dealer in an area with a large military population declared that the new law would preclude a member of the military from giving a spouse a power of attorney to sell a vehicle and to verify the odometer reading.

Other commenters, concerned that the title had to be present at the time of sale, hoped that the use of a power of attorney would ease the burden that title present might have imposed. NIADA noted that if the power of attorney is submitted with the old title when applying for a new title, and a copy is required to be maintained by the dealer, any alteration would be immediately apparent and the paper trail would be maintained. The coalition, as noted above, suggested the use of a special power of attorney which (i) is set forth by a secure process; (ii) contains the appropriate Federal odometer disclosure statement and (iii) is fully completed, dated and signed by the transferor. Upon receipt of the transferor's title, the initial transferee would negotiate the title and complete the transferor's statement based on the transferor's power of attorney and mileage disclosure thereon. The title, together with the power of attorney and all subsequent title reassignments, shall be presented with any application for title.

To guard against a situation ripe for fraud, we have adopted a new paragraph 580.5(h) which provides that no person may sign a disclosure statement as both the transferor and transferee in the same transaction. It also provides that no transferor may give his power of attorney or otherwise appoint as the transferor's agent, any transferee of the same vehicle in the same transaction for the purpose of executing an odometer disclosure statement. Conversely, no transferee may give his power of attorney or otherwise appoint as the transferee's agent, any transferor of the same vehicle in the same transaction for the purpose of executing an odometer disclosure statement.

We have not adopted the coalition's suggestion. The burden that a "title present" requirement might have presented has been alleviated since disclosure must now occur in connection with the transfer of owner-

ship. In addition, the integrity of the paper trail with a secure power of attorney would not be maintained because one party to the transaction would not see the title and the power of attorney could be easily discarded and a new one forged. Furthermore, this process would place a burden on State titling offices to review additional documentation, check for conformity of the information contained on the documents and maintain additional records.

Exemptions

We proposed a new section 580.6 which exempts certain transferors from issuing odometer disclosure statements. With one exception as noted below, this new section exempts the same transferors exempted by former section 580.5.

3M questioned why any exemptions are allowed, asserting that in 3M's opinion, the odometer reading of any vehicle, regardless of its age, weight, or method of sale, is a significant contributor to the vehicle's worth. In response to 3M's inquiry, NHTSA notes that the odometer reading is not used as a guide to the value of certain vehicles. For example, maintenance records have traditionally been relied upon as the principal guide to the condition of trucks and buses. Antique vehicles are primarily valued because of factors such as rarity and age rather mileage. 38 FR 2978 (1973).

Several Federal courts have reviewed NHTSA's authority to create exemptions and reached different conclusions concerning the validity of former section 580.5. *See, Witkowski v. Mack Trucks, Inc.*, 712 F.2d 1352 (11th Cir. 1983); *Barker v. Cawthon Motor Co.*, 629 F.2d 410 (5th Cir. 1980); *Mitchell v. White Motor Credit Corporation*, 627 F. Supp. 1241 (M.D. Tenn. 1986); *Davis v. Dils Motor Co.*, 566 F. Supp. 1360 (S.D.W. Va. 1983). Nevertheless, as noted in the preamble to the NPRM, while some courts have determined that NHTSA's authority to create exemptions may be limited, we believe that NHTSA has the authority to create exemptions for transferors of vehicles for which the odometer reading is not relied upon as an indicator of vehicle mileage or condition. 47 FR 51885 (1982). Therefore, we have adopted section 580.6 as proposed, with one exception.

We proposed to exempt a transferor of a vehicle that is twenty-five years old or older from the requirements of issuing a disclosure statement. We received numerous requests to lower the vehicle age. AAMVA, several of AAMVA's member jurisdictions and the coalition suggested that the exemption be given to a transferor of a vehicle that is ten years old or older. This suggestion is based on studies done in Wisconsin and Iowa which indicate that the incidence of odometer tampering on vehicles over ten model years old is disproportionately small as compared to the vehicle population represented by that age group. The commenters also noted that the selling price of

vehicles over ten years old is not typically based on the odometer reading. AAMVA and several of its members felt that extending the exemption to the transferor of a vehicle ten years old and older would not frustrate the Congressional intent behind the odometer laws since the odometer reading on a vehicle of this age is not used to determine the condition or value of the vehicle. NACAA recommended that the absolute maximum age of vehicle for which the transferor should be required to issue an odometer statement is fifteen years. Based on a study the California Department of Motor Vehicles conducted for NHTSA in 1981, the Director of the Department proposed that the regulation be changed to exempt transferors of vehicles that are six years old and older. Oregon noted that the State legislature, after expressing strong concern about the cost effectiveness of requiring odometer disclosures on vehicles older than eight years, amended Oregon law to require odometer disclosure information only for vehicles eight years old and newer.

NHTSA has reconsidered its proposed requirement in response to these comments. Purchasers of vehicles six and eight years old still rely on the odometer reading to determine the condition and value of the vehicle. While the California study may indicate that odometer tampering is not as prevalent in vehicles six years old and older, the study concerned leased vehicles and does not represent the total used car population. For vehicles over 10 years old, the value is mostly determined by the overall condition and appearance, not primarily mileage. Accordingly, the final rule has been changed to exempt a transferor of a vehicle that is ten years old and older.

Finally, we have not adopted the proposal of American Bankers Association which suggested that the rule exempt from the disclosure requirements, lessors when selling the leased vehicle to the lessee at the end of the lease period. To adopt this suggestion would permit an unscrupulous lessee to purchase the car, roll back the odometer, and sell the car to an unsuspecting buyer for more than its actual value. The lessee's purchaser would be unable to ascertain the veracity of the disclosure statement he receives from the lessee since there would be no previous disclosure record.

Leased Vehicles

In accordance with the Congressional mandate, we proposed a new section 580.7 applicable to leased vehicles. Under the proposed section 580.7, lessors were required to provide written notice to the lessee that ownership of the vehicle is being transferred, that the lessee is required by law to provide the lessor with a written disclosure regarding the mileage and the penalties for noncompliance. The American Automotive Leasing Association (AALA) urged NHTSA to delete the requirement that "ownership

of the vehicle is being transferred," since notifying lessees at that time would be financially burdensome. AALA claimed that a rule requiring a notice that is contemporaneous with the decision to terminate the lease and a separate notice for each car is unwarranted. Rather, AALA and PHH requested that the regulations permit flexibility as to when the lessor gives notice to the lessee of the lessee's obligation to make the required disclosure. Both noted that there are various possibilities for notifying lessees. The notification could be incorporated into the lease agreement, in mailings sent to the clients throughout the year and in forms completed by the lessee to initiate transfer. We have considered these comments and have determined that the requirement that the lessor give notice to the lessee that "ownership of the vehicle is being transferred" is not required by the law and may result in an unnecessary burden for lessors. Therefore, we adopt AALA's proposal and this requirement has been deleted from the final rule. This will allow flexibility as to when the notice of the lessee's disclosure requirements and penalties for noncompliance is given. Furthermore, we will not require a separate notice for each vehicle. Should this flexibility impede or delay investigative action, further rulemaking may need to be undertaken on this matter.

As noted above, the proposed rule also provided that the lessor must give written notice to the lessee that the lessee is required by law to disclose the mileage of the lease vehicle and the penalties for failure to disclose the information. PHH emphasized that the penalties for lessee noncompliance should be explicitly stated in the notice and recommended that Appendix D, the Disclosure Form for Leased Vehicles, be amended to explicitly state the nature of the civil or criminal penalties to which a lessee is subject for failure to comply. PHH believes that a more explicit statement of penalties will help to stress the lessee's risk in noncompliance, will encourage greater accuracy of odometer readings and will motivate the prompt return of the lessee disclosure form to the lessor. We agree with PHH's comments. Therefore, consistent with our decision to amend the citation to the law under section 580.5(c), section 580.7(a) will require that the lessor's notice to the lessee contain a reference to the Federal odometer law and state that failing to complete the disclosure or providing false information may result in fines and/or imprisonment. For purposes of consistency, we will not require a more detailed statement. However, lessors may include additional information such as an explicit statement of the fines and imprisonment term provided by law. Accordingly, we have amended the reference to the law contained in Appendix D and note that Appendix D is only an example of the minimum requirements under the law.

The disclosure required to be made by the lessee under our proposal paralleled that made by the transferor. It required that the person making the disclosure print his name, provide the current odometer reading (not to include tenths) and date the statement. In addition, we proposed that the disclosure include the lessee's name and current address; the lessor's name and current address; the identity of the vehicle including its make, model, year, body type and vehicle identification number; and the signature of the lessor. We received no comments on these proposals and they have been incorporated into this final rule.

We also proposed that the disclosure include the date that the lessor notified the lessee of disclosure requirements and the date that the completed disclosure was received by the lessor. Delaware asserted that it did not understand the importance of these dates. According to Delaware, the date requirement merely necessitates more paper work and filing of records. NADA requested, without comment, the elimination of these date requirements. We will not grant NADA's request. These dates are important for investigative purposes. Our experience shows that dealers and distributors who have been required to maintain odometer disclosure statements under our regulations, upon request for those records, consistently ask investigators for the date of the record. Requiring these dates, in addition to the date of the statement, will aid in the investigation of allegations that the lessor never notified the lessee or that the lessee never gave the lessor a statement. Therefore, subsections 580.7(b)(7) and (8) are adopted as proposed.

In addition, we proposed that the lessee certify whether the odometer reading reflects the actual mileage, whether it reflects the amount of mileage in excess of the designed mechanical limit or whether it is not the actual mileage. As it did with regard to the disclosure by the transferor, NADA urged NHTSA to eliminate the requirement that the disclosure of mileage is in excess of the designed mechanical limit of the odometer. Again, we have not adopted NADA's suggestion. As noted above, to allow someone with a vehicle having over 100,000 miles to certify that the odometer does not reflect the actual mileage permits oral misrepresentations as to the vehicle's actual mileage. Furthermore, while not specifically referencing the requirement as it applied to leased vehicles, MADA expressed concern with the requirement that a person certify that "the odometer reading reflects the mileage in excess of the designed mechanical limits." NHTSA has addressed this concern above as it relates to the disclosure by the transferor. For the same reasons, we have not adopted MADA's suggestion to amend the statement. The certification requirements are adopted as proposed.

To implement section 2(e) of the Truth in Mileage Act, section 408 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. § 1988(e), we proposed to permit a lessor who transfers ownership of a vehicle, without obtaining possession of the vehicle, to disclose, on the title, the mileage indicated by the lessee unless he has reason to believe that the lessee's disclosure does not reflect the actual mileage of the vehicle. PHH noted that it is not unusual for vehicles to be driven substantial distances by the lessee after the lessee's disclosure statement is received by the lessor. PHH asked whether it is NHTSA's intention for lessors to certify, in connection with the transfer of ownership, that the odometer does not accurately reflect the mileage of the vehicle. If the lessee had certified that the odometer reading reflected the actual mileage the vehicle had traveled, it is not NHTSA's intention that lessors indicate that the odometer reading does not reflect the actual mileage. When the lessee certifies that the odometer reading reflects the actual mileage, the lessor may also certify that the odometer reading reflects the actual mileage. This certification would be based upon the lessee's statement and the lessor's knowledge of the additional mileage.

Several commenters raised issues that had not been considered in the NPRM. The National Vehicle Leasing Association (NVLA), AALA and PHH noted that the proposed rule did not refer to the situation where the lessee fails to provide the lessor with a disclosure. PHH requested that NHTSA address the action a lessor is expected to take when a lessee fails to provide an odometer statement or fails to provide a statement in a reasonable time, and what remedies or sanctions apply. AALA requested that NHTSA affirmatively state that in cases where the lessor has notified the lessee but the lessee has failed to provide a disclosure, the lessor may sell the vehicle, making the appropriate disclosure. NVLA took the AALA request one step further, by suggesting what constitutes an appropriate disclosure. NVLA proposed that where the vehicle is to be transferred to the lessee, the lessor should be permitted to complete the transaction and certify that the mileage information is "unknown." If the lessee failed to provide a disclosure and the lessor is selling the vehicle to a third party, NVLA proposed that the lessor should be permitted to certify that to the best of the lessor's knowledge, the odometer reading, provided to the lessor by the third party purchaser, reflects the actual mileage.

Congress expressly stated that "[i]f the lessee fails to comply, the lessor who has provided the required notice is not intended to be precluded from transferring ownership of the vehicle." H.R. Rep. 833, 99th Cong., 2nd Sess. 33 (1986). Therefore, the lessor may sell the vehicle and make the disclosure based upon available information. When the lessor is selling the vehicle to the lessee, we will not permit the lessor to

complete the transaction and certify that the mileage is unknown. The lessor has leverage in this situation and may retain possession of the title to influence the lessee to provide a disclosure. When the lessor is selling a vehicle to a third party purchaser, the lessor must make a certification to the best of his knowledge based upon the available information, including condition reports, maintenance receipts, previous history of lessee vehicle returns and similar business records. To permit a lessor who does not take possession of a vehicle to routinely certify that the odometer reading reflects the actual mileage, as suggested by NVLA, opens the door to fraud on the part of the third party purchaser who obtains possession of the vehicle from the lessee. In this situation, the third party purchaser could tell the lessor the odometer reading is less than it actually is, resulting in an inaccurate statement by the lessor, and then roll back the odometer.

Finally, PHH requested that NHTSA address the remedies that are available to the lessor against a lessee who fails to provide a disclosure. Under section 409 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. § 1989, the lessor may bring a civil action against the lessee. Note that under this section, the lessor must prove an intent to defraud. If the lessor included a provision concerning the disclosure in the lease agreement or contract, the lessor may have an additional cause of action. The requirement that lessees provide a disclosure is also enforceable by the chief law enforcement officer in the State where the violation occurred and by the Federal government.

Record Retention

The NPRM proposed a new section 580.8 concerning the retention of odometer disclosure statements by motor vehicle dealers, distributors and lessors. This proposed section increased, from four to five years, the length of time dealers and distributors who are required by this part to issue an odometer disclosure statement shall retain odometer disclosure statements. Lessors shall retain for five years following the date they transfer ownership of the leased vehicle, the odometer statement they receive from their lessee. These dealers, distributors and lessors shall retain the original or a photostat, carbon or other facsimile copy of each odometer statement they issue and receive. The proposal was phrased broadly to include any media by which such information may be stored, provided there is no loss of information.

Some commenters felt that the extension to five years was both reasonable and logical given the five year statute of limitations for criminal violations of the Federal odometer laws. Others raised questions concerning the necessity of retaining, in whole or in part, copies of disclosure statements.

One commenter asserted that since the odometer disclosure statement will be on the title, it will be

cumbersome and difficult for the transferor to retain a copy. The commenter stated that it is unlikely that States will provide multiple copy titles and that a large number of dealers do not have access to a photocopy machine. This commenter also claimed that it is against the law in California, and possibly in other States, to photocopy a title document. NHTSA does not find this retention requirement to be overly burdensome. In light of increased technology, portable photocopy equipment is available at reasonable prices. The rule allows flexibility in retention, provided there is no loss of information. Finally, while it may be illegal to possess as true or genuine a false or forged document, it does not appear to be illegal to copy a title solely for the purpose of maintaining records. Alan Metier of the California Department of Motor Vehicles, Legal Office, stated that neither the California Vehicle Code nor the California Government Code prohibits the photocopying of titles for record retention purposes. In the course of its investigations, NHTSA has received copies of titles from auto auctions, dealers, leasing companies and State departments of motor vehicles, including the California Department of Motor Vehicles.

NAFA asked whether the transferor is required to retain a copy of the full disclosure signed by the transferee or if he is only required to maintain a copy of his disclosure. The rule requires the transferor to retain a copy of the full disclosure, including the transferee's signature. In addition, for purposes of meeting the requirement to retain a copy of the disclosure statement which includes the buyer's signature, AALA asked NHTSA to allow the transferor who is also a lessor to obtain a power of attorney from the buyer authorizing the transferor to sign the mileage disclosure on behalf of the buyer. Because this would allow the transferor to sign as both the transferor and transferee, thus creating a situation ripe for fraud, AALA's suggestions has not been adopted.

PHH asserted that it is not reasonable to place a legal requirement on the transferor to retain records over which he does not have control and that any transferee with intent to commit fraud by tampering with the title document, will simply alter the document after the transferor's copy has been made. PHH argued that since the States will be receiving and retaining fully executed title documents, there seems to be little net benefit to require transferors to duplicate these records. Therefore, PHH requested that the final rule require only that the transferor retain a copy of the disclosure statement prior to release of the document to the transferee. AALA suggested that the regulation allow a transferor who is also a lessor to fulfill the retention requirements when he retains a copy of the disclosure statement which he forwards for the buyer's signature and requests the buyer to sign the statement and return a copy.

We have not adopted the requests of AALA or PHH. Requiring the transferor to retain a copy of the disclosure signed by the transferee is essential to enforcement. It prevents a buyer from altering the mileage and later alleging that the altered mileage is the mileage he received from the transferor, since the transferor would have a copy of the disclosure with the higher mileage and the transferee's signature. This unaltered copy would not be on file with the State titling office. In addition, requiring the transferor to retain a copy of the disclosure signed by the transferee protects the transferor. With regard to the reasonableness of a legal requirement on the transferor to retain records over which he does not have control, NHTSA assesses civil penalties for failure to retain records in accordance with section 412 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. § 1990b. This assessment takes into account the nature, circumstances, extent and gravity of the violation of the retention requirement committed, and other matters as justice may require.

Consistent with the requirements of the Truth in Mileage Act, we also proposed the addition of a new section 580.9 which concerns the odometer record retention by auction companies. We proposed that each auction company retain, for five years, the following information: the name of the most recent owner on the date the auction took possession of the motor vehicle, the name of the buyer, the vehicle identification number and the odometer reading on the date the auction company took possession of the motor vehicle. This information can be retained in any way that is systematically retrievable. We did not propose to require that this information be included on any special form, but noted that it may be part of the auction invoice or other document currently used by auction companies or be maintained as a portion of a computer data base.

The New Jersey State Police (New Jersey) questioned the requirement that auction companies retain the odometer reading on the date which the auction "took possession of the vehicle." The commenter was concerned that auctions could assert that they do not "take possession," but merely act as a broker between the buyer and seller. In lieu of a requirement that the odometer reading on the date the auction took possession be retained, New Jersey proposed that the reading on the date of sale be retained.

We have not adopted New Jersey's proposal. While an auction does not take ownership of vehicles, it does routinely take physical possession of them. When the cars are registered for sale, the keys to each vehicle are given to the auction which prepares the cars for auction and drives them onto the auction block. Furthermore, the language in the rule is consistent with the provisions of the Truth in Mileage Act.

NAAA, while not specifically addressing the retention requirements as they relate to auctions, did

declare that the retention requirements are more than reasonable and are necessary to enable successful prosecutions. No other comments were received on this proposal and it has been adopted in the final rule.

*Procedures for State Requests
for Assistance, Approval or Extension*

Section 408(d)(1) and (2) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. § 1988(d)(1) and (2), requires the Secretary of Transportation to assist a State in revising its laws to comply with the new disclosure requirements for transferors and transferees, upon "application" from the State. In response to this statutory mandate, the agency proposed a new section 580.10 which sets forth the procedures a State may follow to apply for technical assistance. No comments were received concerning the procedures for requests for assistance and they are adopted in the final rule as proposed.

Section 408(f) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. § 1988(f), states that subsection (d), concerning motor vehicle titles, and subsection (e), concerning lessors and lessees, shall apply in a State unless the State has in effect alternate motor vehicle mileage requirements approved by the Department. We proposed, in a new section 580.11, that a State may petition for an exemption from the disclosure requirements and stated that notice of either grant or denial of a petition for approval of alternate motor vehicle disclosure requirements would be issued to the petitioner. We received no comments on this section. However, for consistency, and to better reflect the provisions of the Truth in Mileage Act, we have changed the language in the title of this section and its subsection (a) from "exemption from disclosure requirements" to "approval of alternate motor vehicle disclosure requirements." In all other respects, the proposal is adopted in this final rule.

We proposed a new section 580.12 which specified the procedures that may be followed by a State to request an extension of time in the event that it requires additional time beyond April 29, 1989, to conform its laws to the Motor Vehicle Information and Cost Savings Act and this part. The proposed section 580.12 also allowed for the renewal of an extension of time.

The agency received three comments on proposed section 580.12. NACAA recommended that NHTSA not extend the compliance deadline except where a need has been demonstrated along with significant evidence that the State is making progress toward compliance through realistic efforts calculated to meet the compliance date. The association stressed that the rule cannot really be effective until all States are in compliance. If one State does not require mileage disclosures on the title, title laundering will

continue. Arkansas explained that it had just purchased a two year supply of titles and noted that a severe financial burden would result if it was prohibited from using them. The Motor Car Dealers Association of Southern California (MCDASC) asked the agency to postpone certain provisions of section 580.5.

NHTSA has considered these comments. Nevertheless, the proposal will be adopted into this final rule. Section 2 (c) of the Truth in Mileage Act allows for extension of time upon a request from a State. Consistent with the statute, we will provide extensions of time in the event that any State needs additional time in revising its laws to meet the new Federal criteria, beyond April 29, 1989, the new law's effective date. Because the statute requires NHTSA to ensure that the State is making reasonable efforts to achieve compliance, we must deny MCDASC's request for a blanket extension of time. We will only consider requests on a State by State basis. NHTSA agrees with NACAA that noncompliance with the Federal odometer laws and this rule would allow title laundering to continue. However, in light of the statutory guidelines, we will not amend the procedures set forth in the proposal. Finally, with regard to Arkansas' concern about discarding titles it may have on April 29, 1989, the agency will take into account financial and administrative burdens and will make every effort to grant reasonable extensions of time so that States may expend their current supply of titles.

Federalism Assessment

This rule has federalism implications affecting the relationship between the national government and the States. I certify that it has been assessed in light of the principles, criteria and requirements as outlined in Executive Order 12612. By limiting the effects on the States to the minimum required by the law, this final rule furthers the principles of federalism established by the Framers of the Constitution while striking an appropriate level of Federal involvement. Odometer fraud is national in scope with motor vehicles frequently being transferred over State lines in order to "wash" the titles. For this reason, Congress directed NHTSA to determine methods most effective for combatting the problem, through the implementation of the Truth in Mileage Act of 1986. NHTSA has consulted with the States to implement the law and has examined the comments submitted by approximately thirty-four States, AAMVA, NACAA and NOEA. While this rule requires that titles issued by the States be secure, and include a mileage reading and a space for the transferee to make a mileage disclosure at the time of a future transfer, this rule is consistent with the statutory mandate and allows the States the maximum administrative discretion possible in comply-

ing with these requirements. We have not required the States to seek our concurrence in an alternative method of document security beyond those listed in Appendix A nor have we required the States to include the disclosure information in a specific format. It is estimated that this rule will impose an additional cost on the States. The likely source of funding for the States will be from revenues generated by increasing the cost of titling motor vehicles. Over the past ten years, the States have demonstrated their ability to fulfill the purposes of this rule by reviewing and amending their titles in attempts to deter odometer fraud.

In consideration of the foregoing, Part 580 of Title 49 of the Code of Federal Regulations is revised to read as follows:

PART 580—ODOMETER DISCLOSURE REQUIREMENTS

Sec.

- 580.1 Scope
- 580.2 Purpose
- 580.3 Definitions
- 580.4 Security of Title Documents
- 580.5 Disclosure of Odometer Information
- 580.6 Exemptions
- 580.7 Disclosure of Odometer Information for Leased Motor Vehicles
- 580.8 Odometer Disclosure Statement Retention
- 580.9 Odometer Record Retention for Auction Companies
- 580.10 Application for Assistance
- 580.11 Petition for Approval of Alternate Disclosure Requirements
- 580.12 Petition for Extension of Time
- Appendix A to Part 580 Secure Printing Processes and Other Secure Processes
- Appendix B to Part 580 Disclosure Form for Title
- Appendix C to Part 580 Separate Disclosure Form
- Appendix D to Part 580 Disclosure Form for Leased Vehicles

Authority: 15 U.S.C.1988; delegation of authority at 49 CFR 1.50(f) and 501.8(e)(1).

§580.1 *Scope.*

This part prescribes rules requiring transferors and lessees of motor vehicles to make written disclosure to transferees and lessors respectively, concerning the odometer mileage and its accuracy as directed by sections 408(a) and (e) of the Motor Vehicle Information and Cost Savings Act as amended, 15 U.S.C. 1988 (a) and (e). In addition, this part prescribes the rules requiring the retention of odometer disclosure statements by motor vehicle dealers, distributors and lessors and the retention of certain other information

by auction companies as directed by sections 408(g) and 414 of the Motor Vehicle Information and Cost Savings Act as amended, 15 U.S.C. 1990 (d) and 1988 (g).

§580.2 *Purpose.*

The purpose of this part is to provide purchasers of motor vehicles with odometer information to assist them in determining a vehicle's condition and value by making the disclosure of a vehicle's mileage a condition of title and by requiring lessees to disclose to their lessors the vehicle's mileage at the time the lessors transfer the vehicle. In addition, the purpose of this part is to preserve records that are needed for the proper investigation of possible violations of the Motor Vehicle Information and Cost Savings Act and any subsequent prosecutorial, adjudicative or other action.

§580.3 *Definitions.*

All terms defined in sections 2 and 402 of the Motor Vehicle Information and Cost Savings Act are used in their statutory meaning. Other terms used in this part are defined as follows:

"Lessee" means any person, or the agent for any person, to whom a motor vehicle has been leased for a term of at least 4 months.

"Lessor" means any person, or the agent for any person, who has leased 5 or more motor vehicles in the past 12 months.

"Mileage" means actual distance that a vehicle has traveled.

"Secure printing process or other secure process" means any process which deters and detects counterfeiting and/or unauthorized reproduction and allows alterations to be visible to the naked eye.

"Transferee" means any person to whom the ownership in a motor vehicle is transferred, or any person who, as agent, accepts transfer of ownership in a motor vehicle for another, by purchase, gift, or any means other than by creation of a security interest.

"Transferor" means any person who transfers his ownership or any person who, as agent, transfers the ownership of another, in a motor vehicle by sale, gift, or any means other than by creation of a security interest.

§580.4 *Security of Title Documents.*

Each title shall be set forth by means of a secure printing process or other secure process. In addition, any other documents which are used to reassign the title shall be set forth by a secure process.

§580.5 *Disclosure of Odometer Information.*

(a) Each title, at the time it is issued to the transferee, must contain the mileage disclosed by the

transferor when ownership of the vehicle was transferred and contain a space for the information required to be disclosed under paragraphs (c), (d), (e) and (f) of this section at the time of future transfer.

(b) Any documents which are used to reassign a title shall contain a space for the information required to be disclosed under paragraphs (c), (d), (e) and (f) of this section at the time of transfer of ownership.

(c) In connection with the transfer of ownership of a motor vehicle, each transferor shall disclose the mileage to the transferee in writing on the title or on the document being used to reassign the title. This written disclosure must be signed by the transferor, including the printed name, and contain the following information:

- (1) The odometer reading at the time of transfer (not to include tenths of miles);
- (2) The date of transfer;
- (3) The transferor's name and current address;
- (4) The transferee's name and current address; and
- (5) The identity of the vehicle, including its make, model, year, and body type, and its vehicle identification number.

(d) In addition to the information provided under paragraph (c) of this section, the statement shall refer to the Federal law and shall state that failure to complete or providing false information may result in fines and/or imprisonment. Reference may also be made to applicable State law.

(e) In addition to the information provided under paragraphs (c) and (d) of this section,

- (1) The transferor shall certify that to the best of his knowledge the odometer reading reflects the actual mileage, or;
- (2) If the transferor knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or
- (3) If the transferor knows that the odometer reading differs from the mileage and that the difference is greater than that caused by odometer calibration error, he shall include a statement that the odometer reading does not reflect the actual mileage, and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(f) The transferee shall sign the disclosure statement and print his name.

(g) If the vehicle has not been titled or if the title does not contain a space for the information required, the written disclosure shall be executed as a separate document.

(h) No person shall sign an odometer disclosure statement as both the transferor and the transferee in the same transaction.

§580.6 Exemptions.

Notwithstanding the requirements of §580.5:

(a) A transferor of any of the following motor vehicles need not disclose the vehicle's odometer mileage:

- (1) A vehicle having a Gross Vehicle Weight Rating, as defined in §571.3 of this title, of more than 16,000 pounds;
- (2) A vehicle that is not self-propelled;
- (3) A vehicle that is 10 years old or older; or
- (4) A vehicle sold directly by the manufacturer to any agency of the United States in conformity with contractual specifications.

(b) A transferor of a new vehicle prior to its first transfer for purposes other than resale need not disclose the vehicle's odometer mileage.

§580.7 Disclosure of Odometer Information for Leased Motor Vehicles.

(a) Before executing any transfer of ownership document, each lessor of a leased motor vehicle shall notify the lessee in writing that the lessee is required to provide a written disclosure to the lessor regarding the mileage. This notice shall contain a reference to the federal law and shall state that failure to complete or providing false information may result in fines and/or imprisonment. Reference may also be made to applicable State law.

(b) In connection with the transfer of ownership of the leased motor vehicle, the lessee shall furnish to the lessor a written statement regarding the mileage of the vehicle. This statement must be signed by the lessee and, in addition to the information required by paragraph (a) of this section, shall contain the following information:

- (1) The printed name of the person making the disclosure;
- (2) The current odometer reading (not to include tenths of miles);
- (3) The date of the statement;
- (4) The lessee's name and current address;
- (5) The lessor's name and current address;
- (6) The identity of the vehicle, including its make, model, year, and body type, and its vehicle identification number;
- (7) The date that the lessor notified the lessee of disclosure requirements;
- (8) The date that the completed disclosure statement was received by the lessor; and
- (9) The signature of the lessor.

(c) In addition to the information provided under paragraphs (a) and (b) of this section,

- (1) The lessee shall certify that to the best of his knowledge the odometer reading reflects the actual mileage; or

(2) If the lessee knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or

(3) If the lessee knows that the odometer reading differs from the mileage and that the difference is greater than that caused by odometer calibration error, he shall include a statement that the odometer reading is not the actual mileage and should not be relied upon.

(d) If the lessor transfers the leased vehicle without obtaining possession of it, the lessor may indicate on the title the mileage disclosed by the lessee under paragraph (b) and (c) of this section, unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle.

§580.8 *Odometer Disclosure Statement Retention.*

(a) Dealers and distributors of motor vehicles who are required by this part to execute an odometer disclosure statement shall retain for five years a photostat, carbon or other facsimile copy of each odometer mileage statement which they issue and receive. They shall retain all odometer disclosure statements at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

(b) Lessors shall retain, for five years following the date they transfer ownership of the leased vehicle, each odometer disclosure statement which they receive from a lessee. They shall retain all odometer disclosure statements at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

§580.9 *Odometer Record Retention for Auction Companies.*

Each auction company shall establish and retain at its primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval, for five years following the date of sale of each motor vehicle, the following records:

(a) The name of the most recent owner (other than the auction company);

(b) The name of the buyer;

(c) The vehicle identification number; and

(d) The odometer reading on the date which the auction company took possession of the motor vehicle.

§580.10 *Application for Assistance.*

(a) A State may apply to NHTSA for assistance in revising its laws to comply with the requirements of 408(d)(1) and (2) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(d)(1) and (2) and §§580.4 and 580.5 of this part.

(b) Each application filed under section shall—

(1) Be written in the English language;

(2) Be submitted, to the Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590;

(3) Include a copy of current motor vehicle titling and/or disclosure requirements in effect in the State; and

(4) Include a draft of legislation or regulations intended to amend or revise current State motor vehicle titling and/or disclosure requirements to conform with Federal requirements.

(c) The agency will respond to the applicant, in writing, and provide a list of the Federal statutory and/or regulatory requirements that the State may have failed to include in its proposal and indicate if any sections of the proposal appear to conflict with Federal requirements.

§580.11 *Petition for Approval of Alternate Disclosure Requirements.*

(a) A State may petition NHTSA for approval of disclosure requirements which differ from the disclosure requirements of §§580.5 and 580.7 of this part.

(b) Each petition filed under this section shall—

(1) Be written in the English language;

(2) Be submitted, to the Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590;

(3) Set forth the motor vehicle disclosure requirements in effect in the State, including a copy of the applicable State law or regulation; and

(4) Explain how the State motor vehicle disclosure requirements are consistent with the purposes of the Motor Vehicle Information and Cost Savings Act.

(c) Notice of either a grant or denial of a petition for approval of alternate motor vehicle disclosure requirements is issued to the petitioner. The effect of a grant of a petition is to relieve a State from responsibility to conform the State motor vehicle titles with §§580.5 and 580.7 of this part during the time of the extension. The effect of a denial is to require a State to conform to the requirements of §§580.5 and 580.7 of this part until such time as the NHTSA approves any alternate motor vehicle disclosure requirements.

§580.12 *Petition for Extension of Time.*

(a) If a State cannot conform its laws to achieve compliance with this part by April 29, 1989, the State may petition for an extension of time.

(b) Each petition filed under this section shall—

(1) Be written in the English language;

(2) Be submitted, by February 28, 1989, to the Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590;

(3) Set forth a chronological analysis of the efforts the State has taken to meet the deadline, the reasons why it did not do so, the length of time desired for extension and a description of the steps to be taken while the extension is in effect.

(c) Notice of either the grant or denial of the petition is issued to the petitioner and will be published in the *Federal Register*.

(d) A petition for a renewal of an extension of time must be filed no later than 30 days prior to the termination of the extension of time granted by the Agency. A petition for a renewal of an extension of time must meet the same requirements as the original petition for an extension of time.

(e) If a petition for a renewal of the extension of time which meets the requirements of §580.12(b) is filed, the extension of time will continue until a decision is made on the renewal petition.

Appendix A — Secure Printing Processes and Other Secure Processes

1. Methods to deter or detect counterfeiting and/or unauthorized reproduction.

(a) Intaglio printing—a printing process utilized in the production of bank-notes and other security documents whereby an engraved plate meets the paper under extremely high pressure forcing the paper into the incisions below the surface of the plate.

(b) Intaglio Printing With Latent Images—a printing process utilized in the production of bank-notes and other security documents whereby an engraved plate meets the paper under extremely high pressure forcing the paper into the incisions below the surface of the plate. The three dimensional nature of intaglio printing creates latent images that aid in verification of authenticity and deter counterfeiting.

(c) High Resolution Printing—a printing process which achieves excellent art clarity and detail quality approaching that of the intaglio process.

(d) Micro-line Printing—a reduced line of type that appears to be a solid line to the naked eye but contains readable intelligence under strong magnification.

(e) Pantograph Void Feature—wording incorporated into a pantograph by varying screen density in the pantograph. The wording will appear when attempts are made to photocopy on color copiers.

(f) Hologram—a defraction foil substrate, produced from a negative which was made by splitting a laser beam into two separate beams to produce a three dimensional effect.

(g) Security Paper—paper containing a security watermark and/or a security thread.

2. Methods to allow alterations to be visible to the naked eye.

(a) Erasure Sensitive Background Inks—a process whereby the text is printed in a dark color ink over a fine line erasure-sensitive prismatic ink tint.

(b) Security Lamination—retro-reflective security laminate is placed over vital information after it has been entered to allow for detection of attempts to alter this information.

(c) Security Paper—paper which has been chemically treated to detect chemical alterations.

Appendix B to Part 580—Disclosure Form for Title.

ODOMETER DISCLOSURE STATEMENT

Federal law (and State law, if applicable) requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I state that the odometer now reads _____
(No Tenths)

miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described herein, unless one of the following statements is checked.

— (1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits.

— (2) I hereby certify that the odometer reading is NOT the actual mileage. **WARNING—ODOMETER DISCREPANCY.**

(Transferor's Signature) (Transferee's Signature)

(Printed Name) (Printed Name)

Date of Statement _____

Transferee's Name _____

Transferee's
Address _____
(Street)

(City) (State) (ZIP Code)

Appendix C to Part 580—Separate Disclosure Form

ODOMETER DISCLOSURE STATEMENT

Federal law (and State law, if applicable) requires that you state the mileage upon transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I, _____ state that the odometer
(Transferor's name, Print)

now reads _____ miles and to the best of my
(no tenths)

knowledge that it reflects the actual mileage of the
vehicle described below, unless one of the following
statements is checked.

__ (1) I hereby certify that to the best of my
knowledge the odometer reading reflects the amount
of mileage in excess of its mechanical limits.

__ (2) I hereby certify that the odometer reading is
NOT the actual mileage. WARNING—ODOMETER
DISCREPANCY.

Make _____ Model _____

Body Type _____

Vehicle Identification Number _____

Year _____

(Transferor's Signature)

(Printed Name)

Transferor's
Address _____
(Street)

(City) (State) (ZIP Code)

Date of Statement _____

(Transferee's Signature)

(Printed Name)

Transferee's Name _____

Transferee's
Address _____
(Street)

(City) (State) (ZIP Code)

Appendix D to Part 580—Disclosure Form for Leased Vehicle

ODOMETER DISCLOSURE STATEMENT (LEASED VEHICLE)

Federal law (and State law, if applicable) requires
that the lessee disclose the mileage to the lessor in
connection with the transfer of ownership. Failure to
complete or making a false statement may result in
fines and/or imprisonment. Complete disclosure form
below and return to lessor.

I, _____ state
(name of person making disclosure, Print)
that the odometer now reads _____ miles and to
(No Tenths)

the best of my knowledge that it reflects the actual
mileage of the vehicle described below, unless one of
the following statements is checked.

__ (1) I hereby certify that to the best of my
knowledge the odometer reading reflects the amount
of mileage in excess of its mechanical limits.

__ (2) I hereby certify that the odometer reading is
NOT the actual mileage.

Make _____ Model _____

Body Type _____

Vehicle Identification Number _____

Year _____

Lessee's
Name _____

Lessee's
Address _____
(Street)

(City) (State) (ZIP Code)

Lessee's
Signature _____

Date of Statement _____

Lessor's
Name _____

Lessor's
Address _____
(Street)

Lessor's
Signature _____

Issued on August 2, 1988

(City) (State) (ZIP Code)

Date Disclosure Form sent to

Lessee _____

Diane K. Steed
Administrator

Date Completed Disclosure Form Received from

Lessee _____

53 F.R. 29464
August 5, 1988



PREAMBLE TO AN AMENDMENT TO PART 580
Odometer Disclosure Law

(Docket No. 87-09; Notice 6)
RIN: 2127-AC42

ACTION: Final rule.

SUMMARY: This final rule amends the provisions of the odometer disclosure regulation that require the transferor of a motor vehicle to disclose to his transferee, in writing, information concerning the odometer reading. Specifically, this rule permits the transferor to use either an odometer disclosure statement containing two sets of certifications or an abbreviated disclosure form to disclose the mileage to his transferee. This change should help minimize the costs of the transition to the new disclosure forms required after April 29, 1989.

DATES: This final rule is effective February 23, 1989. It shall remain in effect until April 29, 1989.

SUPPLEMENTARY INFORMATION: To implement the Truth in Mileage Act of 1986 and to make needed changes in the Federal odometer laws, the National Highway Traffic Safety Administration (NHTSA) published a notice of proposed rulemaking (NPRM) on July 17, 1987. 52 FR 27028 (1987). The agency received numerous comments on the NPRM, representing the opinions of new and used car dealers, auto auctions, leasing companies, State motor vehicle administrators and enforcement and consumer protection agencies. Each of the comments was considered and a final rule was published on August 5, 1988. 53 FR 29464 (1988).

A portion of August 1988 rule, which will become effective on April 29, 1989, amends the form and content of the current odometer disclosure statement. Currently, a transferor is required to issue to his transferee an odometer disclosure statement containing two sets of certifications. In the first set of certifications, the transferor must certify whether or not the odometer reading reflects the actual mileage of the vehicle, or whether it reflects the mileage in excess of the designed mechanical limit of the odometer. In the second set of certifications, the transferor must disclose information about whether the odometer was altered (repaired or replaced), set back, or disconnected. However, if the transferor discloses the mileage to his transferee on the certificate of title or other State document that evidences

ownership of a vehicle, the transferor is not currently required to disclose whether the odometer was altered, set back, or disconnected. In view of the advantage of having a disclosure on the title, the agency permitted this shortened disclosure on documents issued by the State due to the practical limitations of space. *See*, 42 FR 38907 (1977); 45 FR 784 (1980).

Because we see no reason to differentiate between the disclosure on documents issued by the States and the disclosure on separate disclosure statements, the August 1988 rule eliminates the second set of certification requirements for transferors who issue an odometer disclosure statement that is neither on the title nor on any other document issued by a State. 52 FR 27024 (1987). As noted above, the August 1988 rule is effective on April 29, 1989.

The agency received a letter from the Virginia Independent Automobile Dealers Association (VIADA) concerning the use of a shortened odometer disclosure statement. VIADA requested that transferors be permitted to use the shortened odometer disclosure statement immediately, to minimize the cost burdens of the transition to the new form. The Oregon Independent Auto Dealers Association submitted a letter to the agency in support of VIADA's request. As a result of these letters, we published an NPRM on January 19, 1989, which proposed to revise paragraph (d) of section 580.4 to read as follows: "In addition to the information provided under paragraphs (a), (b), and (c) of this section, the transferor *may* also certify * * *" information concerning the disconnection or service of the odometer. (Emphasis has been added to highlight the discretion given to the transferor). 54 FR 2171 (1989).

The agency received one comment on the NPRM. The National Automobile Dealers Association agrees that permitting the use of the shortened odometer disclosure statement will minimize the potential costs associated with the change to an abbreviated statement. The NPRM is adopted as proposed.

There is good cause for an effective date earlier than thirty days; minimizing the economic impacts of the final rule of August 1988 and gaining the investigative and consumer benefits of additional information on the new forms. Therefore, consistent with the

Administrative Procedures Act, 5 U.S.C. 551 et seq., this revision to paragraph (d) of section 580.4 be effective immediately upon publication of this rule in the *Federal Register*. This amendment shall remain in effect until April 29, 1989. On April 29, 1989, the August 1988 final rule becomes effective, and a new section 580.5 will amend the current section 580.4 as revised by this rulemaking action. As noted in the preamble to the August 1988 final rule, there is no prohibition against a seller providing information concerning the odometer reading in addition to the information required by the regulation. 53 FR 29470 (1988) However, the long form currently in use does not meet the requirements of the August 1988 final rule and may not be used after April 29, 1989.

Section 580.4(d) is revised as follows:

§580.4 Disclosure of odometer information.

* * * * *

(d) In addition to the information provided under paragraphs (a), (b), and (c) of this section, the transferor may also certify that:

(1) The odometer was not altered for repair or replacement purposes while in the transferor's possession, and he has no knowledge of anyone else doing so;

(2) The odometer was altered for repair or replacement purposes while in the transferor's possession, and the mileage registered on the repaired or replacement odometer was identical to that before such service; or

(3) The odometer was altered for repair or replacement purposes, the odometer was incapable of registering the same mileage, it was reset to zero, and the mileage on the odometer before repair was _____ miles/kilometers.

* * * * *

Diane K. Steed
*National Highway Traffic Safety
Administrator*

54 FR 7772
February 23, 1989

PREAMBLE TO AN AMENDMENT TO PART 580 Odometer Disclosure Law

(Docket No. 87-09; Notice 9)
RIN: 2127-AC42

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule is in response to a recent amendment to the Truth in Mileage Act (contained in the Pipeline Safety Reauthorization Act of 1988). The amendment concerns powers of attorney used in connection with mileage disclosures and requires NHTSA to promulgate regulations concerning their use.

This rule permits, in limited circumstances when a title document is physically held by a lienholder, the uses of a secure power of attorney form. It allows a transferor to make the required odometer disclosure on a secure power of attorney form, issued by a State, that would authorize the transferee to exactly restate the mileage on the title document on the transferor's behalf. Similarly, this rule allows a transferee to authorize this transferor to sign the disclosure on the title document, on behalf of the transferees. To the extent that they are consistent with the new law, this rule grants, in whole or in part, three petitions for reconsideration.

This notice is published as an interim final rule without notice and the opportunity for comment. However, NHTSA requests comments on this rule. Following the close of the comment period, NHTSA will publish a notice responding to the comments and, if appropriate, NHTSA will amend the provisions of this rule.

DATES: Comments on this interim rule are due no later than April 7, 1989. This interim final rule becomes effective on April 29, 1989, unless a permanent final rule is issued thirty days prior to that date.

SUPPLEMENTARY INFORMATION:

Background

To implement the Truth in Mileage Act of 1986 and to make some needed changes in the Federal odometer regulations, the National Highway Traffic Safety Administration (NHTSA) published a notice of proposed rulemaking (NPRM) on July 17, 1987. 52 FR 27022 (1987). The agency received numerous comments on the NPRM, representing the opinions of new and used car dealers, auto auctions, leasing

companies, State motor vehicle administrators, and enforcement and consumer protection agencies. Each of the comments was considered and a final rule was published on August 5, 1988. 53 FR 29464 (1988).

As required by the Truth in Mileage Act, the August 1988 final rule requires the transferor of a motor vehicle to provide a mileage disclosure on the title document or, if the title document does not include a space for the mileage disclosure (during the phase-in period), or if the vehicle has not been previously titled, it requires the transferor to make a written disclosure of mileage on a separate document. Also as required by that statute, that final rule requires that title documents be manufactured or otherwise set forth by a secure process to deter counterfeiting and alteration; requires that at the time of issue, the titles include the mileage disclosure; adds disclosure requirements for lessors and lessees; and adds retention requirements for lessors and auction companies. In addition, consistent with the statute, the rule amends the form and content of the odometer disclosure statement. The August 1988 rule also prohibits a person from signing the disclosure as both the transferor and transferee in the same transaction in order to guard against a situation where only one party to the transaction would be aware of the disclosure. Finally, that rule clarifies the definition of transferor and transferee and extends the record retention requirement for dealers and distributors.

The Agency received seven petitions for reconsideration of the August 1988 final rule. In addition, we received numerous letters concerning the final rule and supporting the petitions. These petitions requested that NHTSA reconsider the provisions of the final rule that: (1) Prohibit a person from signing the odometer disclosure statement as both the transferor and transferee in the same transaction; (2) define "transferor" and "transferee"; (3) define "secure printing process"; (4) concerned the language included on the odometer disclosure statement; and (5) require dealers and distributors to retain, for five years, a copy of every odometer disclosure statement, including the transferee's signature, that

they issue and receive. These petitions and letters have been placed in the docket. Before the Agency could fully consider the petitions, Congress enacted the Pipeline Safety Reauthorization Act of 1988, Pub. L. 100-561.

Section 401 of the Pipeline Safety Reauthorization Act, which amends section 408(d)(1) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(d)(1), concerns the use of certain powers of attorney in connection with the required mileage disclosure. Although the Truth in Mileage Act generally requires that a vehicle seller (or other transferor) make the required disclosure on the vehicle's title, Congress determined that, under certain limited conditions when the title document is physically held by a lienholder, the transferor should not be precluded from making the disclosure on a secure power of attorney form which includes a space for the required odometer disclosure information. This secure power of attorney form would be given to a buyer (transferee), authorizing him to restate, on the title document, the mileage disclosed by the seller on the secure power of attorney form, if State law otherwise permits. Congress found that precluding such uses of powers of attorney could cause an undue burden on dealers when a consumer's title is held by a bank or other lienholder. Because the consumer does not have the vehicle's title document, the consumer would be unable to complete the disclosure on the title unless: (1) The consumer returned to the dealer after the dealer paid off the lien and received the title from the lienholder, or (2) the title was mailed by the dealer to the consumer, completed by the consumer, and mailed back to the dealer. Both of these alternatives were seen by Congress as interfering with usual commercial transactions. 134 Cong. Rec. H10079 (daily ed. October 12, 1988) (remarks of Rep. Dingell).

To resolve this problem and to alleviate potential costs for dealers and consumers, the new amendment specifies that a secure power of attorney form, which includes a mileage disclosure by the transferor, may be used when the transferor's title document is physically held by a lienholder, if otherwise permitted by State law. The new law directs the agency to prescribe the form and content of the power of attorney/disclosure document and reasonable conditions for its use by the transferor, "consistent with this Act and the need to facilitate enforcement thereof." More specifically, the new law requires that the form: (1) "be issued by a State to transferees in accordance with paragraph (2)(A)(i) * * *" (Paragraph (2)(A)(i) concerns the issuance of documents that are set forth by a secure printing process or other secure process.); (2) include an odometer disclosure statement and other information as NHTSA deems necessary; and (3) be submitted to the State by the person granted the power of attorney. It also requires

NHTSA's rule to provide for the retention of a copy of the power of attorney and to ensure that the person granted the power of attorney completes the disclosure on the title consistent with the disclosure on the power of attorney form.

Scope

Consistent with the statutory mandate, this interim final rule grants, in whole or in part, three of the petitions for reconsideration. This interim final rule also implements the portion of the Pipeline Safety Reauthorization Act of 1988 that concerns the use of powers of attorney to disclose mileage.

NHTSA has also granted, in whole or in part, four petitions for reconsideration in a Notice of Proposed Rulemaking (NPRM) published in today's *Federal Register*. Generally, the NPRM concerns the definition of transferor and transferee with regard to the person who acts as agent for the transferor and transferee. It also concerns the relationship between the retention requirement applicable to dealers and distributors and the requirement that the transferee's signature appear on the odometer disclosure statements.

NHTSA has denied, in whole or in part, three petitions for reconsideration of the final rule published on August 5, 1988, because they are inconsistent with the new statute. For reasons discussed in the document denying the petitions, two other petitions were also denied. The denial notice is published in today's *Federal Register*.

Misuse of Powers of Attorney in Odometer Fraud Schemes

Although the July 1987 proposed rule to implement the Truth in Mileage Act did not include a regulatory provision explicitly concerning the use of powers of attorney, we stated in the preamble to the proposed rule that we recognize that powers of attorney are necessary in certain transactions. Someone acting on behalf of a deceased or incompetent owner would use a power of attorney from those owners to transfer the vehicles to a third party. In addition, the spouse of overseas military personnel, or of someone out of town or otherwise unavailable, may have a power of attorney from a husband or wife to transfer a vehicle to a third party. However, we emphasized that powers of attorney that allow a person to sign a disclosure as both the transferor and transferee result in only one party to the transaction being aware of the previous mileage disclosures. This could jeopardize the integrity of the "paper trail," the evidence of rollbacks that Congress intended to enhance by enacting the Truth in Mileage Act. 52 FR 27026 (1987).

The American Association of Motor Vehicle Administrators (AAMVA), the Wisconsin Department

of Transportation (Wisconsin), and the National Association of Consumer Agency Administrators (NACAA) agreed with our position. AAMVA noted that a power of attorney that allows a person to sign the disclosure as both the buyer and the seller creates a situation ripe for fraud, if that person is intent on rolling back the vehicle's odometer. Several of AAMVA's members concurred in this position. Wisconsin suggested that a new paragraph be added to section 580.5 providing that no person may sign a disclosure as both the transferor and transferee.

Other commenters, concerned that the title had to be present at the time of sale ("title present"), hoped that the use of a power of attorney would ease the burden that title present might have imposed. A coalition of commenters (the "coalition"), consisting of AAMVA, the National Auto Auction Association (NAAA), the National Automobile Dealers Association (NADA), the National Independent Automobile Dealers Association (NIADA), the Automotive Trade Association Executives, and the American Car Rental Association, suggested the use of a special power of attorney. (Although the coalition used the term "secure power of attorney," we are referring to its suggestion by the term "special power of attorney." This helps to differentiate between the statutorily permitted secure power of attorney and the coalition's suggestion.) The coalition proposed that this special power of attorney would (1) Be set forth by a secure process; (2) contain the appropriate Federal odometer disclosure statement; and (3) be fully completed, dated, and signed by the transferee. Upon receipt of the transferor's title, the initial transferee would negotiate the title and complete the transferor's statement based on the transferor's special power of attorney and mileage disclosure thereon. The title, together with the special power of attorney and all subsequent reassignments, would be presented to the State with any application for title.

We reviewed AAMVA's comments and the suggestions of Wisconsin and the coalition in light of our investigative experience which showed that powers of attorney had been abused in the furtherance of odometer fraud schemes. The following two schemes, uncovered during NHTSA's investigations, are illustrative of the use of a power of attorney to commit odometer fraud:

(A) The transferor, a leasing company, sold several vehicles to a wholesale dealer and gave this dealer a power of attorney to execute the odometer disclosure statements on its behalf. The buying dealer rolled back the odometer on the vehicles, entered the lower mileage on the disclosure statements, and signed the disclosures as both the buyer and the seller. The buyer then sent a copy of the statements to the leasing company where they were filed.

(B) A new car dealer purchased a used vehicle and received a separate odometer disclosure statement on which his transferor certified that the odometer reflected the actual mileage of the vehicle. The new car dealer sold the car before he received the title, certifying that the odometer reflected the vehicle's actual mileage. The new car dealer then received the title, which had a blatantly altered odometer reading in the reassignment space on the reverse side of the title. Using the power of attorney that he received from his buyer, the new car dealer signed the disclosure as both the transferor and transferee. He never advised his buyer of the mileage problem. [Note: Other title problems that could be ignored by unscrupulous persons include higher mileage on the face of the title than on the reassignment on the reverse side and a certification that the odometer reading does not reflect the actual mileage.]

Based on the comments from AAMVA, NACAA, and Wisconsin and our own investigative experience, we adopted Wisconsin's suggestion and added a new §580.5(h). This provision prohibits a person from signing the disclosure as both the transferor and transferee in the same transaction.

We did not adopt the suggestion of the coalition of commenters for several reasons. First, we had modified the proposed requirement in the NPRM of July 1987 that the title be present at the time of transfer of ownership and addressed the primary concern of the commenters by permitting the disclosure to be made "in connection with the transfer of ownership," rather than "at the time of transfer of ownership." Second, we were concerned that the coalition's suggestion would interfere with the integrity of the paper trail, which Congress intended to enhance by enacting the Truth in Mileage Act. Under the coalition's suggestion, only one party to the transfer would see the odometer disclosure (which would have been on the title). The power of attorney could be easily discarded and a new one forged and submitted to the State by any of the parties to subsequent transfers, since the issuance of the special power of attorney forms would not be controlled in any way. Finally, this process would place a burden on State titling offices to review additional documentation, check for conformity of the information contained on the documents, and maintain additional records. Accordingly, the final rule of August 1988 implemented the Truth in Mileage Act, where allowing the States the maximum discretion in complying with these requirements. 53 FR 29469, 29472, 29475 (1988).

Petitions for Reconsideration

In petitions filed with the agency, NADA, NIADA, and NAAA asked NHTSA to reconsider §580.5(h), the provision which prohibits a person from signing the disclosure as the transferor and transferee in the

same transaction. The agency also received many letters in support of the petitions. The petitioners claimed that customers would not return to dealers to sign the disclosure on the title. They alleged that a customer's failure to return would result in costs associated with locating these people, administrative costs for mailing and/or duplicating titles, and increased inventory costs in States where the dealer must have the title present at time of sale. This would result in higher vehicle prices as dealers would pass these expenses on to the consumer. Alternatively, they argued that if customers did return, this return visit would result in lost time at work and other costs. They also claimed that a person signing the disclosure as the buyer and the seller did not create a situation ripe for fraud, that the provision conflicted with State laws and was contrary to Federal law. Additional information concerning these petitions is included in the denial of petitions for reconsideration published in today's *Federal Register*.

The petitioners asked that NHTSA eliminate section 580.5(h). Alternatively, the petitioners suggested that NHTSA permit the use of a special power of attorney or require title sets, a two-part title system where the owner holds the title and the lienholder holds a notice of security interest filing.

Congressional Mandate

Before the agency could fully consider these petitions, Congress enacted the Pipeline Safety Reauthorization Act, Pub. L. 100-561. Section 401 of the Act, which amends section 408(d)(1) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(d)(1), concerns the use of limited powers of attorney in connection with mileage disclosure. The purpose of this provision is to resolve a technical problem for purchaser: of used motor vehicles (dealers), without increasing the burden on States or lessening our ability to fight odometer fraud. 134 Cong. Rec. H10079 (daily ed. October 12, 1988) (remarks of Rep. Whittaker). Congress determined that NHTSA's August 1988 final rule, which prohibits a person from signing an odometer disclosure statement as both the transferor and transferee in the same transaction, could have the effect of precluding the use of a power of attorney in certain instances. Recognizing that the Truth in Mileage Act of 1986 requires a disclosure, including the transferee's signature, on the title, Congress found that limiting the use of powers of attorney could cause an undue burden on dealers and consumers when a consumer's title is held by a bank or other lienholder. Because the consumer does not have the vehicle's title in these instances, the consumer, as a transferor, would be unable to complete the disclosure on the title unless: (1) The consumer returned to the dealer after the dealer paid off the lien and

received the title from the lienholder, or (2) the title was mailed by the dealer to the consumer, completed by the consumer, and mailed back to the dealer. Both of these alternatives were rejected by Congress. "It is not reasonable to assume that the consumer will come back to the dealer several days or weeks later to fill in a title received from the bank by the dealer after paying off the lien. It is also not safe to rely on the mails to send the valuable title document to the consumer or to rely on the consumer to return the document in a timely fashion." 134 Cong. Rec. H10079 (daily ed. October 12, 1988) (remarks of Rep. Dingell).

To resolve the problem and alleviate potential costs for dealers and consumers, the new law specifies that a power of attorney authorizing the dealer to disclose mileage on the title on behalf of the consumer may be used when the transferor's title document is physically held by a lienholder, if otherwise permitted by State law. The new law does not require the States to allow the use of a power of attorney for the purpose of mileage disclosure. However, if a State chooses to permit the use of powers of attorney in connection with mileage disclosure, the State itself must issue the power of attorney form, and the form must be consistent with the requirements of the law and the regulations promulgated thereunder. The new law directs the agency to prescribe the form and content of the power of attorney/disclosure document and reasonable conditions for its use by the transferor. More specifically, the new law requires that the form: (1) "be issued by a State to transferees in accordance with paragraph (2)(A)(i) * * *" (Paragraph (2)(A)(i) concerns the issuance of documents that are set forth by a secure printing process or other secure process.); (2) include an odometer disclosure statement and other information as NHTSA deems necessary; and (3) be submitted to the State by the person granted the power of attorney. It also requires NHTSA to provide for the retention of a copy of the power of attorney form and to ensure that the person granted the power of attorney completes the disclosure on the title consistent with the disclosure on the power of attorney form.

We note that in some States, a secure power of attorney is not necessary to ensure that the mileage disclosure of the customer trading in a vehicle to a dealer is included on the vehicle's title document. For example, some States record all lien information on computerized recordkeeping systems and allow the registered owner to hold the title document. Other States have adopted a two-part title system under which the registered owner holds the title document and the lienholder holds a notice of security interest filing. Under either system, because the vehicle owner would have the title document, he could make the disclosure on the title and would not

need to use a power of attorney form. In these States, the provisions of the new law would not apply, and the disclosure signed by the transferor would continue to be required on the vehicle's title document.

Interim Final Rule

This notice is published as an interim final rule, without prior notice and opportunity to comment. NHTSA believes that there is good cause for finding that notice and comment rulemaking is impracticable, unnecessary, and contrary to the public interest in this instance, since it would prevent compliance with the February 1, 1989 statutory deadline for issuance of a final rule. This finding is also based on the agency's view that given the April 29, 1989 effective date of NHTSA's August 1988 final rule which could result in an undue burden on dealers and consumers when a consumer's title is held by a bank or other lienholder, relief from the August 1988 rule is imperative.

As an interim final rule, this regulation is fully in effect and binding after its effective date, unless NHTSA issues a permanent final rule thirty days prior to that time. No further regulatory action by NHTSA is essential to the effectiveness of this rule. However, in order to benefit from comments which interested parties and the public may make, we are requesting that comments be submitted to the docket for this notice. All comments submitted in response to this notice will be considered by the agency. Following the close of the comment period, NHTSA will publish a notice responding to the comments and, if appropriate, NHTSA will amend the provisions of this rule.

Consistent with the provisions of the new law concerning the security of the power of attorney forms, this interim final rule revises §580.4, which concerns the security of title documents. Although the legislative history indicates that the power of attorney forms must be "no less secure than the title document itself", 134 Cong. Rec. H10079 (daily ed. October 12, 1988) (remarks of Rep. Dingell), we believe that we can satisfy our statutory obligation to require secure forms and avoid unnecessary financial burdens upon the States by including a provision that is consistent with our position on the security of reassignment documents. Since the August 1988 final rule requires that reassignment documents be set forth by "a secure process", not necessarily the same process used to secure the title, this rule requires that the power of attorney forms also be set forth by "a secure process". Accordingly, we are changing the title of §580.4 to read "Security of titles documents and power of attorney forms", and we are amending that section to require that power of attorney forms issued pursuant to §580.13 and §580.14 be set forth by a secure process.

The new law does not give NHTSA explicit statutory authority to require the States to control the power of attorney forms by any type of numbering system. Therefore, we have not limited the administrative discretion of the States in this area even though we recognize that it is common practice to control secure documents. This is also consistent with our position concerning reassignment documents. However, nothing in the Act or this rule should be read to preclude a State from using control techniques on these documents.

Since section 401 of the Pipeline Safety Reauthorization Act has the effect of allowing a person to sign an odometer disclosure statement on the title as both the transferor and the transferee in specified circumstances, we are amending §580.5(h), which prohibits a person from signing an odometer disclosure statement as both the transferor and transferee in the same transaction. This amendment to §580.5(h) permits a person to sign an odometer disclosure statement as both the transferor and transferee if the requirements of the new §580.13 and §580.14, which NHTSA is adding below, have been met.

In accordance with the Congressional mandate, we are adding a new §580.13. Under this section, if permitted by State law, a transferor whose motor vehicle title document is physically held by a lienholder may give his transferee a power of attorney for the purpose of mileage disclosure on the title document. The power of attorney must be on Part A of a secure form issued by the State and must contain a space for the transferor to disclose the mileage.

The disclosure required to be made by the transferor to the transferee on the power of attorney form parallels the disclosure required to be made by the transferor to the transferee on the title and on a separate odometer disclosure statement. While this rule sets forth the information which must be disclosed, we are adding, in Appendix E, a sample power of attorney form that the States which elect to provide power of attorney forms may adopt. The form must be separated into parts A, B, and C. However, each State is free to organize, in each part, the information required by this rule in any way it wishes.

As required by the new law and to ensure the integrity of the paper trail, we are requiring the transferee exercising the power of attorney to restate the mileage on the transferor's title exactly as it appears on the transferor's disclosure on the power of attorney form. In addition, this rule requires the transferee to submit the original power of attorney form to the State with an application for title and the transferor's title. This could be accomplished at one of two times. The transferee could apply for title in his own name and submit the secure power of attorney form and his transferor's title. Alternatively, the transferee could submit the secure power of attorney

form after selling the vehicle, with the title and his purchaser's title application, provided his purchaser permits him to apply for title on behalf of the purchaser. As noted by Representative Clement, "Limiting the use of the power of attorney to this "first sale" instance should assist auto dealers in completing the sales transaction while affording sufficient safeguards against odometer fraud." 134 Cong. Rec. H10081 (daily ed. October 12, 1988) (remarks of Rep. Clement). It would ensure that the State would be able to compare the transferor's disclosure on the power of attorney form with the transferee's disclosure, on behalf of the transferor, made on the title pursuant to the power of attorney. If the transferee were not required to submit the power of attorney to the State with the application for title and the transferor's title, the integrity of the paper trail would be at risk, because subsequent transferors could discard the power of attorney, forge a new one, and alter the mileage on the title. (As noted above, we recognize that even with securely printed titles, some alterations have been, and may continue to be, undetected upon initial review by State Departments of Motor Vehicles.) Additionally, the paper trail would be in jeopardy if the transferee submitted only the power of attorney form and no title documents. This could result in the transfer on the vehicle to an out-of-state buyer. The title would be in one State and the secure power of attorney form in another; they could not be easily compared. This would be similar to the problems with the current use of a separate odometer disclosure statement. Therefore, we believe that this submission of the original power of attorney form to the titling State is necessary to prevent the misuse of the forms and to facilitate enforcement of the anti-fraud provisions of the law.

As requested during the debate in the House of Representatives on the amendment, NHTSA has also considered other instances when a secure power of attorney may be necessary so as not to alter or interfere with proper business transactions. We have considered whether to permit a transferee to give his power of attorney to his transferor for the purpose of acknowledging the mileage disclosure. For example, if the transferor is a dealer who does not have possession of the title, because the vehicle was a trade-in and the lienholder has not yet released title, should the buyer, the transferee, be permitted to give a power of attorney to the transferor/selling dealer to acknowledge the mileage disclosure on his behalf? This power of attorney from the transferee to the transferor would allow the transferor to sign the title as both the transferor and transferee in the same transaction. To alleviate any potential commercial or business problems that could result in costs to dealers when they have not yet received the

title upon which they must make a mileage disclosure, because the title is physically held by the lienholder of the person who traded in a car to the dealer, we are adding a new §580.14 that permits a transferee to give his power of attorney to his transferor for the purpose of reviewing the title and any reassignment documents to determine whether there are any mileage discrepancies and, if there are no mileage discrepancies, to sign the title, acknowledging the disclosure. This power of attorney must include a disclosure from the transferor to the transferee that parallels the disclosure required to be made by the transferor to the transferee on the title document and on the separate odometer disclosure statement. In addition, because this power of attorney would allow the same person to sign the title as the transferor and transferee in the same transaction, the appointment of the transferor as the transferee's attorney-in-fact must be made on Part B of the same secure power of attorney form, issued by a State, upon which the transferor was appointed the attorney-in-fact by his transferor pursuant to §580.13. This will enable purchasers to examine the previously issued power of attorney for alterations, erasures, and other marks, and to learn the name of the prior owner without the additional cost of a title search. This is the same information that purchasers would receive if the title was not held by a lienholder since, under the Truth in Mileage Act of 1986, the transferor is required to disclose mileage on the vehicle's title, if the title contains a space for the disclosure. This rule requires that a transferee who is granted a power of attorney from his transferor and who applies for title in his own name must show his purchaser, upon his purchaser's request, a copy of the previous owner's title, including the odometer disclosure completed on behalf of the previous owner, and a copy of the power of attorney form completed by the previous owner. Similarly, if a purchaser decides not to appoint his transferor as his attorney-in-fact pursuant to §580.14, the transferor must show his purchaser a copy of the previous owner's title and a copy of the power of attorney form completed by the previous owner.

To ensure that a person who exercises a power of attorney, either under §580.13, alone, or under §§580.13 and 580.14, is fully aware of his obligation and his liability for any action that is inconsistent with the power of attorney, this interim final rule requires, under a new §580.15, that the person exercising a power of attorney, either under §580.13 or under §§580.13 and 580.14, complete, on Part C of the secure power of attorney form issued by the State, a certification that he has received and reviewed the title and any reassignment documents and that there are no indications of mileage discrepancies. Any mileage discrepancies void the powers of

attorney. A violation of this section could result in fines and/or imprisonment.

We have also considered other instances in which a secure power of attorney that would allow a person to sign a disclosure as the transferor and transferee in the same transaction should be permitted. Some have suggested that a secure power of attorney should be permitted when a title is lost or misplaced. We have carefully balanced the potential convenience of permitting a power of attorney in this circumstance against the serious potential for undermining the law enforcement purposes of the law. (As we have explained above, a person signing a mileage disclosure as both the transferor and transferee creates a situation ripe for fraud when the person signing the disclosure is intent on rolling back the odometer.) On balance, we have concluded that the possible increase in inconvenience does not outweigh the increased opportunity for odometer fraud. Furthermore, we have not been made aware of any business or commercial problems associated with this conclusion that would be comparable to the problems associated with titles physically held by lienholders. Especially because lost or misplaced titles can be replaced, and because we can limit the possible misuse of secure power of attorney forms, we have not extended the use of these secure powers of attorneys to situations in which the transferor's title is lost or misplaced.

NHTSA invites comments on other situations in which a secure power of attorney form may be necessary and appropriate.

Finally, section 401 of the Pipeline Safety Reauthorization Act requires NHTSA to promulgate a regulation that provides for the retention of a copy of the power of attorney form. Therefore, we are amending §580.8 which concerns odometer disclosure statement retention by adding a new paragraph (c). Under this new paragraph, motor vehicle dealers and distributors who are granted a power of attorney by their transferor are required to retain, for five years, a photostat, carbon, or other facsimile copy of each power of attorney form that they receive. These documents must be retained at the primary place of business of the dealer or distributor in an order that is appropriate with business requirements and that permits systematic retrieval. This new paragraph (c) is consistent with the retention requirements of the August 1988 final rule that is applicable to dealers, distributors, and lessors. Like that final rule, the storage provision of this amendment is phrased broadly to include any media by which information may be stored, provided there is no loss of information.

Federalism Assessment

Congress found that limiting the use of powers of

attorney in connection with mileage disclosure could cause an undue burden on dealers and consumers when a consumer's title is physically held by a bank or other lienholder. To resolve the problem and alleviate potential costs for dealers and consumers, the new law specifies that a power of attorney may be used, if otherwise permitted by State law. The law specifies that the form be securely printed and include a disclosure. This interim final rule does not impose any requirements upon the States other than those imposed by the law. Nevertheless, this action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this interim final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The States may decide not to allow the use of powers of attorney in connection with mileage disclosure and, therefore, would not be required to print conforming forms.

Section 580.4 is revised to read as follows:

§580.4 Security of title documents and power of attorney forms.

Each title shall be set forth by means of a secure printing process or other secure process. In addition, any other documents which are used to reassign the title shall be set forth by a secure process. Power of attorney forms issued pursuant to §§580.13 and 580.14 shall be issued by the State and shall be set forth by a secure process.

Section 580.5 is amended by revised paragraph (h) to read as follows:

§580.5 Disclosure of odometer information.

* * * * *

(h) No person shall sign an odometer disclosure statement as both the transferor and transferee in the same transaction, unless permitted by §580.13 or §580.14.

Section 580.8 is amended by adding paragraph (c) to read as follows:

§580.8 Odometer disclosure statement retention.

* * * * *

(c) Dealers and distributors of motor vehicles who are granted a power of attorney by their transferor pursuant to §580.13, or by their transferee pursuant to §580.14, shall retain for five years a photostat, carbon, or other facsimile copy of each power of attorney that they receive. They shall retain all powers of attorney at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

Section 580.13 is added to read as follows:

§580.13 Disclosure of odometer information by power of attorney.

(a) If the transferee's title is physically held by a lienholder and if otherwise permitted by State law, the transferor may give a power of attorney to his transferee for the purpose of mileage disclosure. The power of attorney shall be on a form issued by the State to the transferee that is set forth by means of a secure printing process or other secure process, and shall contain, in Part A, a space for the information required to be disclosed under paragraph (b), (c), (d), and (e) of this section and in Part B, a space for the information required to be disclosed under §580.14. The form shall contain, in Part C, a space for the certification required to be made under §580.15.

(b) In connection with the transfer of ownership of a motor vehicle, each transferor whose title is physically held by lienholder and who elects to give his transferee a power of attorney for the purpose of mileage disclosure, must appoint the transferee his attorney-in-fact for the purpose of mileage disclosure and disclose the mileage on the power of attorney form issued by the State. This written disclosure must be signed by the transferor, including the printed name, and contain the following information:

- (1) The odometer reading at the time of transfer (not to include tenths of miles);
- (2) The date of transfer;
- (3) The transferor's name and current address;
- (4) The transferee's name and current address; and
- (5) The identity of the vehicle, including its make, model, year, body type, and vehicle identification number.

(c) In addition to the information provided under paragraph (b) of this section, the power of attorney form shall refer to the Federal law and state that providing false information or the transferee's failure to submit the form to the State may result in fines and/or imprisonment. Reference may also be made in applicable State law.

(d) In addition to the information provided under paragraphs (b) and (c) of this section,

(1) The transferor shall certify that to the best of his knowledge the odometer reflects the actual mileage; or

(2) If the transferor knows that the odometer reading reflects mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or

(3) If the transferor knows that the odometer reading differs from the mileage and the difference is greater than that caused by calibration error, he shall include a statement that the odometer reading does not reflect the actual mileage and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(e) The transferee shall sign the power of attorney form, print his name, and return a copy of the power of attorney form to the transferor.

(f) Upon receipt of the transferor's title, the transferee shall complete the space for mileage disclosure on the title exactly as the mileage was disclosed by the transferor on the power of attorney form. The transferee shall submit the original power of attorney form to the State, with the application for title and the transferor's title.

A section 580.14 is added to read as follows:

§580.14 Power of attorney to review title documents and acknowledge disclosure.

(a) If the transferor does not have the title document of the vehicle because it is physically held by the lienholder of his transferor and if otherwise permitted by State law, the transferee may give a power of attorney to his transferor to review the title and any reassignment documents for mileage discrepancies, and if no discrepancies are found, to acknowledge disclosure on the title. The power of attorney shall be on a form issued by the State to the transferee that is set forth by means of a secure printing process or other secure process, and shall contain, in Part A, the information required to be disclosed under §580.13. The form shall also contain, in part B, a space for the information required to be disclosed under paragraphs (b), (c), (d), and (e) of this section and, in Part C, a space for the certification required to be made under §580.15.

(b) In connection with the transfer of ownership of a motor vehicle, each transferee of a transferor who does not have the title document because it is physically held by the lienholder of his transferor and who was granted a power of attorney by his transferor for the purpose of mileage disclosure, may appoint his transferor as his attorney-in-fact to review the title and any reassignment documents. This power of attorney must include a mileage disclosure from the transferor to the transferee and must be signed by the transferor, including the printed name, and contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of transfer;

(3) The transferor's name and current address;

(4) The transferee's name and current address; and

(5) The identity of the vehicle, including its make, model, year, body type, and vehicle identification number.

(c) In addition to the information provided under paragraph (b) of this section, the power of attorney form shall refer to the Federal law and state that providing false information or the transferee's failure to submit the form to the State may result in fines and/or imprisonment. Reference may also be made to applicable State law.

(d) In addition to the information provided under paragraphs (b) and (c) of this section.

(1) The transferor shall certify that to the best of his knowledge the odometer reflects the actual mileage; or

(2) If the transferor knows that the odometer reading reflects mileage in excess of the designated mechanical odometer limit, he shall include a statement to that effect; or

(3) If the transferor knows that the odometer reading differs from the mileage and the difference is greater than that caused by calibration error, he shall include a statement that the odometer reading does not reflect the actual mileage and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(e) The transferee shall sign the power of attorney form, print his name.

(f) The transferor shall give a copy of the power of attorney form to his transferee.

(g) If a transferee elects to return to his transferor to sign the disclosure on the title when the transferor obtains the title from the lienholder and does not give his transferor a power of attorney to review the title and any reassignment documents, upon the transferee's request, the transferor shall show to the transferee a copy of the power of attorney that he received from his transferor.

(h) Upon subsequent transfer of the vehicle and upon request of the purchaser, the transferor, who was granted the power of attorney by his transferor and who now holds the title to the vehicle in his own name, must show to his purchaser the copy of the previous owner's title and power of attorney form.

A section 580.15 is added to read as follows:

§580.15 Certification by person exercising power(s) of attorney.

(a) A person who exercises a power of attorney either under §580.13 and 580.14 must complete a certification that he has reviewed the title and any reassignment documents for mileage discrepancies and that no discrepancies exist. This certification shall be under Part C and on the same form as the powers of attorney executed under §§580.13 and 580.14, and shall include:

(1) The signature and printed name of the person exercising the power of attorney;

(2) The address of the person exercising the power of attorney; and

(3) The date of the certification.

(b) Any mileage discrepancies void the powers of attorney.

An Appendix E is added to read as follows:

Appendix E—Power of Attorney Disclosure Form

Warning: This Form May Be Used Only When Title Is Physically Held By Lienholder. This Form Must Be Submitted To The State By The Person Exercising Powers Of Attorney. Failure To Do So May Result In Fines And/Or Imprisonment.

VEHICLE DESCRIPTION

Year _____ Make _____

Model _____ Body Type _____

Vehicle Identification Number _____

Part A. Power of Attorney to Disclose Mileage

Federal law (and State Law, if applicable) requires that you state the mileage upon transfer of ownership. Providing a false statement may result in fines and/or imprisonment.

I, _____
(transferor's name, Print)

appoint _____
(transferee's name, Print)

as my attorney-in-fact, to disclose the mileage, on the title for the vehicle described above, exactly as stated in my following disclosure.

I state that the odometer now reads _____
(no tenths) miles and to the best of my knowledge that it reflects the actual mileage unless one of the following statements is checked.

_____(1) I hereby certify that to the best of my knowledge the odometer reading reflects the mileage in excess of its mechanical limits.

_____(2) I hereby certify that the odometer reading is NOT the actual mileage.

WARNING—ODOMETER DISCREPANCY.

(Transferor's Signature)

(Printed Name)

Transferor's Address (Street) _____

(City) _____ (State) _____ (ZIP Code) _____

Date of Statement _____

(Transferee's Signature)

(Printed Name)

Transferee's Name _____

Transferee's Address (Street) _____

(City) _____ (State) _____ (ZIP Code) _____

Part B. Power of Attorney to Review Title Documents and Acknowledge Disclosure.

(Part B is invalid unless Part A has been completed.)

I, _____
(transferee's name, Print)

appoint _____
(transferor's name, Print)

as my attorney-in-fact, to sign the mileage disclosure, on the title for the vehicle described above, only if the disclosure is exactly as the disclosure completed below.

(Transferee's Signature)

(Printed Name)

Transferee's Name _____

Transferee's Address (Street) _____

(City) _____ (State) _____ (ZIP Code) _____.

Federal law (and State Law, if applicable) requires that you state the mileage upon transfer of ownership. Providing a false statement may result in fines and/or imprisonment.

I, _____
(transferor's name, Print)

state that the odometer now reads _____ (no tenths) miles and to the best of my knowledge that it reflects the actual mileage unless one of the following statements is checked.

_____(1) I hereby certify that to the best of my knowledge the odometer reading reflects the mileage in excess of its mechanical limits.

_____(2) I hereby certify that the odometer reading is NOT the actual mileage.

WARNING—ODOMETER DISCREPANCY.

(Transferor's Signature)

(Printed Name)

Transferor's Address (Street) _____

(City) _____ (State) _____ (ZIP Code) _____.

Date of Statement _____

Part C. Certification

I, _____,
(person exercising above powers of attorney, Print) hereby certify that I have received and reviewed the title for the vehicle described above and that there are no indications of mileage discrepancies.

(Signature)

(Printed Name)

Address (Street) _____

(City) _____ (State) _____ (ZIP Code) _____.

Date _____

Issued on March 3, 1989.

Diane K. Steed,
*National Highway Traffic Safety
Administrator*

54 FR 9809
March 8, 1989

PREAMBLE TO AN AMENDMENT TO PART 580 ODOMETER DISCLOSURE REQUIREMENT

(Docket No. 87-09; Notice 10)

RIN: 2127-AC42

ACTION: Final Rule

SUMMARY: This final rule clarifies the responsibilities imposed on all parties in conjunction with the disclosure of odometer mileage information when transferring ownership of motor vehicles. It clarifies the definitions of transferor and transferee in situations where a person acts as an agent for the transferor or transferee. In addition, this rule requires a transferee to return to his transferor a signed copy of the odometer disclosure statement that he received from the transferor. This rule also provides that to be valid, title reassignment documents must be issued by a State. Finally, this rule expands the circumstances in which a secure power of attorney form issued by the State may be used to make the required odometer disclosure to include situations in which the title has been lost. The power of attorney would authorize the transferee to restate exactly the mileage on the title document on the transferor's behalf. When such vehicles are resold, this rule allows a transferee to use the same power of attorney form to authorize his transferor to sign the disclosure on the title document on behalf of the transferee.

DATES: The portion of section 580.4 concerning the power of attorney form, section 580.5(h), section 580.8(c) and sections 580.13, 580.14, 580.15, and 580.16 are effective August 30, 1989. All other sections become effective September 29, 1989.

Under section 553(d) of the Administration Procedures Act, 5 U.S.C. 553(d), a substantive rule may become effective before thirty days after its publication where it relieves a restriction, or as otherwise provided for by the agency for good cause. The sections that are immediately effective are those dealing with powers of attorney. These sections, although subject to the alterations discussed herein, were already effective. Moreover, the substantive changes relieve restrictions on the use of powers of attorney and, therefore, may be made effective upon publication.

Background

To implement the Truth in Mileage Act of 1986, Pub. L. 99-579, and to make some needed changes in

the Federal odometer regulations, the National Highway Traffic Safety Administration (NHTSA) published a notice of proposed rulemaking (NPRM) on July 17, 1987. 52 FR 27022 (1987). The agency received numerous comments on the NPRM representing the opinions of new and used car dealers, auto auctions, leasing companies, State motor vehicle administrators, and enforcement and consumer protection agencies. Each of the comments was considered, and a final rule was published on August 5, 1988. 53 FR 29464 (1988).

The agency received seven petitions for reconsideration of the August 1988 final rule. These petitions requested that NHTSA reconsider the provisions of the final rule that: (1) prohibit a person from signing the odometer disclosure statement as both the transferor and transferee in the same transaction; (2) define "transferor" and "transferee;" (3) define "secure printing process;" (4) concern the language included on the odometer disclosure statement; and (5) require dealers and distributors to retain, for five years, a fully completed and signed copy of every odometer disclosure statement, including the transferee's signature, that they issue and receive.

In response to the petitions for reconsideration, NHTSA published two notices in the *Federal Register* on March 8, 1989. In granting certain aspects of those petitions, NHTSA issued an NPRM, 54 FR 9858 (1989), that proposed to clarify the definitions "transferor" and "transferee," require the transferee to return a completed disclosure statement to his transferor, and require that, to be valid, title reassignment documents must be issued by a State. Other aspects of the petitions for reconsideration were denied. 54 FR 9816 (1989).

While the petitions for reconsideration were pending before the agency, Congress enacted the Pipeline Safety Reauthorization Act of 1988 (PSRA), Pub. L. 100-561 (October 31, 1988). Section 401 of the PSRA, which amends section 408(d)(1) of the Motor Vehicle Information and Cost Savings Act (MVICSA), 15 U.S.C. 1988(d)(1), authorizes the use of powers of attorney in connection with the required mileage disclosure under certain circumstances. The new law directs the agency to prescribe the form and content

of the power of attorney/disclosure document and to establish reasonable conditions for its use by the transferor "consistent with this Act and the need to facilitate enforcement thereof." It also requires NHTSA's rule to provide for the retention of a copy of the power of attorney by the person exercising it and to ensure that the person granted the power of attorney completes the disclosure on the title consistent with the disclosure on the power of attorney form. Finally, the statute provides that the original power of attorney form must be submitted back to the State by the person exercising the power of attorney.

To implement these provisions, NHTSA issued an interim final rule/request for comments on March 8, 1989. 54 FR 9809 (1989). The interim final rule permits, in limited instances when the title is physically held by a lienholder, an individual to sign the odometer disclosure as both transferor and transferee through the use of a secure power of attorney form, issued by a State. When such vehicles are resold, the interim final rule allows a transferee to use the same power of attorney form to authorize his transferor to sign the disclosure on the title document on his behalf.

The March 1989 Notice of Proposed Rulemaking

Definitions

To clarify that the liability for issuing a false odometer disclosure statement could be placed on a person acting as an agent for the owner of the vehicle, in an NPRM published on July 17, 1987, NHTSA proposed to amend the definition of "transferor" to include the agent of the transferor who transfers the ownership of another and the definition of "transferee" to include an agent of the transferee who accepts transfer of ownership in a motor vehicle. 52 FR 27023 (1987). The definitions were adopted as proposed. 53 FR 29464 (1988).

The National Auto Auction Association (NAAA) and the National Independent Automobile Dealers Association (NIADA) requested NHTSA to reconsider these definitions. NAAA and NIADA suggested that the definitions should be expressly limited to the principal or agent who signs the required disclosure on behalf of the owner. Because the suggestions of NAAA and NIADA were consistent with NHTSA's intention to clarify that the liability for issuing a false statement could be placed on the person acting as an agent for the owner of a vehicle, in the March 1989 NPRM we proposed to amend the portions of the definitions of transferor and transferee concerning the transferor's and transferee's agents. We proposed to define "transferor" to include the transferor's agent who signs any odometer disclosure statement on behalf of the transferor. Similarly, we proposed to define "transferee" to include the transferee's agent who signs any odometer disclosure statement on

behalf of the transferee.

We have received four comments on the proposed changes to the definitions. The Delaware Department of Public Safety, Division of Motor Vehicles (Delaware), and the National Automobile Dealers Association (NADA) agree with the proposed definitions. The National Vehicle Leasing Association (NVLA) "urge[s] NHTSA to provide that only one transferor need provide an odometer disclosure statement to a transferee." Furthermore, NVLA requests that NHTSA amend the definitions to read "or" in lieu of "and" and to amend sections 580.5(c), which requires "each" transferor to make a disclosure. The National Consumer Law Center (NCLC) recommends that the agency retain the definitions contained in the 1988 final rule. It believes that the proposed definitions create a "gaping loophole" and explains its position by reference to the following scenario:

[A] manager of an incorporated dealership or auction engaged in making false disclosures need only have another employee such as an office clerk sign the disclosure statements to avoid liability. The manager could argue that he or she was not a transferor under the first part of the new definition because the manager had no "ownership." The manager would then argue that the second part of the definition also did not apply because while he or she was admittedly an agent and it had been proven that he or she was responsible for a false disclosure, the manager did not "sign" the disclosure statement.

Therefore, NCLC suggests that the definitions be amended to include any person who, as agent, "causes to be" made or signed an odometer disclosure statement.

To assist those involved in the transfers of vehicles to more fully understand the requirements of the law and the proposed definitions, in the preamble to the March 1989 NPRM, we addressed several different scenarios and explained which parties are transferors. As noted in the scenarios, the person who actually signs the disclosure statement may depend upon the relationship between the parties. It is not NHTSA's intention to require that the transferee receive multiple disclosure statements. Therefore, we have adopted NVLA's suggestion and amended section 580.5(c) to state that only one transferor need disclose the mileage to the transferee. However, we have not adopted NVLA's suggestion to amend the definitions to read in the disjunctive as opposed to the conjunctive. If more than one party is, in fact, the transferor, the relationship between the parties determines who issues the odometer disclosure statement.

We have not adopted the proposal of the NCLC. Sections 412 and 413 of the MVICSA, 15 U.S.C. 1990b and 1990c, include as persons covered by the requirements of that Act, a person who "causes to be

done” any act. The manager who “caused” the other employee to sign the disclosure statement would be in violation of statute for causing the employee, as transferor or transferee, to violate another section of the MVICSA or NHTSA’s regulations. Therefore, the regulatory definitions do not need to be expanded to protect against the scenario described by the NCLC, and the original purpose of the amended definition, to close “loopholes which have limited the Government’s ability to prosecute certain violations of the odometer laws because of ambiguity in the definitions”, 53 FR 29465 (1988), has been met.

Record Retention

In response to a petition for reconsideration of the August 1988 final rule submitted by the National Association of Fleet Administrators, Inc. (NAFA), in the March 1989 NPRM, we proposed to place a new requirement upon a transferee. In addition to signing the disclosure and printing his or her name, the transferee would be required to return a copy of the signed odometer disclosure statement to his or her transferor. We anticipated that this provision would ensure that transferees who obtain the title from their long-distance transferors will return a copy of the completed disclosure statement to their transferors and that these long-distance transferors will thus be able to retain the signed odometer disclosure statement, as required by section 580.8(a).

Delaware, NADA, NAFA, and NVLA support this proposal. Because we received no comments in opposition to our proposal, it is adopted as proposed.

We note that, with regard to the transferee’s obligation to return a completed odometer disclosure statement, NVLA also asserts that “it is vitally important that the regulation indicate that a transferor who has sent the odometer disclosure statement to the transferee, requested that the transferee sign the statement and return a copy to the transferor and informed the transferee of potential liability for failure to return the copy should be protected against having violated the regulation in the event that the transferee does not return the copy.” Therefore, NVLA suggests that section 580.8, which concerns the dealers retention requirements, be amended.

NHTSA specifically considered and rejected a similar suggestion proposed by NAFA and the PHH Group, Inc. in their petitions for reconsideration of the August 1988 final rule. As noted in the preamble to the August 1988 final rule and the March 1989 NPRM which granted, in part, those petitions, we stated that pursuant to 15 U.S.C. 1990b, in exercising its enforcement discretion NHTSA must take into account the nature, circumstances, extent, and gravity of a violation and that we cannot provide a complete listing of the circumstances in which failure to retain the required documents will be excused. We continue to believe that it would be inappropriate to

include, in the regulation, what constitutes a “good faith effort” to retain the completed odometer disclosure statement. NVLA requests that we do just that by adopting its suggestion and, therefore, its request is denied.

Security of Reassignment Documents

In the March 1989 NPRM, we proposed to amend section 580.4 concerning the security of reassignment documents. Specifically, we proposed to require that in addition to being set forth by a secure printing process, reassignment documents will not be valid unless they are issued by a State. Delaware and NADA support this proposal. The American Association of Motor Vehicle Administrators (AAMVA) states that this requirement is “consistent with the language of the 1988 amendment to the Truth in Mileage Act and NHTSA’s final rule which requires that secure powers of attorney be issued by the jurisdictions.” AAMVA notes that some States will phase out the use of separate reassignment forms and others may contract with third-party agents for printing, issuing, and controlling secure reassignment documents. No one has commented in opposition to the proposal, and it is adopted in this final rule.

Exemptions

After publication of the August 1988 final rule, NHTSA was asked whether the lessee of a vehicle having a gross vehicle weight rating (GVWR) of more than 16,000 pounds or of a vehicle that is ten years old or older must furnish to his lessor a written statement regarding the vehicle’s mileage. Because the lessor, when transferring a vehicle with a GVWR of more than 16,000 pounds or a vehicle ten years old or older, is not required to give his transferee an odometer disclosure statement, we could see no reason to require a lessee of any of these types of vehicles, or of any vehicles that are not self-propelled, to give their lessor a written statement concerning the vehicle’s mileage. Accordingly, NHTSA proposed to amend section 580.6 to exempt the lessees of certain vehicles from the odometer disclosure requirements of section 580.7. Likewise, NHTSA proposed to exempt the lessors of certain vehicles from the notification requirements of section 580.7. The agency received no comments on this proposal and, accordingly, it is adopted as proposed.

The March 1989 Interim Final Rule

Security of Powers of Attorney

The PSRA provides that “consistent with the purposes of this Act and the need to facilitate enforcement thereof,” if a State permits their use, power of attorney forms shall be “set forth by means of a secure printing process (or other secure process).” To imple-

ment this requirement, the interim final rule revised section 580.4, which concerns the security of title documents and reassignment documents, to require power of attorney forms to meet the security criteria applicable to reassignment documents. The August 1988 Final Rule requires that reassignment documents be set forth by "a secure process," not necessarily the same secure process used to secure title documents. The Delaware DMV commented that secure forms will entail some costs to the States, but did not oppose the provision. This aspect of the interim final rule is retained in this final rule.

Signature of Same Person as Transferor and Transferees

Since the PSRA has the effect of allowing a person to sign an odometer disclosure statement on the title as both the transferor and transferee in specified circumstances, the interim final rule amended section 580.5(h), which prohibited a person from signing an odometer disclosure statement as both the transferor and transferee in the same transaction. This amendment to section 580.5(h) permits a person to sign an odometer disclosure statement as both the transferor and transferee if the requirements of sections 580.13 and 580.14, which NHTSA also added in the interim final rule, have been met. No commenters opposed this amendment and it is retained in the final rule.

Elements of the Power of Attorney Form

Under section 580.13 of the interim final rule, if permitted by State law, a transferor whose motor vehicle title document is physically held by a lienholder may give his transferee a power of attorney for the purpose of making the mileage disclosure on the title document. The power of attorney must be on Part A of a secure form issued by a State and must contain a space for the transferor to disclose the mileage. The disclosure required to be made by the transferor to the transferee on the power of attorney form parallels the disclosure required to be made on the title by section 580.5. In addition, when such vehicles are resold, section 580.14 of the interim final rule provides that if State law permits, the subsequent purchaser may, on Part B of the same form, give his power of attorney to his transferor to acknowledge the transferor's mileage disclosure. The power of attorney must also contain a space in Part B for the transferor to disclose the mileage. The disclosure required to be made by the transferor to the transferee on Part B of the power of attorney form also parallels the disclosure required to be made on the title by section 580.5.

Section 580.15 of the interim final rule provides that the power of attorney form must also contain a certification in Part C of the form, to be completed by the person exercising the power of attorney, that he has reviewed the title and that no discrepancies exist. While the rule sets forth the information which

must be disclosed, and the form must be separated into parts A, B and C, each State is free to organize, in each part, the information required by the rule in any way it wishes. While the language of the required certification has been clarified, these aspects of the interim final rule are otherwise retained in this final rule.

Submission of Power of Attorney Form to the State

The PSRA provides that the "original [of the power of attorney form shall] be submitted back to the State by the person granted such power of attorney." In conformity with this requirement, and to ensure appropriate enforcement of the odometer disclosure requirements, section 580.13(f) of the interim final rule required the transferee to submit the original power of attorney form to the State that issued it with an application for title and the transferor's title. In the preamble, NHTSA identified two ways in which this might be accomplished. The transferee could submit the power of attorney form after selling the vehicle, with the old title and his purchaser's title application, provided his purchaser (and the State) permits him to apply for title on behalf of the purchaser. Alternatively, the transferee could apply for title in his own name and submit the secure power of attorney form and his transferor's title with that application.

NHTSA received several comments in opposition to this provision of the rule. These comments assert that when the subsequent purchaser is another dealer, particularly an out-of-State wholesale dealer, under the law of most States, the initial dealer (transferee) would have to adopt the second alternative and retitle vehicles in his own name. This so-called "retitling requirement," it is argued, is a misinterpretation of the statute and will "disrupt existing commercial practices" of dealers, who would otherwise reassign the old title but will now have to apply for a title themselves, and for the States, who will have to process increased numbers of title applications.

NHTSA agrees that some dealers will have to retitle in their own names, although NHTSA disagrees that it has misinterpreted the statute to "require" retitling. Rather, given our experience with State titling procedures, these appear to be the only viable methods to preserve the integrity of the paper trail and conform to the requirements of the statute.

Moreover, we do not agree that any retitling that becomes necessary will present a significant burden to dealers or to States. First, a majority of all vehicles taken in trade will not have to be retitled in the dealer's name. Second, and perhaps more important, retitling will not prevent cars from being promptly resold. In a majority of States, a vehicle may be sold without the title being present. Thus, standard commercial practice in many places has traditionally been for vehicles to be sold without the title present and

for the title to “catch up” with the vehicle at a later point. Any retitling necessitated by this rule will not disturb this practice. The only difference is that the “new” title will be reassigned instead of the “old” title. At most it will add a small amount of time required for the title to “catch up” with the vehicle because dealers can often secure titles to vehicles in their own names within a day or two through existing dealer retitling arrangements with State departments of motor vehicles.

Even in the States that do require the title to be present before sale, retitling should not cause significant disruption of existing practices because dealers must already wait for the title to arrive from the lienholder, or for reissued titles to be sent from the State before they can resell vehicles. Any retitling in the dealer’s name will only extend briefly the period the dealer must wait before he can resell. Thus, although there will be some retitling costs and some costs associated with delay, these costs will not be unduly burdensome. Further, in most instances, retitling will not interfere with the standard flow of commerce because vehicles will continue to be sold pending arrival of the title, as they have been in the past.

Commenters have suggested alternatives to the ones we have presented. However, these cannot be adopted because they would be inconsistent with the statute. For example, NIADA, NADA and the Iowa Department of Transportation each proposed that the dealer granted power of attorney not be required to submit the original power of attorney form back to the issuing State. They suggested that the dealer should, instead, be allowed to reassign title and the dealer/person next applying for title should be allowed to submit the form back to the issuing State. This proposal cannot be adopted because the PSRA clearly requires “the *original* [secure power of attorney form] to be submitted back to the State *by the person granting such power of attorney.*” (Emphasis added.)

Alternatively, NADA has suggested allowing the original power of attorney to be submitted with the application for title in the new titling State, whether or not that State was the issuing State. Under such an arrangement, NADA suggests that the person granted the power of attorney could attach the original power of attorney to the old title and note or stamp “POA” in the reassignment block. There are several problems with this alternative. First, to do so would be in contravention of the statute. Not only would the dealer who exercised the power of attorney not be returning the form, but the form would not be going “back” to the issuing State. NADA has attempted to read the statute to allow for the return of the form to *any* State. However, we do not believe that the statutory language requiring the secure power of attorney form be issued by “the State” and “submitted back to the State” is susceptible of that

interpretation. Rather, it is clear that Congress intended the secure power of attorney form to be returned to the same State that issued it by the person who was granted and exercised the power of attorney.

Moreover, submission of the power of attorney form to a State other than the one that had issued it would jeopardize the integrity of the paper trail. In contrast to the issuing State, another State would be less familiar with the forms, and therefore less likely to detect improperly completed or fraudulently submitted forms. Although certain information must be disclosed, and the power of attorney form must be organized into Parts A, B, and C, each State is free to organize, in each part, the information required by the rule in any way it wishes. States may also add information or incorporate other things into the power of attorney forms. Allowing a State to receive another State’s power of attorney forms would also interfere with the issuing State’s ability to control the forms because the issuing State would not know whether, or to where, its forms were being returned.

It has also been suggested that the dealer be allowed to file the power of attorney form with the issuing State, either absent any other documentation or with a copy of the reassigned title that has been passed to a buyer. If the person granted power of attorney were not required to submit the power of attorney to the State with the application for title and the transferor’s title, enforcement of the anti-fraud provisions of the law would be hampered. First, the integrity of the paper trail would be at risk because subsequent transferors could discard the power of attorney, forge a new one, and alter the mileage on the title. (We recognize that even with securely printed titles, some alterations have been, and may continue to be, undetected upon initial review by State Departments of Motor Vehicles.) Additionally, the paper trail would be jeopardized if the person granted the power of attorney submitted only the power of attorney form and no title documents, particularly if the vehicle were sold to an out-of-State buyer. The title would be in one State and the power of attorney form in another; they could not easily be compared. This would create problems similar to those experienced with the current use of separate odometer statements.

Allowing the power of attorney form to be filed with the issuing State separately, even along with a copy of the reassigned original title, would also make retention of the form less likely. The States currently retain copies of all title applications and accompanying materials. Separately submitted documents are frequently disposed of by the States. Thus, if the power of attorney form is part of a title application package, a copy of the form, independent of the dealer and customer copies, will exist. Having this independent source of documentation will aid in enforcement, for although a dealer would face penalties for failure

to retain the secure power of attorney form as required by Section 580.8, an unscrupulous dealer might choose to face that penalty rather than risk retaining damaging paperwork. The State's records would provide the evidence to catch such an unscrupulous dealer. Further rulemaking on this issue might be appropriate if, in the future, it is determined that the States had adopted adequate methods to retain power of attorney forms submitted without title applications.

NADA has also suggested that "NHTSA also may want to consider a requirement that states which receive out-of-state power of attorney forms as part of title applications either return those forms to the states of issuance or, more reasonably, make copies available to the states of issuance upon request." This suggestion suffers from the same drawbacks as the other suggestions discussed above. First, any arrangement in which the power of attorney form is submitted to any State other than the issuing State, or is submitted to the issuing State by someone other than the person who exercised the power of attorney is inconsistent with the PSRA. Second, under this proposed arrangement, the record retention problem would continue to exist because the issuing State would be receiving the power of attorney form separately from any application for title. As discussed above, this represents an unjustified risk to enforcement.

Availability of Secure Powers of Attorney

Although the PSRA explicitly authorizes the use of powers of attorney to disclose odometer information only when the title is "physically held by a lienholder," during the floor debate in the House of Representatives, Rep. Dingell stated that he expected NHTSA to examine other situations in which the use of a power of attorney to disclose odometer information might be appropriate. *See* 134 Cong. Rec. H10080 (daily ed. Oct. 12, 1988). In response to this direction, NHTSA has considered other such instances. To facilitate commercial practices in situations where a power of attorney was used at the time the vehicle was sold to the dealer, the interim final rule authorized use of the same power of attorney form for the dealer's sale of the vehicle. Thus, section 580.14 permits, if allowed by State law, a transferee under these circumstances to give his power of attorney to his transferor (i.e., the dealer) for the purpose of reviewing title documents and any reassignment documents to determine whether there are any mileage discrepancies and, if there are no mileage discrepancies, to sign the title, acknowledging the disclosure. This power of attorney must include a disclosure from the transferor to the transferee that parallels the disclosure required to be made by the transferor to the transferee on the title document. In addition, the

appointment of the transferor as the transferee's attorney-in-fact must be made on Part B of the same secure power of attorney form, issued by the State, upon which the transferor was appointed the attorney-in-fact by his transferor pursuant to section 580.13. This enables purchasers to examine the previously issued power of attorney for mileage disclosure alterations, erasures or other marks, and to learn the name of the prior owner without the additional cost of a title search.

NADA and NIADA submitted comments (supported also by NAAA) criticizing the fact that the interim final rule does not allow for the use of secure powers of attorney in situations where the customer's title is not present because the customer has lost or misplaced the title. NADA and NIADA contend that this aspect of the interim final rule will cause a disruption to standard business practices because the title replacement process takes too long. When the title is replaced, it is usually mailed to the dealer, thereby requiring a return trip by the customer to make the disclosure. Moreover, even if the replacement title is mailed to the previous owner, after making the disclosure, he or she will either have to return to the dealer or send the title back to the dealer by mail. Further, NADA and NIADA maintain that the legislative history of the PSRA demonstrates Congress' intention that the use of secure powers of attorney be extended to cover lost title situations.

We do not agree that it was Congress' manifest intent that secure powers of attorney be available in lost title situations. Nevertheless, we have determined that the security of the power of attorney forms, combined with the control that the States plan to exercise over the forms, will serve to counteract the increased opportunity for fraud that will arise from allowing the use of powers of attorney in lost title situations. We are, therefore, adopting NADA's and NIADA's suggestion. This final rule allows, if State law permits, a secure power of attorney to be used for the purpose of odometer disclosure where the title is not present because it has been lost by the person to whom it was issued by the State. In order for a power of attorney to be used in the lost title situation, the transferee (i.e., the dealer) must apply for the duplicate title on behalf of the transferor. Under these conditions, the powers of attorney will be available to facilitate consumer vehicle sales transactions, but will not be available in other than consumer sales transactions where the risk of fraud is considerably greater. If experience demonstrates that this use of powers of attorney does lead to additional odometer fraud, we may decide to revise this expansion of authority.

NVLA submitted comments regarding another aspect of the limited availability of secure powers of attorney. NVLA expressed concern that, as written,

the regulation prevents leasing companies, acting as transferors, from using powers of attorney to acknowledge for their purchasers the mileage disclosures they make, even when the leasing companies titles are held by their lienholders. The inability to use a power of attorney in this situation, NVLA argues, presents a problem because the “buyer may live a great distance from the lessor’s place of business” and that the buyer would face a “significant hardship” in appearing to sign the lessor’s disclosure on the title.

NVLA suggests that the rule be amended to permit the use of a secure power of attorney whenever the title is held by “a lienholder”, rather than by the transferor’s lienholder. Second, NVLA suggests allowing Part B of the secure power of attorney form to be used, without the completion of Part A. Under this proposal, Part A would contain only the vehicle information when the form is used for the Part B power of attorney only. Finally, NVLA suggests requiring the secure power of attorney form for which Part A is not completed be returned to the State with an application for title. These suggestions are not adopted. NVLA seems to misapprehend the intended use of secure powers of attorney under the rule. Further, the “solution” suggested by NVLA would not appear to remedy the perceived problem.

Use of a secure power of attorney was never intended in the situation where a leasing company (or other business) is seeking to sell a vehicle it owns; neither is such use necessary. The availability of a secure power of attorney is intended to facilitate consumer vehicle transactions. Often the consumer car owner is unable to present his title at the time of the sale of the vehicle because the title is held by the consumer’s lienholder and the consumer cannot satisfy the lien by himself; the power of attorney arrangement enables the consumer to sell the vehicle to the dealer, who can pay off the lien, and allows the dealer to complete the required odometer disclosure on the title when the title arrives without bringing the consumer back into the transaction either through use of the mails or by having the consumer return to the dealership in person. The legislative history of the Pipeline Safety Reauthorization Act reinforces this intention: “The amendment. . . specifically refers to situations where a vehicle’s title, because of financing, is held by a lienholder, such as a bank, and not the consumer. In such cases, the consumer cannot fill in the mileage because he or she does not physically hold the title.” (Remarks of Rep. Dingell, 134 Cong. Rec. H10079 (daily ed. Oct 12, 1988)).

In the case of a leasing company, the leasing company would itself be paying off the lien, not the buyer. Thus, even if the title was not present at the time of sale, after the leasing company received the title from its lienholder, the company could make the disclosure,

mail it to the buyer, have the buyer sign it and mail a copy back to the leasing company. Thus, no power of attorney is necessary.

Although nowhere explicitly stating so, NVLA seems concerned about the mailing of required paperwork. With the establishment in this final rule of penalties for the transferee’s failure to return required paperwork, this concern should be ameliorated. Moreover, any problem presented by mailing titles would also occur when mailing the secure power of attorney form. Even under NVLA’s proposal, in order for the buyer to see the leasing company’s disclosure on the secure power of attorney form and to sign the power of attorney, either the buyer would have to appear at the lessor’s place of business or the lessor would have to mail the form to the buyer and rely on the buyer to complete his portion of the form and mail it back. NVLA does not explain how this situation differs from having the buyer appear to sign the title, or mailing the title to the buyer, nor how the use of a power of attorney would be less burdensome. Moreover, even if NHTSA were to allow the use of secure powers of attorney where the leasing company’s title was held by its lienholder, the “problem” NVLA complains of would still exist where the title was not being held by a lienholder, but by the leasing company itself. NVLA does not suggest that the use of a secure power of attorney be allowed where the leasing company already has the title to the vehicle it is selling.

In addition, NHTSA is concerned about the increased risk to enforcement resulting from extending the availability of powers of attorney to transactions like the ones outlined by NVLA. Any use of a power of attorney increases the possibility of fraud and entails some additional risk to enforcement efforts. NHTSA does not believe that the increased possibility for fraud is warranted in this situation, particularly because the use of a power of attorney in this situation would not significantly facilitate transactions that are otherwise impeded.

The Certification Requirements

To ensure that a person who exercises a power of attorney, whether under section 580.13 or both sections 580.13 and 580.14, is fully aware of his obligations and his liability for any action that is inconsistent with the power of attorney, the interim final rule required, under section 580.15, that the person exercising the power of attorney complete, on Part C of the secure power of attorney form issued by the State, a certification that he has “reviewed the title and any reassignment documents for mileage discrepancies and that no discrepancies exist.” Pursuant to section 580.15(b), any mileage discrepancies would void the power of attorney.

NADA and NIADA have both objected to this cer-

tification requirement. Both groups have asserted that the requirement is neither required nor intended under the statute, and that NHTSA was, therefore, without authority to institute it. We disagree. Section 401 of the PSRA directs NHTSA to impose by rule "reasonable conditions" on the use of powers of attorney. Moreover, the statute provides that NHTSA's rules must be "consistent with the purposes of [the Cost Savings] Act and the need to facilitate enforcement thereof." The Truth in Mileage Act requires that the odometer disclosure appear on the title to enable consumers to see these disclosures on titles and the chain of ownership of the vehicle. The use of a power of attorney, although commercially useful, interferes with that aspect of the Truth in Mileage Act because, when using the secure power of attorney form, the dealer is the only person who actually gets to see the title. The certification requirement will facilitate enforcement, without imposing a significant burden on dealers, and is appropriate to carry out Congress' intention to protect the interests of consumers in connection with motor vehicle sales transactions.

Substantively, NADA's comments reflect a concern, shared by NIADA, that "the certification provision . . . appears to impose a wholly new responsibility, that is, to review and attest to the validity of prior disclosures." It has never been NHTSA's intent that this certification requirement place new liabilities on dealers. Further, the dealers are not expected to verify or attest to the validity of prior disclosures. Rather, under the certification requirement, dealers must check the title and compare the disclosure on the power of attorney against the mileage on the title for discrepancies between the disclosures.

NADA points out that current common law and statutory duties already require the dealer to act in a lawful manner and that accepting and/or submitting to the State paperwork that contained discrepancies would currently subject the dealer to liability under the MVICSA and many State laws. We agree. The certification requirement is not intended to create liabilities beyond those already existing, but rather to discourage the dealer from passing on to his buyer a false disclosure received from his transferor on the secure power of attorney form, by encouraging the dealer to "look twice" before acting.

Upon reflection, we have concluded that the current language in Part C of the power of attorney form requiring the dealer to certify that "there are no indications of mileage discrepancies" may not have clearly reflected our intent. Accordingly, we have decided to adopt, with minor modification, a proposal submitted by NADA and NIADA in their June 14, 1989, supplemental comments to change the language of the certification. This final rule amends section 580.15 to provide that a person who exercises a power of at-

torney under section 580.13 and 580.14 must complete a certification that he has disclosed the mileage on the title document consistent with the mileage disclosed to him on the power of attorney form and that he has examined the title and the mileage disclosure made on the title pursuant to the power of attorney is greater than the mileage previously stated on the title.

The certification we are requiring differs from the NADA/NIADA proposal in three minor respects. First, consistent with the terms of existing section 580.15 and the purposes of the certification requirement, Part C will provide that the dealer has reviewed any reassignment documents that are attached to the title as well as the title itself. Second, we are requiring that the person exercising the power of attorney certify that the mileage he enters on the title "is higher" than the mileage already appearing on the title, rather than, as was proposed, "appears higher." The number entered on the title either will or will not be higher than the mileage disclosed on the power of attorney form; thus, "appears" is not appropriate. Finally, we are requiring the person exercising the power of attorney to make his certification "upon examination" of the title, rather than "upon normal visual examination." We consider the term "examination" in this context to be self-defining. Moreover, the term "normal" is vague and its use would only likely cause confusion among dealers as to what constitutes a "normal" examination.

We are aware that at least one State has begun printing secure power of attorney forms with a Part C that contains the language of the certification required under the interim final rule. Since we view the amendments to Part C made in this final rule as a clarification of our prior rule, rather than a substantive change, in order to avoid hardship to that State, and any others that may have already invested in secure power of attorney forms, NHTSA will construe the certification on those forms as carrying the same meaning as if they were worded as required under this final rule. However, to avoid any possible confusion, we urge those States to switch to the current language as soon as possible.

It has been suggested that the certification requirement is most fitting to the "second sale" situation where the subsequent purchaser's only link to the title will be the dealer. We think there is merit to this argument. Thus, in this final rule, we are amending section 580.15 to provide that the certification requirement will apply only when the dealer is exercising a power of attorney for both the "first sale" and "second sale" customers, as provided for in sections 580.13 and 580.14. If the title is present at the time of the second sale, the purchaser will be able to review the title himself to assure that the mileage is entered in accordance with the initial transferor's power of

attorney and is higher than the mileage appearing on the title and reassignment documents. (As a practical matter, the mileage entered by the dealer could never be lower than the mileage already on the title, since if the power of attorney set forth a lower mileage, it would void the power of attorney, and the dealer would not be authorized to sign the disclosure on behalf of the transferor.)

Section 580.15(b) of the interim final rule provides that any mileage discrepancies void the power of attorney. NADA and NIADA have suggested that “mistakes by a grantee” should not void the power of attorney. However, we continue to believe that this provision is vital; if the mileage appearing on the title (or reassignment documents) is greater than the mileage disclosed by the first sale transferor on the power of attorney form, or if the title disclosure does not exactly match the disclosure on the power of attorney, the power of attorney should not be used to pass on inaccurate information. It is immaterial whether the discrepancy occurs through design or mistake, or whether it is caused by the grantor, grantee, or someone else. The power of attorney is voided by the existence of a discrepancy, not by an action causing a discrepancy. For these reasons, the suggestion that grantee mistakes should not void the power of attorney is rejected.

Transferee Access to Previous Title and Power of Attorney Documents

Under section 580.14(h) of the interim final rule, if the transferee who is granted a power of attorney from his transferor applies for title in his own name, the transferee must show his purchaser, upon his purchaser’s request, a copy of the previous owner’s title, including the odometer disclosure completed on behalf of the previous owner, and a copy of the power of attorney form completed by the previous owner. Similarly, under section 580.14(g) of the interim final rule, if a second-sale purchaser decides not to appoint his transferor (i.e., the dealer) as his attorney-in-fact pursuant to section 580.14, the transferor must show his purchaser a copy of the previous owner’s title and a copy of the power of attorney form completed by the previous owner. No one commented in opposition to these provisions and they are retained in the final rule. However, for organizational clarity, these provisions have been separated out of section 580.14, and appear, renumbered, as new sections 580.16(a) and 580.16(b).

Record Retention

Section 401 of the PSRA requires NHTSA’s rules to provide for the retention of the power of attorney form. The interim final rule amended section 508.8, which concerns odometer disclosure statement retention, by adding a new paragraph (c). Under this

paragraph, motor vehicle dealers and distributors who are assigned a power of attorney by their transferors are required to retain, for five years, a photostat, carbon, or other facsimile copy of each power of attorney they receive. These documents must be retained at the primary place of business of the dealer or distributor in an order that is appropriate with business requirements and that permits systematic retrieval. This paragraph is consistent with the retention requirement of the August 1988 final rule that is applicable to dealers, distributors, and lessors. Like the August rule, the storage provision of this amendment is phrased broadly to include any media by which information may be stored, provided there is no loss of information. No one has commented in opposition to this retention requirement, and it is retained unchanged in this final rule.

Miscellaneous Matters

In addition to the matters discussed above, some minor changes to the language of sections 580.13, 580.14, and 580.15 have been made. The purpose of these changes is merely to simplify or clarify the text of the rule. No alterations of rights or duties, except to the extent already discussed above, are intended.

AAMVA asked NHTSA to provide clarification on the use of secure power of attorney in two situations. The first question presented is whether or not the power of attorney provisions apply to the practice of “floor planning.” (“Floor planning” is a practice by which a financial institution will physically hold a title as security for financing, without formally filing or recording a security interest, on a vehicle offered for sale by a dealer.) This “floor planning” arrangement does not qualify for use of the power of attorney. The PSRA allows for the use of a secure power of attorney in cases where “a transferor to whom title to a motor vehicle has been issued by a State” does not have the title because the title is being physically held by the lienholder. Thus, because the dealer is not the person to whom the title was issued by the State, the dealer may not use a power of attorney form for purposes of mileage disclosure under these circumstances. Moreover, even in situations in which a dealer has retitled a vehicle in his own name prior to surrendering the title under a “floor planning” arrangement use of a power of attorney is not available, because the financial institution is not considered a lienholder because no formal lien has been filed and recorded with the State. Because NHTSA believes that the statutory language clearly enough settles this matter, adding qualifying language on “floor planning” to the final rule, as AAMVA has suggested, is not considered appropriate.

The second situation about which AAMVA is seeking clarification is where the lending institution that financed the vehicle’s purchase is located in a State

that requires the lienholder to hold the title as security, but the vehicle is registered in a different State, which allows the owner, rather than the lienholder to hold the title. Under the PSRA, the availability of secure powers of attorney is always subject to State permission. States that choose to make secure powers of attorney available for transactions in which a consumer's title is unavailable because it is held by an out-of-state lienholder may do so. In States that choose not to allow the use of a secure power of attorney, in some or all circumstances, a transferor not in possession of his or her title at the time of sale will have to return to the dealership to sign the title when it is received, or else complete the transaction by mail.

NAAA submitted comments concerning the implications of the general prohibition on the same person signing as transferor and transferee in the same transaction for auto auctions in so-called "chain-of-title" States. In most States, auto auctions are brokers between buyers and sellers, facilitating sales between interested parties. As part of the service auctions provide, many auctions regularly act as agents under a power of attorney for their sellers to complete the necessary paperwork accompanying the sale, including making the required odometer disclosure. In Arizona, California and Colorado, however, auctions have been required by law to appear in the "chain of title." In these states, NAAA notes, "auctions simultaneously take a reassignment from the seller and give a reassignment to the buyer", thereby appearing, however briefly, to own the vehicle. Hence, under the rule, in these states the seller must disclose the mileage to the auction and the auction must execute a separate disclosure to the buyer. Furthermore, the auction is prevented under section 580.8(h) from using the seller's power of attorney to make the disclosure for the seller to the auction and then signing the disclosure as transferee.

The NAAA has appealed to NHTSA to amend section 580.6 to include an exemption from the disclosure requirement for auctions which are required by State law to take reassignment from the seller and give it to the buyer, provided that the selling customer makes a disclosure to the buyer, who acknowledges it as required. NHTSA declines to adopt the suggestion of the NAAA. We understand NAAA's concerns; however, we consider the problem faced by auctions in the "chain-of-title" States essentially one to be worked out by those States and the affected auctions. We are concerned that a proliferation of exemptions to the regulatory requirements will inhibit enforcement of the statute. Therefore, NHTSA considers the creation of another category of exempted transferors inappropriate.

Finally, the Florida DMV expressed concern that the sample secure power of attorney form appearing at Appendix E of the interim final rule does not em-

power the attorney-in-fact to actually transfer ownership of the vehicle, and that another form will be required. The sample form at Appendix E represents only the minimum acceptable elements of a power of attorney for the purpose of mileage disclosure. Nothing in the interim final rule, or this final rule, prevents a State from including a space on the power of attorney form for a grant of power of attorney for the purpose of transferring title.

Federalism Assessment

In adopting the PSRA, Congress apparently found that limiting the use of powers of attorney in connection with mileage disclosure could cause an undue burden on dealers and consumers. To resolve the problem and alleviate the potential costs for dealers and consumers, the new law specifies that power of attorney may be used in certain circumstances, if otherwise permitted by State law. This final rule does not impose any requirements upon the States other than those imposed by the law. Nevertheless, this action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The States may decide not to allow the use of powers of attorney in connection with mileage disclosure and, therefore, would not be required to print conforming forms. Those States that choose to allow the use of powers of attorney will incur some costs from processing applications, maintaining records and issuing new titles resulting from the requirement that the power of attorney form be returned to the State along with a title application. However, as the States may decide not to allow the use of powers of attorney in connection with mileage disclosure, they would not be required to incur these costs. Additionally, while it is estimated that the final rule would result in additional costs to the States for printing secure title reassignment documents and power of attorney forms, the cost to each State is minimal and could easily be recouped from those who are applying for the forms.

Under section 553(d) of the Administrative Procedures Act, 5 U.S.C. 553(d), a substantive rule may become effective before thirty days after its publication where it relieves a restriction, or as otherwise provided for by the agency for good cause. The sections that are immediately effective are those dealing with powers of attorney. These sections, although subject to the alterations discussed herein, were already effective. Moreover, the substantive changes relieve restrictions on the use of powers of attorney and, therefore, may be made effective upon publication.

In consideration of the foregoing, 49 CFR Part 580 is amended as follows:

1. In section 580.3, the definitions of "transferor"

and "transferee" are revised to read as follows:

§580.3 Definitions.

* * * * *

"Transferee" means any person to whom ownership of a motor vehicle is transferred, by purchase, gift, or any means other than by the creation of a security interest, and any person who, as agent, signs an odometer disclosure statement for the transferee.

"Transferor" means any person who transfers his ownership of a motor vehicle by sale, gift, or any means other than by the creation of a security interest, and any person who, as agent, signs an odometer disclosure statement for the transferor.

2. Section 580.4 is revised to read as follows:

§580.4 Security of title documents and power of attorney forms.

Each title shall be set forth by means of a secure printing process or other secure process. In addition, power of attorney forms issued pursuant to §§ 580.13 and 580.14 and documents which are used to reassign the title shall be issued by the State and shall be set forth by a secure process.

3. Section 580.5 is amended by revising paragraphs (c), (f) and (h) to read as follows:

§ 580.5 Disclosure of odometer information

* * * * *

(c) In connection with the transfer of ownership of a motor vehicle, each transferor shall disclose the mileage to the transferee in writing on the title or on the document being used to reassign the title. This written disclosure must be signed by the transferor, including the printed name. In connection with the transfer of ownership of a motor vehicle in which more than one person is a transferor, only one transferor need sign the written disclosure. In addition to the signature and printed name of the transferor, the written disclosure must contain the following information:

- (1) The odometer reading at the time of transfer (not to include tenths of miles);
- (2) The date of transfer;
- (3) The transferor's name and current address;
- (4) The transferee's name and current address; and
- (5) The identity of the vehicle, including its make, model, year, and body type, and its vehicle identification number.

* * * * *

(f) The transferee shall sign the disclosure statement, print his name, and return a copy to his transferor.

* * * * *

(h) No person shall sign an odometer disclosure statement as both the transferor and transferee in the same transaction unless permitted by §§ 580.13 or 580.14.

4. Section 580.6 is amended by revising the introductory text and paragraph (a) and by adding a

paragraph (c) to read as follows:

§ 580.6 Exemptions

Notwithstanding the requirements of §§ 580.5 and 580.7:

(a) A transferor or a lessee of any of the following motor vehicles need not disclose the vehicle's odometer mileage:

- (1) A vehicle having a Gross Vehicle Weight Rating, as defined in § 571.3 of this title, of more than 16,000 pounds;
- (2) A vehicle that is not self-propelled;
- (3) A vehicle that is ten years old or older; or
- (4) A vehicle sold directly by the manufacturer to any agency of the United States in conformity with contractual specifications.

* * * * *

(c) A lessor of any of the vehicles listed in paragraph (a) of this section need not notify the lessee of any of these vehicles of the disclosure requirements of § 580.7.

5. Section 580.8 is amended by revising paragraph (c) to read as follows:

§ 580.8 Odometer disclosure statement retention.

* * * * *

(c) Dealers and distributors of motor vehicles who are granted a power of attorney by their transferor pursuant to § 580.13, or by their transferee pursuant to § 580.14, shall retain for five years a photostat, carbon, or other facsimile copy of each power of attorney that they receive. They shall retain all powers of attorney at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

6. Section 580.13 is revised to read as follows:

§ 580.13 Disclosure of odometer information by power of attorney.

(a) If the transferor's title is physically held by a lienholder, or if the transferor to whom the title was issued by the State has lost his title and the transferee obtains a duplicate title on behalf of the transferor, and if otherwise permitted by State law, the transferor may give a power of attorney to his transferee for the purpose of mileage disclosure. The power of attorney shall be on a form issued by the State to the transferee that is set forth by means of a secure printing process or other secure process, and shall contain, in Part A, a space for the information required to be disclosed under paragraphs (b), (c), (d), and (e) of this section. If a State permits the use of a power of attorney in the situation described in § 580.14(a), the form must also contain, in Part B, a space for the information required to be disclosed under § 580.14, and, in Part C, a space for the certification required to be made under § 580.15.

In connection with the transfer of ownership of a motor vehicle, each transferor to whom a title was issued by the State whose title is physically held by

a lienholder or whose title has been lost, and who elects to give his transferee a power of attorney for the purpose of mileage disclosure, must appoint the transferee his attorney-in-fact for the purpose of mileage disclosure and disclose the mileage on the power of attorney form issued by the State. This written disclosure must be signed by the transferor, including the printed name, and contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of transfer;

(3) The transferor's name and current address;

(4) The transferee's name and current address; and

(5) The identity of the vehicle, including its make, model year, body type and vehicle identification number.

(c) In addition to the information provided under paragraph (b) of this section, the power of attorney form shall refer to the Federal odometer law and state that providing false information or the failure of the person granted the power of attorney to submit the form to the State may result in fines and/or imprisonment. Reference may also be made to applicable State law.

(d) In addition to the information provided under paragraphs (b) and (c) of this section.

(1) The transferor shall certify that to the best of his knowledge the odometer reading reflects the actual mileage; or

(2) If the transferor knows that the odometer reading reflects mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or

(3) If the transferor knows that the odometer reading differs from the mileage and the difference is greater than that caused by a calibration error, he shall include a statement that the odometer reading does not reflect the actual mileage and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(e) The transferee shall sign the power of attorney form, print his name, and return a copy of the power of attorney form to the transferor.

(f) Upon receipt of the transferor's title, the transferee shall complete the space for mileage disclosure on the title exactly as the mileage was disclosed by the transferor on the power of attorney form. The transferee shall submit the original power of attorney form to the State that issued it, with the application for new title and the transferor's title. If the mileage disclosed on the power of attorney form is higher than the mileage appearing on the title the power of attorney is void and the dealer shall not complete the mileage disclosure on the title.

7. Section 580.14 is revised to read as follows:

§ 580.14 Power of attorney to review title documents and acknowledge disclosure.

(a) In circumstances where Part A of a secure power of attorney form has been used pursuant to § 580.13 of this Part, and if otherwise permitted by State law, a transferee may give a power of attorney to his transferor to review the title and any reassignment documents for mileage discrepancies, and if no discrepancies are found, to acknowledge disclosure on the title. The power of attorney shall be on Part B of the form referred to in § 580.13(a), which shall contain a space for the information required to be disclosed under paragraphs (b), (c), (d), and (e) of this section and, in Part C, a space for the certification required to be made under § 580.15.

(b) The power of attorney must include a mileage disclosure from the transferor to the transferee and must be signed by the transferor, including the printed name, and contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of transfer;

(3) The transferor's name and current address;

(4) The transferee's name and current address; and

(5) The identity of the vehicle, including its make, model year, body type and vehicle identification number.

(c) In addition to the information provided under paragraph (b) of this section, the power of attorney form shall refer to the Federal odometer law and state that providing false information or the failure of the person granted the power of attorney to submit the form to the State may result in fines and/or imprisonment. Reference may also be made to applicable State law.

(d) In addition to the information provided under paragraphs (b) and (c) of this section,

(1) The transferor shall certify that to the best of his knowledge the odometer reading reflects the actual mileage; or

(2) If the transferor knows that the odometer reading reflects mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or

(3) If the transferor knows that the odometer reading differs from the mileage and the difference is greater than that caused by a calibration error, he shall include a statement that the odometer reading does not reflect the actual mileage and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(e) The transferee shall sign the power of attorney form, and print his name.

(f) The transferor shall give a copy of the power of

attorney form to his transferee.

8. Section 580.15 paragraphs (a) and (b) are revised to read as follows:

§ 580.15 Certification by person exercising powers of attorney.

(a) A person who exercises a power of attorney under both §§ 580.13 and 580.14 must complete a certification that he has disclosed on the title document the mileage as it was provided to him on the power of attorney form, and that upon examination of the title and any reassignment documents, the mileage disclosure he has made on the title pursuant to the power of attorney is greater than that previously stated on the title and reassignment documents. This certification shall be under Part C of the same form as the powers of attorney executed under §§ 580.13 and 580.14 and shall include:

(1) The signature and printed name of the person exercising the power of attorney;

(2) The address of the person exercising the power of attorney; and

(3) The date of the certification.

(b) If the mileage reflected by the transferor on the power of attorney is less than that previously stated on the title and any reassignment documents, the power of attorney shall be void.

9. Section 580.16 is added to read as follows:

§ 580.16 Access of transferee to prior title and power of attorney documents

(a) In circumstances in which a power of attorney has been used pursuant to § 580.13 of this Part, if a subsequent transferee elects to return to his transferor to sign the disclosure on the title when the transferor obtains the title and does not give his transferor a power of attorney to review the title and reassignment documents, upon the transferee's request, the transferor shall show to the transferee a copy of the power of attorney that he received from his transferor.

(b) Upon request of a purchaser, a transferor who has granted a power of attorney by his transferor and who holds the title to the vehicle in his own name, must show to the purchaser the copy of the previous owner's title and the power of attorney form.

10. The warning and Part C, Certification, of the

sample power of attorney form in Appendix E are amended to read as follows:

Appendix E—Power of Attorney Disclosure Form

Warning: This Form May Be Used Only When Title Is Physically Held By Lienholder Or Has Been Lost. This Form Must Be Submitted To The State By The Person Exercising Powers Of Attorney. Failure To Do So May Result In Fines And/Or Imprisonment.

* * * * *

Part C. Certification (To Be Completed When Parts A and B Have Been Used)

I, _____, (person exercising above powers of attorney, Print), hereby certify that the mileage I have disclosed on the title document is consistent with that provided to me in the above power of attorney. Further, upon examination of the title and any reassignment documents for the vehicle described above, the mileage disclosure I have made on the title pursuant to the power of attorney is greater than that previously stated on the title and reassignment documents. This certification is not intended to create, nor does it create any new or additional liability under Federal or State law.

(Signature)

(Printed Name)
Address (Street) _____
(City) _____ (State) ____ (Zip Code) _____
Date _____

Issued on (no date provided)

Jeffrey Miller
Acting Administrator

**54 F.R. 35879
August 30, 1989**

PREAMBLE TO AN AMENDMENT TO PART 580

Odometer Disclosure Requirements (Docket No. 87-09; Notice 15) RIN: 2127-AC42

ACTION: Final rule.

SUMMARY: This notice amends the odometer regulations in 49 CFR part 580 to implement the 1990 amendments to the Federal odometer law relating to the use of powers of attorney (Pub. L. 101-641). The notice defines "original secure power of attorney," provides that a transferee who exercises a power of attorney may submit a copy of the title to the State (without having to submit an application for a new title) along with the original power of attorney, provides that the State shall retain the documents, and establishes a process for the States to petition for approval of alternative procedures. It also addresses the use of reassignment documents and makes additional clarifying amendments.

DATES: This final rule is effective as of October 21, 1991, except that the amendment to § 580.5 is effective as of June 22, 1992.

SUPPLEMENTARY INFORMATION:

Background

This notice issues a final rule to implement the latest in a series of amendments to the Federal odometer law, enacted as part of an ongoing effort to accommodate the commercial needs of the automobile industry and the administrative needs of the State titling agencies without compromising the consumer protection afforded by the law.

These legislative adjustments reflect circumstances arising after the Truth in Mileage Act of 1986 (Pub. L. 99-579) (TIMA), a law that amended the odometer law (Pub. L. 92-513, 15 U.S.C. 1981-1991) to require each person selling a motor vehicle to disclose the odometer reading on the vehicle's title, rather than using a separate statement. The law directed the States to conform their titles and titling procedures to enable the titles to be used for odometer disclosure. Although most States had already begun to use the title for odometer disclosure, the final rule issued by NHTSA

to implement the law (53 FR 29464, August 5, 1988) required a number of adjustments in State procedures as well as in commercial practices.

The adjustment in commercial practice that met the strongest opposition from the motor vehicle industry was the rule's prohibition of the use of powers of attorney (POA) for odometer disclosure. The agency considered the vehicle title to be of paramount importance in retaining odometer information necessary for enforcement purposes, and regarded the POA as a document that could be used to avoid disclosure on the title. The industry, in contrast, saw the POA as essential in transactions where the title was lost or in the hands of a bank or other lienholder and was therefore not available to the owner at the time of the sale. Without a POA authorizing the purchaser to execute the odometer disclosure on the title, it was argued, the purchaser would have to have the seller return to complete the transaction—a situation that could lead to costly delays for commercial purchasers.

In response to the industry's concerns, Congress amended TIMA in 1988 (Pub. L. 100-561) to permit the use of a secure power of attorney in circumstances where the title was not present at the time of sale, on condition that the transferor keep a copy of the POA and that the transferee return the original POA to the State after executing the disclosure on the title. The amendment directed NHTSA to establish reasonable conditions for the use of the POA.

In an interim final rule to implement the amendment (54 FR 9809, March 8, 1989), the agency permitted the use of a secure POA when the title is held by a lienholder and stipulated that the person receiving the POA must return the original POA to the State, along with the title showing the executed odometer statement and an application for a new title.

In response to comments that the POA procedures were too restrictive, NHTSA issued a final rule (54 FR 35879, August 30, 1989) modifying the procedure by permitting the use of a POA when the title has been lost or misplaced as well as when it is held by a lien-

holder, but adopting the requirement for the transferee to submit a title application with the POA. The latter requirement prompted four petitions for reconsideration, which the agency denied on February 22, 1990 (55 FR 6257).

The denial of the petitions for reconsideration did not quiet the controversy about the requirement that a title application be submitted with the POA. The dealers associations argued that the requirement disregarded the commercial reality of the used car business, in which a significant percentage of vehicles acquired by trade or purchase are not sold directly to a retail consumer but are wholesaled. In the typical wholesale transaction, it was argued, the selling dealer would never obtain title himself but would simply execute the reassignment form on the title to the wholesale purchaser. A requirement to obtain a title would thus create delays and add cost to many transactions, without benefit to consumers.

In the midst of these objections, the agency received a petition from the State of Florida which seemed to offer a suitable alternative. Under the Florida proposal, the transferee would use its authority under a POA to execute the odometer disclosure on the title, but, instead of submitting an application for title to the State with the original POA, would submit only a copy of the title showing the executed odometer statement. The State would thereupon file both documents and would have them available for any investigation of alleged odometer fraud. The transferee could proceed to use the original title to reassign ownership to a wholesaler, without delay or hindrance. NHTSA granted the Florida petition on July 23, 1990, and subsequently issued a notice of proposed rulemaking (55 FR 34941, August 27, 1990).

During the pendency of the rulemaking on the Florida petition, another amendment to TIMA was enacted (Pub. L. 101-164, November 28, 1990), which bars the agency from requiring a new title to be issued by the State which issued the power of attorney. This amendment effectively directs NHTSA to terminate its requirement that the transferee submit an application for title with the original POA. At the same time, the amendment authorizes the agency to require the State to retain the power of attorney or to adopt alternative measures consistent with the purposes of the act. The amendment thus authorizes the agency to adopt a procedure resembling that proposed in response to the Florida petition.

On February 28, 1991, NHTSA issued a notice withdrawing the August 1990 NPRM and proposing rulemaking to implement the provisions of the new amendment (56 FR 8313), and has completed its review of the comments submitted in response to that notice. It is the agency's hope that the following discussion of the provisions adopted in the final rule will resolve the

issues surrounding the use of the POA and other documents used for the disclosure of odometer information.

Definitions

In the February 28 notice, NHTSA proposed to amend § 580.3 to define "original power of attorney" as the secure document issued by the State and any attached copies which are also printed on secure paper.

Only two commenters, the National Automobile Dealers Association (NADA) and the National Auto Auction Association (NAAA), addressed this definition. NADA supported the definition, stating that the proposed amendment "will facilitate commerce in instances where the State that issued the power of attorney is not the same as the State that will issue the new title." NAAA, however, opposed the definition as too narrow and proposed instead to allow any copy, whether or not on secure paper, to be an "original." The adoption of such a definition would thwart Congress' intent that the secure document be transferred back to the issuing State. By specifying that the secure power of attorney form be set forth by means of a secure printing process or other secure process, it seems clear that Congress intended the distinguishing feature between an "original" and a "copy" be the secure nature of the "original."

NAAA also suggested that the making of secure copies might be technically unfeasible. Although NHTSA does not require more than one secure document, there is nothing in the rulemaking record to indicate that a multi-copy form with more than one secure copy could not be readily produced. Neither the American Association of Motor Vehicle Administrators (AAMVA), nor any other commenter, suggested this would be technically unfeasible and NAAA did not provide any data or information to support its position. Rather, the Texas State Department of Highways and Public Transportation suggested that such secure copy forms could be made available. Thus, the NAAA suggestion will not be adopted and the definition of "original power of attorney" will remain as proposed.

The proposed definition of original power of attorney raised another issue. AAMVA, NADA, NAAA, the Texas State Department of Highways and Public Transportation and the California Department of Transportation each suggested that the original POA should be passed on with the title instead of being returned to the issuing State. These commenters argued that by keeping the original title and POA together, any alterations on the title or POA would be easier to detect when they are eventually submitted to the State in which the car is next titled.

Although there may be merit in having the original POA accompany the title, the agency has no discretion to permit this procedure as an alternative to returning the POA with the title. The statute states that "the

person granted such power of attorney . . . shall submit the original back to the State.” In view of this statutory requirement, the final rule requires the original POA to be returned to the State of issuance. However, to address the concerns of those who believe that the POA should accompany the title, the agency notes that the definition of “original power of attorney” permits a secure copy of the POA to be considered an “original.” As NADA stated in support of our definition, “allowing for multicopy originals will allow an ‘original’ to be sent to the State that issued the power of attorney as well as one to be sent forward with the title,” as the States would like.

Submission of the Power of Attorney and Title to the State

The Pennsylvania Department of Transportation (PennDOT) noted that the language in the rule requiring the person exercising the power of attorney to submit it to the issuing State “with a copy of the transferor’s title” could, “[u]nder strict interpretation, . . . require a copy of the title even in circumstances where the power of attorney was being submitted with the actual title for processing of a [new title application].” NHTSA did not intend to require a copy of the title in addition to the actual title document in such cases, nor does the agency believe that Congress intended such a result. Accordingly, NHTSA adopts, with minor editorial adjustment, PennDOT’s suggestion to amend the language of § 580.13(f) to specify that the transferee exercising a power of attorney shall submit to the issuing State the original power of attorney with either a copy of the transferor’s title or the actual title if the transferee is submitting a title application at the same time.

Another clarifying amendment was suggested by the Missouri Department of Revenue. Missouri recommended that § 580.13(f) of the rule state specifically that the transferee submit a copy of the “front and back” of the transferor’s title when returning the executed power of attorney to the issuing State. We appreciate Missouri’s concern but do not think it is necessary to add such language to the regulatory text. We think it is clear that the term “title” refers to the entire document, front and back, and that anything less than the whole of the title is not the “title,” but a portion of the title. The transferee will need to submit a copy of both sides of the title in order to comply with the requirements of § 580.13(f).

The Washington State Department of Licensing commented that returning the power of attorney and a copy of the title to the issuing State will create problems because the power of attorney and the title may not have been issued by the same State and, therefore, the documents would have to be returned to different States. Such is not the case. The regulation

specifies that “[t]he transferee shall submit the original power of attorney form to the State that issued it, with a copy of the transferor’s title.” Consequently, the “issuing” State to which both documents must be returned is the State that issued the power of attorney. There is no requirement for submitting any document to the State that issued the original title.

Retention of Powers of Attorney by the State

The new law expressly prohibits NHTSA from requiring title applications to be filed with powers of attorney (POA), and expressly grants NHTSA the authority to require the States to retain submitted powers of attorney. The agency therefore proposed to amend § 580.13(f) to eliminate the requirement that title applications accompany the powers of attorney submitted back to the State by the persons exercising them. The agency received no comments regarding this proposed amendment and adopts it without change.

The Pennsylvania Department of Transportation requested an amendment stating that the “State issuing the original power of attorney form MAY choose whether to accept a copy of the transferor’s title or require the original title document to be submitted with the secure power of attorney.” As with other discretionary provisions in TIMA, the Federal law will not require any transferee to retitle a vehicle in connection with the use of a secure power of attorney, but the Federal law does not prohibit a State from adopting such a requirement if it so chooses.

NHTSA further proposed to amend § 580.13(f) to require a State which receives an executed power of attorney and transferor’s title in accordance with that section, to retain those documents for five years. The five-year retention period was intended to parallel the record retention requirement imposed on dealers, distributors and lessors.

The Washington State Department of Licensing was the only commenter who objected to any State record retention requirement. Although it did not actually suggest that the proposed retention requirement be withdrawn, it did state that “NHTSA cannot expect States to keep the original secure POA and title copy documents (even in microfilm form) of vehicles which have left their jurisdictions to be titled in another jurisdiction.” Washington provided no evidence to support its claim that the mere retention of records would be impossible. While the State did note a trend toward “paper elimination,” States are not limited to retaining the records in paper form. Furthermore, none of the other States who commented nor AAMVA in any way suggested that the very concept of retaining these records is impracticable. Finally, elimination of the requirement would hamper enforcement efforts and thwart the intent of Congress.

Several commenters urged NHTSA to decrease the retention period, recommending instead a one-year retention requirement or a retention period equal to the State's current titling record retention period. The California Department of Motor Vehicles (CaDMV) and the AAMVA, for example, each noted that most fraud is detected within 12 months of titling, making the first year of retention most crucial. The Texas State Department of Highways and Public Transportation indicated that, once retitled, the new titling State will have a copy of the requisite records. AAMVA, NADA, CaDMV and the Iowa Department of Transportation all commented that five years is longer than most current State titling record retention periods and that a five-year period will require additional handling, resulting in additional costs to the States.

Upon reviewing these comments, the agency has concluded that a fixed five-year retention period would be unduly burdensome to the States. NHTSA does not favor an across-the-board one-year retention period. While most fraud may be detected within the first 12 months after titling, a significant amount of fraud is not detected within that time. Consequently, a period longer than 12 months is preferable. Under § 580.13(f) as originally adopted, a power of attorney form submitted to the State with a title application would be retained for a period equal to the State's standard titling record retention period, which would not necessarily be five years (but, given current State practice, would exceed one year). In light of this and of the cost concerns of the commenters, the agency agrees that its enforcement concerns can be met without mandating a five-year retention period and therefore adopts the suggestion of several commenters that the powers of attorney be retained by the State for a period of three years or at least equal to the State's titling record retention period, whichever is shorter. As stated in the NPRM, the State may retain either the original copies it receives or a photostat, carbon or other facsimile copy, including any media by which such information may be stored, provided there is no loss of information.

Approval of Alternate Requirements

The TIMA contemplates the administrative approval by NHTSA of alternative methods of odometer disclosure, provided those alternate methods are consistent with the purposes of the Act. At the time the 1990 amendment was enacted, the agency had issued a rulemaking notice proposing a mechanism in § 580.11 whereby the agency could grant a State's request for approval of an alternative to the requirements of § 580.13(f) regarding the disposition of POAs. Although that notice was withdrawn, the proposal was reissued with the NPRM. Under that proposal, a State could submit a petition to NHTSA's Chief Counsel setting forth the requirements in effect in the petition-

ing State, including a copy of the applicable State law or regulation and an explanation of how the requirements are consistent with the Act. Notice of grant or denial of the petition would be issued by the Chief Counsel to the petitioner without further notice in the *Federal Register*.

Three commenters, NAAA, NADA and the Oregon Department of Transportation (ODOT), expressed an opinion on this proposal. NAAA opposed the proposal while NADA and ODOT supported it with suggestions for further improvement.

As an initial matter, NAAA questioned NHTSA's authority to approve alternate State procedures for submission of odometer disclosure documents. To substantiate its claim, NAAA argued that the section of TIMA dealing with approval of alternate requirements does not address the procedure by which disclosure documents shall be submitted to the State. It is the agency's view that TIMA authorizes the agency to approve procedural alternatives as well as disclosure format alternatives. House Report 99-833, discussing *inter alia*, the requirements contained in TIMA, explains the intended reach of the alternate requirement approval requirement: "[this provision] states that the requirements of subsections (d) and (e)(1) [which concern the use of secure titles containing mileage disclosure statements and require lessees to provide mileage statements to their lessors upon the lessors' transfers of their vehicles] shall apply in a State unless the State has in effect alternate motor vehicle mileage requirements approved by the Secretary of Transportation." This language does not imply that Congress intended to limit the agency's authority to approve alternate disclosure formats only.

While the agency believes that the "alternate requirements" section of TIMA alone provides statutory authority to NHTSA to create the approval mechanism we have proposed, the subsequent amendments provide further authority. For example, 1988 and 1990 amendments each specifically discuss the disposition of the secure power of attorney and neither suggests that the agency's authority to approve alternatives is circumscribed.

NAAA's substantive opposition to the proposal centers around a concern that the creation of such an approval mechanism will foster non-uniformity and will "exacerbate . . . confusion . . . in interstate titling procedures." We appreciate NAAA's concern and agree that greater uniformity among State titling laws and procedures would be desirable. However, Congress never intended to preempt all State vehicle registration, titling and sales laws. In fact, as noted in House Report 99-833, Congress provided in the law for approval of alternate requirements to "give States maximum flexibility in implementing odometer disclosure provisions."

NHTSA has attempted to follow this approach throughout the rulemaking process. We have tried, where possible, to preserve State discretion. Where we have limited that discretion, it is because Congressional intent and the needs of the act demand it.

Moreover, NHTSA does not share NAAA's belief that the creation of a mechanism to approve alternate procedures for the disposition of secure powers of attorney will, in fact, result in "fifty or more different procedures." The creation of a mechanism does not automatically result in the exercise of that mechanism. Since its original effective date of April 29, 1989, § 580.11 has contained a procedure for the approval of disclosures other than those specified in the regulation and the agency has yet to receive a petition under that section. Furthermore, the need for alternate secure power of attorney disposition methods should be diminished because the retitling requirement has been eliminated. However, the agency still believes that it is important to have the ability to assess alternate methods should a State develop a system that will meet enforcement needs while better meeting some State-specific need of its own.

We also disagree with NAAA's charges that we failed to consider whether the proposed rule will undercut fraud prevention and what the consequences will be for interstate transactions. As noted in the NPRM, any State requesting approval of an alternate system will have to demonstrate specifically how its proposal is consistent with the purposes of the Act, including an analysis of what effect the proposed alternative will have on combating odometer fraud. With respect to NAAA's concern about the effects on interstate transactions, the agency notes that the States have maintained their own vehicle registration, titling and sales laws since long before the introduction of Federal odometer laws. Many of the problems currently encountered by the auctions stem from differences in State laws not affected by the odometer law. Moreover, to the extent that problems have arisen due to varying State implementation of odometer matters within their discretion, NHTSA encourages the States to work together to ameliorate such differences.

Finally, NAAA notes that the proposal that petitions be reviewed and acted upon without notice in the *Federal Register* will add to the confusion of title clerks and others who already have to master many different State practices. NADA also suggested that a brief period of public notice and comment would be appropriate. Upon reflection, we agree that a notice and comment period and public notice of the disposition of the petition would benefit all concerned. Accordingly, the final rule provides that, upon submission of a petition under this section, NHTSA will publish a *Federal Register* notice describing the State proposal and indicating an initial determination, pending a 30-day comment period. Notice of the final action on the petition will also be published in the *Federal Register*.

The Oregon DOT supported the alternative procedures proposal, but requested that the "criteria for approving alternate programs be expanded" because the proposal, as written, allows for "very little in the way of 'alternatives.'" Since the only criterion for approving petitions submitted under the proposal is that the State alternative be consistent with the purposes of the act, and since we do not have the authority to approve alternatives that are not consistent with the purposes of the act, and since we do not have the authority to approve alternatives that are not consistent with the purposes of the Act, we believe that the language is sufficiently broad. Accordingly, we are adopting the changes to § 580.11, as proposed, with the addition of the comment period.

Use of Reassignment Forms by Titled Owners

A number of commenters objected to a proposed amendment to § 580.5 that would require a titled owner to make his or her odometer disclosure on the vehicle's title, and not on a reassignment document. It is apparent from the comments that the purpose and scope of the proposed amendment were not clearly understood.

The purpose of the proposed amendment was to prevent a titled owner who sells a vehicle from using a document other than the title or a secure power of attorney to make the odometer disclosure required by law. The central purpose of TIMA had been to make the title document the sole vehicle for odometer disclosure, thereby completing a years-long movement among the States toward the use of the title for disclosure. The practice of using a separate document for odometer disclosure, which had been common in the early days of the Federal odometer law, had been shown to be too vulnerable to abuse. Although the 1988 and 1990 amendments had recognized the necessity of using a power of attorney in some circumstances, the Congress had placed strict controls on the circumstances in which a POA could be used. These controls reflect Congress's reluctance to allow the use of any document other than the title document for odometer disclosure.

In proposing to prohibit titled owners from using reassignment forms for odometer disclosure, the agency acted in the belief that the reassignment forms would be subject to the same abuses that had compromised the effectiveness of the older, separate disclosure statements. Unlike the POA, which has a legitimate purpose if the title is lost or held by a lienholder, a separate reassignment form has no commercial purpose at the time of the first transfer by a titled owner. In most cases, the title itself would be available to the owner. Alternatively, if a lienholder has the title, the owner could execute a POA authorizing the transferee to complete the odometer disclosure on the title.

The limited scope of the proposal needs to be stressed: it would prohibit reassignment forms only for the titled owner. States may continue to provide

supplementary reassignment forms. Thus, the proposal would not interfere with dealer-to-dealer reassignments, all of which could take place as they do now.

The commenter expressing the strongest objection to the proposal was the State of Arkansas, which had been under the impression that NHTSA had previously approved the State's reassignment form. The South Carolina Department of Highways and Public Transportation and the NADA shared Arkansas' belief that NHTSA had approved the Arkansas reassignment form. In reviewing the communications between Arkansas and NHTSA, we note that we approved the information content of the form, but that we were not asked to approve the use of the form and did not approve its use as a substitute for TIMA disclosure. Moreover, NHTSA specifically advised AAMVA that although Arkansas' proposed form allowing transfer by titled owners as well as dealers would appear not to be prohibited under the rules, NHTSA could not endorse such a use because it is at odds with the use of the secure power of attorney and its attendant protection against fraud. This position has been repeated by the agency, both orally and in writing, including admonitions that the agency would address this issue by rule if necessary. At this time, we believe it is necessary to promulgate a rule expressly prohibiting the use of the reassignment form by titled owners.

In reaffirming its position, the agency acknowledges that there may be circumstances under which a document other than the title itself or a secure POA could be used for odometer disclosure. At the least, however, such a document would have to be used in a way that would ensure the retention of the odometer information and enable law enforcement agencies to use it in investigating odometer fraud. This is the case with the POA procedure, which contains a number of safeguards. The appropriate procedure for considering such an alternative would be the petition process established in § 580.11 for considering alternative odometer disclosures.

Upon reviewing all of the comments on the proposed amendment to § 580.5, NHTSA has decided to adopt the amendment as proposed, to prohibit a titled owner from using a reassignment form for his or her odometer disclosure. This amendment has an effective date of June 22, 1991, rather than October 21, 1991. NHTSA has chosen a later effective date for this amendment to allow States the opportunity to deplete form supplies, make necessary alterations to existing forms and/or pursue the alternate disclosure petition process, as they may wish. NHTSA believes a nine-month lead time will be sufficient to accommodate the needs of the States.

Clarification of Section 580.11(c)

In reviewing § 580.11, the agency tentatively determined that the language of paragraph (c) of that section

was unclear. Specifically, the use of the term "extension" in the sentence "The effect of a grant of a petition is to relieve a State from responsibility to conform the State motor vehicle titles with §§ 580.5 and 580.7 of this part during the time of the extension" could cause some confusion. The effect of a grant of such a petition would be to relieve a State from responsibility to conform its titles with §§ 580.5 and 580.7 for as long as the approved alternate disclosure requirements were in effect in that State, but the term "extension" in that sentence could be confused with the extension given a State to bring its title into conformance with the requirements of this part.

To avoid any confusion, NHTSA proposed to amend that sentence to read as follows: "The effect of the grant of a petition is to relieve a State from responsibility to conform the State disclosure requirements with §§ 580.5, 580.7 or 580.13(f) for as long as the approved alternate disclosure requirements remain in effect in that State." The agency received no comments on this proposal and is, accordingly, adopting it as proposed.

Extension of Implementation Dates

AAMVA requested that NHTSA include in the final rule a provision allowing States to "petition for an extension of any established implementation date based upon which existing statutes and regulations must be amended to comply with the provisions of this new rule, as well as allowing States to exhaust currently existing forms and other documents which may need to be changed."

Since the NPRM had not proposed a new implementation extension process, the agency would not be able to grant AAMVA's request without first seeking additional comment. Based on its initial review, NHTSA does not believe that such an extension is necessary or advisable.

Neither the statute nor the rule requires States to make secure powers of attorney available. Consequently, there is no "deadline" by which a State must change any statutes or regulations regarding the use of such powers of attorney. Nor does this rulemaking action require the alteration of any forms. Accordingly, there is no need for any implementation extension and, therefore, no need for any new procedure by which to request such an extension. With respect to the implementation dates regarding the availability of Federally conforming title documents, nothing in this rulemaking affects those documents and, therefore, there is no need to alter the existing extension petition procedure. In the interests of achieving full implementation, we would not want to take any action, especially unnecessary action, which would encourage further delays.

Odometer Disclosure by Power of Attorney

We received one comment suggesting a technical amendment to § 580.13(b). The commenter, Joanne S. Faulkner, Esq., suggests that this section should be amended to require that, if a power of attorney is to be used, such power of attorney/odometer disclosure statement should be completed "before executing any transfer of ownership documents." Ms. Faulkner argues that this restriction should replace the "in connection with" language that generally controls the time frame in which disclosures are to be made as a means of reducing the possibility of abuse inherent in a flexible time frame.

We decline to adopt Ms. Faulkner's suggestion. We note first that her suggestion lies outside the scope of the NPRM. Further, we do not think such a change is necessary. Ms. Faulkner notes that there is no reason why the parties to a vehicle transfer cannot complete the secure power of attorney at the time of transfer. We agree. However, it is because of this fact that we find her suggested amendment unnecessary. The power of attorney is intended for use when the title is not present at the time of sale so the seller will not have to make a return trip to the dealership. Thus, there is every incentive for the parties to complete the power of attorney form at the time of sale, without the rule having to so specify. At this point we have no indication that parties using secure powers of attorney are completing them at any time other than the point of sale, or that the "flexible time frame" is being used to perpetrate fraud in the use of secure powers of attorney.

In consideration of the foregoing, 49 CFR part 580 is amended as follows:

1. In § 580.3 the following is added between the definitions of "mileage" and "secure printing process or other secure process."

§ 580.3 *Definitions*
* * * * *

Original power of attorney means, for single copy forms, the document set forth by secure process which is issued by the State, and, for multicopy forms, any and all copies set forth by secure process which are issued by the State.

* * * * *

2. In § 580.5, paragraph (c) introductory text is revised as follows:

§ 590.5 *Disclosure of odometer information.*
* * * * *

(c) In connection with the transfer of ownership of a motor vehicle, each transferor shall disclose the mileage to the transferee in writing on the title or, except as noted below, on the document being used to reassign the title. In the case of a transferor in whose name the vehicle is titled, the transferor shall disclose the

mileage on the title, and not on a reassignment document. This written disclosure must be signed by the transferor, including the printed name. In connection with the transfer of ownership of a motor vehicle in which more than one person is a transferor, only one transferor need sign the written disclosure. In addition to the signature and printed name of the transferor, the written disclosure must contain the following information:

* * * * *

3. In § 580.11, paragraphs (a) and (c) are revised as follows:

§580.11 *Petition for approval of alternate disclosure requirements.*

(a) A State may petition NHTSA for approval of disclosure requirements which differ from the disclosure requirements of §§ 580.5, 580.7 or 580.13(f) of this part.

* * * * *

(c) Notice of the petition and an initial determination pending a 30-day comment period will be published in the *Federal Register*. Notice of final grant or denial of a petition for approval of alternate motor vehicle disclosure requirements will be published in the *Federal Register*. The effect of the grant of a petition is to relieve a State from responsibility to conform the State disclosure requirements with §§ 580.5, 580.7 or 580.13(f), as applicable, for as long as the approved alternate disclosure requirements remain in effect in that State. The effect of a denial is to require a State to conform to the requirements of §§ 580.5, 580.7 or 580.13(f), as applicable, of this part until such time as the NHTSA approves any alternate motor vehicle disclosure requirements.

4. In § 580.13, paragraph (f) is revised as follows:

§ 580.13 *Disclosure of odometer information by power of attorney.*
* * * * *

(f) Upon receipt of the transferor's title, the transferee shall complete the space for mileage disclosure on the title exactly as the mileage was disclosed by the transferor on the power of attorney form. The transferee shall submit the original power of attorney form to the State that issued it, with a copy of the transferor's title or with the actual title when the transferee submits a new title application at the same time. The State shall retain the power of attorney form and title for three years or a period equal to the State titling record retention period, whichever is shorter. If the mileage disclosed on the power of attorney form is lower than the mileage appearing on the title, the power of attorney is void and the dealer shall not complete the mileage disclosure on the title.

Issued on September 13, 1991.

56 F.R. 47681
September 20, 1991

PART 580—ODOMETER DISCLOSURE REQUIREMENTS

(Docket No. 87-09; Notice 4)

§ 580.1 Scope.

This part prescribes rules requiring transferors and lessees of motor vehicles to make written disclosure to transferees and lessors respectively, concerning the odometer mileage and its accuracy as directed by sections 408(a) and (e) of the Motor Vehicle Information and Cost Savings Act as amended, 15 U.S.C. 1988 (a) and (e). In addition, this part prescribes the rules requiring the retention of odometer disclosure statements by motor vehicle dealers, distributors and lessors and the retention of certain other information by auction companies as directed by sections 408(g) and 414 of the Motor Vehicle Information and Cost Savings Act as amended, 15 U.S.C. 1990 (d) and 1988 (g).

§ 580.2 Purpose.

The purpose of this part is to provide purchasers of motor vehicles with odometer information to assist them in determining a vehicle's condition and value by making the disclosure of a vehicle's mileage a condition of title and by requiring lessees to disclose to their lessors the vehicle's mileage at the time the lessors transfer the vehicle. In addition, the purpose of this part is to preserve records that are needed for the proper investigation of possible violations of the Motor Vehicle Information Cost Savings Act and any subsequent prosecutorial, adjudicative or other action.

§ 580.3 Definitions.

All terms defined in Sections 2 and 402 of the Motor Vehicle Information and Cost Savings Act are used in their statutory meaning. Other terms used in this part are defined as follows:

Lessee means any person, or the agent for any person, to whom a motor vehicle has been leased for a term of at least 4 months.

Lessor means any person, or the agent for any person, who has leased 5 or more motor vehicles in the past 12 months.

Mileage means actual distance that a vehicle has traveled.

Original power of attorney means, for single copy forms, the document set forth by secure process which is issued by the State, and, for multicopy forms, any and all copies set forth by secure process which are issued by the State. (56 F.R. 47681—September 20, 1991. Effective: October 21, 1991)

Secure printing process or other secure process means any process which deters and detects counterfeiting and/or unauthorized reproduction and allows alterations to be visible to the naked eye.

Transferee means any person to whom ownership of a motor vehicle is transferred, by purchase, gift, or any other means other than by the creation of a security interest, and any person who, as agent, signs an odometer disclosure statement for the transferee.

Transferor means any person who transfers his ownership of a motor vehicle by sale, gift, or any means other than by the creation of a security interest, and any person who, as agent, signs an odometer disclosure statement for the transferor.

§ 580.4 Security of title documents and power of attorney forms.

Each title shall be set forth by means of a secure printing process or other secure process. In addition, power of attorney forms issued pursuant to §§ 580.13 and 580.14 and documents which are used to reassign the title shall be issued by the State and shall be set forth by a secure process.

§ 580.5 Disclosure of odometer information.

(a) Each title, at the time it is issued to the transferee, must contain the mileage disclosed by the transferor when ownership of the vehicle was transferred and contain a space for the information required to be disclosed under paragraphs (c), (d), (e) and (f) of this section at the time of future transfer.

(b) Any documents which are used to reassign a title shall contain a space for the information required to be disclosed under paragraphs (c), (d), (e) and (f) of this section at the time of transfer of ownership.

(c) **【In connection with the transfer of ownership of a motor vehicle, each transferor shall disclose the mileage to the transferee in writing on the title or, except as noted below, on the document being used to reassign the title. In the case of a transferor in whose name the vehicle is titled, the transferor shall disclose the mileage on the title, and not on a reassignment document. This written disclosure must be signed by the transferor, including the printed name. In connection with the transfer of ownership of a motor vehicle in which more than one person is a transferor, only one transferor need sign the written disclosure. In addition to the signature and printed name of the transferor, the written disclosure must contain the following information: (56 F.R. 47681—September 20, 1991. Effective: June 22, 1992)】**

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of transfer;

(3) The transferor's name and current address;

(4) The transferee's name and current address; and

(5) The identity of the vehicle, including its make, model, year, and body type, and its vehicle identification number.

(d) In addition to the information provided under paragraph (c) of this section, the statement shall refer to the Federal law and shall state that failure to complete or providing false information may result in fines and/or imprisonment. Reference may also be made to applicable State law.

(e) In addition to the information provided under paragraphs (c) and (d) of this section,

(1) The transferor shall certify that to the best of his knowledge the odometer reading reflects the actual mileage, or;

(2) If the transferor knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or

(3) If the transferor knows that the odometer reading differs from the mileage and the the difference is greater than that caused by odometer

calibration error, he shall include a statement that the odometer reading does not reflect the actual mileage, and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(f) The transferee shall sign the disclosure statement, print his name, and return a copy to his transferor.

(g) If the vehicle has not been titled or if the title does not contain a space for the information required, the written disclosure shall be executed as a separate document.

(h) No person shall sign an odometer disclosure statement as both the transferor and transferee in the same transaction, unless permitted by § 580.13 or § 580.

§ 580.6 Exemptions.

Notwithstanding the requirements of § 580.5 and 580.7:

(a) A transferor or a lessee of any of the following motor vehicles need not disclose the vehicle's odometer mileage:

(1) A vehicle having a Gross Vehicle Weight Rating, as defined in § 571.3 of this title, of more than 16,000 pounds;

(2) A vehicle that is not self-propelled;

(3) A vehicle that is 10 years old or older; or

(4) A vehicle sold directly by the manufacturer to any agency of the United States in conformity with contractual specifications.

(b) A transferor of a new vehicle prior to its first transfer for purposes other than resale need not disclose the vehicle's odometer mileage.

(c) A lessor of any of the vehicles listed in paragraph (a) of this section need not notify the lessee of any of these vehicles of the disclosure requirements of § 580.7.

§ 580.7 Disclosure of Odometer Information for Leased Motor Vehicles.

(a) Before executing any transfer of ownership document, each lessor of a leased motor vehicle shall notify the lessee in writing that the lessee is required to provide a written disclosure to the

lessor regarding the mileage. This notice shall contain a reference to the federal law and shall state that failure to complete or providing false information may result in fines and/or imprisonment. Reference may also be made to applicable State law.

(b) In connection with the transfer of ownership of the leased motor vehicle, the lessee shall furnish to the lessor a written statement regarding the mileage of the vehicle. This statement must be signed by the lessee and, in addition to the information required by paragraph (a) of this section, shall contain the following information:

- (1) The printed name of the person making the disclosure;
- (2) The current odometer reading (not to include tenths of miles);
- (3) The date of the statement;
- (4) The lessee's name and current address;
- (5) The lessor's name and current address;
- (6) The identity of the vehicle, including its make, model, year, and body type, and its vehicle identification number;
- (7) The date that the lessor notified the lessee of disclosure requirements;
- (8) The date that the completed disclosure statement was received by the lessor; and
- (9) The signature of the lessor.

(c) In addition to the information provided under paragraphs (a) and (b) of this section,

(1) The lessee shall certify that to the best of his knowledge the odometer reading reflects the actual mileage; or

(2) If the lessee knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or

(3) If the lessee knows that the odometer reading differs from the mileage and that the difference is greater than that caused by odometer calibration error, he shall include a statement that the odometer reading is not the actual mileage and should not be relied upon.

(d) If the lessor transfers the leased vehicle without obtaining possession of it, the lessor may indicate on the title the mileage disclosed by the lessee under paragraph (b) and (c) of this section, unless the lessor has reason to believe that the

disclosure by the lessee does not reflect the actual mileage of the vehicle.

§ 580.8 Odometer Disclosure Statement Retention.

(a) Dealers and distributors of motor vehicles who are required by this part to execute an odometer disclosure statement shall retain for five years a photostat, carbon or other facsimile copy of each odometer mileage statement which they issue and receive. They shall retain all odometer disclosure statements at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

(b) Lessors shall retain, for five years following the date they transfer ownership of the leased vehicle, each odometer disclosure statement which they receive from a lessee. They shall retain all odometer disclosure statements at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

[(c) Dealers and distributors of motor vehicles who are granted a power of attorney by their transferor pursuant to § 580.13, or by their transferee pursuant to § 580.14, shall retain for five years a photostat, carbon, or other facsimile copy of each power of attorney that they receive. They shall retain all powers of attorney at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval. (54 F.R. 35879—August 30, 1989. Effective: August 30, 1989)]

§ 580.9 Odometer Record Retention for Auction Companies.

Each auction company shall establish and retain at its primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval, for five years following the date of sale of each motor vehicle, the following records:

(a) The name of the most recent owner (other than the auction company);

(b) The name of the buyer;

(c) The vehicle identification number; and

(d) The odometer reading on the date which the auction company took possession of the motor vehicle.

§ 580.10 Application for Assistance.

(a) A State may apply to NHTSA for assistance in revising its laws to comply with the requirements of 408(d)(1) and (2) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(d)(1) and (2) and §§ 580.4 and 580.5 of this part.

(b) Each application filed under section shall—

(1) Be written in the English language;

(2) Be submitted, to the Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590;

(3) Include a copy of current motor vehicle titling and/or disclosure requirements in effect in the State; and

(4) Include a draft of legislation or regulations intended to amend or revise current State motor vehicle titling and/or disclosure requirements to conform with Federal requirements.

(c) The agency will respond to the applicant, in writing, and provide a list of the Federal statutory and/or regulatory requirements that the State may have failed to include in its proposal and indicate if any sections of the proposal appear to conflict with Federal requirements.

§ 580.11 Petition for Approval of Alternate Disclosure Requirements.

(a) A State may petition NHTSA for approval of disclosure requirements which differ from the disclosure requirements of §§ 580.5 and 580.7 [or 580.13(f)] of this part.

(b) Each petition filed under this section shall—

(1) Be written in the English language;

(2) Be submitted to the Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590;

(3) Set forth the motor vehicle disclosure requirements in effect in the State, including a copy of the applicable State law or regulation; and

(4) Explain how the State motor vehicle disclosure requirements are consistent with the purposes of the Motor Vehicle Information and Cost Savings Act.

(c) [Notice of the petition and an initial determination pending a 30-day comment period will be published in the *Federal Register*. Notice of final

grant or denial of a petition for approval of alternate motor vehicle disclosure requirements will be published in the *Federal Register*. The effect of a grant of a petition is to relieve a State from responsibility to conform the State disclosure requirements with §§ 580.5, 580.7, or 580.13(f), as applicable, for long as the approved alternate disclosure requirements remain in effect in that State. The effect of a denial is to require a State to conform to the requirements of §§ 580.5 and 580.7 or 580.13(f), as applicable, of this part until such time as the NHTSA approves any alternate motor vehicle disclosure requirements. (56 F.R. 47681—September 20, 1991. Effective: October 21, 1991)]

§ 580.12 Petition for Extension of Time.

(a) If a State cannot conform its laws to achieve compliance with this part by April 29, 1989, the State may petition for an extension of time.

(b) Each petition filed under this section shall—

(1) Be written in the English Language;

(2) Be submitted, by February 28, 1989, to the Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C., 20590;

(3) Set forth a chronological analysis of the efforts the State has taken to meet the deadline, the reasons why it did not do so, the length of time desired for extension and a description of the steps to be taken while the extension is in effect.

(c) Notice of either the grant or denial of the petition is issued to the petitioner and will be published in the *Federal Register*.

(d) A petition for a renewal of an extension of time must be filed no later than 30 days prior to the termination of the extension of time granted by the Agency. A petition for a renewal of an extension of time must meet the same requirements as the original petition for the extension of time.

(e) If a petition for a renewal of the extension of the time which meets the requirements of § 580.12 (b) is filed, the extension of time will continue until a decision is made on the renewal petition.

§ 580.13 Disclosure of odometer information by power of attorney.

(a) If the transferor's title is physically held by a lienholder, or if the transferor to whom the title

was issued by the State has lost his title and the transferee obtains a duplicate title on behalf of the transferor, and if otherwise permitted by State law, the transferor may give a power of attorney to his transferee for the purpose of mileage disclosure. The power of attorney shall be on a form issued by the State to the transferee that is set forth by means of a secure printing process or other secure process, and shall contain, in Part A, a space for the information required to be disclosed under paragraphs (b), (c), (d), and (e), of this section. If a State permits the use of a power of attorney in the situation described in § 580.14(a), the form must also contain, in Part B, a space for the information required to be disclosed under § 580.14, and in Part C, a space for certification required to be made under § 580.15.

(b) In connection with the transfer of ownership of a motor vehicle, each transferor to whom a title was issued by the State whose title is physically held by a lienholder or whose title has been lost, and who elects to give his transferee a power of attorney for the purpose of mileage disclosure, must appoint the transferee his attorney-in-fact for the purpose of mileage disclosure and disclose the mileage on the power of attorney form issued by the State. This written disclosure must be signed by the transferor, including the printed name, and contain the following information:

- (1) The odometer reading at the time transfer (not to include tenths of miles);
- (2) The date of transfer;
- (3) The transferor's name and current address;
- (4) The transferee's name and current address; and
- (5) The identity of the vehicle, including its make, model, year, body type, and vehicle identification number.

(c) In addition to the information provided under paragraph (b) of this section, the power of attorney form shall refer to the Federal odometer law and state that providing false information or the failure of the person granted the power of attorney to submit the form to the State may result in fines and/or imprisonment. Reference may also be made to applicable State law.

(d) In addition to the information provided under paragraphs (b) and (c) of this section,

- (1) The transferor shall certify that to the best of his knowledge the odometer reflects the actual mileage; or

- (2) If the transferor knows that the odometer reading reflects mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or

- (3) If the transferor knows that the odometer reading differs from the mileage and the difference is greater than that caused by a calibration error, he shall include a statement that the odometer reading does not reflect the actual mileage and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(e) The transferee shall sign the power of attorney form, print his name, and return a copy of the power of attorney form to the transferor.

(f) [Upon receipt of the transferor's title, the transferee shall complete the space for mileage disclosure on the title exactly as the mileage was disclosed by the transferor on the power of attorney form. The transferee shall submit the original power of attorney form to the State that issued it, with a copy of the transferor's title or with the actual title when the transferee submits a new title application at the same time. The State shall retain the power of attorney form and title for three years or a period equal to the State titling record retention period, whichever is shorter. If the mileage disclosed on the power of attorney form is lower than the mileage appearing on the title, the power of attorney is void and the dealer shall not complete the mileage disclosure on the title. (56 F.R. 47681—September 20, 1991. Effective: October 21, 1991)]

§ 580.14 Power of attorney to review title documents and acknowledge disclosure.

(a) In circumstances where Part A of a secure power of attorney form has been used pursuant to § 580.13 of this Part, and if otherwise permitted by State law a transferee may give a power of attorney to his transferor to review the title and any reassignment documents for mileage discrepancies, and if no discrepancies are found, to acknowledge disclosure on the title. The power of attorney shall be on Part B of the form referred to in § 580.13(a), which shall contain a space for the information required to be disclosed under paragraphs (b), (c), (d), and (e) of this section and, in Part C, a space for the certification required to be made under § 580.15.

(b) The power of attorney must include a mileage disclosure from the transferor to the transferee and must be signed by the transferor, including the printed name, and contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of transfer;

(3) The transferor's name and current address; and

(4) The transferee's name and current address; and

(5) The identity of the vehicle, including its make, model, year, body type, and vehicle identification number.

(c) In addition to the information provided under paragraph (b) of this section, the power of attorney form shall refer to the Federal odometer law and state that providing false information or the failure of the person granted the power of attorney to submit the form to the State may result in fines and/or imprisonment. Reference may also be made to applicable State law.

(d) In addition to the information provided under paragraphs (b) and (c) of this section.

(1) The transferor shall certify that to the best of his knowledge the odometer reflects the actual mileage; or

(2) If the transferor knows that the odometer reading reflects mileage in excess of the designated mechanical odometer limit, he shall include a statement to that effect; or

(3) If the transferor knows that the odometer reading differs from the mileage and the difference is greater than that caused by calibration error, he shall include a statement that the odometer reading does not reflect the actual mileage and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(e) The transferee shall sign the power of attorney form, and print his name.

(f) The transferor shall give a copy of the power of attorney form to his transferee.

§ 580.15 Certification by person exercising power(s) of attorney.

(a) A person who exercises a power of attorney under both §§ 580.13 and 580.14 must complete a certification that he has disclosed on the title document the mileage as it was provided to him on the power of attorney form, and that upon examination of the title and any reassignment documents, the mileage disclosure he has made on the title pursuant to the power of attorney is greater than that previously stated on the title and reassignment documents. This certification shall be under Part C of the same form as the powers of attorney executed under §§ 580.13 and 580.14, and shall include:

(1) The signature and printed name of the person exercising the power of attorney;

(2) The address of the person exercising the power of attorney; and

(3) The date of the certification.

(b) If the mileage reflected by the transferor on the power of attorney is less than that previously stated on the title and any reassignment documents, the power of attorney shall be void. (54 F.R. 35879—August 30, 1989. Effective: August 30, 1989)]

§ 580.16 Access of transferee to prior title and power of attorney documents.

(a) In circumstances in which a power of attorney has been used pursuant to § 580.13 of this Part, if a subsequent transferee elects to return to his transferor to sign the disclosure on the title when the transferor obtains the title and does not give his transferor a power of attorney to review the title and reassignment documents, upon transferee's request, the transferor shall show to the transferee a copy of the power of attorney that he received from his transferor.

(b) Upon request of a purchaser, a transferor who was granted a power of attorney by his transferor and who holds the title to the vehicle in his own name, must show to the purchaser the copy of the previous owner's title and the power of attorney form. (54 F.R. 35879—August 30, 1989. Effective: August 30, 1989)]

**53 F.R. 29464
August 5, 1988**

PREAMBLE TO PART 581—BUMPER STANDARD

(Docket No. 74-11; Notice 12; Docket No. 73-19; Notice 9)

This notice establishes a new bumper standard, limiting damage to vehicle bumpers and other vehicle surfaces in low-speed crashes.

The standard, 49 CFR Part 581, is issued under the authority of Title I of the Motor Vehicle Information and Cost Savings Act, Public Law 92-513, 15 U.S.C. 1901-1991. In addition to specifying limitations on damage to non-safety-related components and vehicle surface areas, it also incorporates the safety requirements currently contained in Federal Motor Vehicle Safety Standard No. 215, *Exterior Protection*.

Since the enactment of the Motor Vehicle Information and Cost Savings Act, the NHTSA has issued four proposals to establish a front and rear end damage ability standard that fulfills the objectives espoused in the law. Title I (*Bumper Standards*) directs the NHTSA to develop standards which "shall seek to obtain the maximum feasible reduction of costs to the public and to the consumer. . . ." Improving the damage resistance of a vehicle in low-speed impact situations will, in the opinion of Congress, save the consumer a significant amount of money.

During the past several years of ongoing rule-making in the bumper area, the NHTSA has continued to conduct studies and examine input from all interested persons. The most recent proposal was published March 12 of this year (40 FR 11598). After thoroughly reviewing the available data and comments submitted to the docket, the NHTSA has concluded that the provisions contained in the March notice would constitute a large step towards accomplishment of the goals described in Title I.

On January 2, 1975, the NHTSA proposed a reduction in the impact speeds specified in Standard 215 and proposed in Part 581 (40 FR 10). The NHTSA's proposal was based primarily on

the results of two agency-sponsored studies which indicated that the cost and weight of many current production bumpers, in light of inflation and fuel shortages, made the bumpers no longer cost-beneficial. Information presented at public hearings on the notice and comments submitted to the docket brought to light additional data which the NHTSA carefully examined. After reviewing its previous studies in light of this new evidence, the agency concluded that the 5-mph protection level (and the 3-mph corner impact level associated with it) should not be reduced. In its March 12, 1975, notice (40 FR 11598) the NHTSA fully explained this decision. Comments have been received from Toyo Kogyo, Volkswagen, Nissan, Motor Vehicle Manufacturers Association, Chrysler, General Motors, Toyota, and Gulf & Western urging the NHTSA to reconsider its rejection of the lower impact test speeds proposed in January.

For the reasons discussed in the March *Federal Register* notice the NHTSA has determined that the pendulum and barrier impact speeds should not be reduced and should remain at 5 mph.

General Motors (GM) submitted two documents, dated January 9, 1976, and January 15, 1976, which analyzed the costs and benefits of 1974 bumper systems based on field surveys conducted in Fort Wayne, Indiana and Milford, Michigan. The conclusion reached by GM in these studies was that the 1974 model year bumper systems were not cost-beneficial. They requested, based on the result of this study, that any raising of the current bumper standard requirements be delayed until longer-term benefit-cost analyses are made.

The NHTSA has examined this study and has concluded that the proposed Part 581 damage-ability standard, which will upgrade the bumper requirements, should be implemented in accord-

ance with the time schedule set forth in this notice. GM in its study has chosen to analyze the cost-effectiveness of bumper systems designed solely for safety component protection. The costs considered by GM have been those occasioned not only by damage to safety-related components, but to non-safety-related vehicle areas, as well. While it may be true that a bumper system that is designed primarily for safety component protection will also provide some degree of protection against non-safety-related damage, it is unreasonable to evaluate the cost-effectiveness of such a system on its capability to perform outside its primary design function. A bumper system designed to comply with Title I would necessarily provide protection to both safety and non-safety-related components and would thereby reduce the degree of damage suffered by most 1974 model vehicles involved in front and rear impacts. The cost-effectiveness of a Title I system, thus, cannot be realistically measured by an examination of 1974 systems which have been designed to provide a lower level of damage protection.

GM gathered data only on its own 1974 model cars and concluded that the impact of Standard 215 on all vehicles has not been cost-beneficial. Conclusions based on such limited data, however, are not sufficient reason for suspending further rulemaking to improve the damage protection capabilities of bumpers. As explained in the March 12, 1975, notice, considerable data have been presented indicating that the bumper systems on some current-model automobiles are heavier and costlier than necessary. This unnecessary weight not only adds to the initial costs, but also increases the life-time operating costs of the vehicle. The use of such bumpers, it has been concluded, has been the result of unnecessary design choices by motor vehicle manufacturers. Studies conducted by the NHTSA and Houdaille Industries, Inc., a bumper manufacturer, indicate that bumper systems utilizing current technology and designed to meet the Part 581 damageability requirements need not weigh any more than pre-standard-215 bumper systems. Basing future rulemaking on the results of a cost-benefit analysis utilizing bumper systems that have not been optimized would be unreasonable.

In the March 12, 1975, notice, the NHTSA proposed alternative effective dates for implementation of the initial Part 581 test requirements. The applicable requirements call for restricted surface damage except to components that actually contact the impact ridge of the pendulum test device or that fasten such components to the vehicle chassis frame. Commenters were asked to address the feasibility of satisfying the proposed damage criteria by September 1, 1976, September 1, 1977, or September 1, 1978. Chrysler said it could meet the prescribed damage level by September 1, 1976, but only if certain modifications in the test requirements were made. Volvo also stated that it could comply by September 1976, but warned of a significant cost penalty. Toyo Kogyo and British Leyland stated they could meet a September 1, 1977 effective date. Toyo Kogyo, however, commented that this would occasion high development costs. British Leyland, on the other hand, said that it could satisfy an earlier effective date, but only at significant cost. American Motors, Ford, and Toyota urged a September 1, 1978, effective date saying that amount of lead time was necessary to obtain compliance.

The Insurance Institute for Highway Safety, the National Association of Independent Insurers, and State Farm urged a 1976 effective date citing the need for regulation of damage to vehicle components and surface areas aside from those directly related to safety. The Insurance Institute supported its request for a 1976 effective date by stating that many existing cars are substantially able to meet the initial Part 581 requirements.

In the NHTSA's view, adoption of a 1976 or 1977 effective date would impose serious lead time problems on a number of manufacturers. Based upon information submitted by the automobile industry, bringing vehicles into compliance by September 1, 1976 or 1977, if possible at all, would entail the expenditure of large sums of money for redesign and retooling. A September 1, 1978 effective date would assure satisfactory compliance with the Part 581 requirements and would avoid the high costs that would occur as a result of an earlier effective date.

The NHTSA has, therefore, concluded that a September 1, 1978, effective date should be

adopted for implementation of the initial Part 581 damageability requirements. This amount of lead time appears necessary for all manufacturers to come into conformity with the provisions.

Toyo Kogyo, American Motors, Motor Vehicle Manufacturers Association, Chrysler, and Ford urged a delay in the proposed September 1, 1979 effective date for implementation of the "no damage" bumper requirements. Toyo Kogyo requested a 1983 effective date, while the other manufacturers suggested that no upgraded requirements be scheduled until field data have been gathered indicating the success of the interim requirements. The National Association of Independent Insurers, anxious for early implementation of the full range of bumper performance requirements, supported adoption of the proposed 1979 effective date.

The NHTSA has examined all of these comments and has concluded that the September 1, 1979 effective date should be adopted. This would provide a lead time of approximately 4 years, which appears sufficient to bring the vehicles into compliance. Awaiting the results of field data related to the interim requirements is not practicable. The information currently before the agency indicates that the proposed 1979 surface damage limitation is a substantial step towards achieving the level of bumper efficiency described by Congress in the Cost Savings Act. Waiting for the accumulation and analysis of additional information would unnecessarily and unreasonably delay the implementation of Part 581, a standard the agency is directed by law to promulgate.

The NHTSA has proposed in several past notices the adoption of test requirements that would allow the manufacture of vehicles with soft exterior surfaces. Currently, the Standard No. 215 exterior protection standard prohibits contact with Planes A and B of the pendulum test device since those areas represent parts of the vehicle that house safety components such as headlamps. Most vehicles constructed with soft exterior surfaces would not be able to comply with the Standard No. 215 requirements since by their very nature they would yield to the impact of the pendulum. The quality of soft face bumper systems which is not taken into account

by the Planes A and B prohibition is that such systems can be constructed in a manner that assures return of the system to its original contours following an impact. The NHTSA proposal would permit contact with the planes at limited force and pressure levels. These force and pressure limitations were intended to assure that the bumper system would yield in a collision to a degree that would minimize damage to the other vehicle's components.

Comments to the proposal to allow contact with Planes A and B focused on that provision's test conditions and its specification of pressure limitations. According to commenters, the prescribed instrumentation of Planes A and B is not practicable since it would be costly with allegedly unreliable test results.

British Leyland, Renault, and Peugeot wanted the agency to clarify the rule by specifying that no instrumentation is necessary on the pendulum where there is no contact during testing with Planes A and B. This fact should be clear based on prior interpretations given by the NHTSA. It has been stated many times in the past that a manufacturer need only exercise due care in assuring that his vehicle would comply with the requirement of a standard when tested by the NHTSA in the manner prescribed. The manufacturer need not conduct the tests prescribed in the standard in order to satisfy this duty. Depending upon the circumstances there may be other means by which he can certify his vehicles' compliance. In the case at issue, the instrumented pendulum would only serve to assure that impact with the planes would not exceed the stated maximum levels. If there is no contact with these planes then obviously the instrumentation would serve no purpose.

Volvo suggested that the provision permitting Planes A and B contact not be added to the standard until a measuring device can be better defined. American Motors, however, presented a suggestion that it contended would significantly simplify the test procedure without diminishing the desired level of vehicle protection. It suggested that the 200-psi limitation be deleted and that a force limitation of 2000 pounds on the combined surfaces of Planes A and B above the impact ridge and 2000 pounds total force on Plane A below the impact ridge be adopted.

American Motors stated that the 200-psi specification was unnecessary in light of the damage limitations contained in the standard.

The initial Part 581 damage criteria [proposed to go into effect September 1, 1976, or 1977, or 1978 (made effective by this notice for September 1, 1978)] presented some problems for Volkswagen, American Motors, Chrysler, Volvo, and Ford with respect to the areas in which damage would be permissible. The proposed section (S5.3.8) limits change to surface areas and safety components, but permits damage to the bumper face bar. The manufacturers argued that damage should also be permitted to cosmetic filler panels, bumper guards, nerf strips, license plate brackets, stone shields, and other components which are not specifically part of the vehicle body. The support for this position is that these components appear to be included in the proposal's description of items that would not be subject to damage limitation during the interim period.

The relevant language of S5.3.8 states that vehicles shall have no damage except to the bumper face bar and the components and associated fasteners that directly attach the bumper face bar to the chassis frame. The bumper face bar is defined as any component of the bumper system that contacts the impact ridge of the pendulum test device. Stone shields and cosmetic filler panels would not be excepted from the damage criteria unless they directly attach the bumper face bar to the chassis frame. Based upon the information currently before the agency, it has determined that neither stone shields nor filler panels are intended to serve such a function.

Bumper guards and nerf strips which are located in a position where they are contacted by the impact ridge of the test device would be considered as a bumper face bar with the lateral metal component (commonly known as a bumper) considered as a component that directly attaches the bumper face bar to the vehicle chassis frame. This reasoning would also apply to bumper systems that have a layer of plastic, rubber, or some other material covering the underlying load bearing structure. The covering material would be considered the bumper face bar and the underlying structure would be considered a component that attaches the face bar to the chassis frame.

Toyo Kogyo commented that the damage criteria contained in S5.3.8 would necessitate the addition of 13 pounds to the bumper which would change the emission rank of some cars and thereby increase their fuel consumption from 4 to 8 percent. The cost of counteracting the increased fuel consumption would, according to Toyo Kogyo, range from \$100 to \$200 per car.

The additional lead time allowed by the September 1, 1978 date for implementation of the initial damage criteria should enable Toyo Kogyo to concentrate its efforts on minimizing any increase in the weight of complying vehicles.

State Farm expressed concern over the application of the S5.3.8 damage criteria to vehicles with soft face systems. They asserted that allowing damage to the bumper face bar and associated components would, in the case of soft face bumper systems, permit damage to the entire front and rear end of the vehicle. This could occur since some soft-face construction utilizes a single large component in the front and rear of the vehicle that takes on the appearance of the vehicle body, but by definition would be the bumper face bar. It was State Farm's suggestion that damage be permitted only to those portions of the bumper face bar that actually come in contact with the impact ridge of the pendulum test device. This would in their opinion avoid the possibility of widespread damage to areas not actually contacted.

The NHTSA finds State Farm's concern unfounded. The 2000-pound total force limitation to the combined surfaces of Planes A and B of the pendulum test device will have the effect of preventing any substantial damage to the areas mentioned by State Farm. For this reason, the NHTSA denies State Farm's request to revise the language of S5.3.8.

Ford Motor Company criticized the provision prohibiting breakage or release of fasteners or joints (S5.3.9) as unreasonable. It asserted that efficient production requires keeping to a minimum the efforts involved in installing moldings and insignia. Of importance, in their opinion, is assuring that the moldings and insignia resist "popping" on rough roads and during minor parking lot impacts. However, they assert that the performance level that would be achieved by

S5.3.9 is unreasonably high since, in their view, moldings which pop off can be easily reinstalled with minimal cost and inconvenience to the car owner.

The NHTSA disagrees with Ford's argument. To allow the type of damage described by Ford would be partially to defeat the effectiveness of the standard. Ornaments that fall off and trim strips that pop off must be repaired if the value of the vehicle is to be maintained. The time and money invested by an individual who must obtain such a repair following a relatively minor collision can be avoided if the manufacturer is required to comply with the performance level of S5.3.9. The NHTSA disagrees with Ford's assessment of the time, cost, and effort involved in obtaining such repairs. The agency has therefore determined that to carry out the Congressional intent to reduce the cost of low-speed accidents, it must require ornaments and trim strips to be immune from damage under the test conditions of the standard.

There were numerous comments on the damage-ability requirements proposed to go into effect on September 1, 1979. Many of the manufacturers suggested a change in the maximum dent limitation (S5.3.11) and requested that a certain amount of bumper set be allowed. In its March 12 notice, the NHTSA proposed to limit damage to the bumper face bar to permanent dents no greater than $\frac{3}{8}$ inch from the original contour. The proposed $\frac{3}{8}$ -inch deviation was based on a Louis Harris & Associates survey of public reactions to bumper damage at various depths. This survey was commissioned by Houdaille Industries, Inc., a manufacturer of bumpers.

International Nickel Co. and Toyota requested that the provision be revised to allow a $\frac{3}{4}$ -inch deviation from the original bumper contour. In light of the results of the Harris survey, which indicated that consumers did not consider damage to be significant until the dents reached a depth of $\frac{1}{4}$ to $\frac{1}{2}$ inch, the NHTSA denies their request and adopts the proposed $\frac{3}{8}$ -inch limitation. To allow deviations to a depth of $\frac{3}{4}$ inch would be to disregard the results of the survey by permitting damage which would be considered significant by many consumers. This would undercut achievement of the purpose of the Part

581 bumper standard to reduce consumer loss of time and money.

Toyo Kogyo, American Motors, International Nickel, and Houdaille urged that the provision (S5.3.11) be amended to permit a certain degree of bumper set. It was pointed out that the impact to a bumper during testing can result in two types of contour change, dent and set. Bumper set is an overall movement or flattening of the bumper face bar which when minor is rarely detectable by the unaided human eye. Under the currently proposed provision the $\frac{3}{8}$ -inch deviation limitation would apply to both setting and denting, with the total of these two types of deviations limited to $\frac{3}{8}$ inch. Thus, the permissible degree of dent deviation would actually be less than $\frac{3}{8}$ inch. Compliance with such a requirement would, according to commenters, result in the production of heavier and more costly bumper systems.

Since the NHTSA has based its $\frac{3}{8}$ -inch deviation limitation on consumer reaction to a dent of that depth, it agrees with commenters that a certain degree of bumper set could be permitted in addition to dent without visibly altering the level of allowable bumper damage. Minor set is generally imperceptible. Thus, allowing it to occur during impact tests would not significantly reduce the level of performance currently assured in the proposed provision. The NHTSA hereby amends Part 581 to permit $\frac{3}{4}$ inch of bumper set in addition to dents of $\frac{3}{8}$ inch.

Consumers Union asserted that the NHTSA should not require near-zero level of damage on all cars since such a regulation would prevent manufacturers from offering as an option cars with cheap, lightweight, expendable bumpers which meet the standard's other requirements. The NHTSA finds no merit in this suggestion and for the following reasons denies the request. First of all, to make compliance with the "no damage" provisions optional would be to disregard the mandate of Congress in the Cost Savings Act, which instructs the agency to promulgate a standard that will reduce consumer costs occasioned by bumper damage. Second, cars produced with lower performance bumpers would be less expensive than those meeting the Part 581 criteria. They might, therefore, seem more appealing to consumers who are unaware

of the costly damage that might be incurred during low-speed collisions. The purpose of Title I of the Cost Savings Act is to protect consumers from such an eventuality. Third, mass production is the factor that will keep manufacturing costs at a low level. If only some vehicles are constructed with damage-resistant bumpers, the cost of those vehicles is likely to be higher than necessary because of this factor.

Nationwide Mutual Insurance Co. and the National Association of Independent Insurers expressed concern that the $\frac{3}{8}$ -inch deviation limitation was too lenient. Nationwide felt that the $\frac{3}{8}$ -inch deviation constituted a relaxation of the NHTSA's previous position that only a dimple should be allowed to the bumper. The NHTSA has concluded, based on the Harris survey, that a dent $\frac{3}{8}$ inch in depth would be inconsequential to most car owners. Prescribing such a deviation as the maximum allowable in a 5-mph barrier or pendulum impact is, therefore, in keeping with the goal of reducing economic loss occasioned by low-speed collisions.

The National Association of Independent Insurers suggested that the $\frac{3}{8}$ -inch deviation be upgraded to require that the dent extend over a minimum area in a dishing fashion which would be less noticeable. This suggestion is rejected since the $\frac{3}{8}$ -inch provision has been fully supported as providing a damage level that fulfills the goals of Title I. In addition, prescribing a dishing effect as a necessary element for compliance would not take into account the various types of impacts to which a vehicle is subject.

State Farm urged that the prohibition against separations of surface materials, paint, polymeric coatings, or other materials from the surface to which they are bonded be extended to cover the bumper face bar during barrier impact tests. Under the current proposal these surface damage limitations would apply only to parts of the vehicle other than the bumper face bar. State Farm asserted that the limitation of application of the no-surface-damage requirements to vehicle surfaces other than the bumper face bar was intended to accommodate the pendulum impact. They therefore see no justification for applying the same limitation during barrier impact testing.

The NHTSA denies State Farm's request. While both barrier and pendulum impacts can cause some chipping or flaking of chrome or soft-face material (depending upon the type of system being tested), such damage is insignificant. Application of a no-surface-damage requirement to the bumper face bar would probably result in manufacturers having to upgrade their plating process or use more sophisticated covering materials to assure compliance. This could result in significant cost increases with little, if any, increase in benefits.

Both State Farm and British Leyland requested that S7.1.1 of Part 581 be clarified to indicate that the pendulum impacts from 16 and 20 inches are intended to be inclusive. Since compliance with the pendulum impact requirements at any height between 16 and 20 inches would necessitate meeting the damage criteria at heights infinitesimally close to 16 and 20 inches, the clarification requested by these commenters is insubstantial. The NHTSA, however, amends S7.1.1 to include the 16- and 20-inch heights as subject to the damage criteria, since some persons apparently considered it unclear.

Chrysler requested a modification of the Part 581 longitudinal pendulum impact test to specify that the required pendulum impacts be at least 12 inches apart laterally and 1 inch apart vertically from any prior impact. The request is denied, since such a modification would prohibit more than one hit in the same area of the bumper. Under the current Part 581 proposal, an impact within 12 inches laterally must be separated from any prior impact by 2 inches, vertically. Based upon available accident data, the NHTSA has concluded that a vehicle will be involved in an average of approximately 2 to 3 bumper collisions at speeds of 5 mph or less in its 10-year life. On an individual vehicle basis, the distribution or the area of the bumper affected by these impacts cannot be predicted. In order to assure a performance level that corresponds with real-world conditions, the NHTSA has determined that each bumper must be capable of meeting the prescribed damage criteria when subjected to more than one pendulum impact in the same area of the bumper.

A substantial number of comments were received from individuals concerned that the Part

581 bumper standard might in some way limit the recycling of bumpers in the aftermarket. This concern is unfounded, since the requirements contained in Part 581 ensure that a wide variety of materials can continue to be used in bumper systems. The provisions in no way restrict the use of metals in bumper systems.

Chrysler argued that the pendulum test device should be used only as a means of assuring uniform bumper height. In its opinion, the pendulum impact test does not constitute an appropriate means of evaluating bumper damageability since the pendulum is rigid, heavy, and aggressive.

The NHTSA does not find Chrysler's argument meritorious. To delete the pendulum impact test as a means of establishing bumper damageability resistance would be to lower considerably the proposed level of performance currently contained in Part 581. The pendulum impact requirements assure that a vehicle is capable of involvement in various types of low-speed collisions without sustaining significant damage. They impose localized stresses at various points on the bumper face bar while the barrier impacts only establish a vehicle's overall ability to withstand impacts at specified energy levels, assuring

the basic strength of the front and rear bumper. In order to satisfy its Congressional mandate by reducing the economic loss occasioned by low-speed collision damage, the NHTSA has concluded that the Part 581 bumper standard must prescribe test requirements that measure a vehicle's damageability characteristics in both barrier and pendulum-type stress situations.

In light of the foregoing, Title 49, Code of Federal Regulations, is amended

1. Federal Motor Vehicle Safety Standard No. 215, *Exterior Protection* (49 CFR 571.215), is revoked.

2. A new Part 581, *Bumper Standard*, is added to read as set forth below.

Effective date: September 1, 1978.

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); sec. 102, Pub. L. 92-513, 86 Stat. 947 (15 U.S.C. 1912) delegation of authority at 49 CFR 1.51.)

Issued on February 27, 1976.

James B. Gregory,
Administrator, National Highway
Traffic Safety Administration

41 F.R. 9346
March 4, 1976



PREAMBLE TO AMENDMENT TO PART 581—BUMPER STANDARD

(Docket No. 74-11; Notice 17; Docket No. 73-19; Notice 14)

This notice responds to petitions for reconsideration of the March 4, 1976, Federal Register notice (41 FR 9346) establishing a new bumper standard that limits damage to vehicle bumpers and other vehicle surfaces in low-speed crashes.

Effective Date: September 1, 1978.

Address: Petitions should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

For Further Information Contact:

Tim Hoyt, Office of Crashworthiness,
Motor Vehicle Programs,
National Highway Traffic Safety Administration,
Washington, D.C. 20590 (202-426-2264).

Supplementary Information:

The standard, 49 CFR Part 581, issued under the authority of Title I of the Motor Vehicle Information and Cost Savings Act, Public Law 92-513, 15 U.S.C. 1901-1991, limits damage to non-safety related components and vehicle surfaces and incorporates the safety-related damage criteria of the current Standard No. 215, *Exterior Protection* (49 CFR Part 571.215). Under the new standard, all vehicles manufactured on or after September 1, 1978, must be capable of undergoing prescribed pendulum and barrier crash tests while experiencing damage only to the vehicle bumper and those components that attach it to the vehicle frame. Vehicles manufactured on or after September 1, 1979, must be capable of undergoing the same tests while experiencing no damage to vehicle exterior surfaces except on the bumper, where dents not exceeding $\frac{3}{8}$ inch and set not exceeding $\frac{3}{4}$ inch may occur.

Petitions for reconsideration were received from General Motors (GM), Ford, Chrysler, American Motors Corporation (AMC), Gulf &

Western, Nissan, and Leyland Cars. The issues raised by petitioners focused primarily on Part 581's cost-benefit basis, its leadtime, and its damage criteria.

GM, Ford, Chrysler, AMC, Nissan, and Gulf & Western stated that the National Highway Traffic Safety Administration (NHTSA) failed to present evidence that Part 581 would be cost beneficial. Ford stated that the record supporting Part 581 gives no assurance that the public will realize incremental savings once the standard is implemented. Chrysler, Nissan, and Gulf & Western cited cost and weight increases which they alleged would impose additional burdens on car owners over and above those presently experienced. AMC complained that the provision for escalating the bumper requirements after one year would result in costly and complex bumper designs, since such a schedule would prohibit the optimization of bumper systems.

Petitioners requested that the agency demonstrate that the requirements of Part 581 will provide cost savings greater than those currently provided by Standard No. 215, *Exterior Protection*. It was suggested by GM, AMC, and Ford that the agency undertake field studies to gather data to support the Part 581 standard. Several manufacturers suggested that implementation of Part 581 be postponed until such time as a field study is completed.

Petitioners' arguments have been raised in past comments to Federal Register notices proposing a Part 581 bumper standard. The NHTSA found them unpersuasive then and hereby rejects them once again. The NHTSA and Houdaille Industries conducted cost benefit studies on compliance with the Part 581 bumper requirements. The studies indicate that bumper systems using current technology and designed to meet the standard's requirements will provide a favorable

cost-benefit ratio. Petitioners have not presented evidence that effectively disputes the conclusions reached in these studies.

Conducting field studies as a means of gathering evidence to support implementation of the Part 581 standard is unrealistic and would not demonstrate as accurately as the Houdaille and NIITSA studies the positive cost-saving potential of the standard. Many manufacturers are continuing to comply with the current Standard 215 bumper requirements by means of inefficient, unoptimized bumpers. Data gathered on these systems thus would not indicate the full possibilities of bumpers specifically designed to meet the Part 581 requirements in an efficient manner. Once manufacturers start utilizing the technology and materials available to them the full benefits of the Part 581 bumper standard can be realized. Until such time, however, manufacturers have it within their power to cause field study results to be misleading and unrepresentative of the potential of Part 581.

The NHTSA has ample evidence in the record that manufacturers are capable of meeting the requirements of Part 581. It also has evidence that compliance can be achieved in a cost-efficient manner. There has been no evidence presented by any of the petitioners that the standard would have a negative cost-benefit impact if met in the ways outlined by Houdaille and the NHTSA in their studies. The agency therefore rejects the cost-benefit objections raised by petitioners.

AMC requested additional leadtime to meet the requirements of Part 581. It contended that it needs 36 months' leadtime to comply with Part 581. It asked that the initial effective date of the standard be delayed until September 1, 1979.

The NIITSA finds AMC's request without merit. The 30-month leadtime for the initial requirements and the 42-month leadtime for the final requirements is considered adequate for compliance. No other manufacturers have expressed concern over attaining the level of performance prescribed for 1978, and evidence in the record indicates that most vehicles already come close to satisfying the specified damage criteria. The request of AMC is therefore denied.

General Motors objected in its petition to the prescribed escalation of the bumper requirements

for September 1, 1979, only 1 year after the standard's initial effective date. It stated that compliance with two sets of bumper requirements within such short period of time would result in unrecoverable costs relating to research, design, development, and tooling, and would inhibit the feasibility of optimizing its bumper systems.

Ford Motor Company stated that it plans to redesign its passenger cars for 1981 due to the requirements of the Energy Policy and Conservation Act (Pub. L. 94-163) and associated legislation. Ford explained that compliance with Part 581 will entail some redesign. It therefore requested that the bumper standard's effective date be delayed until September 1, 1980, so that these necessary redesigning efforts can be accomplished simultaneously.

The agency has found both General Motors' and Ford's requests persuasive. It has therefore issued a notice proposing to delay for 1 year the implementation of the second phase of bumper requirements from September 1, 1979, until September 1, 1980. This action does not conform exactly to Ford's request. However, the NHTSA does not know of any vehicles that would require major design changes until implementation of the more stringent second phase requirements.

Filler panels and stone shields were identified in the March 4, 1976, final rule as exterior vehicle surfaces that must experience no damage as a result of the prescribed test impacts. GM, Chrysler, and AMC objected to this interpretation of the level of damage resistibility filler panels and stone shields must achieve. GM contended that these components are part of the bumper system and provide the transition between the bumper face bar and body panels. It stated that bumper stroke causes unavoidable surface scratches, abrasions, and displacements, which could be eliminated only by using expensive materials and mounting techniques. Chrysler pointed out that filler panels are designed to flex during bumper impacts and may not return to exactly their original contour. According to AMC, however, once a deformed bumper is repaired following an impact, the flexible filler panel will return to its original contour. All three manufacturers requested that filler panels be permitted to sustain some degree of damage during testing.

The agency has reexamined the role of filler panels and stone shields in the bumper system and finds that although they do not actually hold the bumper to the vehicle frame, they are cosmetic components that are part of the entire system that performs the task of attaching the bumper to the frame of the car.

The NHTSA has concluded that permitting damage to filler panels and stone shields will not significantly degrade the level of performance required for vehicles manufactured after September 1, 1978. The flexibility of the filler panel and stone shield material enables it to withstand deforming impacts without permanently losing its shape, but as long as the bumper and components attaching it to the vehicle frame are permitted to sustain damage as a result of impacts, the filler panel and stone shield may likewise sustain some degree of damage. Since these components are less visible than the bumper itself, the small amount of damage that they will incur will normally not be as significant as that allowed to the bumper. Therefore, filler panels and stone shields on vehicles manufactured from September 1, 1978, to August 31, 1979, will be permitted to sustain damage during the prescribed test impacts. This, in essence, grants the requests of petitioners. The agency will address in an upcoming notice the application of damage criteria to stone shields and filler panels on vehicles manufactured after September 1, 1979.

Ford and Chrysler charged that the Part 581 damage criteria are impracticable and lacking in objectivity. Specifically, they objected to the criteria that allow no separations or deviations, and require certain systems to operate in a normal manner. According to petitioners, these criteria are not objective since the requirements of no separation and no deviations can be interpreted as meaning that even the most microscopic deviations and separations are prohibited, or alternatively that only those deviations that are readily apparent are prohibited. With regard to the requirement that certain systems operate in a normal manner, petitioners stated that the meaning of "normal" is unclear and can be interpreted differently by different people. Ford and Chrysler expressed concern that the agency will

interpret the meaning of these damage criteria in a manner conflicting with their interpretation. To resolve the situation to which it is objecting, Chrysler suggested that the requirements be revised to allow minimal and inconsequential deviations, while Ford suggested that the agency withdraw S5.3.2 and S5.3.5 and parts of S5.3.3, S5.3.8, S5.3.10, and S5.3.11 pending development of objective criteria to enable manufacturers to predict accurately whether their vehicles will comply.

The agency understands the petitioners' concerns, but finds that a simple interpretation of the cited requirements is adequate to satisfy their objections. The damage criteria allowing no deviations and no separations are not intended to apply to microscopic changes in the vehicle following test impacts. The types of deviations and separations addressed by Part 581 are those that are perceptible without the use of sophisticated magnifying or measuring equipment. What is required is that the vehicle not reflect any normally observable changes in the stated areas following the prescribed test procedure. Damage that is only identifiable by use of microscopically-oriented equipment would not be considered as prohibited under Part 581.

With regard to the requirement that a vehicle's hood, trunk, and doors operate in the normal manner, the standard is simply providing that these systems continue to operate following the test impacts in the same manner as they did before the impacts. This requirement has been a part of Standard No. 215, *Exterior Protection*, since its implementation on September 1, 1972. No compliance controversies have ever arisen concerning it.

Leyland Cars and AMC requested that the requirements of S5.3.11, allowing no more than $\frac{3}{4}$ -inch set and $\frac{3}{8}$ -inch dent to the bumper face bar, be made applicable to the component that backs up the bumper face bar. Leyland Cars explained that some of its bumpers are covered by a rubber or plastic molding which, under Part 581, would be considered as the bumper face bar. It requested that the component over which the molding is placed be permitted to sustain the same degree of set allowed for the bumper face bar. AMC asked that the component underly-

ing the molding be permitted to experience dents up to $\frac{3}{8}$ -inch as is the bumper face bar.

The NHTSA finds petitioners' concerns unfounded. The prohibition against set and denting applies to vehicle exterior surfaces. From the description of the component supplied by Ford and Chrysler it appears that it is completely covered by the molding and is not an exterior surface area of the vehicle. Therefore, it may experience damage during test impacts. The molding enveloping the reinforcement would represent the exterior surface that is subject to the requirements of S5.3.11.

Nissan and Gulf & Western objected to the prescribed limitations on set and denting contained in S5.3.11. Nissan requested that the damage criteria be revised to allow $\frac{1}{2}$ -inch dent and 1-inch set, instead of the currently required $\frac{3}{8}$ -inch dent and $\frac{3}{4}$ -inch set. It was Nissan's contention that such a revision would cause only a slight change in the appearance of a damaged vehicle, while enabling a considerable change in a vehicle's cost and weight. Gulf & Western alleged that there was no economic justification for the $\frac{3}{8}$ -inch dent and $\frac{3}{4}$ -inch set requirements since they are based solely upon a public opinion poll. It requested that the Part 581 requirements not be implemented until an economic justification is presented.

The NHTSA finds both Nissan's and Gulf & Western's requests lacking in merit. A survey conducted by Louis Harris & Associates of public reaction to various degrees of bumper damage showed that a significant number of people consider $\frac{1}{2}$ -inch dents to be damage they would repair. Based upon this information and cost and weight data contained in the various studies upon which the agency relied in the formulation of the standard, it has been determined that the amendment requested by Nissan would adversely affect the results to be achieved by implementation of the Part 581 bumper standard. The results of the Harris survey have definite economic significance in that those individuals indicating that a certain degree of damage was significant enough that they would have it repaired were providing the pollster with cost data. Damage that is repaired will have a financial impact on the car owner. By the same token,

damage that is detectable and thereby have an economic impact on the car owner. These cost factors were all considered in deciding on the $\frac{3}{8}$ - and $\frac{3}{4}$ -inch damage limitations. For these reasons, the requests of Nissan and Gulf & Western are denied.

Chrysler objected to the procedure prescribed for measuring the depth of bumper dents (S5.3.11(b)), charging that it is unreasonable, inaccurate, and lacks objectivity. Chrysler alleged that the end points of the straight line described in the test procedure for connecting the bumper contours adjoining the contact area are locations that are subjective on bumper face bars with compound curvature. It also charged that the specified measurement method lacks objectivity and can be used only for determining the depth of dents in flat surfaces. Chrysler requested that the agency clarify the provision.

Although the objections raised by Chrysler illustrate that some configurations are more difficult to measure than others, it is the agency's judgement that the method described in S5.3.11(b) is valid and still the most feasible means of determining the extent of damage. Location of the end points of the straight line used to measure the depth of bumper dents does not, in the opinion of the NHTSA, pose a problem. In order to establish the exact location of the end points, the manufacturer may either paint or chalk the pendulum test device. In this way, the pendulum will leave a mark on the precise area of contact.

With regard to Chrysler's objections concerning the measurement of dents, it should be noted that the straight line measurement technique is not necessarily a test procedure. Rather, the language specifying that a deviation from original contour not exceed $\frac{3}{8}$ -inch when measured from a straight line connecting the bumper contour adjoining the contact area should be considered a definition of a dent. Deformations outside the contact area on the bumper surface, such as recessions of a larger area of the bumper, are defined as set.

The agency realizes that the measurement of dent and set on some bumpers with complex curvature may not be a simple procedure. In such cases, the testers must use measurement pro-

cedures that will enable them to accurately measure the degree of dent the bumper has incurred. In situations involving a concave face bar, a reference line can be established by placing a straight line across the area of contact prior to impact. After completion of the actual impact the change in bumper contour can be measured from the previously established reference line. In situations involving a convex face bar, or more complex surfaces, it may be necessary for the manufacturer to remove the bumper following impact in order to compare it with an unimpacted bumper, or to make a cast of the preimpact bumper for comparison with the bumper for comparison with the bumper following the prescribed testing.

Chrysler also requested that S5.3.11 be amended to specify that bumper set be measured relative to the vehicle frame in perpendicular, parallel, and vertical directions with respect to the vehicle's longitudinal centerline. It stated that such a revision would reduce the task of measuring permanent set to a reasonable level.

The NHTSA denies this request since Chrysler has presented no information indicating that the currently prescribed measurement procedure is unfeasible. The agency knows of no reason why reference lines relative to the vehicle frame cannot be established from which bumper set can be measured. To adopt Chrysler's suggested method for measurement would unduly complicate the procedure since determination of the vehicle longitudinal centerline is complex.

GM charged that the NHTSA's definition of bumper face bar may include license plate brackets that are attached to the vehicle bumper, since these components may contact the impact ridge of the pendulum test device. If identified as the bumper face bar, these license plate brackets would be required to meet the level of performance prescribed for bumpers. According to GM, such a result would be extremely costly. License plate brackets capable of complying with the bumper damage criteria would be expensive to produce as well as to replace. This, in GM's opinion, would have a negative cost-benefit impact.

While the NHTSA agrees that license plate brackets should not be required to meet the dam-

age criteria of the bumper face, the NHTSA believes that it is good design practice to locate license plates in an area other than the bumper face. However, recognizing the limited space available on the front of some cars for license plate placement, the NHTSA is reluctantly willing to grant GM's petition on this point. The agency will, in the future, review industry practice on the placement of license plates on new automobiles in an effort to determine if future rulemaking on this matter would be desirable.

AMC requested in its petition that the NHTSA amend the requirements limiting the total force on planes A and B to 2,000 pounds (S5.3.7) to permit a force of 2,000 pounds on plane A below the impact ridge and a force of 2,000 pounds on the combined surfaces of planes A and B above the impact ridge. AMC based its request on the premise that the current requirement allows the full 2,000-pound force to be exerted either above or below the impact ridge of the test device. It pointed out that the NHTSA stated in an earlier notice that the 2,000-pound limit would prevent any substantial damage to the vehicle. Based upon this, AMC argued that allowing 2,000 pounds of force both above and below the impact ridge would not expose those surface areas to any greater force than would be allowed under the current requirements.

The NHTSA disagrees with AMC's contention. The force limitation contained in Part 581 is intended to assure that the primary force of the impact is directed at the bumper face bar. Although all 2,000 pounds of allowable force could be directed to the area either above or below the impact ridge, this total amount of force would not be a significant damage factor. However, if the areas covered by planes A and B were allowed to sustain a total force of 4,000 pounds, the focus of primary force on the bumper face bar would not be assured and the type of aggressive bumper system Part 581 is designed to prevent could be utilized. AMC's request is therefore denied.

AMC requested that Part 581 be amended to include a provision appearing in the January 2, 1975, proposal (40 FR 10) that stated a vehicle need not meet further requirements after having

Effective: September 1, 1978

been subjected to either the longitudinal pendulum impacts followed by the barrier impacts, or the corner pendulum impacts.

The agency has stated in past notices that a vehicle will be involved in an average of three low-speed collisions in its 10-year life. There is no way to predict which portion of the bumper will be affected in these impacts. Therefore, it was decided that vehicles should be required to meet the prescribed damage criteria when subjected to the entire series of test impacts. To provide otherwise would be to establish a level of performance lower than necessary to protect a vehicle from the full range of potentially damaging impacts it is likely to incur during its on-road life. It was for this reason that the provision appearing in the January 2, 1975, proposal was not adopted. It is for this same reason that the agency denies AMC's request.

The text of the Title I bumper standard has in previous notices and the March 4, 1976, final rule been published in the format of a motor vehicle safety standard. Since the bumper standard is actually an entire part within Chapter V

of the Code of Federal Regulations, the format must be changed in order that it may be properly codified. The content of the standard will remain the same. This notice, however, revises the numbering system so that it conforms to the Code of Federal Regulations format.

The principal authors of this notice are Guy Hunter, Office of Crashworthiness, and Karen Dyson, Office of Chief Counsel.

In light of the foregoing, 49 CFR Part 581, is amended and recodified. . . .

Effective date: September 1, 1978.

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); sec. 102, Pub. L. 92-513, 86 Stat. 947 (15 U.S.C. 1912); delegation of authority at 49 CFR 1.50.)

Issued on May 4, 1977.

Joan Claybrook
Administrator

42 F.R. 24056
May 12, 1977

PREAMBLE TO AMENDMENT TO PART 581—BUMPER STANDARD

(Docket No. 73-19; Notice 19 & Docket No. 74-11; Notice 22)

This notice corrects an inadvertent error in the notice that changed the format of Part 581, *Bumper Standard*, so that its numbering system conformed to the Code of Federal Regulations format (42 FR 24056; May 12, 1977). In that notice, the new numbering was not totally incorporated into the body of the regulation.

For further information contact :

Mr. Tim Hoyt
Office of Crashworthiness
Motor Vehicle Programs
National Highway Traffic Safety
Administration
Washington, D.C. 20590
202-426-2264

Supplemental information: On May 12, 1977, the National Highway Traffic Safety Administration published a Federal Register notice (42 FR 24056; FR Doc. 77-13235) responding to petitions for reconsideration of the March 4, 1976, notice (41 FR 9346) establishing a new bumper standard. The May notice also changed the format of Part 581. The text of the bumper standard was previously published in the format of a motor vehicle safety standard. Since the standard is actually an entire part within Chap-

ter V of the Code of Federal Regulations its numbering system was revised in order that it could be properly codified.

When Part 581 was published with its revised format, only the section headings were properly renumbered. The texts of the various sections were inadvertently left unchanged. This notice revises the section references in the body of the regulation to conform to the new format.

The principal author of this notice is Karen Dyson, Office of Chief Counsel.

In accordance with the foregoing, changes should be made to 49 CFR Part 581, *Bumper Standard*. . . .

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); sec. 102, Pub. L. 92-513, 86 Stat. 947 (15 U.S.C. 1912); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on July 26, 1977.

Robert L. Carter
Associate Administrator
Motor Vehicle Programs

42 F.R. 38909
August 1, 1977

PREAMBLE TO PART 581—BUMPER STANDARD

(Docket No. 73-19; Notice 24)

This notice responds to a request from Ford Motor Company for further interpretation of the bumper damageability requirements of Part 581, *Bumper Standard*, and announces the photographic procedure NHTSA will use as an aid in determining whether damage to filler panels and stone shields (shielding panels) is normally observable for purposes of compliance with the standard. This interpretation assists manufacturers in ascertaining whether contemplated bumper designs will provide a level of performance consistent with the requirements of Part 581. This notice also corrects an inadvertent error in the previously announced effective dates for Phase I of the bumper requirements.

Date: This interpretation and the correction to Part 581 are effective immediately.

For further information contact:

Mr. Richard Hipolit, Office of Chief Counsel,
400 Seventh Street, S.W., Washington, D.C.
20590 (202-426-9512)

Supplementary information: NHTSA has established, through issuance of Part 581, Bumper Standard (49 CFR Part 581), requirements for the impact resistance of vehicles in low speed collisions. The effective dates of Part 581 are September 1, 1978, for components other than the bumper face bar and certain associated fasteners (Phase I), and September 1, 1979 for all vehicle components (Phase II). On May 15, 1978, the agency published a notice (43 FR 20804) summarizing its interpretation of various aspects of the Part 581 damage resistance requirements as they relate to vehicle exterior surfaces. Ford Motor Company has asked for additional clarification of the requirement of paragraphs 581.5(c)(10) and (11) of the standard, in a June 22, 1978, request for interpretation that has been placed in the public docket.

APPLICATION OF THE DAMAGE CRITERIA TO BUMPER FACE BARS AND ATTACHED COMPONENTS

The Phase II requirements prohibit permanent deviations from the original contours of vehicle exterior surfaces following pendulum and barrier impacts. An exception is made for the "bumper face bar," whose surface is permitted $\frac{3}{4}$ -inch deviation from its original contour and position relative to the vehicle frame (set) and a $\frac{3}{8}$ -inch deviation from its original contour on areas of contact with the barrier face or the impact ridge of the pendulum test device (dent) (§ 581.(c) (11)). Bumper face bar is defined in § 581.4 as "any component of the bumper system that contacts the impact ridge of the pendulum test device." NHTSA has stated that this definition includes components of a multipiece bumper which are connected as part of the same load bearing structure to a bumper system component which is contacted either by the pendulum test device or the test barrier (43 F.R. 20804; May 15, 1978).

Ford has inquired as to the applicability of this definition of bumper face bar to a variety of components such as directional signals and shielding panels, which may be mounted to a load bearing structure while themselves performing no structural function. Components which do not perform a load bearing function are not necessarily components of the bumper system (and potentially bumper face bar) solely as the result of their incidental mounting on or near a load bearing structure of the bumper system. Components must be examined on a case-by-case basis to determine whether they constitute components of the bumper system.

The agency stated in a previous notice that shielding panels are considered a component of

the bumper system and thus will qualify as bumper face bar if contacted in testing (43 F.R. 20804; May 15, 1978). The same would be true of other cosmetic components directly associated with the bumper system's function such as manufacturing cut-out patches and tape strips the primary function of which is to hide protrusions, fasteners, or other unsightly aspects of the

Illumination devices, e.g., fog lamps and directional signals, are not associated with the bumper system's function and could not qualify as components of the bumper system, even if contacted by the pendulum test device or barrier.

Still other components could be considered components of the bumper system, depending on their application in a particular vehicle design. For example, a grille, which would generally be associated with the vehicle body, could perform a protective function as a component of a bumper system in a soft-face configuration, and could therefore qualify as a component of the bumper system.

The agency recognizes that components mounted to a bumper face bar, but not themselves considered face bar because they are not part of the bumper system or are not impacted in testing, will necessarily move with the set of the bumper face bar, although they do not qualify for the permissible $\frac{3}{4}$ -inch set allowance of (c) (11) (i). However, the stricter damage limitations of paragraph 581.5(c)(10), applicable to such components, are actually limited to "normally observable changes in the started area following the prescribed test procedures" (42 F.R. 24058; May 12, 1977). "[M]ovement of small patches covering manufacturing process cut-outs on the face bar" and movement of shielding panels with the set of the bumper are not considered normally observable (43 F.R. 20804; May 15, 1978). Similarly, non-bumper (e.g., fog-lamps) and other bumper system components (e.g., tape strips), attached to or built into a bumper face bar but not contactable by the test device, would not be considered to have normally observable damage when they simply move with

the set of the face bar. Such movement would, however, be normally observable if the function of the mounted component were impaired, e.g., by misalignment, in the case of a fog lamp beam, to the extent that it would not be adjustable to its normal aim.

The thin, polymeric tape strips described above typically are adhesively bonded to the surface areas of the bumper face bar. The impact of the pendulum test device or test barrier with the bumper face bar may cause distortions on portions of the face bar not directly impacted during testing and cause localized separation on these tape strips from the face bar surface, in the form of wrinkling or bubbling.

The agency had previously stated that, "while both barrier and pendulum impacts can cause some chipping or flaking of chrome or soft-face material (depending on the type of system being tested), such damage is significant" (41 F.R. 9346; March 4, 1976). This reasoning also governs minor damage to tape strips, such as wrinkling or bubbling, so long as the strips are contactable and thus qualify as bumper face bar. This interpretation would apply equally whether the damage happened to fall at the area of impact or elsewhere on the face bar.

Any component of the bumper system which can be contacted by the impact ridge of the pendulum test device in any permissible pendulum stroke is considered bumper face bar for testing of that bumper system, whether or not it was actually contacted in a particular test sequence. Further, the interpretation concerning non-contactable but load bearing components of multipiece bumpers discussed above, although originally announced in the context of metal bumpers (43 F.R. 20804; May 15, 1978), would also govern a multipiece bumper assembly equipped with plastic or rubber bumper guards or nerf strips. Thus, all load bearing components of the bumper assembly, whether plastic, rubber, or metal would be considered bumper face bar and be entitled to a $\frac{3}{4}$ -inch set if they are connected as a part of the same load bearing structure.

MEASUREMENT OF DAMAGE TO THE BUMPER FACE BAR

Paragraph 581.5(c)(11) provides:

Thirty minutes after completion of each pendulum and barrier impact test, the bumper face bar shall have—

(i) No permanent deviation greater than $\frac{3}{4}$ inch from its original contour and position relative to the vehicle frame; and

(ii) No permanent deviation greater than $\frac{3}{8}$ inch from its original contour on areas of contact with the barrier face or the impact ridge of the pendulum test device measured from a straight line connecting the bumper contours adjoining any such contact area.

Ford has inquired as to the measurement techniques the agency will use in determining compliance with these damage limitations. NHTSA has previously recognized that “the measurement of dent and set on some bumpers with complex curvature may not be a simple procedure” (42 F.R. 24056; May 12, 1977). In many cases there may be more than one procedure by which damage can be accurately measured. Innovations in measurement techniques may be needed as new bumper designs are developed. Therefore, while the agency can express the basic measurement geometry (which appears to be Ford’s basic concern) that establish compliance with the damage limits, it cannot specify a particular method to be used in measuring those distances in all cases.

Ford requested resolution of the inadvertent inconsistency between agency statements in the May 1978 interpretation that “the two types of deviation are additive in an area of contact with the barrier face or impact ridge” but that “the localized deviation permitted by paragraph (ii) is measured taking any contour in the area of impact and measuring its movement from its location prior-to-impact to post-impact.” The first statement accurately represents that the deviations are additive in the area of contact with the barrier or pendulum. The second statement failed to make the different and intended point that the contour of the contact area is measured from the contour previous to contact, but only after movement of the surface position and contour relative to the vehicle frame attributable to

set has been subtracted. It should be noted that contour change attributable to set must result from a generalized flattening of the bumper surface outside the area of contact. Otherwise the concept of dent would be indistinguishable from contour set.

The agency rejects Ford’s suggestion to merely measure the contour in the contact area in relation to the surrounding contour following impact. The best example of why the original contour must serve as the baseline is the case in which the contact area consisted of a $\frac{3}{8}$ -inch protrusion from the surrounding area prior to impact and a $\frac{3}{8}$ -inch depression in relationship to the surrounding contour following impact. The resulting dent would actually be $\frac{3}{4}$ -inch deep.

Ford further recommended that all dent measurements be made in vertical sections of the plane of impact which produced the dent. Recognizing the need for flexibility in the measurement of complex bumper configurations, Ford has withdrawn this portion of its request for interpretation.

Ford has questioned the portion of NHTSA’s previous interpretation (43 F.R. 20804; May 15, 1978) which stated that dent may be measured “along any dimension, i.e., width, length, depth,” from any line connecting the adjacent bumper contours. The agency has decided that the $\frac{3}{8}$ -inch dent limitation of § 581.5(c)(11)(ii) should presently be limited to depth measurements only. Development of the Phase II face-bar contour requirements and studies which formed the basis for the $\frac{3}{8}$ -inch dent requirements during the rulemaking proceeding focused primarily on limitation of the depth of deviations. A $\frac{3}{8}$ -inch dent limitation measured in any direction might, at this time, impose an unanticipated burden in some cases and perhaps restrict the flexibility of manufacturers in selecting bumper systems for different model sizes which provide a suitable balance among the interrelated considerations of damage resistance, weight reduction, and cost. Should future testing and bumper design developments indicate that further face-bar dent limitations would be beneficial, such a requirement will be the subject of a future rulemaking notice.

Finally, Ford has asked whether there can be more than one contact area for purposes of measuring damage resulting from a particular impact. It is clear that multiple areas of contact between the bumper face bar and the impact ridge or test barrier may exist, thus creating multiple areas in which dent may occur. Given the complexity of some bumper designs, it would be unrealistic and impractical to require that all damage incurred in an impact be combined for measurement purposes. Deviations caused by impact at non-contiguous locations on the bumper system will be treated as separate contact areas, and damage in each of these areas will be measured separately, without reference to any other area of contact.

PHOTOGRAPHIC PROCEDURES TO AID IN EVALUATING DAMAGE TO SHIELDING PANELS

NHTSA's previous interpretation of the Part 581 requirements (43 F.R. 20804; May 15, 1978) addressed the problem of judging damage to vehicle shielding panels for purposes of determining compliance with paragraph 581.5(c)(10). That provision addresses all exterior surfaces other than bumper face bar and prohibits permanent deviation from original contours or separation of materials from the surface to which they are bonded. The interpretation reiterated that the agency does not consider damage to shielding components to be in violation of the standard if that damage is not "normally observable." In the case of shielding panels, damage not visible in good quality, photographic prints of the suspect area would not be considered by the agency to be "normally observable." The notice indicated that the Office of Vehicle Safety Compliance (OVSC), formerly the Office of Standards Enforcement, would establish standard procedures by which NHTSA would take its evaluative photographs.

While NHTSA originally stated that 8 by 10 inch photographic prints would be employed, the agency has concluded that the use of contact prints of that size may present practical difficulties due to the limited availability and unwieldiness of large cameras. Further study of

existing photographs indicates that 4 by 5 inch contact prints are adequate for the agency's testing.

Upon completion of impact tests in accordance with the test procedures of paragraph 581.7, OVSC photographs shielding panel areas that may have experienced permanent deviation or separation of materials.

View Camera. OVSC uses a standard 4 by 5 inch View Camera with focal length of 127 mm, a maximum aperture of f/4.7, a coated lens, and available shutter speeds of 1 second to 1/400 second.

Film. OVSC uses type 52 Pola Pan 4 by 5 inch film for Polaroid prints.

Illumination. OVSC takes the photographs indoors using the following illumination procedures: (1) illuminating the area to be photographed with crosslighting using two 1,000-watt photofloods lamp for main light, and one 1,000-watt photoflood lamp for fill-in light; and (2) positioning the photoflood lamps so that the light rays strike the subject area at a 45° angle from a distance of 10 feet from the area being photographed.

Camera position. OVSC positions the camera at a distance of 6 feet from the center of the suspect area and utilizes ground glass focusing to properly focus the camera for that distance. Photographs are taken both at 90° and 45° angles relative to the suspect area.

Exposure. OVSC utilizes a General Electric, DeJur or Weston photoelectric exposure meter to determine the exposure requirements. Light readings are taken by measuring the intensity of reflected light from a Kodak Gray Card placed upon the area to be photographed. The meter is placed near enough to the subject (gray card) to indicate the average reflected light (at least within a distance equal to the width of the subject being photographed). A light reading is obtained and set opposite the film speed which is indicated on the meter so that the f/stop or the aperture settings and shutter speeds coincide. The correct camera setting is read directly from the meter.

Effective: September 11, 1978

Photographic print. OVSC produces 4 by 5 inch black and white photographic contact prints from the Polaroid film.

Examination of contact print. OVSC examines the completed contact print with the unaided eye for compliance with 581.5(c)(10).

CORRECTION OF PHASE I EFFECTIVE DATES

On May 12, 1977, NHTSA published a *Federal Register* notice (42 F.R. 24056) responding to petitions for reconsideration and revising the format of Part 581 as originally announced on March 4, 1976 (41 F.R. 9346). Those notices inadvertently indicated that the Phase I exterior surface requirements, now contained in paragraph 581.5(c)(8), would apply to vehicles manufactured from September 1, 1978 to August 1, 1979. The requirements of paragraph 581.5(c)(8) actually

apply to vehicles manufactured until August 31, 1979, and the regulation is therefore corrected to reflect the intended effective dates.

In consideration of the foregoing, the date "August 1, 1979," contained in 49 CFR § 581.5(c)(8), is hereby corrected to read "August 31, 1979."

The program official and lawyer principally responsible for this document are Nelson Gordy and Richard Hipolit, respectively.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); sec. 102, Pub. L. 92-513, 86 Stat. 947 (15 U.S.C. 1912); delegation of authority at 49 CFR 1.50).

Joan Claybrook
Administrator

43 F.R. 40229-40232
September 11, 1978

PREAMBLE TO AN AMENDMENT TO PART 581

Bumper Standard (Docket No. 73-19; Notice 29)

ACTION: Final rule.

SUMMARY: This notice amends the Bumper Standard to reduce the test impact speeds required by that standard to 2.5 mph for longitudinal front and rear barrier and pendulum impacts and 1.5 mph for corner pendulum impacts. The notice also amends the damage resistance criteria of the standard to eliminate limitations on the damage which may be incurred by the bumper face bar and associated components and fasteners in bumper testing.

The agency finds that under this action net benefits will accrue to the public and to the nation's consumers. This action is thus required by the mandate of the Motor Vehicle Information and Cost Savings Act that any bumper standard issued under that statute "seek to obtain the maximum feasible reduction in costs to the public and to the consumer," taking into account the ~~costs~~ costs and benefits of implementation, effects on insurance and legal costs, savings in consumer time and inconvenience and considerations of health and safety.

Any reduction in costs related to bumper systems, including savings from reduced fuel consumption, will exceed any reduction in benefits which may occur because of increases in damage, insurance costs, delay and inconvenience, and other matters. This action will thus increase and seek to maximize the net consumer and public benefits of the standard. The agency also finds that this action will cause no reduction in vehicle safety.

EFFECTIVE DATE: July 4, 1982.

SUPPLEMENTARY INFORMATION: The "Part 581 Bumper Standard" (49 CFR Part 581) specifies levels of damage resistance performance which

passenger motor vehicles must provide in low speed collisions. Bumper performance is measured in test impacts with both a fixed collision barrier and a pendulum test device. Bumpers must meet damage criteria which preclude any damage at all to vehicle exterior surfaces, which ensure protection of various safety-related components of the vehicle, and which allow only minimal damage to the bumper itself.

Background

The history of the Part 581 bumper standard has been long, extremely controversial and fraught with uncertainty. The current action is the culmination of years of study, analysis and agency action and reaction.

Federal Motor Vehicle Safety Standard 215

In its initial efforts in the field of bumper regulation, the National Highway Traffic Safety Administration (NHTSA) issued Federal Motor Vehicle Safety Standard (FMVSS) 215, *Exterior Protection*, under the National Traffic and Motor Vehicle Safety Act (the Safety Act), 15 U.S.C. 1381 *et seq.* As initially implemented on September 1, 1972, that standard imposed requirements which prohibited damage to specified safety-related components and systems, e.g., headlights and fuel systems, in a series of perpendicular barrier impacts, at 5.0-mph for front and 2.5-mph for rear bumper systems.

One year later, several new requirements became effective under FMVSS 215. First, rear barrier impact speeds were increased from 2.5-mph to 5.0-mph. Second, the standard specified 5.0-mph perpendicular front and rear pendulum impacts and 3.0-mph corner front and rear pendulum impacts. Third, a bumper height requirement was in fact established by specifying that the longitudinal pendulum impacts must be

made between a height of 16-20 inches. (The corner pendulum impacts were limited to a height of 20 inches until September 1, 1975, when the standard specified that they must be made within the same 16-20 inch height range.)

Motor Vehicle Information and Cost Savings Act

On October 20, 1972, Congress enacted the Motor Vehicle Information and Cost Savings Act, ("the Act"). 15 U.S.C. 1901 *et seq.* The stated purpose of Title I of the Act is to "reduce economic losses associated with low speed collisions of motor vehicles." 15 U.S.C. 1901(b). Section 102(a) directed the Secretary of Transportation¹ to promulgate bumper standards in accordance with the criteria of section 102(b) which requires that such standards—

seek to obtain the maximum feasible reduction of costs to the public and to the consumer, taking into account:

- (A) the cost of implementing the standard and the benefits attainable as the result of implementation of the standard;
- (B) the effect of implementation of the standard on the cost of insurance and prospective legal fees and costs;
- (C) savings in terms of consumer time and inconvenience; and
- (D) considerations of health and safety, including emission standards.

15 U.S.C. 1912 (b)(1)

The Act also provides that the bumper standards must not conflict with motor vehicle safety standards issued under the Safety Act. 15 U.S.C. 1912(b)(2).

Adoption of the Part 581 Standard

Pursuant to both the new authority of the Act and that of the Safety Act, NHTSA established the Part 581 Bumper Standard in 1976. 41 Fed. Reg. 9,346 (March 4, 1976). As adopted, this

¹The authority of the Secretary to promulgate safety standards has been delegated to the NHTSA Administrator. 49 CFR 1.51(a).

standard combined the safety features of FMVSS 215 with new damage resistance criteria intended to promote consumer cost savings.

The Part 581 standard established compliance test procedures which consist of a series of five test impacts on both the front and the rear bumper. Each test series includes one longitudinal barrier impact, two longitudinal pendulum impacts and two corner pendulum impacts.

The Part 581 standard sets forth substantive requirements in terms of damage resistance criteria which took effect in two stages. The first stage, or "Phase I" of the Part 581 standard, became effective on September 1, 1978, on which date FMVSS 215 was *ipso facto* revoked. Phase I incorporated the former FMVSS 215 safety criteria, and added new damage resistance criteria which prohibited damage to all exterior vehicle surfaces, e.g., sheet metal, *other than* the bumper face bar and related components and fasteners.

More stringent damage resistance criteria, known as the "Phase II" criteria, became effective one year later, on September 1, 1979. The Phase II criteria expanded Part 581 by also imposing limits on the amount of "dent" and "set" damage which could be sustained by the bumper face bar itself in the same series of test impacts. "Dent" refers to permanent deviation from the original contour of the bumper face bar in areas of contact with the barrier face or the impact ridge of the pendulum test device. "Set" refers to permanent deviation of the bumper from its original contour and position relative to the vehicle frame. Phase II limited allowable dent to 3/8 inch, and set to 3/4 inch, each as measured thirty minutes after completion of each test impact.

Early Proposals and Evaluations of the Bumper Standard

1973

NHTSA initially proposed a Part 581 standard in August 1973, while FMVSS 215 was in force, but after the passage of the Act. This 1973 proposal would have required protection against damage in 5.0-mph test impacts. 38 Fed. Reg. 20,899 (August 3, 1973).

1975

NHTSA thereafter issued a second Part 581 proposal, in January 1975. This revised proposal

would not only have reduced (at least temporarily) the impact speeds required by FMVSS 215, but also would have reduced the damage resistance criteria contained in the Part 581 proposal still pending from 1973. 40 Fed. Reg. 10 (January 2, 1975). These proposed reductions were based primarily on the results of two intervening agency-sponsored studies, which indicated that the cost and weight of many of the then-current production bumpers had made such bumpers no longer cost-beneficial. The 1975 proposal would also have reduced the number of longitudinal pendulum impacts from six front and six rear, to three front and three rear.

After considering information and arguments submitted in response to the August 1973 and January 1975 proposals, the agency issued yet another proposal in March 1975. 40 Fed. Reg. 11,598 (March 12, 1975). At that time, the agency withdrew the January 1975 proposal regarding test speeds, and proposed instead only to amend the still pending 1973 proposal to reduce the number of longitudinal pendulum impacts to two front and two rear.

1976

The agency finally promulgated the Part 581 Bumper Standard in March 1976, specifying 5.0-mph test impact speeds and requiring a total of five barrier and pendulum impact tests for the front bumper and five for the rear.

1977

In 1977, however, NHTSA issued two further rulemaking proposals. The first would have delayed the effective date of the Phase II damage criteria one year. 42 Fed. Reg. 10,862 (February 24, 1977). The second, which replaced the first, proposed three alternatives: (1) a one-year delay of Phase II; (2) a one-year delay with a consumer information program on bumper performance in the interim; and (3) an indefinite delay of Phase II and substitution of the information program. 42 Fed. Reg. 30,655 (June 16, 1977). These proposals were withdrawn by the agency in November of that same year. 42 Fed. Reg. 57,979 (November 7, 1977).

Also in 1977, NHTSA decided to undertake a series of long term studies of its existing and proposed rulemaking efforts. As a part of this initiative, it began a multi-year evaluation of the

Part 581 Bumper Standard. This evaluation which was released in April 1981, is discussed in detail below.

1978

In 1978, and after the effective date of the 5.0-mph, Phase I standard, the Senate Appropriations Committee included in its report on the fiscal year 1979 Appropriations Act for the Department of Transportation a directive that NHTSA conduct studies and analyses reevaluating to the maximum extent feasible the question of the level of bumper damage resistance which would be most cost-beneficial to the consumer. The Committee further directed the agency to modify the Part 581 standard (i.e., the standard to which this current rulemaking is addressed) in accordance with the results of such analyses. S. Rep. No. 938, 95th Cong., 2d Sess. 25 (1978).

1979

In February 1979, the agency completed a Preliminary Analysis which concluded that 2.5-mph bumpers offered approximately \$77 more net benefits than 5.0-mph bumpers. In March 1979, the agency published an advance notice of proposed rulemaking seeking public comment on its February analysis. The notice indicated that the responses would be used to aid NHTSA in preparing a final report to the Senate Appropriations Committee and in determining the possible need for changes in the Part 581 standard.

In June 1979, NHTSA published a "Final Assessment of the Bumper Standard." That document estimated the net benefits of alternative bumper standards specifying test impact speeds of 2.5 mph, 5.0 mph, and 7.5 mph. The agency at that time concluded that a standard specifying 5.0-mph impact speeds should be retained since it was believed to provide slightly more lifetime vehicle net benefits (\$39) than one specifying 2.5-mph impact speeds. In December 1979, the agency updated its assessment based on comments received from the automotive and insurance industries. It concluded that the advantage of the 5.0-mph standard over the 2.5-mph standard was less than previously thought, offering only \$11-29 more lifetime vehicle net benefits than a standard specifying 2.5-mph speeds.

1980

In late 1980, during the final days of the 96th Congress, a House-Senate conference committee reported out a bill which would have statutorily reduced the test speed in the Part 581 standard to 2.5 mph for a two-year period. H. R. Rep. No. 1371, 96th Cong., 2d Sess. 25 (1980). Sharp differences of opinion regarding the relative merits of the agency's two 1979 bumper analyses were highlighted in the Congressional debates. See, e.g., Senate debate of September 25, 1980, 126 Cong. Rec. S13499-501. However, Congress adjourned without taking final action on the bill.

1981

In April 1981, NHTSA published a notice of intent to review the Part 581 standard and propose again to modify the requirements of the Part 581 Bumper Standard. 46 Fed. Reg. 21,203 (April 9, 1981).

Also in April 1981, NHTSA completed and published its "Evaluation of the Bumper Standard," which it had begun in 1977. Based upon continually developing data and analyses, this report addressed in still further detail the costs and benefits of each phase of the agency's bumper requirements, beginning with the initial FMVSS 215 standard. The April 1981 Evaluation incorporated newly developed data from various agency studies on insurance claims for vehicles manufactured since the Part 581 standard took effect, on the incidence and extent of low speed collision damage, and on bumper costs. Unlike previous studies, the Evaluation separately analyzed front and rear bumpers. It found that regulated front bumpers tended to be cost effective while rear bumpers were not. This study, in accordance with both the Senate's 1978 directive and the provisions of Executive Order 12291, formed the basis for the agency's undertaking the current rulemaking.

Current Rulemaking

October 1981 Proposal and Analysis

On October 1, 1981, NHTSA published a notice of proposed rulemaking (the NPRM) seeking comments on nine different alternatives for amending Part 581. 46 Fed. Reg. 48,262. The proposals ranged from one reducing the test

impact speed to 2.5 mph for rear bumpers only to one eliminating all test impact requirements for front and rear bumpers except as necessary to maintain a height requirement. Specifically, the nine alternatives were as follows:

— Alternative IA would have reduced the test impact speeds for rear bumpers only to 2.5 mph for longitudinal impacts and to 1.5 mph for corner impacts. It would have maintained the test impact speed for front bumpers at 5.0 mph and would have maintained the Phase II damage resistance criteria. (5.0 mph front/2.5 mph rear, Phase II)

— Alternative IB would have made the changes included in alternative IA and substituted Phase I damage resistance criteria for Phase II criteria for front and rear bumpers. (5.0-mph/2.5-mph, Phase I)

— Alternative IIA would have eliminated the damage resistance criteria for rear bumpers only, with the exception of the criterion that is intended to ensure uniform bumper height by requiring bumper contact with a pendulum test device within a specified height range. It would have maintained the 5.0-mph test impact speed and Phase II criteria for front bumpers. (5.0 mph/height only, Phase II)

— Alternative IIB would have made the changes included in alternative IIA and substituted Phase I criteria for Phase II criteria for the front bumper. (5.0 mph/height only, Phase I)

— Alternative IIIA would have reduced the test impact speed for front and rear bumpers to 2.5 mph for longitudinal impacts and 1.5 mph for corner impacts. It would have retained the Phase II damage criteria. (2.5 mph/2.5 mph, Phase II)

— Alternative IIIB would have made the changes included in alternative IIIA and substituted Phase I criteria for Phase II criteria for front and rear bumpers. (2.5 mph/2.5 mph, Phase I. This alternative is referred to below as the 2.5-mph/2.5-mph alternative.)

— Alternative IVA would have reduced the test impact speed for front bumpers to 2.5 mph for longitudinal impacts and 1.5 mph for corner impacts. It would also have eliminated the damage criteria for rear bumpers with the exception of the bumper height criterion. (2.5 mph/height only, Phase I)

— Alternative IVB would have made the changes included in alternative IVA and substituted Phase I criteria for Phase II criteria for front bumpers. (2.5 mph/height only, Phase I)

— Alternative V would have eliminated the damage resistance criteria for front and rear bumpers, with the exception of the bumper height criterion. (height only/height only)

The alternatives set forth in the NPRM were developed during the preparation of a Preliminary Regulatory Impact Analysis (PRIA) (Docket 73-19, Notice 27, No. 011).² The PRIA which was published for public comment simultaneously with the NPRM, built upon all of the agency's earlier evaluations and assessments. To encourage close scrutiny of the PRIA and the NPRM, and in recognition of the limited empirical data on several important issues, the agency specifically requested comment on 25 detailed questions which were set forth in the NPRM.

Using the present Part 581 standard for comparison, the PRIA estimated the changes in costs and benefits that were likely to occur if the standard were modified in each of the ways set forth in the October notice of proposed rulemaking. The PRIA concluded that the differences in probable net benefits among several alternative bumper standards were small. The results of the PRIA suggested that while 5.0-mph bumper requirements had in fact reduced lifetime repair costs for cars, they also had increased both car purchase prices and fuel consumption. The 5.0-mph bumper requirements had in fact reduced lifetime repair costs for cars, they also had increased both car purchase prices and fuel consumption. The 5.0-mph bumper requirements were found to have decreased insurance company claims payments and overhead, but also to have increased the manufacturing costs of car companies.

Public Meetings

The agency conducted two public meetings on the NPRM on October 22 and November 12, 1981, in fulfillment of the statutory requirement that

²In preparing the PRIA, the agency also considered the possibility of raising, as well as lowering the required test impact speeds. The 1979 Final Assessment stated that a 7.5-mph bumper would have marginally greater net benefits than a 5.0-mph bumper. However, the Executive Summary for that document indicated that the conclusions regarding the 7.5-mph bumper were based on substantially less data than were the conclusions regarding the 5.0-mph bumper and thus that the conclusions about the 7.5-mph bumper were far less reliable. Subsequently obtained data and analyses have not provided any basis for placing more credence in those three-year-old conclusions about 7.5-mph bumpers.

all interested persons be given an opportunity to present orally data, views and arguments on the October 1981 NPRM. The agency scheduled two separate meetings instead of a single extended one in response to a request by insurance industry representatives. Those representatives requested an opportunity to introduce data relating to suggested new compliance technologies whose use would reportedly allow the existing requirements of the Part 581 standard to be retained with little if any modification, but at greatly reduced economic cost. In the notice announcing the meetings, the agency urged all interested parties to provide technical and economic data that would help focus the issues at the first public meeting, and indicated that the second meeting would be used to allow others to respond to testimony at the first meeting. 46 FR 48958 (October 5, 1981).

The views and arguments advanced by responding parties with substantial economic interests at stake, e.g., the insurance and automotive manufacturing industries, were similar to those previously expressed in response to earlier analyses, proposals, and requests for comments. However, commenters did submit significant new data on several issues, including those relating to the cost and weight of bumpers providing different levels of protection.

Positions of Interested Parties

Time impact speed. Insurance industry representatives, generally joined by consumer representatives, expressed their support for retaining the current Part 581 requirements, based upon assertions of favorable benefit and cost analyses of the current standard, safety considerations, and the legislative history of the Act. Insurance representatives further contended that the legislative history indicates a Congressional intent that bumper standards be established at a level of 5.0 mph. They strongly opposed the option of adopting Regulation No. 42 of the United Nations Economic Commission for Europe (ECE).³

³ECE Regulation No. 42 requires that a car's safety systems continue to operate normally after the car has been impacted by a pendulum or moving barrier on the front and rear longitudinally at 4 kilometers per hour (about 2.5 mph) and on a front and rear corner at 2.5 kilometers per hour (about 1.5 mph) at 455 mm (about 18 inches) above the ground under loaded and unloaded conditions. See discussion under "Harmonization," below.

Some insurance industry commenters contended that the record in this proceeding is insufficient to support any reduction of the damage resistance or safety requirements of the Bumper Standard below current levels. These commenters, joined by an organization presenting arguments on behalf of consumers, argued (1) that in order to amend the standard the agency must be able to establish affirmatively that any selected alternative is one which uniquely meets the statutory criteria of the Act and the Safety Act, in a manner superior to any and all others, and (2) that on the record the agency is not able to make such a finding with respect to any particular alternative.

Auto industry commenters overwhelmingly supported the alternative proposing reduction of test impact speeds to 2.5 mph in longitudinal impacts and 1.5 mph in corner impacts, and substitution of Phase I damage criteria for Phase II criteria. Among the reasons stated in support of this alternative were assertions of cost-benefit analyses for that alternative more favorable to the consumer, the results of the agency's prior analyses, the similarity of this alternative to ECE Regulation No. 42, the greater relevance of the 2.5-mph design speed to the speed of the typical parking lot collision, and the enhanced prospects of gathering field data on the relative merits of 2.5-mph and 5.0-mph bumpers.

Three foreign manufacturers stated that they favored adoption of the requirements of ECE Regulation No. 42, but that the 2.5-mph/2.5-mph alternative was their second choice because of its similarity to the European standard. Several other manufacturers, while not advocating the adoption of the ECE requirements as such, noted the desirability of harmonizing United States and European bumper requirements. Some domestic and foreign automakers expressed reservations about adoption of the ECE standard in its entirety, but advocated adopting certain aspects of that standard, such as eliminating the fixed barrier test or establishing a single permissible bumper height.

A trade association representing materials suppliers registered its support for the 5.0-mph/5.0-mph standard, asserting that the standard provides the added advantage of affording actual protection at speeds above 5.0 mph. One bumper component manufacturer proposed the additional

alternative of lowering the pendulum impact speed to 2.5 mph, while retaining the 5.0-mph impact speed for barrier tests. That commenter contended that the pendulum test, which concentrates force on a particular area of the bumper, is a disproportionately severe test which prevents use of optimum 5.0-mph bumper designs.

A number of private individuals also submitted views on the proposed alternatives. The majority of those commenting favored retention of existing Part 581 requirements, although apparently some comments were based on factual representations contained in media reports of the rulemaking proceeding, instead of the data and issues actually under review. See, e.g., Docket 73-19, Notice 27, No. 209. Insurance industry and public interest commenters claimed that public opinion favors the 5.0-mph/5.0-mph standard, and that significant, if not determinative weight should be given to such alleged preferences.

Phase I-Phase II damage resistance requirements. Several commenters specifically addressed the issue of differences between the Phase I and Phase II damage criteria. Automakers addressing the issue uniformly favored return to the Phase I criteria. Two manufacturers advocated elimination of all criteria addressed to damage to non-safety components. The insurance industry generally favored retention of the Phase II criteria, as did a component parts manufacturer, although one insurance industry commenter advocated consideration of permitting nonself-restoring energy absorbing devices.

Other test procedure modifications. Commenters discussed several other alternative approaches to the Phase I-Phase II issue, including merely amending the bumper standard test procedures. One modification discussed by several commenters would allow manual repositioning of bumper or shielding-panel components during testing. Both insurance and auto industry commenters agreed that manual repositioning would be a desirable modification of the bumper system test procedure. However, some auto industry commenters also stated that eliminating the Phase II damage criteria would serve to alleviate much of the need for manual repositioning.

Three vehicle manufacturers and one component supplier recommended limiting the number of pendulum test impacts so that the bumper standard test procedure would more closely

approximate real life experience. These commenters advocated reducing the number of pendulum impacts to one longitudinal impact and one corner impact per bumper, or to one longitudinal and two corner impacts per bumper.

For additional details concerning comments on the NPRM, see the appendix to this notice.

Agency Decision

Drawing on the best available data, public comments submitted in response to the October 1981 NPRM, and comments presented at NHTSA's public meetings on October 22 and November 12, 1981, NHTSA has now completed a Final Regulatory Impact Analysis (FRIA) of the bumper standard alternatives. Docket 73-19, Notice 29, No. 001. Careful consideration was given to the data and analyses contained in the FRIA and all comments received in the rulemaking proceeding. Responses to all significant comments are contained either in this notice or the FRIA. Based on its review of all of these materials, the agency has decided to adopt the 2.5-mph/2.5-mph, Phase I alternative. The alternative reduces to 2.5 mph the front and rear longitudinal barrier and pendulum impacts for testing compliance with the safety and damage resistance criteria and substitutes Phase I damage resistance criteria for Phase II criteria.

In the agency's judgment, neither costs savings nor safety considerations warrant the retention of the current standard. Indeed, the agency believes that the changes in the damage resistance criteria and the compliance test speed are necessary in order to comply with the requirements of the Act that the standard seek to provide the maximum feasible reduction in costs to the public and the consumer.

As discussed in more detail below and in the FRIA, the extensive data analyzed by the agency and the reasoned assumptions made by the agency after opportunity for public comment have led the agency to the firm conclusion that the current 5.0-mph/5.0-mph standard does not meet the statutory requirements. Stated simply, the current standard does not provide or seek to provide the maximum feasible reductions in cost. Therefore, the agency has determined that the current standard can no longer be retained in accordance with the Act. Similarly, it is clear that a standard imposing a height-only requirement

for front and rear bumper systems would provide fewer net benefits than other alternatives considered in this rulemaking proceeding.

The agency recognizes that no single remaining alternative is dramatically superior in terms of net benefits over the wide ranges of reasoned assumptions made about the values of certain important variables. However, after careful comparison of the current standard and the specific proposed alternatives under ranges of assumptions, the agency concludes that the 2.5-mph/2.5-mph, Phase I alternative best satisfies the statutory criterion that the bumper standard "seek to obtain the maximum feasible reduction of costs to the public and to the consumer."

The agency has concluded that the alternatives involving differential front and rear impact speed requirements are less desirable because of uncertainties surrounding the effects of impacts between bumpers with different levels of aggressivity. These alternatives received no support among commenters. Alternatives involving height-only requirements for rear bumpers appeared to provide slightly less net benefits than the 5.0-mph/2.5-mph and 2.5-mph/2.5-mph alternatives under most sets of assumptions considered.

Alternatives which have higher impact speed requirements and would produce essentially the same net benefits, differ from the selected alternative principally in that they make an even trade of additional dollars saved in avoided damage for additional dollars spent for damage protection at such higher speeds. Those alternatives would thus fail to meet the test of the statutory criteria with respect to "maximum feasible reduction of costs." The initial direct costs to consumers of the selected alternative are less than those of that alternative which would in the agency's judgment be most likely to provide comparable net benefits, the 5.0-mph/2.5-mph alternative.

The agency has also concluded that reducing the impact speed to 2.5 mph and eliminating the Phase II damage criteria will not have an adverse effect on safety. Such amendments will have no discernible effect on the number of accidents, deaths or injuries that occur annually.

The new standard adopted in this notice will provide greater latitude and incentive for car manufacturers to improve bumpers through the

innovative use of new designs and materials, while conforming to the clear Congressional directive that the agency promulgate and enforce a minimum performance standard seeking maximum feasible reductions in cost. Also, the chosen alternative best advances the goal of harmonization with international standards while meeting applicable statutory requirements.

Pursuant to Executive Order 12291, the agency has concluded that there is a strong and reasonable basis in the record of this rulemaking proceeding for the factual conclusions and choices of data and methodologies underlying the selection of the 2.5-mph/2.5-mph alternative.

Agency Rationale

The sharply opposed positions of the commenters on the many complex technical, analytical and policy issues raised in this proceeding provide dramatic evidence of the difficulty which the agency has faced in reaching this decision. The primary issues involved in the agency's decision are as follows.

Resolution of uncertainty. The Act directs not only that a bumper standard be adopted and maintained, but also that such standard be set at the particular level of performance which "seeks to provide the maximum feasible reduction of costs to the public and to the consumer," taking into account specified elements of costs and benefits.

On several of the issues presented in choosing among the various alternatives, the agency was confronted with uncertainties arising either from conflicts among data or from the absence or limited nature of relevant, reliable data.

Because of the prior history of the standard and the sequence of technology used by manufacturers to comply over time, field performance data under real world conditions are sharply limited to empirical data on two types of systems, as discussed elsewhere in this notice. As a result, the combination of the specificity of the statutory language and the limited nature of the data available has left the agency certain of the need to act, but marginally less certain as to which of the available alternatives and which means of analysis of such alternatives will produce the result most in conformity with the intent of Congress.

For several years, the agency has been taking all prudent steps to obtain more data to reduce

uncertainty with respect to the appropriate standard and to analyze and account for the possible effects of remaining uncertainties on certain key variables. In a number of areas, more reliable data could not be developed by the agency. In the PRIA, the agency carefully identified and explained the assumptions it made in those areas and invited public scrutiny and comment. To ensure full discussion of all of the issues presented, the agency asked detailed questions regarding those assumptions in the October 1981 NPRM.

The agency's assumptions were the subject of extensive public comment. The agency received over two hundred comments from a full spectrum of interested parties and sought to gather all available data on the subject of this proceeding. New data, estimates and arguments were received which have assisted the agency in adjusting and refining its analysis of the standard and the alternatives.

The agency believes that sufficient information exists to make all determinations required by applicable statutory criteria. The uncertainties confronting the agency now are significantly less than those which existed when the current standard was promulgated. The agency knows far more now about the benefits and costs of bumper standards with various levels of performance requirements than it did then. In the agency's judgment, there is no reasonable prospect of obtaining more definitive data under the continued application of the existing Part 581 standard.

The record is most clear on the issue of the present standard's noncompliance with the criteria in the Act. If the agency were now setting a bumper standard for the first time, it could not justify establishing a 5.0-mph/5.0-mph standard. The existing 5.0-mph standard provides significantly less net benefit to the public and consumers than would several of the proposed alternatives with less stringent performance requirements.

The record and empirical data before the agency are less definitive with respect to some aspects of the agency's assessment of the proposed alternative standards. Some uncertainty continues to exist with respect to several issues, including the proper economic value to be assigned to delay and inconvenience, the number of relevant low-speed impacts which a car may be expected to sustain over its lifetime, the proper economic

value to be assigned to damage which car owners themselves elect not to repair, the proper factor to be applied to determine the relationship between increases in bumper weight and resulting increases in the weight of other vehicle systems and structures to accommodate the heavier bumpers (secondary weight), and the extent of weight reductions which would accrue if various alternative standards were adopted.

NHTSA has explored these areas of uncertainty to the limits of available data and appropriate analytical techniques. Ultimately, the agency has relied in these areas upon inferences from available data, informed judgment about engineering, technical, economic and legal matters, and the informed and expert opinion of commenters on the issue of which alternative level of performance requirements will best achieve the policy objectives set forth in both the Cost Savings and Safety Acts.

The agency has subjected its interim findings and conclusions to sensitivity analyses, to identify and isolate the most significant (i.e., outcome determinative) variables and to determine the levels of confidence which may be placed on the values ultimately assigned to such variables. Where NHTSA could not with certainty assign a single value to a variable determined to be significant, the agency in all cases employed a range of values based upon the best available information. Those ranges generally include the values recommended by the commenters. The use of these ranges permitted the agency to examine the sensitivity of the results of its analysis and ensure the integrity of the outcome.

Finally, the agency identified the sets of assumptions it believes are most probable, and subjected each of its comparative analyses to various combinations of such values. These choices and related assumptions are discussed below in this notice and in greater detail in the FRIA itself.

Selection of test speeds, cost savings considerations—threshold factors. In its efforts to ensure the fullest consideration of the current standard and the proposed alternatives, NHTSA analyzed the net benefits of the standard and each alternative both by the use of average values and the use of extreme values for those variables about which there was either a significant measure of uncertainty or sharp and

irreconcilable differences of opinion among the commenters. Some of the extreme assumptions were favorable to the current standard, while others were favorable to a reduced standard. The extreme values so analyzed represent in most cases neither a probable nor a reasonable outcome of events. Such analysis illustrates the most extreme of the possible outcomes in order to ensure the fullest consideration of the results of the agency's action.

Under the three sets of those extreme assumptions deemed to be the more reasonable by the agency, the net benefit calculation was found to favor a reduced standard. In these comparisons, all but one alternative proposal proved superior to the 5.0-mph/5.0-mph standard in terms of net benefits. See Table X-9 of the FRIA.

Only under the fourth set of extreme assumptions considered by the agency did the current standard yield more net benefits than did the alternatives. See Table X-9 of the FRIA. However, the agency considers it virtually impossible that the factual elements of that combination of assumptions could occur in reality, in large part because of inherent contradictions in economic or behavioral results that would be associated with such alignment. See Chapter XI of the FRIA.

Therefore, the agency can not, consistent with its statutory mandate, retain the existing standard.

Similarly, alternative V, which would have eliminated all but the height requirement for both front and rear bumpers, also is found to fail to maximize net benefits to the consumer under the range of combinations of assumptions considered. No set of assumptions or average set forth in Tables X-9 and X-10 of the FRIA showed superior net benefits for alternative V. Accordingly, this alternative has been rejected by the agency.

Given the relatively flat nature of the cost and benefit curves over the range between the 5.0-mph/2.5-mph and 2.5-mph/height-only alternatives, the choice among the remaining alternatives is more difficult. Particular sets of assumptions would suggest the superiority of various alternatives which retain some level of front bumper impact requirements but which would eliminate all impact requirements, and

retain only a height requirement, for rear bumpers. However, any such apparent superiority in each case occurs only in the unique event of one combination of assumptions. Viewed as a whole, the data and probabilities associated with all combinations of assumptions preclude any reasonable finding that an alternative is superior where the range of necessary factual preconditions is so narrow.

First, under the sets of assumptions considered by the agency to be most likely or representative, the 2.5-mph/unregulated alternative cannot be found to be the alternative which is most likely to maximize net benefits. See Table XI-4 of the FRIA. Under all three sets of assumptions in that table considered by the agency to represent the most likely or average values for disputed elements of fact, the 2.5-mph/unregulated alternative provides fewer net benefits than does the 2.5-mph/2.5-mph alternative. Under two of those sets of facts, the net benefits of the 2.5-mph/unregulated alternative are also inferior to those of the 5.0-mph/2.5-mph alternative.

Second, while the net benefits of the 5.0-mph/unregulated alternative are closer to those of the 5.0-mph/2.5-mph and 2.5-mph/2.5-mph alternatives, they are still inferior. The net benefits of that alternative exceed those of the 2.5-mph/2.5-mph alternative in only one instance in Tables X-9, X-10 and XI-4. In several instances, the 5.0-mph/unregulated alternative yields less net benefits than does either the 5.0-mph/2.5-mph or 2.5-mph/2.5-mph alternative.

Finally, there is another consideration which leads to the rejection of the 5.0-mph/unregulated alternative. Any alternative not providing front and rear impact protection at the same speed raises uncertainty about the aggressivity results or other effects of differential requirements.

Among the alternatives having differential requirements, the 5.0-mph/unregulated alternative has the most extreme differential. Since there are not any hard data on the effects of this differential, those effects could not be factored into the net benefit calculations in the FRIA. However, the agency's engineering judgment leads it to the conclusion that implementing a standard with such a differential would cause front bumpers to be more aggressive than rear bumpers. This aggressivity differential would cause rear ends of cars to receive greater but presently unquantifiable

levels of damage in car-to-car collisions than they would if the impact speed requirements were identical.

The amount of any such additional rear end damage would offset in whole or in part any incremental benefits derived from requiring front bumpers to comply with more stringent requirements. Since these possibilities are not reflected in the net benefit figures for alternatives with differential front and rear impact speeds in Chapters X and XI of the FRIA, such net benefit figures would have to be considered overstated in the event that differential requirements were imposed.

The agency notes that implementing a standard with different front and rear bumper requirements could tend, in a front-to-rear collision between two cars, to have the undesirable effect of subsidizing some of the damage costs of the driver of the striking vehicle, who is most likely to be deemed under law to be at fault in causing the collision.

Finally, although commenters differed on the actual effects of differential impact speed requirements for front and rear bumpers, no commenter advocated adoption of a bumper standard requiring different test impact speeds, and some manufacturers suggested that consumer expectations would make bumpers subject to height-only requirements unacceptable in the marketplace.

Selection of test speeds, cost savings considerations—final decision. The considerations discussed above and the requirement in section 102 that the agency's standard seek to maximize cost reductions thus necessitated the determination by the agency of which of the remaining alternatives, i.e., the 5.0-mph/2.5-mph and 2.5-mph/2.5-mph alternatives, would seek to provide the greatest superiority in net benefits.

Based on the analysis in the FRIA, the agency concludes that the 2.5-mph/2.5-mph alternative more fully satisfies all aspects of the statutory mandate than does the 5.0-mph/2.5-mph alternative. The agency's choice between these two alternatives was reached after comparing the estimated results of implementing these alternatives under all examined sets of extreme assumptions, as well as under those sets of assumptions deemed by the agency most representative or most likely to occur. Under the

sets of extreme assumptions in Table X-9 of the FRIA, an equal number of sets support the choice of each of these two alternatives.

However, when the highly unlikely fourth set of assumptions in Table X-9 is discarded, and the net benefits developed using the first three sets of assumptions in lines 1 through 3 of that table are averaged to represent equal probabilities of outcome for each of the sets of facts (See line 1 of Table XI-4), the 2.5-mph/2.5-mph alternative is clearly superior. This alternative yields \$42 in net benefits relative to the current standard, compared with \$33 in net benefits for the 5.0-mph/2.5-mph alternative.

The agency's direct comparison of these two alternatives in Table XI-4 under other sets (lines 2 and 3 of that table) of assumptions discloses that the 2.5-mph/2.5-mph and the 5.0-mph/2.5-mph alternatives would yield varying net benefits that do not differ greatly.

The agency has noted above the absence of hard data that would be desirable in determining precise values for some of the variables involved in projecting costs and benefits. It is important to note, however, that the variables about which the sharpest disagreements of fact have arisen in the record, e.g., the frequency of low speed accidents, the value of delay and inconvenience, and the appropriate factor to apply to arrive at secondary weight, are in fact also those variables which are the least significant to the outcome of the agency's net benefit calculations. For example, as shown in Table XI-2 of the FRIA, using the value for *each* of these variables which most favors retaining the current standard would reduce the net benefits of the 2.5-mph/2.5-mph alternative by only \$4-12 over the life of the car. A shift in the values assigned to these variables would thus be least likely to produce a change in the outcome of the agency's determinative net benefit calculations. Thus, the variables about which the greatest controversy has arisen are in most cases also those which are least important in the decision-making process.

In selecting this alternative, the agency was also guided by its conclusion that where two or more alternatives yield net benefits or ranges of net benefits which are difficult to distinguish, the cost savings goal of the Act is most fully satisfied by selecting the alternative with the requirements which impose the lowest direct, immediate costs.

The 2.5-mph/2.5-mph alternative is the one which imposes the least direct, immediate costs on the consumer, i.e., the least increase in the cost of a new car. To illustrate this point, if the unregulated bumper is considered the baseline, the agency's analysis indicates that the increase in direct immediate cost to the consumer for bumper system components alone would be \$21-41 for a car equipped to comply with the 2.5-mph/2.5-mph alternative, but \$30-58, or 50 percent higher, for a car equipped to comply with the 5.0-mph/2.5-mph alternative. The choice of the 2.5-mph/2.5-mph alternative over the 5.0-mph/2.5-mph alternative reduces the direct bumper component cost increases by \$9-17, and the difference would be even greater if secondary weight costs were considered. See Table VII-8 of the FRIA.

Selection of the alternative with less stringent requirements, and thus lower immediate costs, avoids forcing consumers to spend more in purchasing a new car in order to obtain what would only eventually, if at all, amount to equivalent net savings or benefits.

If the agency did not select the alternative with the lower immediate costs, the consumer would be required to spend additional money in pursuit of benefits whose occurrence and amount are less certain. The agency believes that the consumer is best served by an approach which in close cases favors the more certain over the less certain equivalent net benefit. NHTSA believes that this interpretation of the Act most fully implements the objectives of the Congress and of Executive Order 12291 and represents the soundest public policy.

The agency also must recognize, and if possible implement, the apparent distinction made in the Act between obtaining the "maximum feasible reduction of costs to the *public* and to the *consumer*" (emphasis added). The legislative history of the Act does not suggest a reason for the apparent distinction between the public at large and those who may purchase cars. One possible interpretation of this distinction is that Congress meant to seek the maximum possible benefits for the public in general, including those not purchasing cars. Once the agency has determined that the net benefits of the 5.0-mph/2.5-mph and 2.5-mph/2.5-mph alternatives are close, the agency believes that the only

interpretation which would give appropriate weight to the statutory distinction between the "public" and "consumer" would be the alternative which better permits the marketplace to work efficiently and to produce innovative designs, the implementation of which will reduce overall costs to society as well as the purchasers of new cars.

Several automobile manufacturers and component suppliers commented that reduction of the test impact speed to 2.5 mph would facilitate use of new components and technologies, including plastics, ultra-high strength steel, and single-unit bumper systems. NHTSA believes that such design flexibility would be beneficial to the public at this time for several reasons. Innovation could result in more effective bumpers at lower cost to the public than would otherwise be available. Innovation and variety will allow individual consumers to apply their own individual value determinations on such important issues as the cost of delay and inconvenience, by opting to purchase more protection than would be cost-beneficial to the consuming public at large under the Act. Innovation, variety and a range of implemented choices in the marketplace will permit the agency to monitor cost and benefit trends and collect data about different performance levels of bumpers in the future.

The 2.5-mph/2.5-mph alternative will permit more innovation than the 5.0-mph/2.5-mph alternative because the former allows wider design freedom. Moreover, the 2.5-mph/2.5-mph alternative will increase the economic incentive of the manufacturers to retool because the parts for the new designs could be used on both the front and rear bumper systems of a vehicle. Without such innovation and retooling, the designs of bumpers are more likely to remain static, at least in the short run, and the benefits of innovative designs will be unrealized or significantly delayed.

There are other considerations that support the selection of the 2.5-mph/2.5-mph alternative. As noted above, any alternative specifying the same front and rear impact speed is deemed preferable to alternatives involving differential front and rear test impact speeds since an alternative with symmetrical requirements would not raise uncertainty about the effects of differential requirements. Further, a bumper standard requiring differential front and rear

impact speeds would lead to increased production costs and an increase in replacement part inventories as a result of probable losses in commonality of front and rear bumper components. Reduced commonality in a mass production market would be likely to increase the consumer cost of new vehicles and replacement parts.

In view of these differences between the alternatives and the probable consequences of the selection of each, the policies and requirements of the Act favor the choice of the 2.5-mph/2.5-mph alternative. As noted later in this preamble, the goal of section 102 is not to provide maximum protection against damage in low-speed collisions without regard to the cost of such protection. Instead, the goal is to reduce front and rear end damage in low-speed collisions under a statutory criterion and specific considerations that, when read together, indicate the most appropriate result is the one that minimizes the total consumer and public expenditure related to such damage and its prevention. The agency believes that the distinctions it has drawn between and the choices it has made among the alternatives are fully consistent with, and required in furtherance of, the policies of the Act.

Selection of test speeds; safety considerations. As discussed in more detail later, adoption of the 2.5-mph/2.5-mph alternative will not have any measurable effect on the risk that future accidents might be caused by safety components which malfunction due to damage incurred in prior low-speed collisions and which are left unrepaired. Available data indicate that very few accidents occur as a result of malfunctioning of those vehicle components which are subject to the safety criteria of the bumper standard. The agency concludes that far fewer accidents could be attributed, and only by speculation, to a failure to repair such components after they had been damaged in the only type of collision relevant to this discussion, i.e., one which might occur at an impact speed between 2.5 mph and 5.0 mph.

Similarly, the agency concludes that reducing the bumper standard test speeds will not increase the risk that safety components damaged in such low-speed collisions will cause injury in subsequent accidents caused by other factors. The only safety-related system that is covered by the safety criteria of the Part 581 bumper standard and that might contribute to injury in the event

of an accident is the fuel system. However, the data relied upon by one commenter addressing this issue predated the effective date of FMVSS 301, Fuel System Integrity. That safety standard provides protection, independent of and substantially superior to that of the bumper standard, against the risk that fuel leaks will create a safety hazard in an accident.

The agency concludes also that reducing the test speeds for the safety criteria will not measurably affect the high-speed crash energy management of cars. The difference in the energy management capability of 5.0-mph bumpers and 2.5-mph bumpers is negligible at crash speeds such as those (30 mph) specified in the safety standards regulating the crashworthiness of new cars.

Finally, NHTSA concludes that reducing the bumper standard test impact speeds will neither create inconsistencies with any of the safety standards nor make compliance with those standards more difficult.

Corner impact speeds. It should be noted that selection of a 2.5-mph test impact speed for longitudinal impacts also necessitates the selection of a 1.5-mph corner impact requirement. The 1.5-mph corner impact speed represents an equivalent proportional reduction in the 3.0-mph corner impact speed in the current standard as compared to the reduction from 5.0 mph to 2.5 mph for longitudinal impacts. The agency has always established corner impact speeds at lower levels due to the greater damage potential of corner pendulum impacts relative to longitudinal pendulum impacts at the same speed. The greater relative severity of the corner impact results from the concentration of crash force on a single location, which is inherent in a corner impact, and the fact that impact absorbing devices are designed to provide maximum protection in the more common longitudinal impacts. If the proportional relationship of the longitudinal and corner impact speeds were not maintained, the effort to maximize net benefits would be frustrated.

Phase I versus Phase II. Making a choice between Phase I and Phase II damage resistance criteria was also difficult because of the limited empirical data available for comparing performance under the two sets of criteria. Phase I of the Part 581 standard remained in effect for

only one model year (MY), 1979, and available information indicates that many manufacturers proceeded directly to bumper designs intended to meet the Phase II requirements prior to their effective date. The information that is available from surveys of vehicle owners and from insurance files indicates no discernible difference between the net benefits of MY 1974-78 and MY 1980 bumpers. Even if this information did reveal a difference, there are no data which the agency could use to determine the relative contributions of Phase I and Phase II to those benefits.

No compliance testing of MY 1979 models was conducted by NHTSA. The agency's compliance test results for MY 1980 suggest greater levels of protection for MY 1980 cars than is found in empirical data on real world damage experience for Phase II bumpers. The agency believes that in such cases agency decisions must be more strongly influenced by real world data since they reflect actual experience and are more reliable indicators of future real world experience. The insurance claim and survey data reflect the myriad variations in accident conditions and circumstances encountered in actual driving. In contrast, the compliance tests involve a limited and idealized set of conditions and circumstances. Those tests were necessarily chosen by the agency with the knowledge that they were imperfect surrogates from which to predict on-road experience.

Those commenters addressing the issue generally noted the cost and weight savings available by deleting the Phase II requirements. Commenters also pointed out that the increased use of non-metallic face bars has decreased the visibility of dent and set and thus greatly changed the circumstances under which such damage must be evaluated. Moreover, as suggested in the comments, deletion of Phase II would eliminate present difficulties in evaluating minor damage in compliance testing. The agency has been unable to determine that there are any net benefits associated with the Phase II damage criteria, independent of impact speed requirements.

The agency has also noted and taken into account the factual information and assertions submitted by representatives of the insurance industry concerning the possible use of more economical compliance technology such as nonself-restoring energy absorbers. The use of such

technology is prevented by the current Phase II requirements. The availability of such technology on new bumper systems is a desirable result, independent of the impact speed requirement imposed by the bumper standard. Retaining the Phase II requirements would inhibit the further development of such technology.

Finally, the agency took into account the importance of distinguishing in its analyses among favorable net benefit results attributable to impact speed reduction only, those results attributable to action with respect to Phase II only, and those results attributable to both aspects of the decision. Factual data exist in the record only with respect to the first and third of these areas. Thus, any attribution of benefits to the Phase II requirements would be too speculative as a basis for agency decision. The agency believes that the probable effect of its current decision will be the introduction of bumper systems exhibiting at least some characteristics of 5.0-mph, Phase I bumpers. Bumper face bars and reinforcements designed for 5.0-mph impacts, and therefore most probably capable of affording even greater actual protection as a result of over-design to ensure compliance, will undoubtedly continue to be used in at least some new cars in the short term. Effectively, 5.0-mph, Phase I bumpers will thus be produced under the new standard, on an interim basis and for some portion of the new car fleet. The performance of these cars can and will be monitored closely by the agency to estimate the actual effects of the shift to Phase I criteria.

For all of these reasons, the agency has concluded that the Phase II criteria are not justified and that those criteria should be deleted from the standard.

Removal of optional equipment during compliance testing. Several commenters contended that existing Part 581 test procedures restrict the installation of certain optional equipment prior to sale of a vehicle to a first purchaser. Although one domestic manufacturer stated that its optional equipment sales were not restricted, other automobile and equipment manufacturers commented that existing test procedures inhibit installation of fog lamps, running lights, and headlamp washers. Commenters recommended dealing with this problem by removing such equipment prior to

testing, exempting such items from the protective criteria, or limiting testing to standard equipment only.

NHTSA believes that the safety value of optional equipment such as fog lamps has yet to be demonstrated conclusively. To the extent that the equipment does serve a safety function, permitting its removal during testing would encourage its installation and thereby promote safety. Further, distinguishing between optional equipment installed before the purchase of a new car and that installed after such purchase serves little purpose, since equipment installed after purchase would be just as likely to be damaged in a low-speed collision. Moreover, such a distinction unfairly discriminates in favor of aftermarket suppliers at the expense of manufacturers and dealers wishing to attach equipment prior to the sale of new cars. The agency also notes that possible cost savings from factory installation of optional equipment are lost if such installation is discouraged by the test requirements. For these reasons, the agency has amended the standard to permit removal of fog lamps, running lights, other optional equipment attached to the bumper face bar, and headlamp washers prior to testing.

Harmonization. The Trade Agreements Act of 1979 (19 U.S.C. 2532(2)), requires that the agency consider harmonization with international standards in its regulatory actions. In the present context, ECE Regulation No. 42 is relevant.

NHTSA has formally endorsed enhanced efforts at harmonization between and among international standards in presentations to the Group of Experts on the Construction of Vehicles (Working Party 29) which operates under the ECE's Inland Transport Committee. Explicit harmonization of a United States bumper standard with the ECE regulation could have some positive economic effects since domestic manufacturers might experience lower costs due to reduced need for differentiation in design and equipment between cars for sale in this country and cars for export. In addition, European manufacturers subject to the ECE regulation could experience similar reduced costs.

This consideration, however, cannot be deemed to be controlling where United States law creates specific performance or policy criteria for regulatory action. With regard to ECE Regulation No. 42, NHTSA has concluded that the Act

imposes specific criteria relating to cost savings which the ECE regulation does not address. Further, it is noted that the Act mandates the bumper standards issued thereunder be drafted so that they regulate performance instead of directly regulating bumper design. Certain provisions of the ECE regulation would impose statutorily impermissible design restrictions on vehicles produced for sale in this country. Finally, NHTSA has concluded that potential bumper mismatch problems could result from substituting the height requirement specified in that regulation for the requirement in the Part 581 Bumper Standard. NHTSA will continue to pursue the question of harmonization in appropriate forums, but at this time merely notes that the 2.5-mph/2.5-mph, Phase I alternative selected in this rulemaking is far more compatible with the ECE regulation than the current Part 581 standard or the 5.0-mph/2.5-mph alternative.

Number of pendulum impacts. Some commenters suggested that the number of pendulum test impacts required by the standard be reduced. However, given the likelihood that some cars may incur more than two low-speed bumper impacts in their lifetime, and the possibility that all such impacts may be either longitudinal or corner impacts and may involve the same bumper, the agency has concluded that the current procedure is appropriate to assure that each bumper is able to withstand the impacts to which it may in fact be subjected over its lifetime.

Public opinion survey. Some commenters alleged that public opinion strongly favors the retention of bumper requirements at current levels and should control the agency's decision in this rulemaking. As evidence of public opinion, two commenters cited a survey conducted by the Opinion Research Corporation, Inc., (ORC) for the Insurance Institute for Highway Safety.

NHTSA disagrees with the commenters' suggestion about public opinion. First, the level of bumper standards established by the agency under the Act cannot be determined merely on the basis of what members of the public understand to be the relevant facts and issues, or what they themselves would prefer. The Congress has determined the public policy which must be applied by the agency, and the agency's decision must be reached in accordance with the statutory criteria. Those criteria do not include public

preferences as such, although as noted in the FRIA, adequately demonstrated public preference may be relevant to assessments of future market demand and the response options available to the auto manufacturing and insurance industries.

Second, the agency does not believe that the ORC survey provides reliable evidence on public preferences regarding economic values associated with bumper alternatives before the agency. An analysis of the text of the survey discloses that the structure and specific questions asked did not compensate for the public's general lack of detailed information concerning the costs and benefits of bumpers. Yet the survey asked a variety of questions which could be meaningfully answered only by persons knowledgeable about such matters. Also, many of the specific questions may have inadvertently encouraged respondents to give inflated estimates of the value of the current bumper standard. For these and other reasons discussed in chapter III of the FRIA, the agency regards the ORC survey as an inconclusive indicator of informed public opinion.

Legal issues. Some commenters advocating retention of the current standard have questioned the adequacy of the record in this proceeding to provide a basis for decision and have challenged in advance the legal soundness of any decision to amend the standard.

In this rulemaking proceeding, the agency has compiled voluminous materials over a period of years which have been used in analyzing competing alternatives. Through the notice and comment process and two public meetings, the agency has received over two hundred comments from a full spectrum of interested parties and has gathered all available data on the subject of this proceeding. New data, estimates and arguments have been received which have assisted the agency in refining its analysis of the standard.

As noted above, the agency recognizes that a degree of uncertainty is present in some of its calculations and conclusions by virtue of the absence of conclusive real world data relating to certain categories of benefits and costs. However, this lack of factual certainty no more absolves the agency of its duty under section 102 of the Act to ensure that a bumper standard exists which in fact complies with the requirement to seek maximum feasible reductions in cost than could similar uncertainties have arguably absolved the

agency of its duty to issue a standard in the first instance. Under the Act, the agency is directed to adopt and maintain a standard. That standard is further required to meet certain statutory criteria. Implicit in this and any similar statutory mechanism is both a prohibition against rescinding an existing standard altogether and maintaining a standard which, on the basis of a developing evidentiary foundation is found either not to have any net benefits, or to have fewer net benefits than any one or more different standards. As noted above, explicit instructions to the effect were directed to the agency in 1978.

The agency does not accept an expansive view of the limitations imposed on the agency's action in this proceeding by the Act, as inferred by some commenters from the provisions of the Act itself. The agency is cognizant of the relevant statutory criteria imposed by this organic Act and has acted in accordance with them.

The statute does not require, and the legislative history does not support, an inference of Congressional intent that the agency be completely certain regarding the relevant factual issues before it conducts rulemaking under this Act. To the contrary, the Act, its legislative history and Congressional action to date have emphasized the presence of significant uncertainty on all of the relevant issues discussed in this notice. Recognition of the uncertainty may be seen in, for example, the wording of the criterion in section 102 governing the setting of the level of the bumper standard. The agency is not required to establish a standard that *produces* the maximum feasible reduction in costs, but one that "seeks to obtain" such a reduction. The agency has always considered itself bound to proceed with continuing review and rulemaking even in the presence of uncertainty. This conclusion and interpretation of the statute is consistent with the agency's actions since enactment, and is explicitly reasserted in this notice.

The statute also does not mandate that the standard be set so as to require the use of the most protective bumpers which can be produced. From the beginning of its action under the provisions of the Act, the agency has always recognized that such bumpers would be so expensive to produce and replace that their use would involve a net economic loss for consumers. 38 Fed. Reg. 20,899 (August 3, 1973). As the

agency also noted in that notice, rulemaking under the Act involves the balancing of many factors to determine what level of performance is most beneficial to the public and the consumer.

As the agency interprets the Act and its history, the purpose of the Act's bumper provisions is to secure cost savings for the public and the consumer. The bumper provisions address the issues of the costs of damage in low-speed collisions and the costs of avoiding that damage and authorize and direct the agency to set standards that minimize the combined total of these costs to the public and the consumer. The goal of seeking cost savings is promoted by setting the standards and as appropriate adjusting them toward the level where the marginal benefits equal marginal costs. That is, if raising bumper performance from its unregulated level yields more incremental benefits, reflected in damage reduction, than the incremental costs of increased damage protection, the standard should be raised. The impact speed requirements should be raised to the point where the incremental increase in damage avoided equals the incremental increase in costs. This is the point at which the cost savings or net benefits are maximized.

Raising the requirements above that point of equality would not provide the public and consumer with any additional cost savings. Two possibilities exist regarding the relationship of incremental benefits and costs above the point. One is that incremental benefits will be less than the incremental costs at all points above the point of equality. In that event, raising the requirements above the point of equality would reduce the cost savings achievable at that point. The other possibility is a variation on the first in that incremental benefits will equal or at least appear to equal incremental costs over some range of requirement levels immediately above the point of equality. The FRIA suggests that there may be a range over which incremental benefits and costs appear to be roughly equal. Setting requirements within such a range would not, however, increase cost savings, and would thus be of questionable validity. It would result in a simple trading of dollars, that is, receiving only as much in reduced damage as one pays for increased damage protection.

In this rulemaking action, NHTSA has determined that the 2.5-mph/2.5-mph alternative

is more likely than the current standard and the other alternatives to be the point of equality, that is, where the incremental benefits first equal the incremental costs. Accordingly, the agency has selected that alternative as the new standard. As noted above, setting a higher standard would not increase the savings to the public and consumers. A higher standard would only increase the direct, immediate costs which each new car purchaser must bear.

Some commenters have asserted that a 5.0-mph test impact speed is necessary to satisfy the expectations voiced in Congress during deliberations on the Act. While these expectations are relevant, the determinative fact in all instances must be what the Congress in fact did through legislative action. In the Act, the Congress did not set a particular standard, but instead adopted the maximum feasible cost reduction criterion, and required that bumper standards be set in accordance with it. The criterion is a deliberately flexible one which permits and even requires that bumper standards be adjusted based on available information.

Some commenters suggested that the agency is legally bound to maintain the Part 581 Bumper Standard at its present level because the standard incorporates the safety criteria of former FMVSS 215. One insurer asserted that the criteria in section 103(a) of the Safety Act must form a basis for any decision to amend the Bumper Standard. Those criteria require that safety standard be practicable, be stated in objective terms, and meet the need for motor vehicle safety. 15 U.S.C. 1392(a). Another insurer cited the legislative history of the Act in support of the proposition that Congress intended safety considerations to be controlling in establishing bumper standards.

Given the hybrid nature of the Part 581 Standard, this rulemaking action was initiated under the concurrent authority of the Act and the Safety Act. Without deciding whether the criteria established for safety standards under section 103 necessarily be applied in all cases under the Act where any safety relationship can be asserted, the agency has concluded, based on the discussion in this notice and the FRIA, that its actions in this proceeding are in all respects in accordance with the applicable criteria of the Safety Act itself.

By the same token, this action does not conflict with safety standards promulgated under the

Safety Act. To the extent that bumper standards may be considered to be safety standards, the 5.0-mph safety criteria of Part 581 have been determined to be unsupported, even under the Safety Act criteria, and are amended by this notice. Reducing the test speed does not make compliance with any safety standard more difficult. The changes made by this rulemaking action do not necessitate any change in efforts to comply with existing safety standards. To the degree that pedestrian impact protection is a relevant safety consideration, current agency research on the subject suggests the possibility of an adverse safety consequence from bumpers designed for impact speeds of 5.0 mph or higher.

The Final Regulatory Impact Analysis

NHTSA's FRIA estimates the changes in costs and benefits likely to result from amending the Bumper Standard. In assessing the relative merits of the alternative bumper standard amendments described in the notice of proposed rulemaking in this proceeding, NHTSA has considered all available evidence and viewpoints in order to quantify and analyze the various factors relevant to determining bumper system net benefits.

As discussed in the agency's FRIA, the primary measure of benefits of the Part 581 Bumper Standard is the economic cost of the damage avoided by use of a bumper designed to provide protection at a higher impact speed. In the agency's FRIA, this cost was determined for each alternative standard by computing the cost of repaired damage and unrepaired damage. The cost of damage was computed by first using the results of vehicle owner surveys and insurance company claim files to estimate the frequency of damage to bumper systems. This figure was then analyzed in terms of the projected effectiveness of that bumper system in preventing damage, as estimated from insurance records and by use of engineering judgment.

Reduced levels of savings representing the value of damage which the vehicle owner decides not to have repaired were determined by first estimating the repair costs for unrepaired damage described by car owners. NHTSA then reduced the repair cost by a range of values to reflect the fact that the damage was not repaired, the effect of vehicle age on the value of that damage, and the absence of any out-of-pocket expenses incurred by the car owner.

The agency's calculation of benefits also took into account insurance cost savings beyond the value of the damage avoided by the bumper system, i.e., through savings in administrative expense. Savings in consumer time and inconvenience resulting from damage avoidance at various levels of bumper damage resistance were also considered as benefits of bumper regulation. Such savings include the value of time saved at the scene of a low-speed accident, reduced time and expense in obtaining repair estimates, and savings in the avoided cost of obtaining alternative transportation while collision damage is repaired. Finally, although not subject to quantification in the agency's economic analysis, the agency considered the possible beneficial or adverse effects of bumper requirements on vehicle safety.

A very important cost impact of bumper regulation is the increase in new car prices attributable to the use of bumper systems providing greater levels of damage resistance. This cost consists of the cost of the bumper system itself and the cost of upgrading other vehicle components to support the additional weight of more damage resistant systems (i.e., the cost of secondary weight). The FRIA examines the changes in such costs that would result from adopting test speeds below those in the current standard. The costs used in the agency's FRIA represent the marginal change in costs resulting from changing from the current bumper standard to an alternative standard requiring lower levels of bumper performance. Costs are calculated in terms of actual cost to the consumer. Finance charges associated with that portion of the vehicle purchase price attributable to the bumper are considered and taken into account as appropriate.

In addition to the effect on the initial cost of purchasing a car, the added operating cost of driving a car with a heavier bumper system has been considered. The agency has estimated the additional fuel costs incurred in carrying the extra primary and secondary weight associated with bumper systems providing greater levels of damage resistance performance. Costs and benefits to be accrued in the future have been discounted to reflect their value in current dollars. Results of the FRIA have been stated in terms of positive or negative net benefits for the

various alternative standards, as compared to the costs and benefits of the current 5.0-mph/5.0-mph standard. See chapters X and XI of the FRIA.

In the agency's analysis, several factual issues are of particular importance, and the data and opinion evidence relied upon by the agency are summarized in greater detail below.

Frequency of bumper-related collisions. As noted above, benefits derived from the damage avoidance properties of bumpers are computed by estimating first the frequency of bumper-related collisions, and then the ability of the bumper system to protect the car in those collisions. Levels of protection thus computed yield benefits in terms of the costs which would otherwise have been incurred in connection with the avoided damage.

In 1970, the Ford Motor Company conducted a survey of actual observed damage to Ford cars in parking lots. Based on that survey, earlier NHTSA analyses estimated that the average car experienced 3.63 low-speed collisions involving its bumpers during its lifetime.

In the PRIA, the agency estimated the frequency of unreported, low-speed collisions at a lower number, based on the results of a telephone survey of principal operators of cars. That survey was conducted for NHTSA by Westat, Inc.

The agency's October 1981 NPRM specifically requested that commenters address the issue of the best method of estimating such low-speed collision frequency. Responding commenters disagreed on the relative merits of the cited damage frequency estimates. While car manufacturers argued for the use of figures derived from the Westat study, insurers generally favored higher estimates. Commenters addressing this issue generally expressed the view that the actual figure for low speed collision frequency would be somewhere below the figure of 3.63 lifetime impacts estimated from the parking lot surveys by Ford.

The agency agrees with commenters that the Ford survey is inadequate for use in the current context, by virtue of various factors, including its concentration on urban areas. The agency believes that the Westat survey, and the comments to the record by interested parties represent superior, and the best available, data on low-speed accident frequency. They have been considered in the computation of this factor. NHTSA has considered

the possible use of crash recorders on cars to assess accident frequency, but finds that this approach would be prohibitively expensive and not technically feasible at this time. For these reasons, the FRIA incorporates a range of values for low-speed accident frequency, using as the bounds of the range the highest estimate provided in the comments and the lower estimate derived from the Westat survey data.

Bumper system effectiveness. On the question of the effectiveness of bumper systems designed to provide protection at differing impact speeds, estimates used in the PRIA were based on comparisons by agency experts between the performance of cars with Part 581 bumpers and with pre-standard cars. The agency was able in the PRIA to make extensive use of field data to determine the effectiveness of bumpers designed to provide protection in 5.0-mph impacts. NHTSA was able also to supplement insurance industry data on reported accidents with Westat survey data on damage incurred in unreported accidents.

However, no similar data on the effectiveness of bumpers designed to provide protection at other impact speeds exists. As a result, the agency was forced to rely in its PRIA on data concerning MY 1973 rear bumpers for its estimates of 2.5-mph bumper effectiveness. These were the only bumpers ever sold in this country which were required to provide 2.5-mph protection. As an alternative and cross-check, the agency also considered in the PRIA estimates which had been developed for use in the June 1979 Final Assessment of the Bumper Standard, and which were based on engineering judgment of the agency's experts regarding the relative effectiveness of various bumper systems. The use of these estimates was supported by the insurance industry in its review of the 1979 Assessment.

Using this methodology, the agency estimated that 2.5-mph bumpers would achieve 67 percent of the effectiveness of 5.0-mph bumpers in low-speed collisions. That is, 2.5-mph bumpers would be two-thirds as effective in preventing damage as 5.0-mph bumpers would be.

Car and insurance industry commenters joined in arguing the unreliability of estimates based on the performance experience of MY 1973 rear bumpers. They stressed the lack of comparability between these early bumpers and the 2.5-mph bumper systems which would be produced today,

citing the absence of any uniform height requirement for MY 1973 bumpers, the actual similarity of MY 1973 bumpers to unregulated bumpers of prior years, the increased uniformity among bumper designs in the present vehicle fleet, and other factors related to the vehicle fleet mix. NHTSA agrees with commenters that data on MY 1973 rear bumpers fail to provide an accurate approximation of current 2.5-mph designs. NHTSA has concluded therefore that the methodology employing MY 1973 rear bumper data should not be used in estimating current levels of bumper effectiveness.

NHTSA has considered relying upon European data relating to the performance experience of bumpers designed in compliance with ECE Regulation No. 42 to assess the effectiveness of 2.5-mph bumpers but has concluded that adequate data of that type are not available. Although alternative data sources were specifically sought in NHTSA's October 1981 NPRM, no field data on the effectiveness of alternative systems in other countries were introduced into the record by commenters. Moreover, European bumpers are required to be designed to meet a safety standard only, and are tested under different procedures than American bumpers. Finally, differences in fleet composition and average vehicle weight, as well as the greater frequency of urban driving in Europe, would limit the relevance of data based on vehicles in use abroad to predicted vehicle experience in American driving conditions.

Insurance industry commenters presented to the record data on certain laboratory tests undertaken on production vehicles alleged to have been equipped with 2.5-mph bumpers, i.e., pickup trucks and multipurpose passenger vehicles not subject to the Part 581 requirements. NHTSA has concluded, based on the evidence in the record, that the damage levels reported in the insurance industry tests are not sufficiently relevant to predict 2.5-mph bumper performance. The tests reported upon were of limited scope, and no data have been introduced or are known to the agency from which to conclude that the bumper systems tested were designed to, or would in fact, comply with the Part 581 requirements in 2.5-mph barrier and pendulum impacts. Moreover, a commenter from the auto industry pointed out an instance in which the insurance claim frequency for a car equipped with a Part 581 bumper was actually higher than for its

counterpart, the four-wheel drive, multipurpose passenger vehicle version which was equipped with an unregulated bumper. The agency has therefore concluded that estimates based on extrapolation from field data better account for factors such as crash angle, impact speed, frequency of occurrence and vehicle fleet mix. Thus, NHTSA makes use in the FRIA of the 67 percent effectiveness figure employed in the 1979 Assessment, but now applies this factor to the superior lifetime damage estimates derived from the 1981 Evaluation.

Primary bumper costs and weight. With respect to the increase in costs associated with bumper systems providing greater levels of damage protection, many motor vehicle manufacturers submitted previously unavailable estimates of the cost and weight penalties associated with providing bumpers meeting current 5.0-mph performance requirements, as compared with the cost of complying with a 2.5-mph, Phase I requirement or with the ECE Regulation No. 42 bumper requirement.

The agency estimates in the FRIA that the primary cost differences between 5.0-mph and 2.5-mph Phase II bumper systems can be best expressed as a range from \$18 to \$35. The corresponding range of weight differences is estimated to be from 15 to 33 pounds. The \$18 to \$35 and 15 to 33 pound ranges are based on estimates submitted to NHTSA by the manufacturers and reflect the range of representative cost and weight savings estimates submitted.

In their submissions to the rulemaking docket, the manufacturers generally did not identify all changes in design or components that would take place if the bumper standard were reduced to 2.5 mph/2.5 mph. Certain changes were specifically noted, however. Manufacturers stated that such a reduction would allow the removal of self-restoring, heavy duty energy absorbers and noted that they would probably make that change. Some manufacturers also identified reducing face bar thickness and removing some reinforcements as being among the changes possible if the standard were reduced.

Although the estimates of cost and weight for 2.5-mph bumper systems included in the FRIA generally agree with current estimates of representative manufacturers, and are consistent with those confidential submissions made in response to the 1979 advance notice of proposed

rulemaking, other independent estimates have been generated which indicate that even greater weight reductions are possible if the Part 581 bumper standard were reduced to 2.5 mph/2.5 mph. For example, the 1979 Final Assessment cited a weight reduction estimate of 43 pounds developed by a design engineer under contract with NHTSA. Since the 43 pound figure was developed in reference to cars averaging 3,350 pounds in weight, the appropriate value applicable to the lighter average car produced today would be less. Assuming that weight loss in primary bumper weight would be proportional to total vehicle weight, the appropriate figure for today's cars would be approximately 36-37 pounds. Notwithstanding the higher value thus represented, the upper range set forth in the FRIA is 33 pounds. If the higher figures of 36-37 pounds were used, the weight and cost differential between 5.0-mph and 2.5-mph bumpers, and thus the benefits of the lower impact speed, would be even greater.

In addition, other independent cost studies submitted as evidence in the record indicate that the actual costs for all manufacturers of components such as energy absorbers may in fact be higher than cost estimates by the car manufacturers who submitted data on this point. See, for example, Docket No. 81-07 Notice 1, No. 006. If the cost avoided by removing such energy absorbers from a car were as high as \$48, instead of the \$20 estimated in confidential submissions responding to the 1979 advance notice of proposed rulemaking (as updated to reflect the weight of current cars), the additional cost savings of reducing the Part 581 standard to 2.5 mph/2.5 mph would be increased by \$28, thereby enhancing the cost reduction attributable to that alternative. In this case, although the result may be to underestimate the benefit of the lower standard, the agency has chosen to use in the FRIA the lower cost and weight estimates submitted by the manufacturers who commented in response to the NPRM, since such lower values produce benefit calculations less favorable to the regulatory result urged by the car manufacturers involved.

Secondary weight and cost. On the subject of secondary weight, NHTSA relied in its FRIA on methodologies developed by the Transportation Systems Center (TSC) of Cambridge, Massachusetts, and General Motors. The TSC methodology

assumes that, in the case of vehicles with unitized bodies, the vehicle body will not be affected by changes in bumper weight. This methodology results in a secondary weight factor of .5; that is, one half pound of secondary weight will be added to the rest of the vehicle for each pound of added bumper weight. The General Motors methodology, based on actual component weights of MY 1974 General Motors products, assumes that all the weight of a unitized vehicle body is affected by secondary weight. This methodology results in a secondary weight factor of about 1.0.

The agency has concluded, based on all comments received, that the assumptions of the TSC methodology concerning vehicles with unitized bodies are extreme. One manufacturer submitted an estimate of secondary weight based on its analysis of its most efficient new car designs. That analysis indicates a secondary weight factor of 0.7 (i.e., seven-tenths of a pound added for each pound of added bumper system weight). Since all of these were new designs for which secondary weight factors may be lower than for the fleet as a whole, the agency considers that this estimate most likely represents the lower bound of secondary weight factors in the current vehicle fleet. Older, existing production car designs, which would also be affected by a reduced standard, would be likely to have a secondary weight factor of 1.0 or higher. The agency has concluded that there is no adequate basis to establish a higher value than that based upon actual component weight analysis, and accordingly the agency makes use of both the .7 and 1.0 factors in the FRIA.

Only two commenters addressed the issue of the cost of secondary weight. Both commenters suggested that NHTSA's estimate of \$.72 per pound in the PRIA represents the lower bound of possible secondary weight costs, since it was based only on the cost per pound of structural components and did not include cost effects on weight dependent subsystems such as tires and brake linings. However, the agency believes that while changes such as upgrading brake linings or marginally increasing tire size to accommodate increased bumper weight will undoubtedly occur to some extent, they are impossible to quantify in terms of dollar costs on the record before the agency. Thus, the agency continues to use only the cost of major structural materials such as

cold-rolled steel and aluminum to reflect secondary weight cost more conservatively. Because of an error discovered by the agency in its original computation of the markup factor used in the PRIA, the agency has now corrected the cost of secondary weight and uses \$.60 per pound in the FRIA.

Use of consumer costs instead of manufacturer variable costs. In calculating for the FRIA the cost savings available from modified bumper requirements, NHTSA considered manufacturers' variable cost savings, but not reductions attributable to savings on dealer markup, which represent some additional potential consumer savings. Several motor vehicle manufacturers endorsed NHTSA's inclusion of variable cost savings in its analysis and projected savings of 10 to 30 percent resulting from reducing the Bumper Standard impact speed level to 2.5 mph. However, the manufacturers also commented that consumer cost (which includes dealer markup), rather than variable cost, is a more realistic determinant of the cost of bumper regulation.

The agency believes that use of consumer costs is more consistent with the requirements of the Act. Using the newly submitted cost savings estimates supplied by the auto manufacturers, and the agency's independent analysis of the reasonableness of these estimates based on the use of teardown studies, NHTSA stated cost savings in terms of consumer costs in its FRIA. The FRIA employs a sensitivity analysis to assess the effect on consumer prices of various possible bumper standard alternatives.

Finance charges. In its PRIA, NHTSA added the cost of new car finance charges to the cost of current bumper systems. While several auto industry sources saw no difficulty with consideration of finance changes from the standpoint of economic theory, certain representatives of the auto and insurance industries noted that the principal of a car loan, in addition to the interest, should have been discounted to estimate true consumer savings. The agency agrees that the approach used in the PRIA overstated consumer savings because of the failure to discount the loan principal also. In estimating new car costs in the FRIA, the agency has discounted both the principal and the interest of new car loans.

Percentage of new car purchases which are financed. One commenter argued that the agency

overestimated the percentage of vehicle purchases which are financed, and the duration of the financing obtained. However, the agency's figures on loan duration and percentage of new car sales financed are based on the latest available information from the Federal Reserve Board. The commenter based its alternate suggested percentage figure on data which included used car sales, which are less frequently financed. Moreover, to the extent that a small percentage of new car sales are not financed through consumer credit, e.g., fleet sales, these sales are nonetheless commonly financed through business borrowing at an even higher interest rate. Thus, the agency has not changed its analysis in response to this comment.

Retooling costs. Comments by one domestic manufacturer at NHTSA's public meeting on bumpers indicated that that company would incur a one time retooling cost of one million dollars if the present bumper standard were amended to reduce the test impact speed. Another major domestic manufacturer contended that this cost is irrelevant because, if it were not economically favorable to manufacturers to retool, such expenses would not be incurred. The agency has concluded that in computing overall societal costs of the regulation, this expense is relevant and should be considered. However, retooling costs have already been included in the agency's estimates of new car costs and thus are not addressed as a separate item in the FRIA.

Fuel consumption. In addition to the initial expense of purchasing a bumper system providing increased damage resistance performance, more stringent bumper standards which require heavier systems increase vehicle operating expenses. The added weight of the bumpers causes an increase in fuel consumption. As discussed above, projected weight savings from reduction of the bumper standard test impact speed to 2.5 mph would be significant, even for smaller cars. In its PRIA, NHTSA estimated that each additional pound of weight adds 1.1 gallons to the lifetime fuel consumption of a passenger vehicle. Some commenters accepted this fuel penalty figure as a reasonable approximation. One manufacturer advocated use of a higher figure. However, the source of the 1.1 gallon estimate, a major domestic auto manufacturer, revised its estimate downward to 1.0 gallons per pound, based on

testing and simulation studies on new, lighter weight cars. The agency is using this revised lower figure to be conservative in its estimates of benefits associated with the proposed alternatives to the current 5.0-mph standard.

NHTSA in its PRIA used a projected 1982 fuel cost in 1981 dollars of \$1.60 per gallon in calculating the cost of the fuel consumed in carrying additional bumper weight, with small additional real price increases (in terms of 1981 dollars) in subsequent years. The four major domestic automakers concurred in the use of this figure in comments on the notice of proposed rulemaking. However, figures in the latest Department of Energy (DOE) and Data Resources, Inc. (DRI) forecasts suggest that an estimate of \$1.28 per gallon more accurately reflects current pricing trends. Accordingly, the agency has used this figure as the 1982 average price in the FRIA.

Discount rate. For purposes of its PRIA, NHTSA used a discount rate of 10 percent in assessing the current value of future costs and benefits. This rate has been established by the Office of Management and Budget for use in Government analyses. Since, however, it is arguable that a statutory mandate to consider actual costs and benefits would require the agency to at least analyze the actual discount rate as well in reaching its conclusions, such an analysis was undertaken. See Table III-6 of the FRIA. Although one commenter suggested a lower figure, NHTSA has concluded that, given the insensitivity of net benefits to changes in the discount rate, the 10 percent rate is appropriate at this time. This figure represents a compromise between competing schools of thought as defined in economic literature, and has been used in past agency regulatory analyses. Its continued use facilitates the comparison of costs and benefits of different regulatory actions. Thus, the 10 percent figure has been retained as the basis for the discount rate used throughout the FRIA, in estimating the current value of both costs and benefits.

Lifetime distribution of accident frequency. NHTSA based its discounting in the PRIA on the assumption that accident frequency is distributed over a vehicle's lifetime, in proportion to the number of miles traveled each year by the vehicle. Car manufacturers differed on the validity of this assumption, with some contending that accident

rates are higher for older vehicles. If this were true, then the net benefits of reducing the bumper standard would be even greater than estimated by the agency in the FRIA. However, NHTSA has concluded that the evidence presented on actual distribution of accidents over vehicle lifetime is not sufficiently reliable to attempt more specific yearly estimates, because, among other things, it includes both high- and low-speed accidents and the correlation between these types of accidents has not been established. Thus, the agency continues to use its original assumption on this point.

Effect of non-bumper related design changes on repair costs. A member of the insurance industry contended that not all increases in damage-per-claim figures occurring since implementation of the bumper standard should be attributed to the standard. According to that commenter, new components, such as rectangular headlamps and one-piece plastic front-end panels, which have come into use since implementation of Federal bumper standards, have added to damage-per-claim figures used by NHTSA to assess the effect of the bumper standard. Commenters made no showing regarding the costs of the various front-end components, the extent of their use in given model years, or the frequency and extent of their damage. Further, as several auto industry commenters noted, the increased complexity of the 5.0-mph bumper system makes that system more expensive to repair or replace when damaged in an impact above its design speed of 5.0 mph. Thus, the record provides no objective basis for the agency to modify its analysis.

Value of unrepaired damage. In the PRIA, NHTSA valued the cost of unrepaired damage at the full cost to repair that damage. However, several auto manufacturers commented that such damage should be valued at some lesser figure or should not be counted at all. One manufacturer placed the figure at not more than 50 percent of the cost to repair the damage. The agency's 1979 Final Assessment placed the figure at 75 percent. NHTSA has concluded that unrepaired damage clearly imposes some cost. The value of this cost, however, would necessarily vary with the age of the car, other cumulative damage, whether or not bumper-related, and other factors. NHTSA believes that a range of 50 to 75 percent of the full cost of repair represents a reasonable balancing

of competing considerations and has used such a range to approximate the value of unrepaired damage in the FRIA.

One commenter suggested that consumer tolerance for cosmetic vehicle damage increases, and the value of such damage should therefore decrease, with vehicle age. However, the agency has no way of assessing this effect and therefore considers it too speculative to include in the FRIA. Therefore, the agency has not amended its calculations in response to this comment.

Current versus future technology. Throughout the consideration of bumper effectiveness, cost, and weight, the agency has been faced with the alternatives of relying on historical data based on the experience of previous model year vehicles, or on calculations based on present or future technologies. The difficulty of the choice is apparent. The former approach has the advantage of greater and superior empirical data, but may not fully account for the most recent advances in design or materials technology. The latter approach may more fully reflect state current and future conditions, but the absence of any empirical or field data introduces significantly greater elements of uncertainty.

Insurance industry and consumer representatives criticized the agency's analysis for relying on bumper designs used in the late 1970's instead of the best bumper technology available today. These commenters contended that state-of-the-art bumpers in use on the latest vehicle models are lighter, more efficient, and cost less than bumpers on earlier models and are more representative of bumpers which will be used in the future. An insurance industry representative and one component supplier commented that new technologies involving use of plastics could positively affect the net benefits of 5.0-mph bumpers. Motor vehicle manufacturers countered that use of a representative current bumper system as the basis for cost and weight estimates is more realistic, because it is more reflective of immediate cost/benefit impacts and because styling considerations frequently limit the use of the most efficient bumper design available.

The agency believes that analysis of the bumper regulation should be based on real world conditions and that it is unrealistic to assume that the most advanced technology will be used in all cases. While the use of alternative technologies

could affect costs and benefits if such technologies were widely adopted, no evidence has been presented that cost, styling, production or other constraints would permit universal acceptance of these new technologies. More important, even if designs more efficient in terms of costs and weight were chosen to represent 5.0-mph bumpers in the FRIA, the effect of this change on the FRIA outcome would be negated in large part by the necessary parallel assumption that bumper systems offering lower levels of protection would also be designed and implemented at the most efficient levels possible. Therefore, NHTSA has concluded that projections of bumper net benefits must continue to be based on data relating to real world bumper systems.

Insurance premium increases. Many comments submitted by insurance industry sources and others noted that insurance premiums would increase if the bumper standard impact speed were lowered from its current levels. Insurers generally concurred that the level of such collision insurance premium increase would be 10 percent if the bumper standard test impact speed were reduced to 2.5 mph. The agency has reviewed in detail the cost of increased collision damage costs and the increased administrative overhead burden that would be incurred. Based on this analysis and on the assumption that only actual cost increases would be approved by state regulatory bodies for pass through and recovery in the form of rate increases the agency can not agree that such estimates are accurate. NHTSA accounts for insurance cost increases through estimates in the FRIA of increased collision damage costs and administrative overhead.

Effect on insurance companies, bumper component suppliers, and new car dealers. The agency's October 1981 notice of proposed rulemaking requested comments on the effect which amendment of the bumper standard would have on the insurance industry and bumper component suppliers. Members of these industries did not respond to this inquiry, except with regard to the insurance premium estimates noted above. Motor vehicle manufacturers addressing this point generally concluded that effects on related industries would not be major. Although one source predicted a reduction in the dollar sales volume of bumper component parts, increased sales of replacement parts would tend

to offset to some extent the lower per unit cost of bumper replacement parts.

One industry which did claim a major interest in this proceeding was the automobile retail sales industry, as represented by the National Automobile Dealers Association. That organization pointed out the devastating effects on its membership of the recent depressed automotive retail sales market and provided data indicating the effect on car sales of price increases similar in magnitude to those resulting from the Part 581 Bumper Standard.

Consumer time and inconvenience. Several commenters addressed issues relevant to the consideration by NHTSA, as mandated by the Act, of the value of consumer time and inconvenience related damage incurred in low-speed collisions. NHTSA's PRIA incorporated a figure of \$26 per incident as the value of consumer time and inconvenience associated with assessment and repair of low-speed collision damage. Insurance industry and consumer representative commenters presented results of a survey conducted for that industry by Opinion Research Corporation which seemed to suggest that a much higher per accident value should be placed on time and inconvenience. However, NHTSA has concluded that the results of this survey do not require revision of the agency's estimates of the value of delay and inconvenience.

Commenters citing the Opinion Research survey placed values of \$150 to \$200 per incident on the delay and inconvenience resulting from low-speed accidents, in contrast to NHTSA's PRIA estimate of \$26. However, review of the survey results suggests that these estimates may include the value of repair costs to be borne by consumers, i.e., the deductible amount of the consumers' collision insurance, usually \$100, a cost accounted for elsewhere in NHTSA's analysis.

Also, the Opinion Research survey focused attention on the delay and inconvenience involved in having collision damage repaired. NHTSA's estimates are based on average time loss for all accidents, including those in which damage was minimal and/or not repaired. The survey included questions which could be accurately answered only by persons with detailed knowledge of the costs and benefits of bumper systems. Moreover, apparent biases in some of the survey questions may have inflated survey respondents' estimates

of the value of damage avoidance. When the effect of the above noted factors is accounted for, the insurance industry and consumer representative commenters' estimates and the NHTSA estimate do not differ greatly.

Some automobile industry and consumer representatives commented that the agency's estimate of \$10 per incident for the cost of alternate transportation while low-speed collision damage is repaired may be too low. A consumer organization commented that the agency underestimated the time lost at the scene of an accident and in obtaining repair estimates. It suggested that NHTSA had also understated the expense of being without a car while collision damage is repaired. It should be noted that the agency's Analysis counts savings in delay and inconvenience for all accidents, whether or not damage is actually repaired. Since damage is not always repaired, the agency's figures translate into a higher per accident savings for those accidents where repairs are actually made. Nevertheless, after consideration of the comments on these issues, the agency has now used, and has performed a sensitivity analysis using, a range of costs for time and inconvenience of \$26 to \$50 in the FRIA.

Safety issues. Insurance industry and other commenters expressed concern that reduction of the test impact speed requirements of the standard would pose a risk to vehicle safety due to increased damage to safety-related components. As evidence of the safety impact of bumper regulation, one insurance industry commenter cited a study in which it examined accident claims involving rear impacts to MY 1973 and 1974 vehicles. According to this commenter, the results of this study indicate reductions in trunk lid and taillamp damage on certain models when the bumper standard for rear bumpers was upgraded in MY 1974. This commenter also noted reductions in trunk lid, trunk latch and tailpipe damage on some models in data from NHTSA's driver survey, although the commenter concluded that the survey was of such limited scope as to preclude the drawing of significant conclusions. The commenter asserted that components of the type protected by the Bumper Standard do affect safety in that, even if their malfunction does not actually cause an accident, it increases the risk to occupants once

an accident occurs, e.g., through leaking fuel from a damaged fuel system.

Several auto industry sources commented that current bumper requirements do not provide significant safety benefits. One major domestic manufacturer cited studies conducted by Westat and Indiana University's Institute for Research in Public Safety (Docket No. 73-19, Notice 27, No. 041) in support of its assertion that only one percent of accidents are caused by safety component malfunctions which could have resulted from low-speed collision damage. This commenter contended, moreover, that the nature of these malfunctions (e.g., lamps not working) does not permit the inference that even this low incidence of contribution to accident causation is attributable to collisions, but is instead more commonly experienced as a result of maintenance neglect (e.g., failure to replace burned-out bulbs). As a result, the commenter argues that low-speed collision damage is a minuscule factor in motor vehicle safety. Another major manufacturer also commented that the bumper standard's connection to safety is tenuous, and that there is no evidence that safety would be compromised by amendment of the bumper standard requirements. Other automakers commented that a 2.5-mph bumper standard would be adequate in any event to protect vehicle safety components.

Other commenters asserted that 5.0-mph bumper requirements may in fact have a net adverse effect on vehicle safety. An auto industry trade association commented that the extra weight and rigidity of more damage resistant bumpers could adversely affect crash deformation characteristics and rates of crush and energy absorption so as to reduce potential levels of occupant protection in higher speed collisions. Another auto industry commenter argued that while 5.0-mph bumpers do not contribute significantly to safety through protection of safety components, the added weight of those bumpers necessarily reduces accident avoidance capability by adversely affecting braking and cornering performance.

Finally, the agency's own developing research into pedestrian impact protection indicates a clear possibility of conflict between affording enhanced safety protection in this area and increasing or even maintaining the current bumper standard.

After consideration of the extensive discussion of this issue in the record of this proceeding, including the Indiana University study referenced above, NHTSA has concluded both that no safety based justification exists for the current 5.0-mph bumper requirements, and that relaxation of the impact speed requirements would not compromise any known safety consideration. In the agency's judgment, a safety need for 5.0-mph bumpers has never been demonstrated, either before issuance of the FMVSS 215 and Part 581 standards or by subsequent experience. Moreover, the argument that protection of safety systems in low-speed collisions is important for purposes of vehicle crashworthiness as well as crash avoidance is not convincing in view of the fact that the only Part 581 criterion which contributes significantly to crashworthiness, i.e., the criterion relating to the fuel system, is now protected much more effectively by FMVSS 301.

NHTSA has also considered the energy management consequences of this action with respect to compliance with the applicable FMVSS requirements relating to occupant crash protection and fuel system integrity. Insurance industry commenters noted that the crash energy of a 2.5-mph collision is one quarter that of a 5.0-mph collision. Thus, it was suggested that 2.5-mph bumpers would be less effective in managing crash energy than 5.0-mph bumpers. However, a number of motor vehicle manufacturers commented that in the 30.0-mph barrier impact used to determine compliance with various crashworthiness FMVSS, the vehicle bumper absorbs only a small percentage of the crash energy, generally less than 5 percent. Moreover, some manufacturers commented that reduction of the bumper test impact speed requirements would permit removal of space consuming and aggressive energy absorbers and stiff frame rails which may actually inhibit design of vehicles for efficient high-speed energy management. Also, reduction of bumper test impact requirements could lead to reduced aggressivity of the impacting vehicle in side collisions.

After review of comments received, NHTSA has concluded that reduction of bumper test impact requirements would not have a negative effect on high-speed crash energy management. The amount of energy generated in a 5.0-mph barrier impact is less than three percent of that

generated in a 30.0-mph barrier crash. The energy generated in a 2.5-mph barrier impact is one percent of 30.0-mph crash energy. Thus, although 5.0-mph bumpers may absorb more energy than 2.5-mph bumpers, the difference is negligible in a 30.0-mph barrier impact. Moreover, as suggested by commenters, the 5.0-mph bumper requirements may inhibit efficient vehicle energy management design. NHTSA has concluded that 5.0-mph bumpers make no significant contribution to occupant crash protection or to protection of fuel system components which may be damaged in high-speed crashes.

Thus, the agency's action does not conflict with any existing safety standards.

Other Issues

Accounting for vehicle size in testing. NHTSA requested that commenters consider whether the test procedure adequately accounts for vehicle size differences. While some commenters suggested that car size is a factor in damage resistance, those commenters expressing an opinion on the issue commented that the existing test requirements adequately account for these effects. Those requirements adjust test pendulum weight to the mass of the vehicle tested. Commenters also noted that size and weight differences among cars are decreasing as downsizing progresses. Thus, change in the test procedures to account for vehicle size differences does not appear to be warranted.

Manual repositioning of bumper system components during testing. Several commenters suggested the desirability of allowing manual repositioning of bumper or shielding-panel components during testing. These commenters suggested that such a procedure would reduce costs, increase design flexibility, promote the use of new technologies, and reduce the subjectivity now inherent in the evaluation of shielding-panel damage. However, some auto manufacturers also stated that eliminating the Phase II damage resistance requirements would alleviate much of the need for manual repositioning. Since the Phase II criteria are being replaced by Phase I criteria, and manual repositioning might introduce uncertainties into the test procedure, the agency has decided not to permit manual repositioning.

Bumper height. On the issue of bumper height, several auto manufacturers commented that the

height requirements of the standard account for a substantial portion of the benefits of the standard. One automaker referred to matching heights as the single most important requirement of the standard. A major insurer, however, contended that a matching requirement associated with an "ineffective" impact speed of 2.5 mph would be meaningless. This commenter also contended that only 49 percent of reported accidents are bumper-to-bumper accidents.

Of course, a significant proportion of reported accidents would be side impacts, rollovers, and single vehicle collisions rather than bumper-to-bumper impacts. Therefore, it does not necessarily follow that damage incurred in non-bumper-to-bumper accidents is attributable to bumper mismatch. Moreover, unreported accidents would be expected to include a higher proportion of bumper-to-bumper accidents than would reported accidents because bumper-to-bumper contact would prevent significant damage in a number of cases. Thus, a number of bumper-to-bumper accidents would not appear in the figures for reported accidents.

Finally, the agency notes that the height of some vehicle structural components may be determined by the height of the bumper. To the degree that uniform side structural members, additional levels of protection may result in side impact collisions from matching of bumpers and frame rails. NHTSA concludes that the height requirement is a useful component of the bumper regulation. Height standardization is maintained under the amendment announced in this notice.

One commenter advocated lowering the prescribed bumper height to less than 16 inches, the current low bound for pendulum testing. This commenter contended that low bumpers would optimize pedestrian protection characteristics, minimize aerodynamic drag, and reduce injuries in side impacts. NHTSA will consider the contribution of bumper height in connection with ongoing research in the areas of pedestrian protection and side impacts. However, until such time as the effects of bumper height in these areas can be fully evaluated, the very high transition cost of converting existing vehicle designs and the desirability of consistency with bumper heights of the existing vehicle fleet makes it preferable that the present height requirements be maintained.

Effective date. Some automobile manufacturers commented on the need for expeditious action to amend the standard. One manufacturer noted that final action by March 1982 would permit bumper system modifications to be made in time for introduction of model year 1983 vehicles. Another commented on the long leadtimes necessary for introduction of product changes. Yet another stated that an effective date for bumper standard amendments in the near future would permit incorporation of bumper system changes in a new vehicle model currently in the design stage. In view of these considerations, and because this action relieves a restriction, NHTSA has determined that good cause exists to make this amendment effective 45 days from the date of publication of this notice in the *Federal Register*.

Requirements for Analyses

NHTSA has determined that this proceeding involves a major rule within the meaning of Section 1, paragraph (b)(1), of Executive Order 12291 in that it is likely to result in an annual effect on the economy of \$100 million or more. The agency estimates that current bumper requirements add between \$140 to \$200 to the cost of a new car compared to the cost of a car with unregulated bumpers. The reduction of test impact speed requirements for each of the roughly 11 million vehicles expected to be sold in this country annually is likely to result in an impact on the economy far exceeding \$100 million. For this same reason, this action is considered significant for purposes of Department of Transportation procedures for internal review of regulatory actions. The agency's FRIA for this action has been placed in the public docket. Copies may be obtained by contacting the Docket Section, Room 5108, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

Pursuant to the Regulatory Flexibility Act, the agency has considered in its FRIA 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 is not required for this action. The agency has concluded that few, if any, manufacturers of motor vehicles and bumper

components or vehicle insurers are small entities. New car dealers will not be significantly affected because this action is unlikely to significantly affect new car sales levels for individual dealerships. To the extent that such sales may be affected, the effect would be positive. While increased car collision damage repairs may result from this action, the impact on individual repair shops is not expected to be significant. Again, the effect would be positive.

The economic effects of this action on small organizations and governmental units will generally be the same as those on the general public. As purchasers of new cars, these organizations and units will experience the same increase in net benefits. While this action could result in a minor increase in police time spent at the scene of some low-speed accidents, this effect is not expected to be significant.

In developing this final rule, NHTSA considered the bumper standard promulgated by the International Standards Organization and adopted by the ECE. However, the agency found that standard to be inappropriate for use in this

country since it does not adequately deal with consumer cost savings considerations as required by the Act.

NHTSA has prepared an Environmental Assessment of the likely environmental consequences of this proposal. This Assessment has been placed in the public rulemaking docket (Docket 73-19; Notice 27, No. 004). Based on this Assessment, the agency has concluded that this action will not have a significant effect on the human environment and that, for this reason, an Environmental Impact Statement will not be prepared for this action.

Issued on May 14, 1982.

Raymond A. Peck, Jr.
Administrator

47 F.R. 21820
May 20, 1982

Appendix

The following is a summary of the more major comments submitted in response to the notice of proposed rulemaking and discussed in more general terms in the preamble of this notice. This summary is organized in broad terms according to the interest groups from which the comments were received. Responses to these comments are set forth in the preamble to the final rule and in the FRIA.

Insurance Industry and Consumer Representative Comments

In commenting on the issue of low-speed damage frequency, insurance industry and consumer representatives criticized the Westat survey on a number of grounds. The Insurance Institute for Highway Safety (IIHS) and Consumers Union contended that the survey understates damage frequency due to memory weaknesses on the part of survey respondents. IIHS also noted that nonprincipal drivers were not surveyed directly and cited discrepancies between the original Westat survey and a follow-up survey emphasizing operators of later model vehicles. Allstate Insurance Company contended that the Westat survey cannot be used to make judgments about the effects of changing the bumper standard on the frequency of damage to safety components because the sample size is too limited, and that the survey is not representative because it covers only unreported damage. Allstate advocated use of a higher estimate, although not as high as that suggested by the Ford survey results. IIHS also suggested that use of the Westat survey improperly accounts for accidents reported to police. State Farm Mutual Automobile Insurance Company contended that the study understates the number of low-speed impacts due to the probable existence of impacts with parked vehicles, and of accidents not reported to the person interviewed.

On the issue of bumper effectiveness, IIHS and the Highway Loss Data Institute (HLDI) supplied results of laboratory tests on current vehicles not required to meet the Part 581 standard, *i.e.*, pickup trucks and multipurpose passenger vehicles. These commenters reported substantially poorer bumper performance on these vehicles, which, according to these

commenters, would comply with a 2.5-mph bumper requirement.

IIHS also argued that vehicle size is a major determinant of the amount and frequency of crash-related property damage. Thus, IIHS contended NHTSA's assessment of bumper effectiveness is biased in favor of older, unregulated vehicles because the more recent vehicle mix includes greater numbers of more damage prone smaller vehicles. Moreover, IIHS argued, imports are more frequently involved in property damage accidents than are domestically produced vehicles, further biasing the analysis against later model years which include a larger percentage of imported vehicles.

The American Insurance Association and State Farm contended that the discount rate of 10 percent applied by the agency to determine the present value of future expenditures is too high. Since bumpers represent an investment which displaces other consumption, these commenters argued that a more accurate discount rate would be 4 percent. Allstate commented that the discounting factor should be applied to inflated costs rather than current costs.

On the subject of delay and inconvenience, the Center for Auto Safety (CFAS) placed the cost of a rental vehicle, which may be required while low-speed collision damage is repaired, at \$24 to \$30 per day. CFAS estimated that consumers use 1.6 gallons of gasoline in obtaining a single damage repair estimate and that each such estimate now costs \$35 on the average. CFAS also contended that the agency underestimated the lost lost at the scene of an accident and in obtaining repair estimates.

An insurance industry representative submitted data from a public opinion poll which, according to the commenter, demonstrates overwhelming public support for the 5.0-mph bumper standard. The commenter also asserted that this poll indicates people are willing to pay for the higher levels of protection provided by the 5.0-mph bumper standard. CFAS also argued that the public supports the 5.0-mph bumper requirements.

The insurance industry argued that ECE Regulation No. 42 is irrelevant and inappropriate to requirements of the Cost Savings Act, primarily because it does not address the issue of protection against economic damage. According to the insurance industry, the ECE requirements

amount to merely a weaker version of FMVSS 215. Moreover, this source contended the ECE standard focuses in part on design rather than performance characteristics, and thus is not in accordance with United States statutory requirements for issuance of performance standards.

Liberty Mutual Insurance Company commented that the current Part 581 requirements do not adequately account for vehicle dive, which can contribute to bumper underride in accident situations. Presumably, dive-induced mismatch damage would be increased under ECE requirements.

On the issue of new technologies, IIHS argued that new materials, *i.e.*, polycarbonate plastics, which could significantly reduce the weight of bumpers meeting current 5.0-mph requirements are available at this time. State Farm advocated the possible use of sacrificial components, *i.e.*, components which must be adjusted or replaced after a collision, as a means of reducing bumper cost and weight.

Auto Industry Comments

In addressing the question on the issue of low speed collision frequency, General Motors Corporation and Ford Motor Company commented that studies conducted by Ford overstate damage frequency, principally due to their emphasis on vehicles used in urban areas. These commenters suggested that the Westat survey is a more reliable source of data because it is more current and is based on a more representative sampling system.

Chrysler Corporation, American Motors Corporation, and Volkswagen of America, Inc. commented that neither the Ford nor West data provide an adequate means of assessing low-speed collision frequency. These commenters suggested that use of crash recorders or other controlled tests is necessary to generate data.

In questioning the value of MY-1973 bumpers in assessing 2.5-mph bumper effectiveness, several commenters pointed out that MY-1973 bumpers were not subject to a pendulum impact test and thus were not required to be of a uniform height. Commenters noted that MY-1973 rear bumpers were essentially the same as MY-1972 bumpers, but with stronger mounting brackets. This comment is consistent with State Farm's comment

that its research revealed no difference in performance between MY-1973 and 1972 rear bumpers. Some commenters also concluded that new 2.5-mph bumpers would perform better in the current vehicle mix than did MY-1973 bumpers in previous years, due to the increased uniformity of current bumper designs. General Motors, Ford, and Chrysler joined in attacking the relevance of laboratory tests as a means of assessing the relative performance of bumpers, stating that such tests have never been correlated to real world conditions.

American Motors suggested that NHTSA consider the European experience with 2.5-mph bumpers under ECE Regulation No. 42. However, General Motors commented that its German subsidiary reported an absence of field data on the effectiveness of 2.5-mph bumpers in Europe. Moreover, General Motors contended that the European bumper standard is purely a safety standard and that bumpers designed to meet that standard would not be representative of future American 2.5-mph designs. In General Motors' opinion, the estimates used in NHTSA's 1979 Final Assessment provide the best available information on bumper effectiveness at alternative design speeds.

Several auto industry sources argued that unregulated bumpers produced in the future would provide greater levels of damage resistance performance than pre-standard bumpers. The factor most commonly cited in support of this contention was that consumer expectations would require that bumpers provide higher levels of performance. Insurance cost considerations, international harmonization, and experience in designing improved bumpers were also cited as contributing to the prospects for improved performance from future unregulated bumpers. Certain auto industry sources estimated that unregulated bumpers would exceed 1.5-mph performance and, at least initially, provide performance approximating that available under a 2.5-mph Phase I standard or ECE Regulation No. 42.

In discussions of bumper cost and weight savings from use of 2.5-mph bumpers, estimates of overall weight savings ranged from 8 lbs. for Volkswagen to over 38 lbs. for Volvo of America Corporation. Ford reported weight savings of 34 lbs. for its European Escort model compared to

its American counterpart as a result of differing bumper requirements. Associated cost savings of roughly \$35 were estimated by several manufacturers.

On the related issue of secondary weight, a recent General Motors analysis of seventeen late model front-wheel drive vehicles produced a secondary weight factor of .72. General Motors stated that this factor was used in the design process of its recent "X" and "J" car models. Toyota Motor Company also estimated a secondary weight factor of .7 for its current models. Renault agreed that the correct secondary weight factor is greater than .5. Comments received from Ford, Chrysler, and American Motors all contended that a secondary weight factor of 1.0 would be appropriate for NHTSA's analysis.

The fuel penalty factor of 1.1 gallons of fuel consumed for each additional pound of bumper weight, used in NHTSA's Preliminary Regulatory Impact Analysis, was based on testimony presented by General Motors before Congress. General Motors, in its comments on the notice of proposed rulemaking on bumper standard amendments, revised its estimate downward to 1.0 gallon of fuel per pound of vehicle weight. However, several other motor vehicle manufacturers commented that the 1.1 gallon figure is reasonable. Chrysler noted that a higher figure could be used.

Chrysler estimated the increased cost to repair 5.0-mph bumpers as compared to 2.5-mph bumpers at between \$70 and \$90. BMW of North America, Inc. cited an analysis prepared by a West German technical institute which found that at impact speeds of 18 kph (approximately 11 mph) and higher, repair costs for American-made bumpers are greater than for European bumpers due to more expensive bumper shock absorbers and body components. BMW also noted a West German insurance study reporting that the great majority of all collisions occur at speeds above 11 kph.

General Motors and Ford commented that NHTSA's figure for the hourly value of lost time is too high, General Motors contending that the figure should be somewhere between the average hourly wage rate and the minimum wage. Ford argued that a figure of \$3.50, roughly half the average hourly earnings figure, would be more accurate. This figure is consistent with a Consumer's Research report which concluded that

commuters are willing to pay 42 percent of an hour's wage to save one hour of travel time. Regarding the cost of alternate transportation while collision damage is being repaired, Ford concurred in the agency's estimate of \$10 per incident. Volkswagen commented that the figure seemed too low, and General Motors suggested that the agency consider the actual cost of rental vehicles.

Chrysler expressed the opinion that insurance premiums would decrease due to a reduction in bumper repair costs if the performance requirements of the standard were lowered. Ford commented that insurance industry premium discounts and surcharges based on vehicle damage claims experience provide a significant marketplace incentive to manufacturers to design vehicles providing better damage resistance performance.

Daimler-Benz AG, Renault, and Peugeot S.A. cited cost and consistency considerations as the basis for their positions in support of the ECE standard. Other commenters suggested that cost savings, *e.g.*, savings in tooling and testing costs, would result from harmonization. Renault estimated weight savings of 14-15 kg. for its vehicles equipped with bumpers designed to meet the ECE standard.

Volkswagen and American Motors discussed at length their position that the fixed-barrier impact test should be dropped from the standard. ECE Regulation No. 42 does not require a fixed-barrier test. According to Volkswagen, elimination of the barrier test would reduce testing costs, promote international harmonization, and make the standard more equitable. Volkswagen criticized the barrier test as unreliable, unsophisticated, and adding nothing to the standard. American Motors contended that the pendulum test alone would be sufficient, since it assures height standardization and proper bumper geometry to minimize override, and the versatile positioning of the pendulum permits testing of the entire bumper system. American Motors suggested that the pendulum test could be run with the vehicle idling to provide a test relevant to dynamic situations. Volvo suggested the alternative of employing the ECE test procedure with damage criteria taken from the Part 581 standard.

Volkswagen and BL Technology Ltd. pointed out that the ECE standard provides for pendulum

impact at a single height rather than within a height range as is the case with the Part 581 standard. BL Technology contended that the ECE height requirement should be adopted in this country to promote harmonization and reduce costs. BL Technology also noted that the single height requirement permits reduced vertical bumper width thereby improving engine cooling. However, Volkswagen argued there is little difference between the European and United States' height requirements in terms of benefits and that the Part 581 requirement should be retained to avoid possible mismatch with vehicles already in use.

On the subject of Phase I versus Phase II damage criteria Ford and General Motors questioned the cost-effectiveness of the Phase II requirements. General Motors argued that NHTSA's analysis overstates the benefits of the Phase II standard because the agency overestimates the effectiveness of Phase II bumpers in impacts at speeds of 5.0 mph or below. General Motors added that NHTSA must consider the 5 lbs. of additional weight and resulting \$6 additional fuel cost imposed by the Phase II requirements. Information supplied by Volvo and the Bureau of Labor statistics suggests that initial consumer costs of between \$10 and \$15 result from the Phase II requirements. Ford contended that no true Phase I bumpers have ever been produced because model year 1979 vehicles represented a transition period between FMVSS 215 and Part 581, Phase II.

Ford contended that the pendulum test is not appropriate for assessing damage resistance properties of the bumper itself due to its concentration of force in particular locations. This test, in combination with the Phase II criteria may, according to Ford, require use of expensive energy absorbers even if the test impact speed were lowered to 2.5 mph. Although Davidson Rubber Division commented that the Phase II criteria posed no problem for soft face systems, that manufacturer at the same time advocated reduction of the pendulum impact speed to 2.5 mph. BL Technology and General Motors commented that return to Phase I criteria would encourage design innovation and the use of new, lighter weight materials. Mitsubishi Motors Corporation favored the Phase I criteria because bumper deformation would improve the crash energy management characteristics of the bumper system.

Ford also noted objectivity problems in evaluating bumper damage under the Phase II criteria. Finally, Ford argued that the increased use of rubber and polymeric bumper materials has changed consumer perceptions and reduced the visibility of and concern about minor dents and similar damage which was inherent in the use of chrome-plated bumpers.

Two auto manufacturers advocated dropping not only the damage criteria applicable to the bumper system itself, but all criteria limiting damage to the exterior surfaces of the vehicle. Saab-Scania of America, Inc. made this suggestion in the context of a possible decision to retain the 5.0-mph test impact speed requirement. Toyota's comment noted vehicle cost and weight could be reduced by eliminating the exterior surface protection requirements.

Commenters addressing the issue differed on the extent of manual repositioning which should be permitted. Ford recommended permitting manual repositioning which could be performed without special equipment or experience. Volkswagen favored manual repositioning without tools, while Chrysler suggested that manual repositioning without "special" tools be permitted.

On the question of new technologies, Ford and Volkswagen commented that relaxation of the bumper standard requirements would permit use of fiberglass bumpers, plastic face bars, rubber mountings, and ultrahigh strength steel components which could result in cost and weight savings, increased styling flexibility and improved aerodynamic characteristics. Davidson Rubber offered compressible plastics, *i.e.*, foam or honeycomb materials, as examples of materials which could be used if the standard requirements were lowered. C&F Stamping Company, Inc. cited plastics and single-unit bumper systems. American Motors commented that return to Phase I would increase usage of SMC Components. Chrysler noted the potential for cost and weight savings from ultrahigh strength steel if Phase II criteria were eliminated. One component supplier, Molnar Industries, Inc. noted the availability of fiber reinforced plastic bumpers which it contended may make lowering the bumper standard requirements unnecessary.

47 F.R. 21820
May 20, 1982

PREAMBLE TO AN AMENDMENT TO PART 581

Bumper Standard [Docket No. 73-19; Notice 32]

ACTION: Interpretive amendment.

SUMMARY: The Part 581 Bumper Standard specifies that certain equipment be removed from a vehicle before testing. This notice clarifies the wording of a May 20, 1982, amendment to make it clear that (1) no change was intended in the requirement as it related to trailer hitches and license plate brackets, i.e., that all trailer hitches and license plate brackets are removed, whether or not they are optional equipment, and (2) all running lights and fog lamps which are optional equipment should be removed, whether or not they are mounted on the bumper face bar.

EFFECTIVE DATE: September 23, 1983.

SUPPLEMENTARY INFORMATION: Section 581.6(a)(5) of the Bumper Standard specifies that certain equipment be removed from a vehicle before testing. Prior to the most recent amendment, the section specified that trailer hitches and license plate brackets be removed from the vehicle. The standard was amended in a notice published in the Federal Register (46 FR 48262) on May 20, 1982, which, among other things, expanded the specified equipment that is removed to include headlamp washers and certain optional equipment, i.e., running lights, fog lamps, and equipment mounted on the bumper face bar. The section was revised to read:

Trailer hitches, license plate brackets, running lights, fog lamps, other optional equipment mounted on the bumper face bar and headlamp washers are removed from the vehicle.

The amended section might be read to be more restrictive than the former section as it relates to trailer hitches and license plate brackets, i.e., that only trailer hitches and license plate brackets which are optional equipment must be removed. This notice clarifies the wording of that amendment to make it clear that no change was intended in the requirement

as to these types of equipment. Thus, this notice makes it clear that all trailer hitches and license brackets must be removed. The agency neither proposed nor intended any change in the requirement as it relates to those types of equipment.

Another possible question of interpretation under the amended section is whether all running lights and fog lamps which are optional equipment should be removed, or only those which are mounted on the bumper face bar. This notice clarifies the wording of the amendment to make it clear that running lights and fog lamps which are optional equipment should be removed, whether or not they are mounted on the bumper face bar.

This amendment is an interpretive amendment which does not change the substantive requirements of the Bumper Standard in any respect. Accordingly, it is found for good cause shown that notice and comment are unnecessary and that an immediate effective date is in the public interest.

In consideration of the foregoing, 49 CFR Part 581 is amended as follows:

§581.6 [Amended]

Section 581.6(a)(5) is revised to read:

(a) * * *

(5) Trailer hitches, license plate brackets, and headlamp washers are removed from the vehicle. Running lights, fog lamps, and equipment mounted on the bumper face bar are removed from the vehicle if they are optional equipment.

Issued on September 19, 1983.

Diane K. Steed
Deputy Administrator

**48 FR 43331
September 23, 1983**

PART 581—BUMPER STANDARD

(Docket No. 74-11; Notice 12; Docket No. 73-19; Notice 9)

§ 581.1 Scope. This standard establishes requirements for the impact resistance of vehicles in low speed front and rear collisions.

§ 581.2 Purpose. The purpose of this standard is to reduce physical damage to the front and rear ends of a passenger motor vehicle from low speed collisions.

§ 581.3 Application. This standard applies to passenger motor vehicles other than multipurpose passenger vehicles.

§ 581.4 Definitions. All terms defined in the Motor Vehicle Information and Cost Savings Act, P.L. 92-513, 15 U.S.C. 1901-1991, are used as defined therein.

“Bumper face bar” means any component of the bumper system that contacts the impact ridge of the pendulum test device.

§ 581.5 Requirements.

(a) [Each vehicle shall meet the damage criteria of §§ 581.5(c)(1) through 581.5 (c)(9) when impacted by a pendulum-type test device in accordance with the procedures of § 581.7(b), under the conditions of § 581.6, at an impact speed of 1.5 m.p.h., and when impacted by a pendulum-type test device in accordance with the procedures of § 581.7(a) at 2.5 m.p.h., followed by an impact into a fixed collision barrier that is perpendicular to the line of travel of the vehicle, while traveling longitudinally forward, then longitudinally rearward, under the conditions of § 581.6, at 2.5 m.p.h.” (47 F.R. 2182—May 20, 1982. Effective: July 4, 1982)]

(b) [Reserved.]

(c) Protective criteria.

(1) Each lamp or reflective device except license plate lamps shall be free of cracks and shall comply with applicable visibility requirements of S4.3.1.1 of Standard No. 108 (§ 571.108 of this part). The aim of each headlamp shall be adjustable to within the beam aim inspection limits specified in Table 2 of SAE Recommended Practice J599b, July 1970, measured with a mechanical aimer conforming to the requirements of SAE Standard J602a, July 1970.

(2) The vehicle's hood, trunk, and doors shall operate in the normal manner.

(3) The vehicle's fuel and cooling systems shall have no leaks or constricted fluid passages and all sealing devices and caps shall operate in the normal manner.

(4) The vehicles' exhaust system shall have no leaks or constrictions.

(5) The vehicle's propulsion, suspension, steering, and braking systems shall remain in adjustment and shall operate in the normal manner.

(6) A pressure vessel used to absorb impact energy in an exterior protection system by the accumulation of gas pressure or hydraulic pressure shall not suffer loss of gas or fluid accompanied by separation of fragments from the vessel.

(7) The vehicle shall not touch the test device, except on the impact ridge shown in Figures 1 and 2, with a force that exceeds 2000 pounds on the combined surfaces of Planes A and B of the test device.

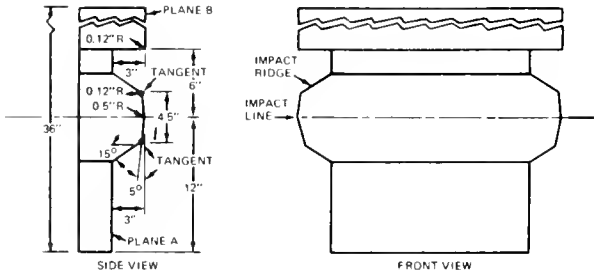
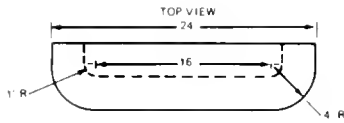


FIGURE 1

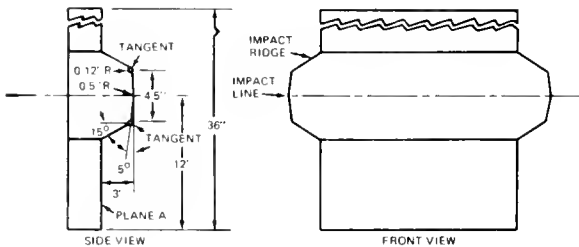
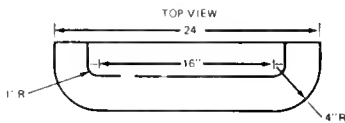


FIGURE 2

(8) The exterior surfaces shall have no separations of surface materials, paint, polymeric coatings, or other covering materials from the surface to which they are bonded, and no permanent deviations from their original contours 30 minutes after completion of each pendulum and barrier impact, except where such damage occurs to the bumper face bar and the components and associated fasteners that directly attach the bumper face bar to the chassis frame.

(9) Except as provided in § 581.5(c) (8), there shall be no breakage or release of fasteners or joints.

(10) Reserved.

(11) Reserved.

§ 581.6 Conditions. The vehicle shall meet the requirements of § 581.5 under the following conditions:

(a) General.

(1) The vehicle is at unloaded vehicle weight.

(2) The front wheels are in the straight ahead position.

(3) Tires are inflated to the vehicle manufacturer's recommended pressure for the specified loading condition.

(4) Brakes are disengaged and the transmission is in neutral.

(5) [Trailer hitches, license plate brackets, and headlamp washers are removed from the vehicle. Running lights, fog lamps, and equipment mounted on the bumper face bar are removed from the vehicle if they are optional equipment. (48 F.R. 43331—September 23, 1983. Effective: September 23, 1983)]

(b) *Pendulum test conditions.* The following conditions apply to the pendulum test procedures of § 581.7(a) and § 581.7(b):

(1) The test device consists of a block with one side contoured as specified in Figure 1 and Figure 2 with the impact ridge made of AISI 4130 steel hardened to 34 Rockwell "C." The impact ridge and the surfaces in Planes A and B of the test device are finished with a surface roughness of 32 as specified by SAE Recommended Practice J449A, June 1963. From the point of release of the device until the onset of rebound, the pendulum suspension system holds Plane A vertical, with the arc described by any point on the impact line lying in a vertical plane

(for § 581.7(a), longitudinal; for § 581.7(b), at an angle of 30° to a vertical longitudinal plane) and having a constant radius of not less than 11 feet.

(2) With Plane A vertical, the impact line shown in Figures 1 and 2 is horizontal at the same height as the test device's center of percussion.

(3) The effective impacting mass of the test device is equal to the mass of the tested vehicle.

(4) When impacted by the test device, the vehicle is at rest on a level rigid concrete surface.

(c) Barrier Test Condition. At the onset of a barrier impact, the vehicle's engine is operating at idling speed in accordance with the manufacturer's specification. Vehicle systems that are not necessary to the movement of the vehicle are not operating during impact.

§ 581.7 Test Procedures.

(a) Longitudinal Impact Test Procedures.

(1) Impact the vehicle's front surface and its rear surface two times each with the impact line at any height from 16 to 20 inches, inclusive, in accordance with the following procedure.

(2) For impacts at a height of 20 inches, place the test device shown in Figure 1 so that Plane A is vertical and the impact line is horizontal at the specified height.

(3) For impacts at a height between 20 inches and 16 inches, place the test device shown in Figure 2 so that Plane A is vertical and the impact line is horizontal at a height within the range.

(4) For each impact, position the test device so that the impact line is at least 2 inches apart in vertical direction from its position in any prior impact, unless the midpoint of the impact line with respect to the vehicle is to be more than 12 inches apart laterally from its position in any prior impact.

(5) For each impact, align the vehicle so that it touches, but does not move, the test device, with the vehicle's longitudinal centerline perpendicular to the plane that includes Plane A of the test device and with the test device in-board of the vehicle corner test positions specified in § 581.7(b).

(6) Move the test device away from the vehicle, then release it to impact the vehicle.

(7) Perform the impacts at intervals of not less than 30 minutes.

(b) Corner impact test procedure.

(1) Impact a front corner and a rear corner of the vehicle once each with the impact line at a height of 20 inches and impact the other front corner and the other rear corner once each with the impact line at any height from 16 to 20 inches, inclusive, in accordance with the following procedure.

(2) For an impact at a height of 20 inches, place the test device shown in Figure 1 so that Plane A is vertical and the impact line is horizontal at the specified height.

(3) For an impact at a height between 16 inches and 20 inches, place the test device shown in Figure 2 so that Plane A is vertical and the impact line is horizontal at a height within the range.

(4) Align the vehicle so that a vehicle corner touches, but does not move, the lateral center of the test device with Plane A of the test device forming an angle of 60 degrees with a vertical longitudinal plane.

(5) Move the test device away from the vehicle, then release it to impact the vehicle.

(6) Perform the impacts at intervals of not less than 30 minutes.

PREAMBLE TO PART 582—INSURANCE COST INFORMATION REGULATION

(Docket 74-40; Notice 2)

This notice establishes an insurance cost information regulation pursuant to the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 *et seq.*). The regulation is based upon a notice of proposed rulemaking published November 4, 1974 (39 F.R. 38912) and comments submitted in response to the notice.

The regulation will require automobile dealers to distribute to prospective purchasers information which compares differences in insurance costs for different makes and models of passenger motor vehicles based upon differences in their damage susceptibility and crashworthiness. In the absence of insurance cost information that reflects damageability and crashworthiness, this rule does not, at the present time, have an effect on automobile dealers. Damage susceptibility and crashworthiness studies currently being conducted by the NHTSA are expected to influence the insurance rate structure by providing data which will enable the insurance industry to take these factors into account. As this occurs, the NHTSA will prepare comparative indices for the dealers to distribute to prospective purchasers.

Several comments on the proposed rulemaking discussed the merits of the Motor Vehicle Information and Cost Savings Act and are therefore beyond the scope of this rulemaking. Other comments offered methods for performing the damage susceptibility and crashworthiness studies. These comments have been forwarded to the technical staff performing the studies. Two comments suggested minor changes in the text of the regulation for clarity and to make the proposed regulation more consistent with the purposes of the Act. These suggestions have been adopted

in the final regulation. Their effect is that the insurance cost information disseminated by the dealers would be in the form of comparative indices, based on differences in damage susceptibility and crashworthiness, rather than simply the insurance premium rate which is determined by many factors.

One comment expressed the view that providing this information to consumers within 30 days after its publication in the *Federal Register* was an excessive burden upon the dealers. The NHTSA does not believe that sufficient justification for this position has been made in light of the need to provide the information to the consumer in time for it to be of use to him in purchasing an automobile.

Therefore, a new Part 582, *Insurance Cost Information*, is added in Chapter V, Title 49, Code of Federal Regulations, to read as set forth below.

Effective date: Although the final rule is effective February 1, 1975, as specified in the Cost Savings Act, the dates when automobile dealers will be required to distribute insurance cost information are dependent upon NHTSA progress in developing such information and will be published at a later date in the *Federal Register*.

(Sec. 201(c), P. L. 92-513, 86 Stat. 947 (15 U.S.C. 1941(e)); delegation of authority at 49 CFR 1.51).

Issued on January 31, 1975.

James B. Gregory
Administrator

40 F.R. 4918
February 3, 1975

PART 582—INSURANCE COST INFORMATION REGULATIONS

§ 582.1 Scope. This part requires automobile dealers to make available to prospective purchasers information reflecting differences in insurance costs for different makes and models of passenger motor vehicles based upon differences in damage susceptibility and crashworthiness, pursuant to section 201(e) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1941(e)), herein "the Cost Savings Act."

§ 582.2 Purpose. The purpose of this part is to enable prospective purchasers to compare differences in auto insurance costs for the various makes and models of passenger motor vehicles based upon differences in damage susceptibility and crashworthiness, and to realize any savings in collision insurance resulting from differences in damageability, and any savings in medical payment insurance resulting from differences in crashworthiness.

§ 582.3 Definitions.

(a) *Statutory definitions.* All terms used in this part which are defined in section 2 of the Cost Savings Act are used as so defined.

(b) *Definitions used in this part.*

(1) "Automobile dealer" means any person who engages in the retail sale of new or used automobiles as a trade or business.

(2) "Collision insurance" means insurance that reimburses the insured party for physical damage to his property resulting from automobile accidents.

(3) "Insurance cost" means the insurance premium rate, as expressed in appropriate indices, for collision and medical payment, including personal injury protection in no-fault states.

(4) "Medical payment insurance" means insurance that reimburses the insured party for medical expenses sustained by himself, his family, and his passengers in automobile accidents.

§ 582.4 Requirements.

(a) Each automobile dealer shall provide the insurance cost information specified in § 582.5 for examination by prospective purchasers at each location where he offers vehicles for sale.

(b) The information shall be provided without charge and in sufficient quantity to have it available for retention by prospective purchasers, within 30 days after its publication in the *Federal Register*.

(c) The information shall be in English and, if a significant portion of the prospective purchasers do not speak English, in the non-English language most widely spoken by prospective purchasers.

§ 582.5 Insurance cost information form.

The insurance cost information provided pursuant to section 582.4 shall be presented as follows: [Form to be specified].

40 F.R. 4918
February 3, 1975

PREAMBLE TO PART 585—AUTOMATIC RESTRAINT PHASE-IN REPORTING REQUIREMENTS

(Docket No. 74-14; Notice 43)

ACTION: Final rule.

SUMMARY: On April 12, 1985, NHTSA issued a notice proposing a number of amendments to Standard No. 208, *Occupant Crash Protection*. Based on its analysis of the comments received in response to that notice, the agency has decided to take the following actions: retain the oblique crash test for automatic restraint equipped cars, adopt some New Car Assessment Program test procedures for use in the standard's crash tests, provide in the standard for a due care defense with respect to the automatic restraint requirement, and require the dynamic testing of manual lap/shoulder belts in passenger cars. This notice also creates a new Part 585 that sets reporting requirements regarding compliance with the automatic restraint phase-in requirements of the standard.

EFFECTIVE DATE: The amendments made by this notice will take effect on May 5, 1986, except the requirement for dynamic testing of manual safety belts in passenger cars will go into effect on September 1, 1989, if the automatic restraint requirement is rescinded.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 1984 (49 FR 28962), the Secretary of Transportation issued a final rule requiring automatic occupant protection in all passenger cars. The rule is based on a phased-in schedule beginning on September 1, 1986, with full implementation being required by September 1, 1989. However, if before

April 1, 1989, two-thirds of the population of the United States are covered by effective state mandatory safety belt use laws (MULs) meeting specified criteria, the automatic restraint requirement will be rescinded.

More specifically, the rule requires:

- Front outboard seating positions in passenger cars manufactured on or after September 1, 1986, for sale in the United States, will have to be equipped with automatic restraints based on the following schedule:

- Ten percent of all cars manufactured on or after September 1, 1986.

- Twenty-five percent of all cars manufactured on or after September 1, 1987.

- Forty percent of all cars manufactured on or after September 1, 1988.

- One hundred percent of all cars manufactured on or after September 1, 1989.

- During the phase-in period, each car that is manufactured with a system that provides automatic protection to the driver without the use of safety belts and automatic protection of any sort to the passenger will be given an extra credit equal to one-half car toward meeting the percentage requirement. In addition, each car which provides non-belt automatic protection solely to the driver will be given a one vehicle credit.

- The requirement for automatic restraints will be rescinded if MULs meeting specified conditions are passed by a sufficient number of states before April 1, 1989, to cover two-thirds of the population of the United States. The MULs must go into effect no later than September 1, 1989.

In the July 1984 notice, the Secretary identified various issues requiring additional rulemaking. On April 12, 1985, the agency issued two notices setting

forth proposals on all of those issues. One notice (50 FR 14589), which is the basis for the final rule being issued today, proposed: reporting requirements for the phase-in, deletion of the oblique test, alternative calculations of the head injury criterion (HIC), allowing the installation of manual belts in convertibles, use of the New Car Assessment Program (NCAP) test procedures, and adoption of a due care defense. The notice also proposed the dynamic testing of manual lap/shoulder belts for passenger cars, light trucks and light vans. The second notice (50 FR 14602) set forth the agency's proposals on the use of the Hybrid III test dummy and additional injury criteria. NHTSA has not yet completed its analysis of the comments and issues raised by the Hybrid III proposal or the proposal regarding convertibles and dynamic testing of safety belts in light trucks and light vans. The agency will publish a separate *Federal Register* notice announcing its decision with regard to these issues when it has completed its analysis.

Oblique Crash Tests

Standard No. 208 currently requires cars with automatic restraints to pass the injury protection criteria in 30 mph head-on and oblique impacts into a barrier. The April 1985 notice contained an extensive discussion of the value of the oblique test and requested commenters to provide additional data regarding the safety and other effects of deleting the requirements.

The responses to the April notice reflected the same difference of opinion found in the prior responses on this issue. Those favoring elimination of the test argue that the test is unnecessary since oblique crash tests generally show lower injury levels. They also said the additional test adds to the cost of complying with the standard—although manufacturers differed as to the extent of costs. Four manufacturers suggested that any cost reduction resulting from elimination of the test would be minimal, in part because they will continue to use the oblique tests in their restraint system developmental programs, regardless of what action the agency takes. Another manufacturer, however, said that while it would continue to use oblique testing during its vehicle development programs, the elimination of the oblique test in Standard No. 208 would result in cost and manpower savings. These savings would result because the parts used in vehicles for certification testing must be more representative of actual production parts than the parts used in vehicles crashed during development tests.

Those favoring retention of the test again emphasized that the test is more representative of real-world crashes. In addition, they said that occupants in systems without upper torso belts, such as some air bag or passive interior systems, could experience contact with the A-pillar and other vehicle structures in the oblique test that they would not experience in a head-on test. Although, again, there were conflicting opinions on this issue—one manufacturer said that oblique tests would not affect air bag design, while other manufacturers argued that the oblique test is necessary to ensure the proper design of air bag systems. The same manufacturer that said air bag design would not be affected by the oblique test, emphasized that vehicles with 2-point automatic belts or passive interiors, “may show performance characteristics in oblique tests that do not show up on perpendicular tests.” Similarly, one manufacturer said that oblique tests will not result in test dummy contact with the A-pillar or front door—while another manufacturer argued that in the oblique test contact could occur with the A-pillar in vehicles using non-belt technologies.

After examining the issues raised by the commenters, the agency has decided to retain the oblique tests. There are a number of factors underlying the agency's decision. First, although oblique tests generally produce lower injury levels, they do not consistently produce those results. For example, the agency has conducted both oblique and frontal crash tests on 14 different cars as part of its research activities and NCAP testing. The driver and passenger HIC's and chest acceleration results for those tests show that the results in the oblique tests are lower in 31 of the 38 cases for which data were available. However, looking at the results in terms of vehicles, 6 of the 14 cars had higher results, exclusive of femur results, in either passenger or driver HIC's or chest accelerations in the oblique tests. The femur results in approximately one-third of the measurements were also higher in the oblique tests. Accident data also indicate that oblique impacts pose a problem. The 1982 FARS and NASS accident records show that 14 percent of the fatalities and 22 percent of the AIS 2-5 injuries occur in 30 degree impacts.

The agency is also concerned that elimination of the oblique test could lead to potential design problems in some automatic restraint systems. For example, air bags that meet only a perpendicular impact test could be made much smaller. In such a case, in an oblique car crash, the occupant would roll off the smaller bag and strike the A-pillar or instrument panel. Similarly, the upper torso belt of an automatic belt system

could slip off an occupant's shoulder in an oblique crash. In belt system with a tension-relieving device, the system will be tested with the maximum amount of slack recommended by the vehicle manufacturer, potentially increasing the possibility of the upper torso belt slipping off the occupant's shoulder. In the case of passive interiors, an occupant may be able to contact hard vehicle structures, such as the A-pillar, in oblique crashes that would not be contacted in a perpendicular test. If the A-pillar and other hard structures are not designed to provide protection in oblique crashes then there would be no assurance, as there presently is, that occupants would be adequately protected. Thus, the oblique test is needed to protect unrestrained occupants in passive interiors, and to ensure that air bags and automatic or manual safety belts are designed to accommodate some degree of oblique impact.

The agency recognizes that retention of the oblique test will result in additional testing costs for manufacturers. The agency believes, however, that there are a number of factors which should minimize those costs. First, even manufacturers opposing retention of the oblique test indicated that they will continue to perform oblique crash tests to meet their own internal requirements as well as to meet the oblique test requirements of the Standard No. 301, *Fuel System Integrity*. Since the oblique tests of Standard No. 208 and Standard No. 301 can be run simultaneously, the costs resulting from retention of the oblique crash test requirements of Standard No. 208 should not be significant.

Dynamic Testing of Manual Belts

The April notice proposed that manual lap/shoulder belts installed at the outboard seating positions of the front seat of four different vehicle types comply with the dynamic testing requirements of Standard No. 208. Those requirements provide for using test dummies in vehicle crashes for measuring the level of protection offered by the restraint system. The four vehicle types subject to this proposal are passenger cars, light trucks, small van-like buses, and light multipurpose passenger vehicles (MPV's). (The agency considers light trucks, small van-like buses, and light MPV's to be vehicles with a Gross Vehicle Weight Rating (GVWR) of 10,000 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. The 5,500 pound unloaded vehicle weight limit is also used in Standard No. 212, *Windshield Retention*, and Standard No. 219, *Windshield Zone Intrusion*. The limit was adopted in those standards on April 3, 1980

(45 FR 22044) to reduce compliance problems for final-stage manufacturers. Readers are referred to the April 1980 notice for a complete discussion of the 5,500 pound limit.)

Currently, manual belts are not subject to dynamic test requirements. Instead they must be tested in accordance with Standard No. 209, *Seat Belt Assemblies*, for strength and other qualities in laboratory bench tests. Once a safety belt is certified as complying with the requirements of Standard No. 209, it currently may be installed in a vehicle without any further testing or certification as to its performance in that vehicle. The safety belt anchorages in the vehicle are tested for strength in accordance with Standard No. 210, *Seat Belt Assembly Anchorages*.

The April 1985 notice also addressed the issue of tension-relieving devices on manual belts. Tension-relieving devices are used to introduce slack in the shoulder portion of a lap-shoulder belt to reduce the pressure of the belt on an occupant or to effect a more comfortable "fit" of the belt to an occupant. The notice proposed that manufacturers be required to specify in their vehicle owner's manuals the maximum amount of slack they recommend introducing into the belt under normal use condition. Further, the owner's manual would be required to warn that introducing slack beyond the maximum amount specified by the manufacturer could significantly reduce the effectiveness of the belt in a crash. During the agency's dynamic testing of manual belts, the tension-relieving devices would be adjusted so as to introduce the maximum amount of slack specified in the owner's manual.

The agency proposed that the dynamic test requirement for passenger cars take effect on September 1, 1989, and only if the Secretary determines that two-thirds of the population is covered by effective safety belt use laws, thereby rescinding the automatic restraint requirement. Should such a determination be made, it is important that users of manual belts be assured that their vehicles offer the same level of occupant protection as if automatic restraints were in their vehicles. Absent a rescission of the automatic restraint requirement, application of the dynamic testing requirements to manual safety belts in passenger cars would be unnecessary since those belts would not be required in the outboard seating positions of the front seat. In the case of light trucks, light MPV's and small van-like buses, the agency proposed that the dynamic test requirement take effect on September 1, 1989. The proposed effective date for light trucks, light MPV's and van-like buses was

not conditional, because those vehicles are not covered by the automatic restraint requirement and will likely continue to have manual safety belts.

Adoption of the requirement

As discussed in detail below, the agency has decided to adopt a dynamic test requirement for safety belts used in passenger cars. The agency is still analyzing the issues raised in the comments about dynamic testing for safety belt systems in other vehicles and will announce its decision about safety belt systems in light trucks, MPV's and buses at a later date.

Most of the commenters favored adopting a dynamic test requirement for manual belts at least with respect to passenger cars, although many of those commenters raised questions about the lead-time needed to comply with the requirement. Those opposing the requirement argued that the field experience has shown that current manual belts provide substantial protection and thus a dynamic test requirement is not necessary. In addition, they argued that dynamic testing would substantially increase a manufacturer's testing costs, and its testing workload. One commenter said that because of the unique nature of the testing, it could not necessarily be combined with other compliance testing done by a manufacturer. The same commenter argued that vehicle downsizing, cited by the agency as one reason for dynamically testing belts, does not create safety problems since the interior space of passenger cars has remained essentially the same as it was prior to downsizing. The commenter also argued there is no field evidence that the use of tension-relieving devices in safety belts, the other reason cited by the agency in support of the need to test dynamically manual safety belts, is compromising the performance of safety belts.

The agency strongly believes that current manual belts provide very substantial protection in a crash. The Secretary's 1984 automatic protection decision concluded that current manual safety belts are at least as effective, and in some cases, more effective than current automatic belt designs. That conclusion was based on current manual safety belts, which are not certified to dynamic tests. However, as discussed in the April 1985 notice, the agency is concerned that as an increasing number of vehicles are reduced in size for fuel economy purposes and as more tension-relieving devices are used on manual belts, the potential for occupant injury increases. The agency agrees that downsizing efforts by manufacturers have attempted to preserve the interior space of passenger

cars, while reducing their exterior dimensions. Preserving the interior dimensions of the passenger compartment means that occupants will not be placed closer to instrument panels and other vehicle structures which they could strike in a crash. However, the reduction in exterior dimensions can result in a lessening of the protective crush distance available in a car. Thus the agency believes it is important to ensure that safety belts in downsized vehicles will perform adequately. In the case of tension-relieving devices, agency tests of lap/shoulder belt restrained test dummies have shown that as more slack is introduced into a shoulder belt, the injuries measured on the test dummies increased. Thus, as discussed in detail later in this notice, the agency believes it is important to ensure that safety belts with tension-relievers provide adequate protection when they are used in the manner recommended by vehicle manufacturers. This is of particular concern to the agency since the vast majority of new cars (nearly all domestically-produced cars) now are equipped with such devices. For those reasons, the agency is adopting the dynamic test requirement.

The adoption of this requirement will ensure that each and every passenger car, as compared to the vehicle population in general, offers a consistent, minimum level of protection to front seat occupants. By requiring dynamic testing, the standard will assure that the vehicle's structure, safety belts, steering column, etc., perform as a unit to protect occupants, as it is only in such a test that the synergistic and combination effects of these vehicle component can be measured. As discussed in detail in the Final Regulatory Evaluation (FRE), vehicle safety improvements will result from dynamic testing; and, as discussed later in this notice, such improvements can often be made quickly and at low cost.

The agency recognizes that manufacturers may have to conduct more testing than they currently do. However, the dynamic testing of manual belts in passenger cars, as with testing of automatic restraints, can be combined with other compliance tests to reduce the overall number of tests. The agency notes that in its NCAP tests, it has been able to combine the dynamic testing of belts with measuring the vehicle's compliance with other standards. The agency has followed the same practice in its compliance tests. For example, the agency has done compliance testing for Standard Nos. 208, 212, 219, and 301 in one test. The agency would, of course, recognize a manufacturer's use of combined tests as a valid testing procedure to certify compliance with these standards.

Effective Date

Two commenters argued that the requirement should become effective as soon as practical. As discussed in the April 1985 notice, the agency proposed an effective date of September 1, 1989, because it did not want to divert industry resources away from designing automatic restraints for passenger cars. The agency continues to believe it would be inappropriate to divert those resources for the purposes of requiring improvements on manual belt systems that might not be permitted in passenger cars.

Other commenters asked for a delay in the effective date—one asked for a delay until September 1, 1991, while another asked that the effective date be set 2-3 years after the determination of whether a sufficient number of States have passed effective mandatory safety belt use laws. NHTSA does not agree there is a need to delay the effective date beyond September 1, 1989 for passenger cars. Commenters argued that the time span between any decision on rescission of the automatic restraint requirements (as late as April 1, 1989) and the effective date of the dynamic testing of manual belts (September 1, 1985) is too short to certify manual belts.

The agency believes there is sufficient leadtime for passenger cars. Most of the vehicle components in passenger cars necessary for injury reduction management are the same for automatic restraint vehicles and dynamically tested manual belt vehicles. Additionally, as indicated and discussed in the April notice, approximately 40 percent of the passenger cars tested in the agency's 35 mph (NCAP) program meet the injury criteria specified in Standard No. 208, even though a 35 mph crash involves 36 percent more energy than the 30 mph crash test required by Standard No. 208. In addition, the FRE shows that with relatively minor vehicle and/or restraint system changes some safety belt systems can be dramatically improved. This is further evidence that development of dynamically tested manual belts for passenger cars in 30 mph tests should not be a major engineering program. Thus, a delay in the effective date for passenger cars is not needed.

Webbing tension-relieving devices

With one exception, those manufacturers who commented on the proposal concerning tension-relieving devices supported testing safety belts adjusted so that they have the amount of slack recommended by the manufacturer in the vehicle owner's manual. However, one manufacturer and two other commenters objected to the provision related to dynamic

testing with the tension-relieving device adjusted to the manufacturer's maximum recommended slack position. The manufacturer objected to a dynamic test that would require any slack at all to be introduced into the belt system, on the grounds that uncontrolled variability would be introduced into the dynamic test procedure, which would then lack objectivity. The manufacturer asserted that it might have to eliminate all tension-relieving devices for its safety belts.

The agency's proposed test procedure was intended to accommodate tension-relieving devices since they can increase the comfort of belts. At the same time, the proposal would limit the potential reduction in effectiveness for safety belt systems with excessive slack. The agency does not agree that this test procedure need result in the elimination of tension-relieving devices from the marketplace. As mentioned earlier, other manufacturers supported the proposal and did not indicate they would have to remove tension-relieving devices from their belt systems. The commenter opposing the requirement did not show that injury levels cannot be controlled within the specified injury criteria by testing with the recommended amount of slack, as determined by the manufacturer. The recommended slack could be very small or at any level selected by the manufacturer as appropriate to relieve belt pressure and still ensure that the injury reduction criteria of Standard No. 208 would be met. As a practical matter, most tension-relievers automatically introduce some slack into the belt for all occupants. Testing without such slack would be unrealistic.

The two other commenters objected to the proposal that manual belt systems using tension-relieving devices meet the injury criteria with only the specified amount of slack recommended in the owner's manual. They stated that most owners would not read the instructions in the owner's manual regarding the proper use of the tension-relieving device. They said an occupant could have a false sense of adequate restraint when wearing a belt system adjusted beyond the recommended limit.

The agency's views on allowing the use of tension relievers in safety belts were detailed in the April 1985 notice. The agency specifically noted the effectiveness of a safety belt system could be compromised if excessive slack were introduced into the belt. However, the agency recognizes that a belt system must be used to be effective at all. Allowing manufacturers to install tension-relieving devices makes it possible for an occupant to introduce a small amount of slack to relieve shoulder belt pressure or to divert

the belt away from the neck. As a result, safety belt use is promoted. This factor should outweigh any loss in effectiveness due to the introduction of a recommended amount of slack in normal use. This is particularly likely in light of the requirement that the belt system, so adjusted, must meet the injury criteria of Standard No. 208 under 30 mph test conditions. Further, the inadvertent introduction of slack into a belt system, which is beyond that for normal use, is unlikely in most current systems. In addition, even if too much slack is introduced, the occupant should notice that excessive slack is present and a correction is needed, regardless of whether he or she has read the vehicle's owner's manual.

Exemption from Standard Nos. 203 and 204

One commenter suggested that vehicles equipped with dynamically tested manual belts be exempt from Standard Nos. 203, *Impact Protection for the Driver from the Steering Control Systems*, and 204, *Steering Column Rearward Displacement*. The agency does not believe such an exemption would be appropriate because both those standards have been shown to provide substantial protection to belted drivers.

Latching procedure in Standard No. 208

One commenter asked that Standard No. 208 be modified to include a test procedure for latching and adjusting a manual safety belt prior to the belt being dynamically tested. NHTSA agrees that Standard No. 208 should include such a procedure. The final rule incorporates the instructions contained in the NCAP test procedures for adjusting manual belts, as modified to reflect the introduction of the amount of slack recommended by the vehicle manufacturer.

Revisions to Standard No. 209

The notice proposed to exempt dynamically tested belts from the static laboratory strength tests for safety belt assemblies set forth in S4.4 of Standard No. 209. One commenter asked that such belts be exempted from the remaining requirements of Standard No. 209 as well.

NHTSA agrees that an additional exemption from some performance requirements of Standard No. 209 is appropriate. Currently, the webbing of automatic belts is exempt from the elongation and other belt webbing and attachment hardware requirements of Standard No. 209, since those belts have to meet the injury protection criteria of Standard No. 208 during a crash. For dynamically-tested manual belts,

NHTSA believes that an exemption from the webbing width, strength and elongation requirements (sections 4.2(a)-(c)) is also appropriate, since these belts will also have to meet the injury protection requirements of Standard No. 208. The agency has made the necessary changes in the rule to adopt that exemption.

The agency does not believe that manual belts should be exempt from the other requirements in Standard No. 209. For example, the requirements on buckle release force should continue to apply, since manual safety belts, unlike automatic belts, must be buckled every time they are used. As with retractors in automatic belts, retractors in dynamically tested manual belts will still have to meet Standard No. 209's performance requirements.

Revisions to Standard No. 210

The notice proposed that dynamically tested manual belts would not have to meet the location requirements set forth in Standard No. 210, *Seat Belt Assembly Anchorages*. One commenter suggested that dynamically tested belts be completely exempt from Standard No. 210; it also recommended that Standard No. 210 be harmonized with Economic Commission for Europe (ECE) Regulation No. 14. Two other commenters suggested using the "out-of-vehicle" dynamic test procedure for manual belts contained in ECE Regulation No. 16, instead of the proposed barrier crash test in Standard No. 208.

The agency does not believe that the "out-of-vehicle" laboratory bench test of ECE Regulation No. 16 should be allowed as a substitute for a dynamic vehicle crash test. The protection provided by safety belts depends on the performance of the safety belts themselves, in conjunction with the structural characteristics and interior design of the vehicle. The best way to measure the performance of the safety belt/vehicle combination is through a vehicle crash test.

The agency has already announced its intention to propose revisions to Standard No. 210 to harmonize it with ECE Regulation No. 14; therefore the commenters' suggestions concerning harmonization and exclusion of dynamically tested safety belts from the other requirements of Standard No. 210 will be considered during that rulemaking. At the present time, the agency is adopting only the proposed exclusion of anchorages for dynamically tested safety belts from the location requirements, which was not opposed by any commenter.

Belt Labelling

One commenter objected to the proposal that dynamically tested belts have a label indicating that they may be installed only at the front outboard seating positions of certain vehicles. The commenter said that it is unlikely that anyone would attempt to install a Type 2 lap shoulder belt in any vehicle other than the model for which it was designed. The agency does not agree. NHTSA believes that care must be taken to distinguish dynamically tested belt systems from other systems, since misapplication of a belt in a vehicle designed for use with a specific dynamically tested belt could pose a risk of injury. If there is a label on the belt itself, a person making the installation will be aware that the belt should be installed only in certain vehicles.

Use of the Head Injury Criterion

The April 1985 notice set forth two proposed alternative methods of using the head injury criterion (HIC) in situations when there is no contact between the test dummy's head and the vehicle's interior during a crash. The first proposed alternative was to retain the current HIC calculation for contact situations. However, in non-contact situations, the agency proposed that a HIC would not be calculated, but instead new neck injury criteria would be calculated. The agency explained that a crucial element necessary for deciding whether to use the HIC calculation or the neck criteria was an objective technique for determining the occurrence and duration of head contact in the crash test. As discussed in detail in the April 1985 notice, there are several methods available for establishing the duration of head contact, but there are questions about their levels of consistency and accuracy.

The second alternative proposed by the agency would have calculated a HIC in both contact and non-contact situations, but it would limit the calculation to a time interval of 36 milliseconds. Along with the requirement that a HIC not exceed 1000, this would limit average head acceleration to 60g's or less.

Almost all of the commenters opposed the use of the first proposed alternative. The commenters uniformly noted that there is no current technique that can accurately identify whether head contact has or has not occurred during a crash test in all situations. However, one commenter urged the agency to adopt the proposed neck criteria, regardless of whether the HIC calculation is modified. There was a sharp division among the commenters on the second proposed alternative. Manufacturers commenting on

the issue uniformly supported the use of the second alternative; although many manufacturers argued that the HIC calculation should be limited to a time interval of approximately 15 to 17 milliseconds (ms), which would limit average head accelerations to 80-85 g's. Another manufacturer, who supported the second alternative, urged the agency to measure HIC only during the time interval that the acceleration level in the head exceeds 60 g's. It said that this method would more effectively differentiate results received in contacts with hard surfaces and results obtained from systems, such as airbags, which provide good distribution of the loads experienced during a crash. Other commenters argued that the current HIC calculation should be retained; they said that the proposed alternatives would lower HIC calculations without ensuring that motorists were still receiving adequate head protection.

NHTSA is in the process of reexamining the potential effects of the two alternatives proposed by the agency and of the two additional alternatives suggested by the commenters. Once that review has been completed, the agency will issue a separate notice announcing its decision.

NCAP Test Procedures

The April 1985 notice proposed adopting the test procedures on test dummy positioning and vehicle loading used in the agency's NCAP testing. The commenters generally supported the adoption of the test procedures, although several commenters suggested changes in some of the proposals. In addition, several commenters argued that the new procedures may improve test consistency, but the changes do not affect what they claim is variability in crash test results. As discussed in the April 1985 notice, the agency believes that the test used in Standard No. 208 does produce repeatable results. The proposed changes in the test procedures were meant to correct isolated problems that occurred in some NCAP tests. The following discussion addresses the issues raised by the commenters about the specific test procedure changes.

Vehicle test attitude

The NPRM proposed that when a vehicle is tested, its attitude should be between its "as delivered" condition and its "loaded" condition. (The "as delivered" condition is based on the vehicle attitude measured when it is received at the test site, with 100 percent of all its fluid capacities and with all its tires inflated to the manufacturer's specifications. For passenger

cars, the "loaded" condition is based on the vehicle's attitude with a test dummy in each front outboard designated seating position, plus carrying the cargo load specified by the manufacturer).

One commenter said that the weight distribution, and therefore the attitude, of the vehicle is governed more by the Gross Axle Weight Rating (defined in 49 CFR Part 571.3) than the loading conditions identified by the agency. The commenter recommended that the proposal not be adopted. Another commenter said that the agency should adopt more specific procedures for the positioning of the dummy and the cargo weight. For example, that commenter recommended that the "cargo weight shall be placed in such manner that its center of gravity will be coincident with the longitudinal center of the trunk, measured on the vehicle's longitudinal centerline." The commenter said that unless a more specific procedure is adopted, a vehicle's attitude in the fully loaded condition would not be constant.

The agency believes that a vehicle attitude specification should be adopted. The purpose of the requirement is to ensure that a vehicle's attitude during a crash test is not significantly different than the fully loaded attitude of the vehicle as designed by the manufacturer. Random placement of any necessary ballast could have an effect on the test attitude of the vehicle. If these variables are not controlled, then the vehicle's test attitude could be affected and potential test variability increased.

NHTSA does not agree that the use of the Gross Axle Weight Rating (GAWR) is sufficient to determine the attitude of a vehicle. The use of GAWR only defines the maximum load-carrying capacity of each axle rather than in effect specifying a minimum and maximum loading as proposed by the agency. In addition, use of the GAWR may, under certain conditions, make it necessary to place additional cargo in the passenger compartment in order to achieve the GAWR loading. This condition is not desirable for crash testing, since the passenger compartment should be used for dummy placement and instrumentation and not ballast cargo. Thus the commenter's recommendation is not accepted.

The other commenter's recommendations regarding more specific test dummy placement procedures for the outboard seating positions were already accommodated in the NPRM by the proposed new S10.1.1, *Driver position placement*, and S10.1.2, *Passenger position placement*. Since those proposals adequately describe dummy placement in these positions, they are adopted.

NHTSA has evaluated the commenter's other sug-

gestion for placing cargo weight with its center of gravity coincident with the longitudinal center of the trunk. The agency does not believe that it is necessary to determine the center of gravity of the cargo mass, which would add unnecessary complexity to the test procedure, but does agree that the cargo load should be placed so that it is over the longitudinal center of the trunk. The test procedures have been amended accordingly.

Open window

One commenter raised a question about the requirement in S8.1.5 of Standard No. 208 that the vehicle's windows are to be closed during the crash test. It said adjustment of the dummy arm and the automatic safety belt can be performed only after an automatic belt is fully in place, which occurs only after the door is closed. Therefore, the window needs to be open to allow proper arm and belt placement after the door is closed.

NHTSA agrees that the need to adjust the slack in automatic and dynamically-tested manual belts prior to the crash test may require that the window remain open. The agency has modified the test procedure to allow manufacturers the option of having the window open during the crash test.

Seat back position

One commenter recommended that proposed S8.1.3, *Adjustable seat back placement*, be modified. The notice proposed that adjustable seat backs should be set in their design riding position as measured by such things as specific latch or seat track detent positions. The commenter suggested two options. The first option would be to allow vehicle manufacturers to specify any means they want to determine the seat back angle and the resulting dummy torso angle. As its second option, the commenter recommended that if the agency decides to adopt the proposal, it should determine the "torso angle with a H-point machine according to SAE J826." The commenter said that depending on how the torso angle is established, different dummy torso angles could result in substantial adjustment deviations that can affect seat back placement.

The purpose of the requirement is to position the seat at the design riding position used by the manufacturer. The agency agrees with the commenter that manufacturers should have the flexibility to use any method they want to specify the seat back angle. Thus, the agency has made the necessary changes to the test procedure.

Dummy placement

One commenter made several general comments about dummy placement. It agreed that positioning is very important and can have an influence on the outcome of crash tests. It argued that both the old and the proposed procedures are complicated and impractical to use. The commenter claims this situation will become more complicated if the Hybrid III is permitted, since the positioning must be carried out within a narrow temperature range (3°F) for the test dummy to remain in calibration.

The commenter also believes that the positioning of the dummy should relate to vehicle type. It said that the posture and seating position of a vehicle occupant will not be the same in a van as in a sports car. For example, it said it has tried the proposed positioning procedures and found that they can result in an "unnatural" position for the dummy in a sports vehicle. The commenter argued that this "unnatural" position would then lead to a knee bolster design which would perform well in a crash test, but would likely not provide the same protection to a real occupant because of difference in positioning. The commenter recommended that the old positioning procedure be retained and the new procedure be provided as an option for those manufacturers whose vehicles cannot be adequately tested otherwise.

Because consistency in positioning the dummy is required prior to test, NHTSA believes that a single set of procedures should apply. As discussed in the April 1985 notice, the agency proposed the new procedures because of positioning problems identified in the NCAP testing. Allowing the use of the old positioning procedures could lead to sources of variability, thus negating a major objective of the procedures. The commenter's suggestion is therefore not adopted. The agency also notes that during its NCAP testing, which has involved tests of a wide variety of cars (including sports cars), trucks and MPV's, NHTSA has not experienced the "unnatural" seating position problem cited by the commenter.

Knee pivot bolt head clearance

Two commenters said that the proposal did not specify the correct distance between the dummy's knees, as measured by the clearance between the knee pivot bolt heads. The commenters are correct that the distance should be 11¾ inches rather than the proposed value of 14½ inches. The agency has corrected the number in the final rule.

Foot rest

One commenter believes that a driver of cars equipped with foot rests typically will place his or her left foot on the foot rest during most driving and therefore this position should be used to simulate normal usage. The commenter said that using the foot rest will minimize variations in the positioning of the left leg, thus improving the repeatability of the test. In a discussion with the commenter, the agency has learned that the type of foot rest the commenter is referring to is a pedal-like structure where the driver can place his or her foot.

For vehicles without foot rests, the commenter recommended the agency use the same provisions for positioning the left leg of the driver as are used for the right leg of the passenger. It noted that positioning the driver's left leg, as with the passenger's right leg, can be hampered by wheelwell housing that projects into the passenger compartment and thus similar procedures for each of those legs should be used.

NHTSA agrees that in vehicles with foot rests, the test dummy's left foot should be positioned on the foot rest as long as placing the foot there will not elevate the test dummy's left leg. As discussed below, the agency is concerned that foot rests, such as pads on the wheelwell, that elevate the test dummy's leg can contribute to test variability. The agency also agrees that the positioning procedures for the driver's left leg and the passenger's right leg should be similar in situations where the wheelwell housing projects into the passenger compartment and has made the necessary changes to the test procedure.

Wheelwell

One commenter believes that the wheelwell should be used to rest the dummy's foot. It said that positioning the test dummy's foot there is particularly appropriate if the wheelwell has a design feature, such as a rubber pad, installed by the manufacturer for this purpose.

NHTSA disagrees that the dummy's foot should be rested on the wheelwell housing. The agency is concerned that elevating the test dummy's leg could lead to test variability by, among other things, making the test dummy unstable during a crash test. Although the wheelwell problem is similar to the foot rest problem, placement of the test dummy's foot on a separate, pedal-like foot rest can be accomplished while retaining the heel of the test dummy in a stable position on the floor. That is not the case with pads located on the wheelwell.

Another commenter also said that the proposed procedure for positioning the test dummy's legs in vehicles where the wheelwell projected into the passenger compartment was unclear as to how the centerlines of the upper and lower legs should be adjusted so that both remain in a vertical longitudinal plane. In particular, it was concerned that in a vehicle with a large wheelhousing, it may not be possible to keep the left foot of the driver test dummy in the vertical longitudinal plane after the right foot has been positioned. It believes that the procedure should specify which foot position should be given priority; it recommended that the position of the right leg be required to remain in the plane, while bringing the left leg as close to the vertical longitudinal plane as possible. The agency agrees that maintaining the inboard leg of the test dummy in the vertical plane is more easily accomplished since it will not be blocked by the wheelwell. The agency has modified the test procedure to specify that when it is not possible to maintain both legs in the vertical longitudinal plane, that the inboard leg must be kept as close as possible to the vertical longitudinal plane and the outboard leg should be placed as close as possible to the vertical plane.

Lower leg angle

One commenter argued that proposed sections on lower leg positioning (S10.1.2.1 (b) and S10.1.2.2 (b)) will not result in a constant positioning of the test dummy's heels on the floor pan, thus causing differences in the lower leg angles. It stated that the lower leg angles will affect the femur load generated at the moment the foot hits the toe board during a collision. The commenter therefore proposed that the test procedure be revised to include placing a 20 pound load on the test dummy's knee during the foot positioning procedure. The commenter did not, however, explain the basis for choosing a force of 20 pounds.

NHTSA believes that use of the additional weight loading and settling procedure proposed by the commenter will add an unnecessary level of complexity to the test procedure without adding any corresponding benefit. The positioning of the test dummy's heel has not been a problem in the agency's NCAP tests. Accordingly, the agency is not adopting the commenter's recommendation.

Shoulder adjustment

One commenter asked the agency to specify that the shoulders of the test dummy be placed at their

lowest adjustment position. While the shoulders are slightly adjustable, the agency believes that specifying an adjustment position is unnecessary. The agency's test experience has shown that the up and down movement of the shoulders is physically limited by the test dummy's rubber "skin" around the openings where the arms are connected to the test dummy's upper torso.

Dummy lifting procedure

One commenter was concerned about the dummy lifting proposed in (Section S10.4.1, Dummy Vertical Upward Displacement). It said that if the dummy lifting method is not standardized, test results could be affected by allowing variability in the position of the dummy's H point (the H point essentially represents the hip joint) through use of different lifting methods. It recommended use of a different chest lifting method to avoid variability in the subsequent positioning of the test dummy H-point.

The agency is not aware of any test data indicating that the use of different lifting methods is a significant source of variability. As long as a manufacturer follows the procedures set forth in S10.4.1 in positioning the test dummy, it can use any lifting procedure it wants.

Dummy settling load

One commenter was concerned about the proposed requirements for dummy settling (S10.4.2, *Lower torso force application*, and S10.4.5, *Upper torso force application*). The commenter believes that the proposals are inadequate because they do not prescribe the area over which to apply the load used to settle the test dummy in the seat. The commenter said that if the proposed 50 pound settling force is applied to an extremely small contact area, then the dummy may be deformed. It recommended that the load be applied to a specified area of 9 square inches on the dummy. In addition, it recommended that the agency specify the duration of the 50 lb. force application during the adjustment of the upper torso; it suggested a period of load application ranging from 5 to 10 seconds.

NHTSA and others have successfully used the proposed settling test procedures in their own tests without having any variability problems. Unless abnormally small contact areas are employed, or extremely short durations are used, standard laboratory practices should not result in any such problems. The agency believes that further specifying the area and timing of the force application is not necessary.

Dummy head adjustment

One commenter pointed out that it is impossible to adjust the head according to S10.6, Head Adjustment, because the Part 572 test dummy does not have a head adjustment mechanism. The agency agrees and has deleted the provision.

Additional dummy settling and shoulder belt positioning procedures

One commenter suggested a substantial revised dummy settling procedure and new procedures for positioning of the shoulder belt. NHTSA believes that its proposed procedures sufficiently address the settling and belt position issues. In addition, the commenter did not provide any data to show that variability would be further reduced by its suggested procedures. A substantial amount of testing would be needed to verify if the commenter's suggested test procedures do, in fact, provide any further decrease in variability than that obtained by the agency's test procedures. For those reasons, the agency is not adopting the commenter's suggestions for new procedures.

Due Care

In the April 1985 notice, the agency proposed amending the standard to state that the due care provision of section 108(b)(2) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1397(b)(2)) applies to compliance with the standard. Thus, a vehicle would not be deemed in noncompliance if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the standard.

Commenters raised a number of questions about the proposal, with some saying that the agency needed to clarify what constitutes "due care," others recommending that the agency reconsider the use of "design to conform" language instead of due care and another opposing the use of any due care provision.

A number of commenters, while supporting the use of a due care provision, said that the proposal provides no assurance that a manufacturer's good faith effort will be considered due care. They said that the agency should identify the level of testing and analysis necessary to constitute due care. Another commenter emphasized that in defining due care, the agency must ensure that a manufacturer uses recognized statistical procedures in determining that its products comply with the requirements of the standard.

Another group of commenters requested the agency to reconsider its decision not to use "design to conform" language in the standard; they said that the agency's concerns about the subjectivity of a "design to conform" language are not greater and could well be less than that resulting from use of due care language.

One commenter opposed the use of any due care language in the standard. It argued that the National Traffic and Motor Vehicle Safety Act requires the agency to set objective performance requirements in its standards. When a manufacturer determines that it has not met those performance requirements, then the manufacturer is under an obligation to notify owners and remedy the noncomplying vehicles. It argued that the proposed due care provision, in effect, provides manufacturers with an exemption from the Vehicle Safety Act recall provisions.

As discussed in the July 1984 final rule and the April 1985 notice, the agency believes that the test procedure of Standard No. 208 produces repeatable results in vehicle crash tests. The agency does, however, recognize that the Standard No. 208 test is more complicated than NHTSA's other crash test standards since a number of different injury measurements must be made on the two test dummies used in the testing. Because of this complexity, the agency believes that manufacturers need assurance from the agency that, if they have made a good faith effort in designing their vehicles and have instituted adequate quality control measures, they will not face the recall of their vehicles because of an isolated apparent failure to meet one of the injury criteria. The adoption of a due care provision provides that assurance. For the reasons discussed in the July 1984 final rules, the agency still believes use of a due care provision is a better approach to this issue than use of a design to conform provision.

As the agency has emphasized in its prior interpretation letters, a determination of what constitutes due care can only be made on a case-by-case basis. Whether a manufacturer's action will constitute due care will depend, in part, upon the availability of test equipment, the limitations of available technology, and above all, the diligence evidenced by the manufacturer.

Adoption of a due care defense is in line with the agency's long-standing and well-known enforcement policy on test differences. Under this long standing practice if the agency's testing shows noncompliance and a manufacturer's tests, valid on their face, show complying results, the agency will conduct an inquiry into the reason for the differing results. If the agency

concludes that the difference in results can be explained to the agency's satisfaction, that the agency's results do not indicate an unreasonable risk to safety, and that the manufacturer's tests were reasonably conducted and were in conformity with standard, then the agency does not use its own tests as a basis for a finding of noncompliance. Although this interpretation has long been a matter of public record, Congress, in subsequent amendments of the Vehicle Safety Act, has not acted to alter that interpretation. The Supreme Court has said that under those circumstances, it can be presumed that the agency's interpretation has correctly followed the intent of the statute. (*See United States v. Rutherford*, 442 U.S. 544, 544 n. 10 (1979))

Phase-In

Attribution rules

With respect to cars manufactured by two or more companies, and cars manufactured by one company and imported by another, the April 1985 notice proposed to clarify who would be considered the manufacturer for purposes of calculating the average annual production of passenger cars for each manufacturer and the amount of passenger cars manufactured by each manufacturer that must comply with the automatic restraint phase-in requirements. In order to provide maximum flexibility to manufacturers, while assuring that the percentage phase-in goals are met, the notice proposed to permit manufacturers to determine, by contract, which of them will count, as its own, passenger cars manufactured by two or more companies or cars manufactured by one company and imported by another.

The notice also proposed two rules of attribution in the absence of such a contract. First, a passenger car which is imported for purposes of resale would be attributed to the importer. The agency intended that this proposed attribution rule would apply to both direct importers as well as importers authorized by the vehicle's original manufacturer. (In this context, direct importation refers to the importation of cars which are originally manufactured for sale outside the U.S. and which are then imported without the manufacturer's authorization into the U.S. by an importer for purposes of resale. The Vehicle Safety Act requires that such vehicles be brought into conformity with Federal motor vehicle safety standards.) Under the second proposed attribution rule, a passenger car manufactured in the United States by more than one manufacturer, one of which also

markets the vehicle, would be attributed to the manufacturer which markets the vehicle.

These two proposed rules would generally attribute a vehicle to the manufacturer which is most responsible for the existence of the vehicle in the United States, i.e., by importing the vehicle or by manufacturing the vehicle for its own account as part of a joint venture, and marketing the vehicle. (Importers generally market the vehicles they import.) All commenters on these proposals supported giving manufacturers the flexibility to determine contractually which manufacturer would count the passenger car as its own. The commenters also supported the proposed attribution rules. Therefore, the agency is adopting the provisions as proposed.

Credit for early phase-in

The April 1985 notice proposed that manufacturers that exceeded the minimum percentage phase-in requirements in the first or second years could count those extra vehicles toward meeting the requirements in the second or third years. In addition, manufacturers could also count any automatic restraint vehicles produced during the one year preceding the first year of the phase-in. Since all the commenters addressing these proposals supported them, the agency is adopting them as proposed. The agency believes that providing credit for early introduction will encourage introduction of larger numbers of automatic restraints and provide increased flexibility for manufacturers. In addition, it will assure an orderly build-up of production capability for automatic restraint equipped cars as contemplated by the July 1984 final rule.

One commenter asked the agency to establish a new credit for vehicles equipped with non-belt automatic restraints at the driver's position and a dynamically-tested manual belt at the passenger position. The commenter requested that such a vehicle receive a 1.0 credit. The commenter also asked the agency to allow vehicles equipped with driver-only automatic restraint systems to be manufactured after September 1, 1989, the effective date for automatic restraints for the driver and front right passenger seating positions in all passenger cars. In its August 30, 1985 notice (50 FR 35233) responding to petitions for reconsideration of the July 1984 final rule on Standard No. 208, the agency has already adopted a part of the commenter's suggestion by establishing a 1.0 vehicle credit for vehicles equipped with a non-belt automatic restraint at the driver's position and a manual lap/shoulder belt at the passenger's position. For reasons detailed in the July 1984 final rule, the

agency believes that the automatic restraint requirement should apply to both front outboard seating positions beginning on September 1, 1989, and is therefore not adopting the commenter's second suggestion.

Phase-In Reporting Requirements

The April 1985 notice proposed to establish a new Part 585, *Automatic Restraint Phase-in Reporting Requirements*. The agency proposed requiring manufacturers to submit three reports to NHTSA, one for each of the three automatic restraint phase-in periods. Each report, covering production during a 12-month period beginning September 1 and ending August 31, would be required to be submitted within 60 days after the end of such period. Information required by each report would include a statement regarding the extent to which the manufacturer had complied with the applicable percentage phase-in requirement of Standard No. 208 for the period covered by the report; the number of passenger cars manufactured for sale in the United States for each of the three previous 12-month production periods; the actual number of passenger cars manufactured during the reporting production (or during a previous production period and counted toward compliance in the reporting production period) period with automatic safety belts, air bags and other specified forms of automatic restraint technology, respectively; and brief information about any express written contracts which concern passenger cars produced by more than one manufacturer and affect the report.

One commenter questioned the need for a reporting requirement, saying that the requirement was unnecessary since manufacturers must self-certify that their vehicles meet Standard No. 208. The agency believes that a reporting requirement is needed for the limited period of the phase-in of automatic restraints so that the agency can carry out its statutory duty to monitor compliance with the Federal motor vehicle safety standards. During the phase-in, only a certain percentage of vehicles are required to have automatic restraints. It would be virtually impossible for the agency to determine if the applicable percentage of passenger cars has been equipped with automatic restraints unless manufacturers provide certain production information to the agency. NHTSA is therefore adopting the reporting requirement.

The same commenter said that requiring the report to be due 60 days after the end of the production year can be a problem for importers. The commenter said

that production records may accompany the vehicle, which may not actually reach the United States until 30 or 45 days after the production year ends. The commenter asked the agency to provide an appeal process to seek an extension of the period to file the report. The agency believes that the example presented by the commenter represents a worst case situation and complying with the 60 day requirement should not be a problem for manufacturers, including importers. However, to eliminate any problems in worst case situations, the agency is amending the regulation to provide that manufacturers seeking an extension of the deadline to file a report must file a request for an extension at least 15 days before the report is due.

Calculation of average annual production

The agency also proposed an alternative to the requirement that the number of cars that must be equipped with automatic restraints must be based on a percentage of each manufacturer's average annual production for the past three model years. The proposed alternative would permit manufacturers to equip the required percentage of its actual production of passenger cars with automatic restraints during each affected year. Since all commenters addressing this proposal supported it, the agency is adopting it as an alternative means of compliance, at the manufacturer's option. In the case of a new manufacturer, the manufacturer would have to calculate the amount of passenger cars required to have automatic restraints based on its production of passenger cars during each of the affected years. Since the agency has decided to adopt the alternative basis for determining the production quota, it has made the necessary conforming changes in the reporting requirements adopted in this notice.

One commenter also requested the agency to clarify whether a manufacturer does have to include its production volume of convertibles when it is calculating the percentage of vehicles that must meet the phase-in requirement. The automatic restraint requirement applies to all passenger cars. Thus, a manufacturer's production figures for passenger car convertibles must be counted when the manufacturer is calculating its phase-in requirements.

Retention of VINs

In order to keep administrative burdens to a minimum, the agency proposed that the required report need not use the VIN to identify the particular type of automatic restraint installed in each

passenger car produced during the phase-in period. Since that information could be necessary for purposes of enforcement, however, the agency proposed to require that manufacturers maintain records until December 31, 1991, of the VIN and type of automatic restraint for each passenger car which is produced during the phase-in period and is reported as having automatic restraints. Although direct import cars are not required to have a US-format VIN number, those cars would still have a European-format VIN number and thus direct importers would be required to retain that VIN information. (The agency is considering a petition from Volkswagen requesting that direct import cars be required to have US-format VINs.)

The reason for retaining the information until 1991 is to ensure that such information would then be available until the completion of any agency enforcement action begun after the final phase-in report is filed in 1990. The agency believes this requirement meets the needs of the agency, with minimal impacts on manufacturers, and therefore is adopting it as proposed. One commenter asked whether a manufacturer is required to keep the VIN information as a separate file or whether keeping the information as a part of its general business records is sufficient. As long as the VIN information is retrievable, it may be stored in any manner that is convenient for a manufacturer.

In consideration of the foregoing, 49 CFR Part 571.208 is amended as follows:

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.

1. Section S4.1.3.1.2 is revised to read as follows:

S4.1.3.1.2 Subject to S4.1.3.4 and S4.1.5, the amount of passenger cars, specified in S4.1.3.1.1 complying with the requirements of S4.1.2.1 shall be not less than 10 percent of:

(a) the average annual production of passenger cars manufactured on or after September 1, 1983, and before September 1, 1986, by each manufacturer, or

(b) the manufacturer's annual production of passenger cars during the period specified in S4.1.3.1.1.

2. Section 4.1.3.2.2 is revised to read as follows:

S4.1.3.2.2 Subject to S4.1.3.4 and S4.1.5, the amount of passenger cars specified in S4.1.3.2.1 complying with the requirements of S4.1.2.1 shall be not less than 25 percent of:

(a) the average annual production of passenger cars manufactured on or after September 1, 1984,

and before September 1, 1987, by each manufacturer, or

(b) the manufacturer's annual production of passenger cars during the period specified in S4.1.3.2.1.

3. Section 4.1.3.3.2 is revised to read as follows:

S4.1.3.3.2 Subject to S4.1.3.4 and S4.1.5, the amount of passenger cars specified in S4.1.3.3.1 complying with the requirements of S4.1.2.1 shall be less than 40 percent of:

(a) the average annual production of passenger cars manufactured on or after September 1, 1985, and before September 1, 1988, by each manufacturer or

(b) the manufacturer's annual production of passenger cars during the period specified in S4.1.3.3.1.

4. Section S4.1.3.4 is revised to read as follows:

S4.1.3.4 *Calculation of complying passenger cars.*

(a) For the purposes of calculating the numbers of cars manufactured under S4.1.3.1.2, S4.1.3.2.2, or S4.1.3.3.2 to comply with S4.1.2.1:

(1) each car whose driver's seating position complies with the requirements of S4.1.2.1(a) by means not including any type of seat belt and whose front right seating position will comply with the requirements of S4.1.2.1(a) by any means is counted as 1.5 vehicles, and

(2) each car whose driver's seating position complies with the requirements of S4.1.2.1(a) by means not including any type of seat belt and whose right front seat seating position is equipped with a manual Type 2 seat belt is counted as one vehicle.

(b) For the purposes of complying with S4.1.3.1.2, a passenger car may be counted if it:

(1) is manufactured on or after September 1, 1985, but before September 1, 1986, and

(2) complies with S4.1.2.1.

(c) For the purposes of complying with S4.1.3.2.2, a passenger car may be counted if it:

(1) is manufactured on or after September 1, 1985, but before September 1, 1987,

(2) complies with S4.1.2.1, and

(3) is not counted toward compliance with S4.1.3.1.2

(d) For the purposes of complying with S4.1.3.3.2, a passenger car may be counted if it:

(1) is manufactured on or after September 1, 1985, but before September 1, 1988,

(2) complies with S4.1.2.1, and

(3) is not counted toward compliance with S4.1.3.1.2 or S4.1.3.2.2.

5. A new section S4.1.3.5 is added to read as follows:
S4.1.3.5 *Passenger cars produced by more than one manufacturer.*

S4.1.3.5.1 For the purposes of calculating average annual production of passenger cars for each manufacturer and the amount of passenger cars manufactured by each manufacturer under S4.1.3.1.2, S4.1.3.2.2 or S4.1.3.3.2, a passenger car produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S4.1.3.5.2:

(a) A passenger car which is imported shall be attributed to the importer.

(b) A passenger car manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer which markets the vehicle.

S4.1.3.5.2 A passenger car produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR Part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S4.1.3.5.1.

6. A new section S4.6 is added to read as follows:

S4.6 *Dynamic testing of manual belt systems.*

S4.6.1 If the automatic restraint requirement of S4.1.4 is rescinded pursuant to S4.1.5, then each passenger car that is manufactured after September 1, 1989, and is equipped with a Type 2 manual seat belt assembly at each front outboard designated seating position pursuant to S4.1.2.3 shall meet the frontal crash protection requirements of S5.1 at those designated seating positions with a test dummy restrained by a Type 2 seat belt assembly that has been adjusted in accordance with S7.4.2.

S4.6.2 A Type 2 seat belt assembly subject to the requirements of S4.6.1 of this standard does not have to meet the requirements of S4.2(a)-(c) and S4.4 of Standard No. 209 (49 CFR 571.209) of this Part.

7. S7.4.2 is revised to read as follows:

S7.4.2 *Webbing tension relieving device.* Each vehicle with an automatic seat belt assembly or with a Type 2 manual seat belt assembly that must meet S4.6 installed in a front outboard designated seating position that has either manual or automatic devices permitting the introduction of slack in the webbing of the shoulder belt (e.g., "comfort clips" or "window-shade" devices) shall:

(a) comply with the requirements of S5.1 with the shoulder belt webbing adjusted to introduce the maximum amount of slack recommended by the manufacturer pursuant to S7.4.2.(b);

(b) have a section in the vehicle owner's manual that explains how the tension-relieving device works and specifies the maximum amount of slack (in inches) recommended by the vehicle manufacturer to be introduced into the shoulder belt under normal use conditions. The explanation shall also warn that introducing slack beyond the amount specified by the manufacturer can significantly reduce the effectiveness of the shoulder belt in a crash; and

(c) have an automatic means to cancel any shoulder belt slack introduced into the belt system by a tension-relieving device each time the safety belt is unbuckled or the adjacent vehicle door is opened, except that open-body vehicles with no doors can have a manual means to cancel any shoulder belt slack introduced into the belt system by a tension-relieving device.

8. Section 8.1.1(c) is revised to read as follows:

S8.1.1(c) *Fuel system capacity.* With the test vehicle on a level surface, pump the fuel from the vehicle's fuel tank and then operate the engine until it stops. Then, add Stoddard solvent to the test vehicle's fuel tank in an amount which is equal to not less than 92 and not more than 94 percent of the fuel tank's usable capacity stated by the vehicle's manufacturer. In addition, add the amount of Stoddard solvent needed to fill the entire fuel system from the fuel tank through the engine's induction system.

9. A new section 8.1.1(d) is added to read as follows:

S8.1.1(d) *Vehicle test attitude.* Determine the distance between a level surface and a standard reference point on the test vehicle's body, directly above each wheel opening, when the vehicle is in its "as delivered" condition. The "as delivered" condition is the vehicle as received at the test site, with 100 percent of all fluid capacities and all tires inflated to the manufacturer's specifications as listed on the vehicle's tire placard. Determine the distance between the same level surface and the same standard reference points in the vehicle's "fully loaded condition". The "fully loaded condition" is the test vehicle loaded in accordance with S8.1.1(a) or (b), as applicable. The load placed in the cargo area shall be centered over the longitudinal centerline of the vehicle. The pretest vehicle attitude shall be equal to either the as delivered or fully loaded attitude or between the as delivered attitude and the fully loaded attitude.

10. S7.4.3 is revised by removing the reference to "S10.6" and replacing it with a reference to "S10.7."

11. S7.4.4 is revised by removing the reference to "S10.5" and replacing it with a reference to "S10.6."

12. S7.4.5 is revised by removing the reference to "S8.1.11" and replacing it with a reference to "S10."

13. Section 8.1.3 is revised to read as follows:

S8.1.3 *Adjustable seat back placement.* Place adjustable seat backs in the manufacturer's nominal design riding position in the manner specified by the manufacturer. Place each adjustable head restraint in its highest adjustment position.

14. Sections 8.1.11 through 8.1.11.2.3 are removed.

15. Sections 8.1.12 and 8.1.13 are redesignated 8.1.11 and 8.1.12, respectively.

16. Section 10 is revised to read as follows:

S10 *Test dummy positioning procedures.* Position a test dummy, conforming to Subpart B of Part 572 (49 CFR Part 572), in each front outboard seating position of a vehicle as specified in S10.1 through S10.9. Each test dummy is:

(a) not restrained during an impact by any means that require occupant action if the vehicle is equipped with automatic restraints.

(b) restrained by manual Type 2 safety belts, adjusted in accordance with S10.9, if the vehicle is equipped with manual safety belts in the front outboard seating positions.

S10.1 *Vehicle equipped with front bucket seats.* Place the test dummy's torso against the seat back and its upper legs against the seat cushion to the extent permitted by placement of the test dummy's feet in accordance with the appropriate paragraph of S10. Center the test dummy on the seat cushion of the bucket seat and set its midsagittal plane so that it is vertical and parallel to the centerline of the vehicle.

S10.1.1 *Driver position placement.*

(a) Initially set the knees of the test dummy 11¾ inches apart, measured between the outer surfaces of the knee pivot bolt heads, with the left outer surface 5.9 inches from the midsagittal plane of the test dummy.

(b) Rest the right foot of the test dummy on the undepressed accelerator pedal with the rearmost point of the heel on the floor pan in the plane of the pedal. If the foot cannot be placed on the accelerator pedal, set it perpendicular to the lower leg and place it as far forward as possible in the direction of the geometric center of the pedal with the rearmost point of the heel resting on the floor pan. Except as prevented by contact with a vehicle surface, place the right leg so that the upper and lower leg centerlines fall, as close as possible, in a vertical longitudinal plane without inducing torso movement.

(c) Place the left foot on the toeboard with the rearmost point of the heel resting on the floor pan as close as possible to the point of intersection of the planes described by the toeboard and the floor pan. If the foot cannot be positioned on the toeboard, set it

perpendicular to the lower leg and place it as far forward as possible with the heel resting on the floor pan. Except as prevented by contact with a vehicle surface, place the left leg so that the upper and lower leg centerlines fall, as close as possible, in a vertical plane. For vehicles with a foot rest that does not elevate the left foot above the level of the right foot, place the left foot on the foot rest so that the upper and lower leg centerlines fall in a vertical plane.

S10.1.2 *Passenger position placement.*

S10.1.2.1 *Vehicles with a flat floor pan/toeboard.*

(a) Initially set the knees 11¾ inches apart, measured between the outer surfaces of the knee pivot bolt heads.

(b) Place the right and left feet on the vehicle's toeboard with the heels resting on the floor pan as close as possible to the intersection point with the toeboard. If the feet cannot be placed flat on the toeboard, set them perpendicular to the lower leg centerlines and place them as far forward as possible with the heels resting on the floor pan.

(c) Place the right and left legs so that the upper and lower leg centerlines fall in vertical longitudinal planes.

S10.1.2.2 *Vehicles with wheelhouse projections in passenger compartment.*

(a) Initially set the knees 11¾ inches apart, measured between outer surfaces of the knee pivot bolt heads.

(b) Place the right and left feet in the well of the floor pan/toeboard and not on the wheelhouse projection. If the feet cannot be placed flat on the toeboard, set them perpendicular to the lower leg centerlines and as far forward as possible with the heels resting on the floor pan.

(c) If it is not possible to maintain vertical and longitudinal planes through the upper and lower leg centerlines for each leg, then place the left leg so that its upper and lower centerlines fall, as closely as possible, in a vertical longitudinal plane and place the right leg so that its upper and lower leg centerlines fall, as closely as possible, in a vertical plane.

S10.2 *Vehicle equipped with bench seating.* Place a test dummy with its torso against the seat back and its upper legs against the seat cushion, to the extent permitted by placement of the test dummy's feet in accordance with the appropriate paragraph of S10.1.

S10.2.1 *Driver position placement.* Place the test dummy at the left front outboard designated seating position so that its midsagittal plane is vertical and parallel to the centerline of the vehicle and so that the midsagittal plane of the test dummy passes through the center of the steering wheel rim. Place the legs,

knees, and feet of the test dummy as specified in S10.1.1.

S10.2.2 *Passenger position placement.* Place the test dummy at the right front outboard designated seating position as specified in S10.1.2, except that the midsagittal plane of the test dummy shall be vertical and longitudinal, and the same distance from the vehicle's longitudinal centerline as the midsagittal plane of the test dummy at the driver's position.

S10.3 *Initial test dummy placement.* With the test dummy at its designated seating position as specified by the appropriate requirements of S10.1 or S10.2, place the upper arms against the seat back and tangent to the side of the upper torso. Place the lower arms and palms against the outside of the upper legs.

S10.4 *Test dummy settling.*

S10.4.1 *Test dummy vertical upward displacement.* Slowly lift the test dummy parallel to the seat back plane until the test dummy's buttocks no longer contact the seat cushion or until there is test dummy head contact with the vehicle's headlining.

S10.4.2 *Lower torso force application.* Using a test dummy positioning fixture, apply a rearward force of 50 pounds through the center of the rigid surface against the test dummy's lower torso in a horizontal direction. The line of force application shall be 6½ inches above the bottom surface of the test dummy's buttocks. The 50 pound force shall be maintained with the rigid fixture applying reaction forces to either the floor pan/toeboard, the 'A' post, or the vehicle's seat frame.

S10.4.3 *Test dummy vertical downward displacement.* While maintaining the contact of the horizontal rearward force positioning fixture with the test dummy's lower torso, remove as much of the 50 pound force as necessary to allow the test dummy to return downward to the seat cushion by its own weight.

S10.4.4 *Test dummy upper torso rocking.* Without totally removing the horizontal rearward force being applied to the test dummy's lower torso, apply a horizontal forward force to the test dummy's shoulders sufficient to flex the upper torso forward until its back no longer contacts the seat back. Rock the test dummy from side to side 3 or 4 times so that the test dummy's spine is at any angle from the vertical in the 14 to 16 degree range at the extremes of each rocking movement.

S10.4.5 *Upper torso force application.* With the test dummy's midsagittal plane vertical, push the upper torso against the seat back with a force of 50 pounds applied in a horizontal rearward direction along a line that is coincident with the test dummy's midsagittal plane and 18 inches above the bottom surface of the test dummy's buttocks.

S10.5 *Placement of test dummy arms and hands.* With the test dummy positioned as specified by S10.3 and without inducing torso movement, place the arms, elbows, and hands of the test dummy, as appropriate for each designated seating position in accordance with S10.3.1 or S10.3.2. Following placement of the arms, elbows and hands, remove the force applied against the lower half of the torso.

S10.5.1 *Driver's position.* Move the upper and the lower arms of the test dummy at the driver's position to their fully outstretched position in the lowest possible orientation. Push each arm rearward, permitting bending at the elbow, until the palm of each hand contacts the outer part of the rim of the steering wheel at its horizontal centerline. Place the test dummy's thumbs over the steering wheel rim and position the upper and lower arm centerlines as close as possible in a vertical plane without inducing torso movement.

S10.5.2 *Passenger position.* Move the upper and the lower arms of the test dummy at the passenger position to fully outstretched position in the lowest possible orientation. Push each arm rearward, permitting bending at the elbow, until the upper arm contacts the seat back and is tangent to the upper part of the side of the torso, the palm contacts the outside of the thigh, and the little finger is barely in contact with the seat cushion.

S10.6 *Test dummy positioning for latchplate access.* The reach envelopes specified in S7.4.4 are obtained by positioning a test dummy in the driver's seat or passenger's seat in its forwardmost adjustment position. Attach the lines for the inboard and outboard arms to the test dummy as described in Figure 3 of this standard. Extend each line backward and outboard to generate the compliance arcs of the outboard reach envelope of the test dummy's arms.

S10.7 *Test dummy positioning for belt contact force.* To determine compliance with S7.4.3 of this standard, position the test dummy in the vehicle in accordance with the appropriate requirements specified in S10.1 or S10.2 and under the conditions of S8.1.2 and S8.1.3. Pull the belt webbing three inches from the test dummy's chest and release until the webbing is within 1 inch of the test dummy's chest and measure the belt contact force.

S10.9 *Manual belt adjustment for dynamic testing.* With the test dummy at its designated seating position as specified by the appropriate requirements of S8.1.2, S8.1.3 and S10.1 through S10.5, place the Type 2 manual belt around the test dummy and fasten the latch. Remove all slack from the lap belt. Pull the upper torso webbing out of the retractor and allow it to retract; repeat this operation four times. Apply a 2

to 4 pound tension load to the lap belt. If the belt system is equipped with a tension-relieving device introduce the maximum amount of slack into the upper torso belt that is recommended by the manufacturer for normal use in the owner's manual for the vehicle. If the belt system is not equipped with a tension relieving device, allow the excess webbing in the shoulder belt to be retracted by the retractive force of the retractor.

17. S11 is removed.

18. S4.1.3.1.1, S4.1.3.2.1, S4.1.3.3.1, S4.1.4 and S4.6.1 are revised by adding a new second sentence to S4.1.3.1.1, S4.1.3.2.1, S4.1.3.3.1 and S4.1.4 and a new second sentence to S4.6.1 to read as follows:

A vehicle shall not be deemed to be in non-compliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

19. S8.1.5 is amended to read as follows:

Movable vehicle windows and vents are, at the manufacturer's option, placed in the fully closed position.

20. S7.4 is amended to read as follows:

S7.4. *Seat belt comfort and convenience.*

(a) *Automatic seat belts.* Automatic seat belts installed in any vehicle, other than walk-in van-type vehicles, which has a gross vehicle weight rating of 10,000 pounds or less, and which is manufactured on or after September 1, 1986, shall meet the requirements of S7.4.1, S7.4.2, and S7.4.3.

(b) *Manual seat belts.*

(1) *Vehicles manufactured after September 1, 1986.* Manual seat belts installed in any vehicle, other than manual Type 2 belt systems installed in the front outboard seating positions in passenger cars or manual belts in walk-in van-type vehicles, which have a gross vehicle weight rating of 10,000 pounds or less, shall meet the requirements of S7.4.3, S7.4.4, S7.4.5, and S7.4.6.

(2) *Vehicles manufactured after September 1, 1989.*

(i) If the automatic restraint requirement of S4.1.4 is rescinded pursuant to S4.1.5, then manual seat belts installed in a passenger car shall meet the requirements of S7.1.1.3(a), S7.4.2, S7.4.3, S7.4.4, S7.4.5, and S7.4.6.

(ii) Manual seat belts installed in a bus, multipurpose passenger vehicle and truck with a gross vehicle weight rating of 10,000 pounds or less, except for walk-in van-type vehicles, shall meet the requirements of S7.4.3, S7.4.4, S7.4.5, and S7.4.6.

571.209 *Standard No. 209, Seat belt assemblies.*

1. A new S4.6 is added, to read as follows:

S4.6 *Manual belts subject to crash protection requirements of Standard No. 208.*

(a) A seat belt assembly subject to the requirements of S4.6.1 of Standard No. 208 (49 CFR Part 571.208) does not have to meet the requirements of S4.2 (a)-(c) and S4.4 of this standard.

(b) A seat belt assembly that does not comply with the requirements of S4.4 of this standard shall be permanently and legibly marked or labeled with the following language:

This seat belt assembly may only be installed at a front outboard designated seating position of a vehicle with a gross vehicle weight rating of 10,000 pounds or less.

571.210 *Standard No. 210, Seat Belt Assembly Anchorages.*

1. The second sentence of S4.3 is revised to read as follows:

Anchorages for automatic and for dynamically tested seat belt assemblies that meet the frontal crash protection requirement of S5.1 of Standard No. 208 (49 CFR Part 571.208) are exempt from the location requirements of this section.

PART 585—AUTOMATIC RESTRAINT PHASE-REPORTING REQUIREMENTS

1. Chapter V, Title 49, Transportation, the Code of Federal Regulations, is amended to add the following new Part:

PART 585—AUTOMATIC RESTRAINT PHASE-REPORTING REQUIREMENTS

Secs.

585.1 Scope.

585.2 Purpose.

585.3 Applicability.

585.4 Definitions.

585.5 Reporting requirements.

585.6 Records.

585.7 Petition to extend period to file report.

Authority: 15 U.S.C. 1392, 1407; delegation of authority at 49 CFR 1.50.

585.1 *Scope.*

This section establishes requirements for passenger car manufacturers to submit a report, and maintain records related to the report, concerning the number of passenger cars equipped with automatic restraints in compliance with the requirements of S4.1.3 of Standard No. 208, *Occupant Crash Protection* (49 CFR Part 571.208).

585.2 *Purpose.*

The purpose of the reporting requirements is to aid the National Highway Traffic Safety Administration in determining whether a passenger car manufac-

turer has complied with the requirements of Standard No. 208 of this Chapter (49 CFR 571.208) for the installation of automatic restraints in a percentage of each manufacturer's annual passenger car production.

585.3 *Applicability.*

This part applies to manufacturers of passenger cars.

585.4 *Definitions.*

All terms defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391) are used in their statutory meaning.

"Passenger car" is used as defined in 49 CFR Part 571.3.

"Production year" means the 12-month period between September 1 of one year and August 31 of the following year, inclusive.

585.5 *Reporting requirements.*

(a) *General reporting requirements.*

Within 60 days after the end of each of the production years ending August 31, 1987, August 31, 1988, and August 31, 1989, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirements of Standard No. 208 for installation of automatic restraints in its passenger cars produced in that year. Each report shall—

- (1) Identify the manufacturer;
- (2) State the full name, title and address of the official responsible for preparing the report;
- (3) Identify the production year being reported on;
- (4) Contain a statement regarding the extent to which the manufacturer has complied with the requirements of S4.1.3 of Standard No. 208;
- (5) Provide the information specified in 585.5(b);
- (6) Be written in the English language; and
- (7) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

(b) *Report content.*

(1) *Basis for phase-in production goals.*

Each manufacturer shall provide the number of passenger cars manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the current production year. A new manufacturer that is, for the first time, manufacturing passenger cars for sale in the United States must report the number of passenger cars manufactured during the current production year.

(2) *Production.*

Each manufacturer shall report for the production year being reported on, and each preceding production year, to the extent that cars produced during the preceding years are treated under Standard No. 208 as having been produced during the production year being reported on, the following information:

(i) the number of passenger cars equipped with automatic seat belts and the seating positions at which they are installed,

(ii) the number of passenger cars equipped with air bags and the seating positions at which they are installed, and

(iii) the number of passenger cars equipped with other forms of automatic restraint technology, which shall be described, and the seating positions at which they are installed.

(3) *Passenger cars produced by more than one manufacturer.*

Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by section S4.1.3.5.2 of Standard No. 208 shall:

(i) Report the existence of each contract, including the names of all parties to the contract, and explain how the contract affects the report being submitted,

(ii) Report the actual number of passenger cars covered by each contract.

585.6 *Records.*

Each manufacturer shall maintain records of the Vehicle Identification Number and type of automatic restraint for each passenger car for which information is reported under 585.5(b)(2), until December 31, 1991.

585.7 *Petition to extend period to file report.*

A petition for extension of the time to submit a report must be received not later than 15 days before expiration of the time stated in 585.5(a). The petition must be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. The filing of a petition does not automatically extend the time for filing a report. A petition will be granted only if the petitioner shows good cause for the extension and if the extension is consistent with the public interest.

Issued on March 18, 1986

Diane K. Steed
Administrator

51 F.R. 9801
March 21, 1986



PREAMBLE TO AN AMENDMENT TO PART 585

Automatic Restraint Phase-In Reporting Requirement (Docket No. 17-14; Notice 59)

ACTION: Technical amendment.

SUMMARY: NHTSA inadvertently omitted a relevant statutory section from the authority citation for the automatic restraint phase-in reporting regulation. This notice corrects that error.

DATE: The amendment made by this notice takes effect September 11, 1988.

SUPPLEMENTARY INFORMATION: On March 21, 1986, NHTSA published a final rule establishing a new 49 CFR Part 585, *Automatic Restraint Phase-In Reporting Requirements* (51 FR 9800). In that rule, the agency listed the authority for Part 585 as 15 U.S.C. 1392 and 1407, with the delegation of authority at 49 CFR 1.50.

This authority citation inadvertently omitted the principal statutory source of NHTSA's authority to impose recordkeeping requirements on manufacturers and other persons subject to the National Traffic and Motor Vehicle Safety Act (the Safety Act). That statutory section is 15 U.S.C. 1401, subsection (b) of which specifies that:

Every manufacturer of motor vehicles . . . shall establish and maintain such records and every manufacturer . . . shall make such reports, as the Secretary may reasonably require to enable him to determine whether such manufacturer . . . has acted or is acting in compliance with

this title or any rules, regulations, or orders issued thereunder . . .

This notice amends the authority citation for Part 585 by adding 15 U.S.C. 1401 to the statutory sections listed in the authority citation. This amendment merely clarifies the source of NHTSA's authority to establish the reporting and recordkeeping requirements in Part 585. This amendment does not alter any manufacturer's existing responsibilities under Part 585, nor does it impose reporting and recordkeeping requirements on manufacturers not currently subject to Part 585. Accordingly, NHTSA finds for good cause that notice and opportunity for comment on this amendment are unnecessary.

In consideration of the foregoing the authority citation for 49 CFR Part 585 is revised as follows:

Authority: 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50.

Issued on August 9, 1988.

Diane K. Steed
Administrator

53 F.R. 30.434
August 12, 1988

PREAMBLE TO AN AMENDMENT TO PART 585

Automatic Restraint Phase-In Reporting Requirement

(Docket No. 74-14; Notice 70)

RIN 2127-AD10

ACTION: Final rule.

SUMMARY: This rule extends the requirements for automatic crash protection, which currently apply to front outboard seats in passenger cars, to front outboard seats in three additional types of light-duty vehicles. With automatic crash protection, occupants of those vehicle types will be protected by means that require no action by vehicle occupants. The effectiveness of automatic crash protection is dynamically tested, that is, a vehicle must comply with specified injury criteria, as measured on a test dummy, when tested by this agency in a 30 miles per hour barrier crash test. The three newly covered vehicle types are trucks, multipurpose passenger vehicles (such as passenger vans and four-wheel drive utility vehicles), and buses, all with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. These vehicles are collectively termed "light trucks" throughout the rest of this preamble.

The automatic crash protection requirements for light trucks will be implemented in a manner that closely parallels the manner in which the automatic crash protection requirements for cars were implemented. As was the case with passenger cars, the automatic crash protection requirements for light trucks will be phased in over a period of several years.

EFFECTIVE DATE: The changes made in this rule become effective September 23, 1991.

Light trucks manufactured before September 1, 1994 will not be required to comply with the automatic crash protection requirements set forth in this rule. Each manufacturer and each importer will be required to install automatic protection in—

- 20 percent of its light trucks manufactured from September 1, 1994 to August 31, 1995, inclusive;
- 50 percent of its light trucks manufactured from September 1, 1995 to August 31, 1996, inclusive;
- 90 percent of its light trucks manufactured from September 1, 1996 to August 31, 1997, inclusive;
- and
- 100 percent of its light trucks manufactured on

or after September 1, 1997.

Alternatively, a manufacturer may choose to comply with a schedule which postpones by one year the date on which its first light truck must have automatic protection, but accelerates by two years the date on which all of its trucks must be so equipped. Under this alternative schedule, a manufacturer will not be required to equip any light trucks manufactured on or before August 31, 1995 with automatic crash protection, but must equip *all* light trucks manufactured on or after September 1, 1995 with automatic crash protection.

Background

Standard No. 208, Occupant Crash Protection (49 CFR 571.208) is intended to reduce the likelihood of occupant deaths and the likelihood and severity of occupant injuries in crashes. As one means of achieving these goals, Standard No. 208 has long required the installation of safety belts in passenger cars. Since September 1, 1989, Standard No. 208 has also required each new passenger car to be equipped with automatic crash protection for outboard front-seat occupants. Vehicles equipped with automatic crash protection protect their occupants by means that require no action by vehicle occupants. The effectiveness of automatic crash protection is dynamically tested, that is, a vehicle must comply with specified injury criteria, as measured on a test dummy, when tested by this agency in a 30 miles per hour barrier crash test. The two types of automatic crash protection currently offered on new passenger cars are automatic safety belts (which help to assure belt use) and air bags (which supplement safety belts and offer some protection even when safety belts are not used). Automatic crash protection in cars will save thousands of lives and prevent tens of thousands of serious injuries each year when all cars are so equipped.

Although Standard No. 208 has long required the installation of safety belts at all designated seating positions in light trucks, it has not required those vehicles to provide automatic crash protection.

NHTSA decided it was appropriate to consider whether light trucks should be required to offer automatic crash protection in front outboard seating positions, in addition to safety belts at all seating positions. This effort led NHTSA to propose to require automatic crash protection in light trucks in a notice of proposed rulemaking (NPRM) published on January 9, 1990 (55 FR 747).

That NPRM proposed to require automatic crash protection in trucks, multipurpose passenger vehicles (such as passenger vans and utility vehicles), and buses with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, and to measure the effectiveness of the automatic crash protection using the same crash test procedures specified for passenger cars. Additionally, the NPRM proposed to phase in the automatic crash protection requirements, as was done for the passenger car automatic crash protection requirements. Finally, to encourage the production of light trucks with air bags, it proposed to allow a "one-truck credit" provision for vehicles with air bags at the driver's position, along the lines of the "one-car credit" provision for passenger cars.

NHTSA received 34 comments in response to this NPRM. Commenters included vehicle manufacturers, air bag suppliers, trade associations, representatives of the insurance industry, academia, other governmental agencies, and consumers. Several of the manufacturers commented that they would have difficulty complying with some or all of the elements of the proposed implementation schedule. To further explore these comments, NHTSA requested additional information from five vehicle manufacturers (Chrysler, Ford, General Motors, Mazda, and Toyota) on May 24, 1990.

NHTSA has considered and analyzed all of the comments and other information in developing this final rule. For the convenience of the reader, this rule uses the same organization and format as the NPRM did.

Requirements of This Rule

1. *Vehicles Covered by This Rule*

The agency proposed to extend the requirements for automatic crash protection to trucks, multipurpose passenger vehicles, and buses with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. As noted in the NPRM, nearly all trucks and multipurpose passenger vehicles in this weight range will be required to comply with the injury criteria in a 30 mph barrier crash with manual lap/shoulder belts at the front outboard seats fastened around test dummies, or, at the manufacturer's option, with automatic crash protection for those seating positions, as

of September 1, 1991. Given that implementation of this new crash testing requirement for light trucks would precede the implementation of the automatic restraint requirement for those vehicles, the agency stated in the NPRM that, "NHTSA believes that the need for structural changes to accommodate the installation of automatic crash protection in light trucks beginning in late 1993 would be minimal because of the changes already necessary to comply with the dynamic testing requirements in Standard No. 208 applicable to light trucks manufactured on or after September 1, 1991." 55 FR 749; January 9, 1990.

The commenters generally concurred with the proposal that trucks and multipurpose passenger vehicles be equipped with automatic crash protection. However, some commenters suggested that the installation of automatic crash protection would not be as simple as was implied in the NPRM, while others asked for additional leadtime to install automatic crash protection, and still others identified particular types of trucks and multipurpose passenger vehicles that could pose unique problems for automatic crash protection. This final rule requires trucks and multipurpose passenger vehicles to be equipped with automatic crash protection.

The NPRM also set forth a proposal to require automatic crash protection in front outboard seats of small buses, even though small buses will not be subject to the dynamic testing requirements that become effective September 1, 1991. The agency stated its belief that automatic crash protection in small buses would be practicable, especially because many van-type buses are based on a platform and drivetrain that are the same as or similar to the platform and drivetrain of van-type multipurpose passenger vehicles that will be subject to the dynamic testing requirements. Further, the NPRM set forth the agency's belief that the safety need for automatic crash protection for the driver and any other front outboard seat occupants in a small bus did not appear to be any different than it is for occupants of front outboard seats of multipurpose passenger vehicles and trucks of similar size and weight. The agency sought comments on these tentative conclusions. No commenters suggested that the agency was incorrect. Accordingly, this rule adopts the proposed requirement for small buses to be equipped with automatic crash protection, for the reasons set forth in the proposal.

The agency also sought comment on its proposal to include certain types of light trucks in the requirement for automatic crash protection, even though those vehicles were excluded from the dynamic testing requirements. These vehicles were:

- a. motor homes,
- b. convertibles,

- c. open-body type vehicles,
- d. walk-in van-type trucks,
- e. vehicles designed exclusively to be sold to the U.S. Postal Service, and
- f. vehicles with chassis-mounted campers.

These types of light trucks were excluded from the dynamic testing requirements because the vehicles are unique in design, often have unique restraint systems, and are intended to accommodate a narrowly defined end use. Additionally, the numbers of these vehicles produced annually are limited, so the overall impact of these vehicle types on light truck safety is proportionally small.

Notwithstanding this previous decision, NHTSA proposed to make these types of light trucks subject to the automatic protection requirements. The NPRM noted that the agency is unaware of any data showing a differing safety need for front-seat occupants of these types of light trucks than for front-seat occupants of other light trucks of comparable size and weight. The agency expressly noted that designs for automatic crash protection may be more complex and the costs for automatic crash protection may well be higher in these particular types of light trucks than in other light trucks. However, NHTSA tentatively concluded that the increased complexity and higher costs were not sufficient to justify allowing these light trucks to provide a lesser level of occupant safety than other light trucks of comparable size and weight. The agency sought public comment on this tentative conclusion in the NPRM.

The agency received extensive comments. Ford commented that a requirement for automatic crash protection would pose particular technical difficulties for manufacturers of motor homes and walk-in vans. Chrysler commented that a requirement for automatic crash protection would pose particular technical difficulties for manufacturers of light truck convertibles and open-body type vehicles. In addition, Chrysler commented that NHTSA had not provided any substantive justification for concluding that automatic crash protection would be practicable for these types of light trucks. General Motors (GM) commented that walk-in van-type vehicles should be excluded from the automatic crash protection requirements because of a lesser safety need for occupant protection in those vehicles. GM commented that these vehicles are typically used to make deliveries in urban areas, and not generally used for highway driving or personal use. GM also commented that only about 30 percent of its walk-in vans are equipped with front passenger seats, and that, in the 1989 model year, GM sold only 137 walk-in vans within the proposed weight ranges. Finally, GM asserted that a considerable redesign of its walk-in vans would be needed to comply with a requirement for automatic crash protection, and

that this redesign would not be practical for such a small number of vehicles. The Recreation Vehicle Industry Association (RVIA) commented that the final rule should either exclude motor homes from the automatic restraint requirements or limit the automatic restraint requirements to motor homes with a gross vehicle weight rating of 6,000 pounds or less. According to RVIA, motor homes "are not part of the 'safety problem'" and structural changes to motor homes would be needed to comply with the automatic restraint requirements. Winnebago Industries, a motor home manufacturer, commented that one of its models would have a difficult time complying with the automatic restraint requirements and asked that this model of motor home be excluded from the automatic crash protection requirements.

In response to these comments, NHTSA has carefully reexamined its proposal to include these light truck types in the automatic crash protection requirements. The agency believes it should apply the automatic crash protection requirements to all types of light trucks if it would be practicable to install automatic protection in these vehicles and if the safety benefits of automatic protection would be reasonably related to the cost of such installations. NHTSA has applied this approach to whether the automatic crash protection requirements should be applied to each of the six light truck types that were excluded from the dynamic testing requirements.

With respect to convertibles and open-body type vehicles, the available evidence indicates that it is practicable to install automatic crash protection. Convertible passenger cars are required to include automatic crash protection. Manufacturers such as Chrysler are advertising the merits of air bag technology, especially in convertibles. The transfer of technology from convertible passenger cars to provide automatic crash protection in convertible and open-body light trucks will not require any technological "breakthroughs." Instead, such a transfer will require careful planning and engineering to install automatic crash protection in these types of light trucks.

NHTSA concurs with Chrysler's comment to the extent that it suggests that installing automatic crash protection in convertible and open-body light trucks will be more difficult than in convertible passenger cars, because these types of light trucks are generally designed for off-road or other utility use. This greater degree of difficulty is a good reason for allowing manufacturers some additional lead-time to incorporate automatic crash protection in these vehicles. This final rule does that by providing an additional year in the phase-in, as discussed later in this preamble.

However, NHTSA does not concur with Chrysler's

comment to the extent that it suggests that this greater degree of difficulty is sufficient to justify excluding convertibles and open-body type light trucks from the automatic crash protection requirements. As explained above, NHTSA agrees that careful planning and engineering will be needed to modify the automatic crash protection systems used in convertible passenger cars for application to convertible and open-body light trucks. The agency believes that the requirement for automatic crash protection in convertible and open-body light trucks is "practicable" within the meaning of section 103(a) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(a)), because manufacturers can comply with the requirement by transferring the basic technology from similar vehicles (convertible passenger cars), and making modifications to account for the different characteristics of the light trucks.

The costs for providing automatic crash protection in these trucks are estimated to be roughly comparable to the costs for providing automatic crash protection in convertible passenger cars. Similarly, the safety benefits of automatic crash protection in these trucks should be comparable to the benefits of automatic crash protection in convertible passenger cars. In 1988 alone, 174 front seat occupants of open-body trucks were killed in vehicle crashes. NHTSA has previously concluded that the safety benefits from automatic crash protection in convertible passenger cars are more than adequate to justify the estimated costs associated with installing automatic crash protection in convertibles. See 52 FR 10122; March 30, 1987 and 53 FR 15067; April 27, 1988. The agency has no reason to alter that conclusion here.

Accordingly, NHTSA concludes that it is practicable to provide automatic crash protection in light trucks that are convertibles or open-body vehicles. Further, the agency believes that the safety benefits of automatic crash protection in these types of light trucks will be reasonably related to the costs of providing automatic crash protection in these trucks. Therefore, this rule does not exclude convertibles and open-body light trucks from the automatic crash protection requirements.

The next type of light truck examined by the agency was walk-in vans. These vehicles pose special technical difficulties for automatic crash protection, because of their unique design features, including nearly vertical steering columns, fold-away driver's seats, large open doorway areas, and the absence of B-pillars near the driver's seating position. Further, there are no passenger cars similar to walk-in vans, so it would not be possible to transfer, with some modifications, automatic crash protection technology from a similar type of passenger car. Thus, while it might be possible, it would present substantially

greater technical and engineering challenges to install automatic crash protection in walk-in vans than would be presented to install automatic protection in the other types of light trucks that were excluded from the dynamic testing requirements for manual safety belts.

In addition, walk-in vans are designed primarily for deliveries in urban areas, where the driver will frequently enter and exit the vehicle to make the deliveries. Hence, these vehicles are less likely than others to be involved in high-speed crashes. Additionally, most walk-in vans are not within the proposed weight limits for light trucks to be equipped with automatic crash protection. In its comments, GM stated that it sold only 137 walk-in vans within the proposed weight limits during 1988. NHTSA concludes that the costs that would be associated with designing a system of automatic crash protection for walk-in vans, which would be spread over the few walk-in vans that fell within these weight limits, would not be reasonably related to the safety benefits anticipated for such walk-in vans. After considering these factors, NHTSA has concluded that the requirement for automatic restraints in light trucks should not apply to walk-in vans.

The agency next examined vehicles designed exclusively to be sold to the U.S. Postal Service. The available evidence indicates that these light trucks would not present any serious problems for the installation of automatic crash protection. Hence, it would be practicable to require automatic crash protection in these light trucks. However, the safety benefits from requiring automatic crash protection in these vehicles would be marginal, because the U.S. Postal Service requires its employees to wear the safety belts in the Postal Service vehicles while on the job. This safety belt use policy should ensure that persons riding in these light trucks will have the safety protection of manual lap/shoulder belts every time they ride in these vehicles. Automatic crash protection would, therefore, offer marginal, if any, additional protection in these vehicles. Given the lesser safety benefits for automatic crash protection in light trucks designed exclusively for sale to the U.S. Postal Service, the agency has decided to exclude these light trucks from the automatic crash protection requirements.

Finally, the agency examined motor homes and vehicles carrying chassis-mount campers. The commenters that addressed the proposal to cover these vehicles did not suggest that there were any particular difficulties presented for installing automatic crash protection in motor homes and vehicles carrying chassis-mount campers. Instead, those commenters focused on the fact that these vehicles are typically manufactured in more than one stage and that the final-stage manufacturers are small businesses.

No commenter identified some characteristic in the design of these vehicles that would make it harder to install automatic crash protection in them than in other types of light trucks, nor is NHTSA aware of any such characteristic. Similarly, there are no indications of any lesser safety need for automatic crash protection in these vehicles. Motor homes and vehicles carrying chassis-mount campers are not designed primarily for use in urban areas, nor is there any reason to believe that safety belt use in these vehicles is substantially greater than in other types of light trucks. Further, the cost of installing automatic crash protection in these vehicles would not exceed the costs of installing automatic protection in other types of light trucks. After examining these factors, there is no apparent basis for excluding these vehicles from the automatic crash protection requirements. Therefore, this rule requires motor homes and vehicles carrying chassis-mount campers to comply with the automatic crash protection requirements.

To the extent that commenters were addressing the particular attributes of motor home manufacturers, instead of the particular attributes of vehicles that are motor homes, the agency believes it is appropriate under the National Traffic and Motor Vehicle Safety Act (the Safety Act) to have the standard apply to all motor homes and vehicles carrying chassis-mount campers. If any manufacturer of motor homes and/or vehicles carrying chassis-mount campers would experience a substantial economic hardship as a result of these requirements, that manufacturer may file a petition requesting a temporary exemption from the automatic crash protection requirements, pursuant to 49 CFR Part 555, Temporary Exemption from Motor Vehicle Safety Standards. NHTSA can consider the special circumstances of vehicle manufacturers in the context of evaluating any such petitions, and take appropriate actions to afford any necessary special treatment for such manufacturers.

2. Crash Test Procedural and Performance Requirements

The NPRM proposed that compliance testing for light trucks equipped with automatic crash protection be conducted according to the same test procedures and using the same injury criteria that are currently specified for use in testing passenger cars equipped with automatic crash protection. Ford asked in its comments that calculation of the head injury criterion (HIC) be limited to a 15 millisecond maximum, instead of the currently-specified 36 millisecond maximum. Ford previously raised this identical comment for HIC calculations for passenger cars. NHTSA specifically rejected Ford's earlier comment in the preamble to the rule that established the 36 millisecond maximum for HIC calculations;

see 51 FR 37028, at 37031; October 17, 1986. In its new comment, Ford did not provide any additional data or information, nor did Ford explain why it believes HIC should be calculated differently for passenger cars and light trucks. There is, therefore, no reason for NHTSA to modify its previous rejection of Ford's 15 millisecond limit.

Ford also commented that a minor adjustment should be made to the test procedures in Standard No. 208 to make them consistent with the procedures in Standards No. 212, Windshield Mounting, and No. 219, Windshield Zone Intrusion. Ford correctly noted that Standards No. 212 and 219 include a provision in the test procedures for trucks, multipurpose passenger vehicles, and buses that "unloaded vehicle weight does not include the weight of work-performing accessories." The effect of this provision is that certain work-performing accessories mounted on the front of trucks, such as snow plows and winches, are not mounted on the vehicle for the crash test. Absent a similar provision in Standard No. 208, those portions of the work-performing accessories that are ordinarily removed from the vehicle when they are not in use (such as the snowplow blade) would not be mounted on the vehicle for the crash test, but any accessories that are mounted on the vehicle before delivery and are not ordinarily removed (such as the snowplow mounting hardware) would remain in place on the vehicle for the crash test.

Ford commented that these differing provisions in Standard No. 208 and Standards No. 212 and 219 would force manufacturers to conduct two different crash tests for the purposes of certifying compliance. If the test procedures for the standards were the same, the manufacturers would only have to conduct one crash test, just as a single test can be used to measure compliance with the three standards for passenger cars. The exclusion of work-performing accessories from the calculation of unloaded vehicle weight in Standards No. 212 and 219 also places the certification burden on the original vehicle manufacturers, instead of the small manufacturers that attach work-performing accessories to new vehicles, and keeps the certification burden manageable for the vehicle manufacturer, because not every different combination of vehicle and work-performing accessory is subject to compliance testing. NHTSA is persuaded by this comment for the reasons offered by Ford. Therefore, this final rule amends S8.1.1(b) of Standard No. 208 to include the same provision in the test procedures for light trucks that has long been included in the test procedures for light trucks subject to Standards No. 212 and 219.

No other commenters addressed the proposal to apply the passenger car test procedures and injury criteria to light trucks with automatic crash protec-

tion. With the exception of the modification made in response to the Ford comment discussed above, the proposed procedures are adopted in this final rule.

The NPRM also proposed to establish the same due care defense for light trucks with automatic crash protection as is currently established for passenger cars. Both Ford and GM commented in support of this proposal. It is adopted in this final rule for the reasons stated in the proposal.

3. *Phased-In Implementation of the Automatic Crash Protection Requirements*

a. *The Phase-In.* The NPRM proposed to "phase in" the automatic crash protection requirements for light trucks in a similar manner as the automatic crash protection requirements were phased in for passenger cars. The commenters supported the concept of implementing automatic crash protection requirements for light trucks by a "phase-in." This rule adopts a "phase-in" for automatic crash protection requirements.

To allow sufficient leadtime before the start of the phase-in for automatic crash protection in light trucks, the agency proposed to begin the phase-in with vehicles manufactured on or after September 1, 1993. This schedule was proposed to allow manufacturers two years after implementation of the dynamic testing requirements for light trucks (on September 1, 1991) to complete the engineering steps and certification testing needed to install automatic crash protection in light trucks. The agency believed this period of leadtime was sufficient to develop automatic crash protection for light trucks because, at the time of the NPRM, NHTSA believed that passenger car technology could be "readily transferred" to light trucks.

A delay in the beginning of the phase-in was urged by all the vehicle manufacturers that commented on that aspect of the notice. They emphasized the number of new regulations that will take effect during this time period, including the extension of several passenger car standards to light trucks, the expiration (in September 1993) of the "one car credit" for passenger cars with an air bag at the driver's position, and new side impact standards for passenger cars. The commenters asserted that the cumulative effect of all these new requirements would tax the engineering, design, development, and testing staff and resources of the vehicle manufacturers to a greater extent than was acknowledged in the NPRM.

Other vehicle manufacturers commented that the timing of the start of the phase-in period would affect the type of automatic crash protection that was installed in light trucks. Because of the development work that will have to be done, especially for the sensors, to install air bags on light trucks, the manu-

facturers said that an early start to the phase-in would result in manufacturers installing less innovative forms of automatic crash protection, such as non-motorized automatic safety belts. The point of these comments was that the agency would inadvertently discourage the installation of more advanced means of automatic crash protection, such as air bags, if NHTSA required the phase-in to begin too early.

NHTSA has carefully reexamined the proposed September 1, 1993 starting date for the phase-in in light of these comments. In the NPRM, the agency stated that it did not want to begin the phase-in for automatic crash protection too soon after the September 1, 1991 implementation of the dynamic testing requirements for manual safety belts in light trucks. The comments to the NPRM indicate that the transfer of air bag technology from passenger cars to light trucks may be more complex than the agency believed, especially the sensors to deploy the air bag on vehicles that are used off-road. Vehicle manufacturers will need time to develop air bag systems for light trucks. The less time that is available for development and installation of automatic crash protection in light trucks, the less likely it is that manufacturers will choose the more difficult and riskier course of installing more innovative types of automatic crash protection, such as air bags. Instead, the manufacturers would be more likely to install non-motorized automatic safety belts. The agency does not want to inadvertently discourage efforts to install air bags or other innovative types of automatic crash protection in light trucks. After further considering this issue, NHTSA has decided to delay the start of the phase-in period for an additional year. Hence, this rule provides that the automatic restraint requirements will apply to light trucks manufactured on or after September 1, 1994.

A related question concerns the percentage of each manufacturer's light trucks that should be required to be equipped with automatic crash protection in each year of the phase-in, and the length of the phase-in before all subject light trucks should be required to be equipped with automatic crash protection. The NPRM proposed a 3-year phase-in, with 20 percent of a manufacturer's light trucks required to offer automatic crash protection in the first year of the phase-in, 50 percent doing so in the second year of the phase-in, and all light trucks manufactured two years or more after the start of the phase-in equipped with automatic crash protection. Several commenters asked that this phase-in be extended. For example, GM asked that the agency use the same 4-year phase-in that was used for passenger cars (10, 25, 40, and 100 percent), while Chrysler asked for a 5-year phase-in (10, 25, 50, 75, and 100 percent).

NHTSA explained in the NPRM that the phase-in

proposed for light trucks was more rapid than what was specified for passenger cars, because the phase-in for automatic crash protection in passenger cars reflected some considerations that are not present for automatic crash protection in light trucks. These considerations were:

1. the need for public familiarity with and acceptance of the different types of automatic crash protection;
2. the need for vehicle manufacturers to design and incorporate automatic crash production in their production vehicles for the first time; and
3. the need to establish a supplier base for automatic crash protection systems.

None of these three considerations apply to the same extent for light trucks. By the start of this phase-in in September of 1994, the public will have seen automatic crash protection in all new passenger cars made in the preceding 5 years. The manufacturers will be able to apply the engineering knowledge and experience that they have acquired over that period to solve the problems that must be overcome to provide automatic crash protection in light trucks. Finally, the air bag suppliers that commented on this rulemaking stated that they will have no trouble developing sufficient capacity to meet the anticipated future demand for their products in light trucks. Hence, NHTSA has concluded that it is appropriate to require a more rapid introduction of automatic crash protection in light trucks than was required in passenger cars.

Ford commented that it supported NHTSA's proposal to adopt a more rapid introduction of automatic crash protection in light trucks than in passenger cars. However, Ford's comments urged the agency to add one additional year to the phase-in, and require 90 percent of light trucks to offer automatic crash protection in this additional year. According to Ford, this 90 percent year would effectively require automatic crash protection on nearly all light trucks, while allowing an additional year to address any unique problems that may arise with particular types of low-volume light trucks, such as larger off-road vehicles.

NHTSA has concluded that this comment has merit. There are many more types of light trucks than passenger cars. If any unanticipated problems should arise in connection with equipping light trucks with automatic crash protection, it is most likely that those problems would occur for one of the unusual (i.e., limited production volume) light truck configurations. A third year of a phase-in set at the 90 percent level would ensure that the public has nearly all the benefits expected from automatic crash protection in light trucks, while also allowing the manufacturers flexibility to accommodate some of the more difficult engineering problems presented

by a requirement for automatic crash protection in all light trucks. For example, adding a third year to the phase-in in which 90 percent of all light trucks are required to offer automatic crash protection would permit Chrysler an additional year of time to equip its convertibles and open-body vehicles with automatic crash protection. At the same time, Chrysler would be required to install automatic crash protection in the vast majority of its other light trucks, including minivans and pickups. Accordingly, Ford's suggestion is adopted in this final rule.

The agency also asked for comments on whether small buses should be excluded from the automatic crash protection requirements during the phase-in, and be required to be equipped with automatic crash protection requirements at the end of the phase-in (September 1, 1997). This would have been similar to the approach used for convertible passenger cars during the phase-in of the automatic crash protection requirements for passenger cars. Chrysler and Ford commented that there was no need for small buses to be excluded from the automatic crash protection requirements during the phase-in, and no commenter suggested that small buses should be excluded during the phase-in. Hence, NHTSA has not included any such provision in this final rule.

Range Rover commented that the proposed phase-in schedule would, in effect, require light truck manufacturers that produce only one model to provide automatic crash protection in 100 percent of their light trucks in the first year of the phase-in. This is because manufacturers that make several models of light trucks can select a few models for automatic crash protection to comply with the early years of the phase-in and leave production of the other models unchanged. However, the manufacturer of a single light truck model must design, certify and put into production automatic crash protection for its entire fleet (the single model) beginning with the first year of the phase-in. Range Rover commented that this was unfair, and that the phase-in provided no flexibility or relief for small, single line manufacturers.

NHTSA believes that the proposed phase-in schedule can be viewed as being not necessarily any more difficult for single line manufacturers than for large manufacturers. Since the proposed phase-in schedule requires at least 20 percent of a manufacturer's light trucks to comply with the new automatic crash protection requirement in the first year of the phase-in, in practice each manufacturer must bring at least one model into compliance for that year. Viewed in this way, the burden on a manufacturer with only one model in the U.S. market to bring one model into compliance for the first year may be regarded as not being any different than that of a manufacturer which sells many models. NHTSA further notes that the phase-in for automatic crash

protection in passenger cars made no special provisions for single line manufacturers and those manufacturers were able to comply with that phase-in.

On the other hand, the agency recognizes that a single model represents all of a single line manufacturer's production and only a small portion of a multi-line manufacturer's production. It also recognizes that a greater portion of a single line manufacturer's engineering expertise and other resources will be called upon to bring that single line into compliance than a multi-line manufacturer will have to use to achieve compliance for a single line.

The agency has identified an alternative compliance schedule which it believes would help meet the concerns of single line manufacturers, while also being consistent with the need for motor vehicle safety. Under this option, a manufacturer would not need to meet the new requirements for any of its light trucks during the first year of the phase-in (September 1, 1994 to August 31, 1995), but would then be required to meet the requirements for all of its light trucks beginning with the second year of the phase-in (September 1, 1995 to August 31, 1996). A manufacturer choosing this option would thus have four full model years of leadtime to meet the new requirements. While this option would be available to all manufacturers, the information currently available indicates that the larger manufacturers will choose to comply with the 20/50/90 phase-in. NHTSA believes that the 0/100/100 phase-in option would be consistent with the need for motor vehicle safety, since the number of light trucks meeting the new automatic crash protection requirements during the 3-year phase-in period would be considerably higher under this option than under the other 20/50/90 phase-in schedule. Therefore, this final rule adopts an optional phase-in schedule of 0/100/100 to address the concerns of single line manufacturers, as expressed in Range Rover's comment.

b. Calculation of Compliance with Phase-In. NHTSA proposed to carry over most of the procedures used in calculating compliance with the phase-in of passenger cars with automatic crash protection so as to make the same procedures apply during the phase-in of automatic crash protection in light trucks. Specifically, NHTSA proposed to use the same means for assigning responsibility for vehicles with more than one statutory "manufacturer" and the same means for specifying how to calculate the appropriate percentage of the manufacturer's total production during the phase-in. No commenters addressed these proposals, so they are adopted for the reasons set forth in the NPRM.

c. Phase-In Exclusion for Vehicles Manufactured in Two or More Stages and for Altered Vehicles. The NPRM proposed that the automatic crash protection requirements would not apply during the phase-in

period to light trucks that were altered or manufactured in two or more stages, but that all light trucks would be subject to those requirements after the phase-in expires. After considering all comments, NHTSA has decided to adopt that proposal.

The Safety Act requires that every manufacturer certify that each of its vehicles complies with all applicable safety standards. NHTSA has previously recognized that this statutory requirement could impose unreasonable burdens on final stage manufacturers if they had to certify not only the work they had performed on the finished vehicle, but also the work performed on the incomplete vehicle by its manufacturer (generally large manufacturers such as Chrysler, Ford, and GM). Therefore, the agency adopted regulations that prescribe the method by which manufacturers of vehicles manufactured in more than one stage shall assure conformity with the safety standards. 49 CFR 567.5 and Part 568.

Under 49 CFR 568.4(a)(7), the manufacturer of an "incomplete vehicle," as defined in 49 CFR 568.3, must provide an "incomplete vehicle document" that states, for each applicable safety standard, either (i) that the vehicle when completed will conform to the standard if no alterations are made in specified components of the vehicle; (ii) the specific conditions of final manufacture under which the completed vehicle will conform to the standard; or (iii) 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. Thus, for all standards "affected" by the design of the incomplete vehicle, if the final stage manufacturer completes the vehicle within the specifications set forth by the incomplete vehicle manufacturer, it can be assured that the completed vehicle will comply with the applicable standards.

In addition, pursuant to 49 CFR 567.5(a), the manufacturer of a "chassis-cab," the most common form of incomplete vehicle, must certify that the completed vehicle will conform to all applicable standards if it is completed in accordance with the incomplete vehicle document furnished pursuant to Part 568. (A chassis-cab is defined in 49 CFR 567.3 as "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.") Pursuant to 49 CFR 567.5(c), if a final stage manufacturer completes a chassis-cab in accordance with its manufacturer's specifications, it need state only that fact on the certification label to impute responsibility for the completed vehicle's conformity with the applicable standards to the manufacturer of the chassis-cab. (Pursuant to section 159(c)(2) of the Safety Act, 15 U.S.C. § 1419(c)(2), the final stage

manufacturer is normally obligated to conduct any recalls that may be necessary to correct noncompliances with safety standards or safety-related defects. However, the manufacturers may assign this responsibility among themselves by contract. 49 CFR 567.5(e), 568.7.)

NHTSA recognizes that manufacturers of incomplete vehicles that are not "chassis-cabs" (such as cowl chassis, cutaway chassis, and stripped chassis) are not required by section 567.5 to certify the compliance of their incomplete vehicles with applicable safety standards. They are, however, required by 49 CFR 568.4 to provide an "incomplete vehicle document" that describes the manner in which the incomplete vehicle may be completed and remain in compliance with the standards "affected" by the incomplete vehicle. On the other hand, the manufacturers of many of these chassis, such as those that do not have completed occupant compartments, will not be making any representations with respect to the conformity of their vehicles with Standard No. 208, since the design of the chassis may not "affect" that standard. Therefore, a final stage manufacturer that chooses to use such a chassis would have the duty to certify that the completed vehicle conformed with Standard No. 208, as would a final stage manufacturer that completed *any* chassis, including a chassis-cab, in a manner that was not consistent with the incomplete vehicle manufacturer's specifications.

Very few (if any) final stage manufacturers have the engineering and financial resources necessary to independently determine whether a completed vehicle complies with a complex safety standard such as Standard No. 208. Thus, as a practical matter, NHTSA anticipates that most, if not all, final stage manufacturers will have to complete their vehicles within specifications established by an incomplete vehicle manufacturer, and, in most cases, they will have to use chassis-cabs.

Similarly, an alterer must certify that every vehicle it alters complies with all applicable safety standards as altered. Alterers perform their alterations on vehicles that have already been certified as complying with all applicable safety standards. The alterer must certify that each of its vehicles continues to comply with all applicable safety standards after the alterer has performed its operations on the vehicle. Alterers must, therefore, have some independent basis for their certifications that the altered vehicles continue to comply with all applicable safety standards. Certifications of continuing compliance for altered vehicles may be based on, among other things, engineering analyses, computer simulations, actual testing, or instructions for alteration voluntarily provided by the original vehicle manufacturer in a "body builder's guide."

The National Truck Equipment Association

(NTEA), an association of final stage manufacturers and alterers, suggested that vehicles produced in more than one stage should be excluded from the automatic crash protection requirements. In its comment, NTEA acknowledged that its members can pass through the certification on chassis-cabs that are completed in accordance with the incomplete vehicle manufacturer's instructions. NTEA claimed, however, that not all vehicles can be completed or modified in accordance with those instructions. NTEA suggested that the incomplete vehicle manufacturers might impose severe new restrictions that would effectively "force" final stage manufacturers to complete the vehicle outside the original manufacturer's instructions.

NHTSA has previously considered assertions that incomplete vehicle manufacturers would establish unreasonably stringent limitations on their vehicles. In the rules establishing dynamic testing requirements for manual safety belts in light trucks under Standard No. 208 (53 FR 50221; December 14, 1988) and extending Standard No. 204's steering column rearward displacement limitations to additional light trucks (54 FR 24344; June 7, 1989), NHTSA noted that it did not believe that any incomplete vehicle manufacturer could, as a practical matter, establish unreasonably stringent limitations for its incomplete vehicles. If any incomplete vehicle manufacturer were to do so, final stage manufacturers would purchase their incomplete vehicles from other manufacturers that had established more realistic limitations.

The agency's belief that market forces will prevent incomplete vehicle manufacturers from establishing unreasonably stringent limitations seems to have been correct. No manufacturer has provided NHTSA with any evidence that overly stringent limitations have been or will be imposed on incomplete vehicles subject to any of the existing crash testing requirements. Thus, NHTSA does not find persuasive NTEA's suggestion that unreasonably stringent limitations will be imposed on the completion of incomplete vehicles as a result of this amendment.

NHTSA recognizes that the adoption of the automatic crash protection requirements may lead incomplete vehicle manufacturers to impose some new limitations on the manner in which their vehicles may be completed, in order to assure that the completed vehicle will meet the requirements of the standard. However, there is no reason to believe that final stage manufacturers will be unable to complete their vehicles within those limitations.

NTEA's comments also addressed the fact, discussed above, that under 49 CFR 567.5, only manufacturers of incomplete chassis-cabs are required to provide a formal certification that can be "passed-through" by a final stage manufacturer. When com-

pleting an incomplete vehicle that is not a chassis-cab, or when completing an incomplete vehicle outside of the incomplete vehicle manufacturer's instructions, the final stage manufacturer would have to independently certify that the completed vehicle complied with the automatic crash protection requirements. NTEA argued that final stage manufacturers lack the financial and engineering expertise needed to make such a certification, and contended that this obliges NHTSA to permanently exempt those vehicles from the automatic crash protection requirements.

With respect to non-chassis-cabs, NHTSA reiterates that, as provided by 49 CFR Part 568, completion of an incomplete vehicle in accordance with the specifications set forth in an incomplete vehicle document will ensure conformity with applicable standards and thus provide a basis for a final stage manufacturer to certify the completed vehicle. Therefore, with respect to those chassis for which the incomplete vehicle manufacturer provides specifications with respect to Standard No. 208, NTEA's concerns regarding the ability of final stage manufacturers to independently certify these vehicles are not well grounded. However, NHTSA acknowledges that most non-chassis-cabs will not include specifications for Standard No. 208. Thus, final-stage manufacturers that do not have an independent basis for certifying compliance with the automatic crash protection requirements will not be able to use non-chassis-cabs to complete vehicles within the weight ranges subject to the automatic crash protection requirements.

As discussed above, NHTSA agrees that as a practical matter, most final stage manufacturers will not have the resources to develop an independent basis to certify compliance with Standard No. 208 if they do not complete vehicles within the specifications established by incomplete vehicle manufacturers or if the incomplete vehicle manufacturer does not provide specifications applicable to that standard. That is why the agency has consistently suggested that the simplest way for final stage manufacturers to assure that their vehicles will comply with the safety standards is to complete the vehicles in accordance with those specifications. A final stage manufacturer may have to "shop around" among different incomplete vehicles and different manufacturers to find an incomplete vehicle that can be completed in the manner that its customer desires, while remaining within the incomplete vehicle manufacturer's limitations. However, this is not an unreasonable burden in light of the safety benefits of automatic crash protection.

Moreover, NHTSA is not convinced that it will be impossible for final stage manufacturers to establish that vehicles that are completed outside of an incomplete vehicle manufacturer's specifications comply with the automatic crash protection requirements of

Standard No. 208. Final stage manufacturers that complete vehicles outside the incomplete vehicle manufacturer's specifications are in the same position as alterers regarding the certification responsibility. That is, the final stage manufacturer and the alterer must base their certification of compliance with the automatic crash protection requirements of Standard No. 208 on the evaluations and analyses made by the final stage manufacturer or alterer, instead of basing their certification on the specifications the original vehicle manufacturer provided for the vehicle. Although it might be too difficult or expensive for an individual final stage manufacturer or alterer to independently certify compliance through crash tests, it may be feasible for several such entities to join together to conduct or sponsor crash tests and/or engineering analyses that would provide an adequate basis for certification.

Volkswagen commented that it believed that it will not be practicable for modified vehicles to comply with the automatic crash protection requirements, particularly if the incomplete vehicle is equipped with an air bag. According to Volkswagen, it is "virtually impossible" for the manufacturer of an incomplete vehicle with an air bag system to provide guidance and certification information to final stage manufacturers, in part because of the different types of special equipment and/or bodies that might be added to the incomplete vehicle. Further, according to Volkswagen, it would be impossible for final stage manufacturers to independently certify compliance without conducting a crash test for each specific configuration. Because of this alleged impracticability, Volkswagen concluded that any light trucks that are produced in two or more stages should be excluded from the automatic crash protection requirements.

NHTSA has previously explained in detail its rejection of similar arguments in the rulemakings extending dynamic testing of manual safety belts to light trucks under Standard No. 208 (53 FR at 50225-50228) and extending Standard No. 204's steering column rearward displacement limitations to additional light trucks (54 FR at 24347-24350). To briefly repeat, manufacturers of all light trucks have been required for more than a decade to certify that their vehicles comply with three standards (Nos. 212, 219, and 301) that use a 30 mph barrier crash test to determine compliance. Throughout that period, manufacturers of incomplete vehicles have been required by 49 CFR Part 568 to provide incomplete vehicle documents that contain certification information and instructions to final stage manufacturers along with the incomplete vehicle. In order to have a basis for the specifications contained in the incomplete vehicle documents—*i.e.*, to assure that vehicles that are completed within those specifications will comply with

applicable crash test standards—the incomplete vehicle manufacturer must conduct some analysis of how the chassis would perform in a crash test. While this analysis may be more complex for the dynamic testing and automatic crash protection requirements of Standard No. 208 than for the other Standards that require crash testing, the process is not fundamentally different. Thus, Volkswagen's suggestion that it is not feasible for incomplete vehicle manufacturers to provide guidance to final stage manufacturers is not persuasive.

Ford commented that it believed NHTSA had underestimated the difficulty that the automatic crash protection requirements would pose for final stage manufacturers and alterers. Ford commented that it would "find it relatively manageable" to provide guidance and appropriate limits for Ford vehicles used by final stage manufacturers and alterers if the vehicles incorporated Ford-designed seats and occupant protection systems. However, Ford also commented that "alterers appear to believe" that installing different seats is fundamental to their manufacturing and marketing operations and stated that it was unlikely that Ford could provide much useful guidance for seats and occupant protection systems that are not designed and installed by Ford.

Ford's comment is consistent with its reported response to the dynamic testing requirement that will apply to manual safety belts in light trucks manufactured on or after September 1, 1991. In a November 27, 1989 article on page E4 of *Automotive News*, it was reported that, for the purposes of the dynamic testing requirement, Ford's instructions to final stage manufacturers and alterers would require the use of front seats installed by Ford. However, that same article reported that Chrysler and General Motors plan to develop guidelines that will allow final stage manufacturers and alterers to replace the original front seats and still be covered by the original certification of compliance. Thus, it appears that such flexibility is practicable.

If Ford does specify in its incomplete vehicle documents and body builders' guide that final stage manufacturers and alterers could only be assured of compliance with Standard No. 208 if they used Ford's seats, final stage manufacturers and alterers would have two options that would enable them to avoid having to independently certify compliance. They could either use Ford vehicles and complete or modify the vehicle in accordance with Ford's instructions, or use vehicles produced by a different manufacturer that permit the use of a variety of seats. In either case, no significant compliance burden would be imposed on the final stage manufacturer or alterer.

For the foregoing reasons, NHTSA has concluded

that there is no need to exclude vehicles produced in two or more stages or altered vehicles from the automatic crash protection requirements once the phase-in has ended. However, somewhat different considerations apply to the issue of whether those requirements should apply during the phase-in, which ends August 31, 1997.

During the phase-in period, manufacturers of completed light trucks will be required to install automatic crash protection in some but not all of their vehicles. If automatic crash protection were not available in the particular type of chassis used by a final stage manufacturer or alterer (perhaps because the chassis manufacturer did not intend to install automatic crash protection in its completed vehicles that are based on that chassis), it is unlikely that the final stage manufacturer or alterer could design, install, and certify a system of automatic crash protection for the vehicle. In recognition of these difficulties, the agency proposed to exclude light trucks manufactured in two or more stages and light trucks that are altered from the automatic crash protection requirements during the 20/50/90 phase-in period.

No commenter opposed this proposal and several supported it. NHTSA remains convinced that it would be impracticable to require final stage manufacturers and alterers to assure that a specified percentage of their vehicles complied with the automatic crash protection requirements of Standard No. 208 during the phase-in. Therefore, this final rule adopts the proposed exclusion of light trucks manufactured in two or more stages and light trucks that are altered from the automatic crash protection requirements during the phase-in. Because of this exclusion, this rule also adopts the proposal to allow original manufacturers the option to either include or exclude their light trucks that are sent to second stage manufacturers and alterers, when determining compliance during the phase-in period for automatic crash protection in light trucks. However, as indicated above, once the phase-in is completed, all light trucks must be equipped with automatic crash protection.

d. Phase-In Reporting Requirements. The agency proposed to adopt substantially the same reporting requirements for light trucks as were previously specified for passenger cars during the phase-in of the automatic crash protection requirements for those vehicles. The agency also proposed to not require information about altered light trucks and light trucks manufactured in two or more stages to be submitted in these reports, because manufacturers of those light trucks were not required to comply with the percentage requirements during the phase-in. No commenters addressed this subject. These requirements are adopted as proposed, for the rea-

sons set forth in the NPRM.

e. Phase-In Certification Requirements. The NPRM proposed to require a separate certification to appear on light trucks that were produced during the phase-in and were intended to be among the percentage of their manufacturer's annual production certified as complying with the automatic crash protection requirements. During the phase-in of automatic crash protection, some of a manufacturer's vehicles are equipped with automatic crash protection, while the rest are equipped only with manual safety belts. However, the information on the certification labels on both vehicles equipped with automatic crash protection and those equipped with only manual safety belts would fail to differentiate between the vehicles.

Additionally, during a phase-in, manufacturers are permitted to equip those vehicles with both manual safety belts and air bags, for example, but not certify the vehicles as complying with the automatic crash protection requirements. Instead, the manufacturers could certify that the vehicles complied with Standard No. 208 by virtue of the manual safety belts and assert the position that the air bags were a voluntary additional means of occupant protection. In this case, nothing on the certification label would alert the agency that these vehicles were not certified as complying with the automatic crash protection requirements.

NHTSA proposed to address the practical difficulties that had arisen in these situations in the passenger car phase-in by requiring manufacturers to affix an additional certification label on their light trucks produced during the phase-in period, if the light trucks were certified as complying with the automatic crash protection requirement. This proposal reflected the agency's tentative conclusions that this additional certification would effectively solve those problems, while imposing only minimal added burdens on the manufacturers.

The commenters strongly disagreed with the agency's proposal. Ford commented that the additional certification label would likely be misleading to consumers. Ford also commented that agency personnel would have ample additional sources for learning whether particular vehicles were certified as complying with the automatic crash protection requirements, including the proposed reports and the proposed requirement to keep records of the vehicle identification numbers of the vehicles certified as complying with the automatic crash protection requirements. Chrysler, Nissan, and Volkswagen all commented that the proposed additional certification label would be an increased burden, even if it were only slight, and that the agency had not articulated any benefits, great or small, that would result from imposing that burden.

After reviewing these comments, the agency has concluded that the proposed additional certification label should not be adopted in this final rule. As noted in the comments, agency personnel will be able to obtain the necessary certification information if the proposed reporting and recordkeeping requirements are adopted for the phase-in. NHTSA can make that information available to the public if there is any confusion about particular light trucks during the phase-in. Thus, there is no compelling reason to require an additional certification label on light trucks during the phase-in.

f. Retention of VINs. For the phase-in of automatic crash protection for passenger cars, NHTSA determined that it was important for enforcement purposes that manufacturers maintain records of the vehicle identification number (VIN) and the type of automatic crash protection installed on each passenger car produced during the phase-in period that was reported to NHTSA as one of the manufacturer's cars equipped with automatic crash protection. Again with respect to passenger cars, the manufacturers were required to retain these records for slightly more than two years after the end of the phase-in. The agency proposed to adopt the same requirements for light trucks. No commenter offered any objections to this proposal. Therefore, this final rule adopts the proposed VIN recordkeeping requirement.

4. "One-Truck Credit" Provision

As the requirements for automatic crash protection were being phased-in for passenger cars, NHTSA adopted provisions designed to give car manufacturers an incentive to use more innovative automatic crash protection systems in their vehicles. Accordingly, Standard No. 208 includes provisions so that each car equipped with a non-belt automatic crash protection system for the driver's position, such as an air bag or passive interior, and a manual safety belt for the right front passenger's position will be counted as a vehicle complying with the automatic crash protection requirements. These provisions are referred to as the "one-car credit." NHTSA repeatedly stated its belief that the "one-car credit" would encourage the introduction of non-belt automatic crash protection systems into passenger cars sooner than would occur if manufacturers were simply required to install automatic crash protection systems in both front seating positions simultaneously.

NHTSA tentatively determined it would also be appropriate to offer an incentive for light truck manufacturers to install more innovative systems of automatic crash protection. This tentative determination reflected the agency's belief that, as in the case of passenger cars, the *relative* technological ease of widespread installation in light trucks of passenger-side air bags is less than that of passenger-side automatic

belts. Absent some measures to equalize this technological disparity, NHTSA believes that light truck manufacturers would opt for the installation of automatic belts at both the driver's and passenger's positions, instead of installing an air bag at the driver's position and an automatic belt at the passenger's position. Thus, the agency proposed to offer the "one-truck credit" to allow the passage of sufficient time for the relative technological difficulties of passenger-side air bags and passenger-side automatic belts to become nearly equal. The agency tentatively concluded that 4 years was the minimum time sufficient for that purpose. Therefore, the NPRM proposed that the one-truck credit be available for light trucks manufactured during the 4-year period after the beginning of the phase-in of the automatic crash protection requirement.

Chrysler, Ford, and General Motors supported the proposed one-truck credit. The only commenter that objected to the proposal was Motor Voters. According to Motor Voters, market forces may be sufficient to encourage light truck manufacturers to choose air bags as the means for complying with the automatic crash protection requirement. In this case, there would be no need for any additional regulatory incentives. Because of this, Motor Voters suggested in its comments that the one-truck credit be allowed during the phase-in period, but that the one-truck credit provision be ended when the phase-in expires.

NHTSA concurs with Motor Voters' belief that the one-truck credit provision should not be offered for an excessive period of time, because it would then serve to delay for too long the safety benefits of automatic crash protection for the right front passenger position in light trucks. In the preamble to the NPRM, NHTSA also explained that it believed that, if the one-truck credit provision were available for a period of less than 4 years, the short credit would not provide sufficient time to resolve technical issues associated with passenger side air bags in light trucks. Hence, if the one-truck credit were made available for too short a time, it would do little to encourage light truck manufacturers to install driver-side air bags in light trucks. Motor Voters' comments did not set forth any new facts or information not previously considered by the agency in reaching its tentative decision on the appropriate length of time for the one-truck credit provision. A review of the available information reinforces NHTSA's technical judgment that there are special technical problems presented by the installation of air bags in light trucks that can be alleviated by allowing the one-truck credit. After this review, NHTSA has decided to adopt the proposed 4-year duration for the one-truck credit in this final rule.

Other "Credit" Issues During the Phase-In

The agency proposed to adopt the same 1.5 vehicle credit for light trucks that was available for passenger cars during the phase-in. Pursuant to this provision, cars equipped with an air bag or other non-belt means of automatic crash protection at the driver's position, and any type of automatic crash protection at the right front passenger's position, were counted as 1.5 cars equipped with automatic crash protection during the phase-in of the automatic crash protection requirements for passenger cars.

In its comments, Ford stated that the 1.5 credit provides some incentive for truck manufacturers to introduce passenger-side air bags, but that a two-truck credit would be more effective as an incentive. Ford acknowledged that Porsche had sought a two-car credit for passenger cars, and that this request was denied by NHTSA. 51 FR 42598; November 25, 1986. However, Ford commented that most of the agency's reasons for denying the two-car credit for cars would not be applicable for light trucks. Hence, Ford asked NHTSA to reexamine this issue.

In its denial of a two-vehicle credit provision for cars, NHTSA explained that the 1.5 vehicle credit already provided an extra incentive for manufacturers to install air bags for both the driver and right front passenger *and* that no manufacturer had provided detailed data specifically explaining how a two-car credit would serve as an additional incentive to any manufacturer to change its production plans during the phase-in. Absent such a quantification, NHTSA's judgment was that a two-vehicle credit provision could actually serve as a disincentive to installing air bags in the greatest number of vehicles during the phase-in.

The agency believes this reasoning is equally applicable to light trucks. Neither Ford nor any other manufacturer has provided any details about how a two-truck credit would affect their plans to install air bags in their trucks. Absent such information, it is NHTSA's technical judgment that an additional 0.5 vehicle credit over and above the existing 1.5 vehicle credit for trucks with both driver and passenger air bags would not ensure more air bags in light trucks during the phase-in. Hence, this final rule does not include a two-truck credit provision.

During the phase-in of automatic crash protection in passenger cars, NHTSA decided to permit the "carry-forward" of credits for vehicles equipped with automatic crash protection. The carry-forward provisions allow manufacturers that exceed the minimum percentage of vehicles equipped with automatic crash protection in one year of the phase-in to count those excess vehicles as credits toward the specified percentage during any subsequent model years of the phase-in. Additionally, for passenger cars, man-

ufacturers were allowed to count cars produced during the year before the start of the phase-in as credits toward the specified percentage in any year of the phase-in. NHTSA explained that these carry-forward credits would encourage the early introduction of more vehicles with automatic crash protection, provide increased flexibility for vehicle manufacturers, and assure an orderly build-up of production capability for automatic crash protection. The agency proposed to allow the same carry-forward of credits during the phase-in of automatic crash protection for light trucks.

Ford commented that it supported the proposed carry-forward of credits. However, Ford requested that manufacturers be permitted to carry-forward credits for light trucks equipped with automatic crash protection that are produced in the 2 years before the start of the phase-in (i.e., September 1, 1992 to August 31, 1994), instead of the proposed carry-forward of credits for automatic crash protection in light trucks produced in the year before the start of the phase-in (i.e., September 1, 1993 to August 31, 1994). Ford commented that this extension of the carry-forward credit provision would encourage manufacturers to introduce automatic crash protection in light trucks as soon as possible.

NHTSA is persuaded by this comment. To the extent that light truck manufacturers are not permitted to receive credit for trucks equipped with automatic crash protection produced before the start of the phase-in, those manufacturers would have an incentive to hold off the installation of automatic crash protection in their light trucks until they would receive such credit. Otherwise, a manufacturer that installed automatic crash protection as soon as it could in its light trucks would end up installing automatic crash protection in a higher percentage of its vehicles than manufacturers who make lesser efforts to install automatic crash protection, while both received the same credits for purposes of complying with the phase-in. For example, a manufacturer that installs automatic crash protection in 10 percent of its vehicles the model year before the phase-in starts and then in an additional ten percent of its vehicles during the first year of the phase-in (for a total of 20 percent of its vehicles) would not be credited any differently than a manufacturer that equipped 20 percent of its vehicles with automatic crash protection during the first year of the phase-in, if there were no provision allowing carry-forward of credits. Hence, an extension of the period for carry-forward credits serves the interests of safety by encouraging the earliest possible introduction of automatic crash protection. Accordingly, this rule adopts Ford's suggestion to permit the carry-forward of credits for light trucks equipped with automatic crash protection produced in the 2

years before the start of the phase-in.

Obviously, light trucks that are not certified as complying with the automatic crash protection requirements *cannot* be carried forward as credits toward complying with the automatic protection requirements. The agency has slightly revised the provision for calculating credits in S4.2.5.5 of Standard No. 208 and the reporting requirements in § 585.5(b)(2), to ensure that all parties understand that carry-forward credits are only available for light trucks certified as providing automatic crash protection.

Finally, Mazda asked the agency to permit the "carry-back" of credits, a procedure that was explicitly rejected for the passenger car phase-in. "Carry-back" provisions allow manufacturers that fall short of the minimum percentage of vehicles equipped with automatic crash protection in one year of the phase-in to make up the shortfall in future model years of the phase-in. Carry-back provisions were rejected for the passenger car phase-in, because these provisions would allow vehicle manufacturers to delay the installation of automatic crash protection and result in lesser safety benefits for the public.

Mazda did not question the agency's previous conclusions that carry-back credits delay the availability of automatic crash protection. Absent any additional information, NHTSA has no basis for changing its previously stated rejection of the concept of carry-back credits during the phase-in period.

5. *Compatibility with Child Safety Seats*

In the NPRM, the agency proposed to include special requirements for the passenger seating position in two-seater vehicles. The agency proposed that the automatic crash protection system installed at the right front seating position must be capable of being adjusted to secure a child safety seat or the seating position must be equipped with an original equipment manual lap or lap/shoulder belt to secure a child seat. Many vehicle manufacturers that commented on the NPRM objected to this proposal. Motor Voters and the Automotive Occupant Restraints Council both supported the proposal.

After the publication of this NPRM on automatic crash protection in light trucks, the agency published an NPRM devoted to the subject of the compatibility of safety belt systems with child safety seats; 55 FR 30937; July 30, 1990. Instead of addressing this issue in a piecemeal fashion in several different rulemakings, NHTSA believes it is more appropriate to use the child seat compatibility rulemaking as the forum for addressing all concerns about the compatibility of child safety seats and the various occupant protection systems, including automatic crash protection systems. Hence, the subject

will not be addressed further in this rulemaking action.

Technical Amendments of Regulatory Language

Ford concluded its comments with a request that NHTSA clarify the interrelationship of three rulemaking actions under Standard No. 208 addressing occupant protection requirements for light trucks. The first of these was the rule requiring dynamic testing of manual safety belts installed in front outboard seating positions in light trucks (52 FR 44898; November 23, 1987), codified at S4.2.2 and S4.2.3 of Standard No. 208. The second rulemaking was the requirement for rear seat lap/shoulder safety belts in light trucks (54 FR 46257; November 2, 1989), codified at S4.2.4 of Standard No. 208. The third rulemaking is this rulemaking requiring automatic crash protection in light trucks, codified at S4.2.5 and S4.2.6 of Standard No. 208.

Ford commented that S4.2.4 appears to require lap/shoulder belts in rear outboard seating positions of most light trucks. However, Ford correctly noted that the dynamic testing requirements for manual safety belts in light trucks and the automatic crash protection requirements for light trucks refer to the older passenger car options for occupant protection, which permit the installation of lap-only safety belts in rear outboard seats of vehicles. Ford suggested that this be clarified. This rule makes the requested clarification, so that no unintended confusion will arise about whether light trucks must be equipped with lap/shoulder belts in rear seating positions.

Ford also commented that it was unclear if the dynamic testing requirements for light trucks equipped with manual safety belts applied to light trucks equipped with manual safety belts that are produced during the phase-in period for automatic crash protection. The answer is that dynamic testing will apply to all subject light trucks manufactured on or after September 1, 1991, including the years during which automatic crash protection will be phased in, that meet the requirements of Standard No. 208 by providing manual lap/shoulder belts at front outboard seating positions. Language has been added to the dynamic testing requirements to make this requirement more explicit.

Finally, Ford commented that it assumed light trucks not subject to the dynamic testing require-

ments but that would be subject to the automatic crash protection requirement (motor homes, convertibles, open-body vehicles, etc.) would be excluded from a manufacturer's production total when determining compliance with the phase-in. This assumption is incorrect. NHTSA explicitly proposed to include these vehicles and did not propose to exclude such vehicles during the phase-in. This rule does not have any such exclusion.

Regulatory Impacts

NHTSA has examined the impacts of this rulemaking action and determined that it is both "major" within the meaning of Executive Order 12291 and "significant" within the meaning of the Department of Transportation's regulatory policies and procedures, because of both the costs and the public interest associated with this proposed rulemaking action. Accordingly, a Final Regulatory Impact Analysis (FRIA) has been prepared for this proposal, and a copy of the FRIA has been placed in the public docket for this rulemaking action. A copy of the FRIA may be obtained by writing to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW, Washington, D.C. 20590.

Table 1 presents the incremental benefits of automatic crash protection assuming all light trucks with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less would have automatic belts, or assuming all light trucks would have driver side air bags, or assuming all light trucks would have air bags for the driver and right front seat passenger. These benefits can be considered to accrue over the lifetime of one model year's production when all light trucks in that model year have automatic crash protection or these benefits can be considered annual benefits at some future date when all light trucks in the fleet incorporate automatic crash protection. These incremental benefits are compared to manual safety belt use rates of 26.6 to 40 percent (26.6 percent was derived from the Fatal Accident Reporting System, and represents belt use in potentially fatal accidents by light truck occupants for 1989; 40 percent is an estimate of potential safety belt use levels in 1995 based on a continuing trend of increased use due to State safety belt use laws, consumer safety awareness, and safety belt education programs).

TABLE 1
 Incremental Benefits for Automatic Crash Protection
 Assuming Light Trucks with a GVWR of 8,500 Pounds GVWR or Less
 And Unloaded Vehicle Weight of 5,500 Pounds or Less
 Were Equipped with that Type of Automatic Protection

	<u>Fatalities</u>	<u>AIS 2-5 Injuries</u>	<u>AIS 1 Injuries</u>
Driver Air Bags	1,573 to 1,855	18,688 to 22,178	32,837 to 40,423
Driver and Right Front Air Bags	2,016 to 2,378	23,960 to 28,434	42,098 to 51,824
Automatic Belts <u>Usage</u>			
50 Percent	370 to 1,216	4,353 to 13,829	7,258 to 16,984
60 Percent	949 to 1,796	10,881 to 20,357	14,517 to 24,243
70 Percent	1,529 to 2,375	17,409 to 26,883	21,775 to 31,501

The estimated costs of automatic crash protection for light trucks are shown in Table 2.

TABLE 2
 Estimated Consumer Costs of Automatic Crash Protection

<u>Restraint System</u>	<u>Consumer Cost (1989 \$)</u>
Driver air bag	\$277.86
Driver and RF air bag	404.16
Automatic belts Motorized	185.66
Automatic belts Non-motorized	44.21

The estimated lifetime fuel costs for the added weight of these various types of automatic protection are shown in Table 3.

TABLE 3
 Lifetime Fuel Cost
 (Present Value, 10% Annual Discount Rate)

<u>Restraint System</u>	<u>Incremental Weight per Vehicle</u>	<u>Total Vehicle Lifetime Fuel Cost (1989 \$)</u>
Driver air bag	9.0 lbs.	\$12.38
Driver and RF air bag	21.0	28.80
Automatic belts Motorized	10.0	13.75
Automatic belts Non-motorized	5.0	6.89

TABLE 4
 Total Vehicle Costs Including
 Lifetime Fuel Costs
 (Present Value, 10% Annual Discount Rate)
 (Without Secondary Weight)

<u>Restraint System</u>	<u>Incremental Weight per Vehicle</u>	<u>Total Per Vehicle Cost Including Lifetime Fuel Cost (1989 \$)</u>
Driver air bag	9.0 lbs.	\$290.24
Driver and RF air bag	21.0	432.96
Automatic belts Motorized	10.0	199.41
Automatic belts Non-motorized	5.0	51.10

(With Secondary Weight)

<u>Restraint System</u>	<u>Incremental Weight per Vehicle</u>	<u>Total Per Vehicle Cost Including Lifetime Fuel Cost (1989 \$)</u>
Driver air bag	15.3 lbs.	\$303.76
Driver and RF air bag	35.7	464.47
Automatic belts Motorized	17.0	214.43
Automatic belts Non-motorized	8.5	58.62

Additionally, the agency has analyzed the effects of this proposal on small entities, in accordance with the Regulatory Flexibility Act. This analysis appears at Section IV of the FRIA. Based on the available information, the agency does not believe that a substantial number of small entities will be affected by this final rule, and that any effects on small entities would not be significant economic impacts. Interested persons are invited to examine this section of the FRIA.

The agency has also analyzed this rule under the National Environmental Policy Act and determined that it will not have a significant effect on the human environment. A discussion of this determination can be found in the Environmental Assessment that has been prepared for this rule. This report is available in the public docket for this rulemaking action.

This rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Office of Management and Budget (OMB) had already approved NHTSA's requirement for phase-in reporting for automatic crash protection in passenger cars (OMB #2127-0535). However, this rule extends the existing passenger car requirements to light trucks during the phase-in of automatic crash protection. This extension is considered to be an information collection requirement, as that term is

defined by OMB in 5 CFR Part 1320. Accordingly, the information collection requirement was submitted to and approved by OMB, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The reporting and recordkeeping requirements in this rule have been assigned OMB #2127-0535 and approved through April 30, 1993.

In consideration of the foregoing, Chapter V of Title 49 of the Code of Federal Regulations is amended as follows:

S4.2 of Standard No. 208 is amended by revising S4.2.2, S4.2.3, and the title of S4.2.4, and adding new S4.2.5 and S4.2.6, to read as follows:

S4.2 Trucks and multipurpose passenger vehicles with GVWR of 10,000 pounds or less.

* * * * *

S4.2.2 Trucks and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, manufactured on or after September 1, 1991 and before September 1, 1997. Except as provided in S4.2.4, each truck and multipurpose passenger vehicle with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, manufactured on or after September 1, 1991 and before September 1, 1997, shall meet the requirements of S4.1.2.1, or at the option of the manufacturer, S4.1.2.2 or S4.1.2.3 (as specified for passenger cars), except that 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-mount campers may instead meet the requirements of S4.2.1.1 or S4.2.1.2. Each Type 2 seat belt assembly installed in a front outboard designated seating position in accordance with S4.1.2.3 shall meet the requirements of S4.6.

S4.2.3 Trucks and multipurpose passenger vehicles manufactured on or after September 1, 1991 with either a GVWR of more than 8,500 pounds but not greater than 10,000 pounds or with an unloaded vehicle weight greater than 5,500 pounds and a GVWR of 10,000 pounds or less. Except as provided in S4.2.4, each truck and multipurpose passenger vehicle manufactured on or after September 1, 1991, that has either a gross vehicle weight rating which is greater than 8,500 pounds, but not greater than 10,000 pounds, or has an unloaded vehicle weight greater than 5,500 pounds and a GVWR of 10,000 pounds or less, shall meet the requirements of S4.1.2.1, or at the option of the manufacturer, S4.1.2.2 or S4.1.2.3 (as specified for passenger cars), except that 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-mount campers may instead meet the requirements of S4.2.1.1 or S4.2.1.2.

S4.2.4 Rear outboard seating positions in trucks and multipurpose passenger vehicles manufactured on or after September 1, 1991 with a GVWR of 10,000 pounds or less. * * *

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S4.2.5 Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1994, and before September 1, 1997.

S4.2.5.1 Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1994 and before September 1, 1995.

S4.2.5.1.1 Subject to S4.2.5.1.2 and S4.2.5.5 and except as provided in S4.2.4, each truck, bus, and multipurpose passenger vehicle, other than walk-in van-type trucks and vehicles designed to be exclusively sold to the U.S. Postal Service, with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that is manufactured on or after September 1, 1994 and before September 1, 1995, shall comply with the requirements of S4.1.2.1, S4.1.2.2, or S4.1.2.3 (as specified for passenger cars). A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know

in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

S4.2.5.1.2 Subject to S4.2.5.5, the amount of trucks, buses, and multipurpose passenger vehicles specified in S4.2.5.1.1 complying with S4.1.2.1 (as specified for passenger cars) shall be not less than 20 percent of:

(a) The average annual production of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1991, and before September 1, 1994, by each manufacturer that produced such vehicles during each of those annual production periods, or

(b) The manufacturer's total production of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during the period specified in S4.2.5.1.1.

S4.2.5.2 Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1995 and before September 1, 1996.

S4.2.5.2.1 Subject to S4.2.5.2.2 and S4.2.5.5 and except as provided in S4.2.4, each truck, bus, and multipurpose passenger vehicle, other than walk-in van-type trucks and vehicles designed to be exclusively sold to the U.S. Postal Service, with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that is manufactured on or after September 1, 1995 and before September 1, 1996, shall comply with the requirements of S4.1.2.1, S4.1.2.2, or S4.1.2.3 (as specified for passenger cars). A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

S4.2.5.2.2 Subject to S4.2.5.5, the amount of trucks, buses, and multipurpose passenger vehicles specified in S4.2.5.2.1 complying with S4.1.2.1 (as specified for passenger cars) shall be not less than 50 percent of:

(a) The average annual production of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1992, and before September 1, 1995, by each manufacturer that produced such vehicles during each of those annual production periods, or

(b) The manufacturer's total production of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during the

period specified in S4.2.5.2.1.

S4.2.5.3 Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1996 and before September 1, 1997.

S4.2.5.3.1 Subject to S4.2.5.3.2 and S4.2.5.5 and except as provided in S4.2.4, each truck, bus, and multipurpose passenger vehicle, other than walk-in van-type trucks and vehicles designed to be exclusively sold to the U.S. Postal Service, with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that is manufactured on or after September 1, 1996 and before September 1, 1997, shall comply with the requirements of S4.1.2.1, S4.1.2.2, or S4.1.2.3 (as specified for passenger cars). A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

S4.2.5.3.2 Subject to S4.2.5.5, the amount of trucks, buses, and multipurpose passenger vehicles specified in S4.2.5.3.1 complying with S4.1.2.1 (as specified for passenger cars) shall be not less than 90 percent of:

(a) The average annual production of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1993, and before September 1, 1996, by each manufacturer that produced such vehicles during each of those annual production periods, or

(b) The manufacturer's total production of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during the period specified in S4.2.5.3.1.

S4.2.5.4 Alternative phase-in schedule. A manufacturer may, at its option, comply with the requirements of this section instead of complying with the requirements set forth in S4.2.5.1, S4.2.5.2, and S4.2.5.3.

(a) Except as provided in S4.2.4, each truck, bus, and multipurpose passenger vehicle, other than walk-in van-type trucks and vehicles designed to be exclusively sold to the U.S. Postal Service, with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that is manufactured on or after September 1, 1994 and before September 1, 1995, shall comply with the requirements of S4.1.2.1, S4.1.2.2, or S4.1.2.3 (as specified for passenger cars).

(b) Except as provided in S4.2.4, each truck, bus, and multipurpose passenger vehicle, other than walk-in van-type trucks and vehicles designed to be

exclusively sold to the U.S. Postal Service, with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that is manufactured on or after September 1, 1995 shall comply with the requirements of S4.1.2.1 (as specified for passenger cars) of this standard. A vehicle shall not be deemed to be in noncompliance with this Standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

(c) Each truck, bus, and multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1995, but before September 1, 1998, whose driver's seating position complies with the requirements of S4.1.2.1(a) of this standard by means not including any type of seat belt and whose right front passenger's seating position is equipped with a manual Type 2 seat belt that complies with S5.1 of this standard, with the seat belt assembly adjusted in accordance with S7.4.2, shall be counted as a vehicle complying with S4.1.2.1.

S4.2.5.5 Calculation of complying trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less.

(a) For the purposes of the calculations required in S4.2.5.1.2, S4.2.5.2.2, and S4.2.5.3.2 of the number of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that comply with S4.1.2.1 (as specified for passenger cars):

(1) Each truck, bus, and multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less whose driver's seating position complies with the requirements of S4.1.2.1(a) by means not including any type of seat belt and whose front right seating position complies with the requirements of S4.1.2.1(a) by any means is counted as 1.5 vehicles, and

(2) Each truck, bus, and multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less whose driver's seating position complies with the requirements of S4.1.2.1(a) by means not including any type of seat belt and whose right front passenger's seating position is equipped with a manual Type 2 seat belt that complies with S5.1 of this Standard, with the seat belt assembly adjusted in accordance with S7.4.2, is counted as one vehicle.

(3) Each truck, bus, and multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that

is manufactured in two or more stages or that is altered (within the meaning of § 567.7 of this chapter) after having previously been certified in accordance with Part 567 of this chapter is not subject to the requirements of S4.2.5.1.2, S4.2.5.2.2, and S4.2.5.3.2. Such vehicles may be excluded from all calculations of compliance with S4.2.5.1.2, S4.2.5.2.2, and S4.2.5.3.2.

(b) For the purposes of complying with S4.2.5.1.2, a truck, bus, or multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less may be counted if it:

(1) Is manufactured on or after September 1, 1992, but before September 1, 1994, and

(2) Is certified as complying with S4.1.2.1 (as specified for passenger cars).

(c) For the purposes of complying with S4.2.5.2.2, a truck, bus, or multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less may be counted if it:

(1) Is manufactured on or after September 1, 1992, but before September 1, 1995,

(2) Is certified as complying with S4.1.2.1 (as specified for passenger cars), and

(3) Is not counted towards compliance with S4.2.5.1.2.

(d) For the purposes of complying with S4.2.5.3.2, a truck, bus, or multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less may be counted if it:

(1) Is manufactured on or after September 1, 1992, but before September 1, 1996,

(2) Is certified as complying with S4.1.2.1 (as specified for passenger cars), and

(3) Is not counted towards compliance with S4.2.5.1.2 or S4.2.5.2.2.

S4.2.5.6 Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less produced by more than one manufacturer.

S4.2.5.6.1 For the purposes of calculating average annual production for each manufacturer and the amount of vehicles manufactured by each manufacturer under S4.2.5.1.2, S4.2.5.2.2, or S4.2.5.3.2, a truck, bus, or multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S4.2.5.6.2:

(a) A vehicle that is imported shall be attributed to the importer.

(b) A vehicle that is manufactured in the United States by more than one manufacturer, one of which

also markets the vehicle, shall be attributed to the manufacturer that markets the vehicle.

S4.2.5.6.2 A truck, bus, or multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified in an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR Part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S4.2.5.4.1.

S4.2.6 Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1997. Except as provided in S4.2.4, each truck, bus, and multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1997 shall comply with the requirements of S4.1.2.1 (as specified for passenger cars) of this standard, except that walk-in van-type trucks and vehicles designed to be exclusively sold to the U.S. Postal Service may instead meet the requirements of S4.2.1.1 or S4.2.1.2. Each truck, bus, and multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1997, but before September 1, 1998, whose driver's seating position complies with the requirements of S4.1.2.1(a) of this Standard by means not including any type of seat belt and whose right front passenger's seating position is equipped with a manual Type 2 seat belt that complies with S5.1 of this Standard, with the seat belt assembly adjusted in accordance with S7.4.2, shall be counted as a vehicle complying with S4.1.2.1. A vehicle shall not be deemed to be in noncompliance with this Standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

* * * * *

3. A new S4.4.4 is added to Standard No 208, to read as follows:

S4.4 Buses.

* * * * *

S4.4.4 Buses with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1994. Each bus with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1994 shall comply with the requirements

of S4.2.5 and S4.2.6 of this standard, as applicable, for front seating positions, and with the requirements of S4.4.3.2 or S4.4.3.3 of this standard, as applicable, for all rear seating positions.

* * * * *

4. S8.1.1(b) of Standard No. 208 is revised to read as follows:

S8. Test conditions.

* * * * *

S8.1.1 Except as provided in paragraph (c) of this section, the vehicle, including test devices and instrumentation, is loaded as follows:

* * * * *

(b) Multipurpose passenger vehicles, trucks, and buses. A multipurpose passenger vehicle, truck, or bus is loaded to its unloaded vehicle weight plus 300 pounds or its rated cargo and luggage capacity weight, whichever is less, secured in the load carrying area and distributed as nearly as possible in proportion to its gross axle weight ratings, plus the weight of the necessary anthropomorphic test devices. For the purposes of this section, unloaded vehicle weight does not include the weight of work-performing accessories. Vehicles are tested to a maximum unloaded vehicle weight of 5,500 pounds.

* * * * *

PART 585—[AMENDED]

5. The authority citation for Part 585 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50.

6. Section 585.1 is revised to read as follows:

This part establishes requirements for manufacturers of trucks, buses, and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less to submit reports, and to maintain records related to the reports, concerning the number of such vehicles equipped with automatic crash protection in compliance with the requirements of S4.2.5 of Standard No. 208, Occupant Crash Protection (49 CFR § 571.208).

7. Section 585.2 is revised to read as follows:

§ 585.2 Purpose.

The purpose of these reporting requirements is to aid the National Highway Traffic Safety Administration in determining whether a manufacturer of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less has complied with the requirements of Standard No. 208, Occupant Crash Protection (49 CFR § 571.208) to install automatic crash protection in specified percentages of the manufacturer's annual production of

those vehicles.

8. Section 585.3 is revised to read as follows:

§ 585.3 Applicability.

This part applies to manufacturers of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. However, this part does not apply to any such manufacturers whose production consists exclusively of:

- (a) vehicles manufactured in two or more stages;
- (b) walk-in van-type trucks;
- (c) vehicles designed to be exclusively sold to the U.S. Postal Service;

(d) Vehicles that are altered after previously having been certified in accordance with part 567 of this chapter.

7. Section 585.4 is revised to read as follows:

§ 585.4 Definitions.

(a) All terms defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391) are used in their statutory meaning.

(b) *Bus, gross vehicle weight rating or GVWR, multipurpose passenger vehicle, truck, and unloaded vehicle weight* are used as defined in § 571.3 of this chapter.

(c) *Production year* means the 12-month period between September 1 of the prior year and August 31 of the year in question, inclusive.

8. Section 585.5 is revised to read as follows:

§ 585.5 Reporting requirements.

(a) *General reporting requirements.*

(1) Within 60 days after the end of the production years ending August 31, 1995, August 31, 1996, and August 31, 1997, each manufacturer that manufactured any trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during the production year (other than walk-in van-type trucks, vehicles designed to be exclusively sold to the U.S. Postal Service, vehicles manufactured in two or more stages, or vehicles that were altered after previously having been certified in accordance with part 567 of this chapter) shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirements of Standard No. 208 (49 CFR 571.208) for installation of automatic crash protection in such vehicles manufactured during that production year.

(2) Each report submitted in compliance with paragraph (a)(1) of this section shall:

- (i) Identify the manufacturer;
- (ii) State the full name, title, and address of the official responsible for preparing the report;

(iii) Identify the production year for which the report is filed;

(iv) Contain a statement regarding the extent to which the manufacturer has complied with the requirements of S4.2.5 of Standard No. 208 (§ 571.208 of this chapter);

(v) Provide the information specified in paragraph (b) of this section;

(vi) Be written in the English language; and

(vii) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

(b) *Report content.*

(1) *Basis for phase-in production goals.* Each manufacturer shall report the number of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that it manufactured for sale in the United States for each of the three preceding production years or, at the manufacturer's option, for the production year for which the report is filed. A manufacturer that did not manufacture any trucks, buses, or multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during each of the three preceding production years must report the number of trucks, buses, and multipurpose passenger vehicles with a GVWR or 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured during the production year for which the report is filed.

(2) *Production.* Each manufacturer shall report for the production year for which the report is filed, and for each preceding production year, to the extent that trucks, buses, and multipurpose passenger vehicles produced during the preceding production years are treated under § 571.208 of this chapter as having been produced during the production period for which the report is filed, the information specified in paragraphs (b)(2)(i) through (b)(2)(iii) of this section, inclusive, with respect to its trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less.

(i) The number of those vehicles certified as complying with S4.1.2.1 of Standard No. 208, Occupant Crash Protection (49 CFR § 571.208) because they are equipped with automatic seat belts and the

seating positions at which those belts are installed;

(ii) The number of those vehicles certified as complying with S4.1.2.1 of Standard No. 208, Occupant Crash Protection (49 CFR § 571.208) because they are equipped with air bags and the seating positions at which those air bags are installed; and

(iii) The number of those vehicles certified as complying with S4.1.2.1 of Standard No. 208, Occupant Crash Protection (49 CFR § 571.208) because they are equipped with other forms of automatic crash protection, which forms of automatic crash protection shall be described, and the seating positions at which those forms of automatic crash protection are installed.

(3) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by section S4.2.5.6.2 of § 571.208 of this chapter shall:

(i) Report the existence of each such contract, including the names of all parties to each such contract, and explain how the contract affects the report being filed; and

(ii) Report the number of vehicles covered by each such contract.

11. Section 585.6 is revised to read as follows:

§ 585.6 Records.

Each manufacturer shall maintain records of the vehicle identification number and type of automatic crash protection for each vehicle for which information was reported under § 585.5(b)(2), until December 31, 1999.

Issued on March 20, 1991.

Jerry Ralph Curry
Administrator

56 F.R. 12472
March 26, 1991

MOTOR VEHICLE SAFETY STANDARD NO. 585

Automatic Restraint Phase-In Reporting Requirements

(Docket No. 74-14; Notice 43)

S1. Scope. [This part establishes requirements for manufacturers of trucks, buses, and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less to submit reports, and to maintain records related to the reports, concerning the number of such vehicles equipped with automatic crash protection in compliance with the requirements of S4.2.5 of Standard No. 208, Occupant Crash Protection (49 CFR § 571.208).

S2. Purpose. [The purpose of these reporting requirements is to aid the National Highway Traffic Safety Administration in determining whether a manufacturer of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less has complied with the requirements of Standard No. 208, Occupant Crash Protection (49 CFR § 571.208) to install automatic crash protection in specified percentages of the manufacturer's annual production of those vehicles.

S3. Applicability. [This part applies to manufacturers of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. However, this part does not apply to any such manufacturers whose production consists exclusively of:

- (a) Vehicles manufactured in two or more stages;
- (b) Walk-in van-type trucks;
- (c) Vehicles designed to be exclusively sold to the U.S. Postal Service; and/or
- (d) Vehicles that are altered after previously having been certified in accordance with Part 567 of this chapter.

S4. Definitions. [(a) All terms defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C 1391) are used in their statutory meaning.

(b) *Bus, gross vehicle weight rating or GVWR, multipurpose passenger vehicle, truck, and unloaded vehicle weight* are used as defined in § 571.3 of this chapter.

(c) *Production year* means the 12-month period between September 1 of the prior year and August 31 of the year in question, inclusive.

S5. Reporting requirements.

(a) *General reporting requirements.*

[(1) Within 60 days after the end of the production years ending August 31, 1995, August 31, 1996, and August 31, 1997, each manufacturer that manufactured any trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during the production year (other than walk-in van-type trucks, vehicles designed to be exclusively sold to the U.S. Postal Service, vehicles manufactured in two or more stages, or vehicles that were altered after previously having been certified in accordance with Part 567 of this chapter) shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirements of Standard No. 208 (49 CFR § 571.208) for installation of automatic crash protection in such vehicles manufactured during that production year.

(2) Each report submitted in compliance with paragraph (a)(1) of this section shall:

- (i) Identify the manufacturer;
- (ii) State the full name, title, and address, of the official responsible for preparing the report;
- (iii) Identify the production year for which the report is filed;
- (iv) Contain a statement regarding the extent to which the manufacturer has complied with the requirements of S4.2.5 of Standard No. 208 (§ 571.208 of this chapter);
- (v) Provide the information specified in paragraph (b) of this section;
- (vi) Be written in the English language; and
- (vii) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

(b) *Report content*

(1) *Basis for phase-in production goals.* Each manufacturer shall report the number of trucks, buses,

and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that it manufactured for sale in the United States for each of the three preceding production years or, at the manufacturer's option, for the production year for which the report is filed. A manufacturer that did not manufacture any trucks, buses, or multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during each of the three preceding production years must report the number of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured during the production year for which the report is filed.

(2) *Production.* Each manufacturer shall report for the production year for which the report is filed, and for each preceding production year, to the extent that trucks, buses, and multipurpose passenger vehicles produced during the preceding production years are treated under § 571.208 of this chapter as having been produced during the production period for which the report is filed, the information specified in paragraphs (b)(2)(i) through (b)(2)(iii) of this section, inclusive, with respect to its trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less.

(i) The number of those vehicles certified as complying with S4.1.2.1 of Standard No. 208, Occupant Crash Protection (49 CFR §571.208) because they are equipped with automatic seat belts and the seating positions at which those belts are installed;

(ii) The number of those vehicles certified as complying with S4.1.2.1 of Standard No. 208, Occupant Crash Protection (49 CFR § 571.208) because they are equipped with air bags and the seating positions at which those air bags are installed; and

(iii) The number of those vehicles certified as complying with S4.1.2.1 of Standard No. 208, Occupant Crash Protection (49 CFR § 571.208) because they are equipped with other forms of automatic crash protection, which forms of automatic crash protection shall be described, and the seating positions at which those forms of automatic crash protection are installed.

(3) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by section S4.2.5.6.2 of § 571.208 of this chapter shall:

(i) Report the existence of each such contract, including the names of all parties to each such contract, and explain how the contract affects the report being filed; and

(ii) Report the number of vehicles covered by each such contract.

S6. Records. [Each manufacturer shall maintain records of the vehicle identification number and type of automatic crash protection for each vehicle for which information was reported under § 585.5(b)(2), until December 31, 1999. (56 F.R. 12472—March 26, 1991. Effective: September 23, 1991)]

Issued on March 20 1991.

51 F.R. 9801
March 21, 1986

56 F.R. 12472
March 26, 1991

PREAMBLE TO AN AMENDMENT TO PART 586

Reporting Compliance with Phasing-in of Dynamic Side Impact Test Requirements (Docket 88-06; Notice 10) RIN 2127-AB86

ACTION: Final rule.

SUMMARY: This notice establishes reporting and recordkeeping requirements necessary for NHTSA to enforce the phasing-in of the new dynamic test requirements in the amended Standard No. 214, *Side Impact Protection*, which appears elsewhere in today's *Federal Register*. NHTSA proposed on January 27, 1988 to establish such reporting requirements.

DATES: The amendments made by this final rule to the *Code of Federal Regulations* are effective November 29, 1990, except for the information collection requirements. These information collection requirements have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them. NHTSA will issue a notice in the future establishing an effective date for the information collection requirements.

SUPPLEMENTARY INFORMATION:

I. Background

On January 27, 1988, NHTSA proposed to amend Standard No. 214 to supplement the existing quasi-static test procedures and performance requirements with dynamic test procedures and performance requirements for passenger cars. The proposed test procedure was a dynamic simulation of a vehicle striking a car in the side in a typical intersection side impact crash. Elsewhere in today's *Federal Register* NHTSA adopts the final rule amending Standard No. 214. Two alternative compliance schedules are established, the choice of which is at the option of the manufacturer. Under the first schedule, each manufacturer of passenger cars will have to meet the new side impact performance requirements based on the following phase-in schedule:

10 percent of automobiles manufactured during the 12 month period beginning September 1, 1993.

25 percent of automobiles manufactured during the 12 month period beginning September 1, 1994.

40 percent of automobiles manufactured during the 12 month period beginning September 1, 1995; and

All automobiles manufactured on or after September 1, 1996. Under the other schedule, no compliance will be required during the production year beginning September 1, 1993, but full implementation will be required effective September 1, 1994.

NHTSA stated in the preamble of the proposed side impact rule that it was proposing to adopt reporting and recordkeeping requirements to facilitate implementation of the dynamic side impact requirements. NHTSA further stated that the proposed reporting and recordkeeping requirements would be similar to those adopted in connection with the phase-in of the automatic restraint requirements for passenger cars in Standard No. 208, *Occupant Crash Protection*. NHTSA did not receive any comments regarding the proposed reporting and recordkeeping requirements for the side impact phase-in.

II. Description of the Final Rule

NHTSA is adopting reporting and recordkeeping requirements almost identical to those adopted for Standard No. 208. Under this rule, manufacturers are required to submit reports to NHTSA for each of the side impact phase-in periods. Each report, covering production during a 12-month period beginning September 1 and ending August 31, would be required to be submitted within 60 days after the end of that period. Three reports would have to be filed. The filing deadlines would be 60 days after (1) August 31, 1994, (2) August 31, 1995 and (3) August 31, 1996.

Information required in each report includes a statement regarding whether or not the manufacturer complied with the phase-in and the basis for that statement. If a manufacturer chooses the second compliance option (i.e., none of their fleet must meet the requirements the first year of the phase-in, but all of their fleet must meet the requirements the second and third years of the phase-in), the manufacturer would state this in the report due 60 days after August 31, 1994. Manufacturers would also have to include the following information in their reports (except the report due 60 days after August 31, 1994 for manufacturers who choose

the second compliance option): the number of passenger cars manufactured for sale in the United States for each of the three previous 12-month production periods; the actual number of passenger cars manufactured during the reporting production period that meet the requirements of the amended Standard No. 214; and brief information about any express written contracts in which manufacturers of passenger cars produced by more than one manufacturer determine which manufacturer would count the cars as its own during a given year of the phase-in of Standard No. 214.

The reporting requirements adopted in this rule are necessary for the three-year period of the phase-in of the new test procedures and performance requirements under Standard No. 214. The information specified by the requirements will enable the agency to carry out its statutory duty to monitor compliance with the Federal motor vehicle safety standards. During the phase-in, only a certain percentage of vehicles are required to meet the new requirements of Standard No. 214. It would be virtually impossible for NHTSA to determine if the appropriate percentage of passenger cars has met the new requirements of Standard No. 214 unless manufacturers provide production information to the agency. Thus, NHTSA is requiring manufacturers to report information on both the total number of cars produced and the number of cars produced that meet the requirements of the revised Standard No. 214. NHTSA is requiring reporting of the number of cars manufactured for sale in the United States during each of the three previous 12-month production periods because Standard No. 214 allows manufacturers the option of using the average production volume during the last three production years to determine the number of cars that must meet the requirements of the revised Standard No. 214. Manufacturers are required to provide a statement regarding whether or not they complied with the phase-in and the basis for that statement. This provision requires a manufacturer to show that they produced the requisite percentage of cars that meet the dynamic testing and performance requirements of the revised Standard No. 214. This percentage could be based on either that 12-month production volume or the average production volume for the three previous 12-month production periods.

This rule also requires manufacturers to report brief information about any express written contracts concerning passenger cars produced by more than one manufacturer. In the revised Standard No. 214, published elsewhere in today's *Federal Register*, NHTSA explains which company generally will be considered the manufacturer of a car that is manufactured by two or more companies or manufactured by one company and imported by another. The Standard generally attributes a car to the manufacturer which is most responsible for the existence of the vehicle in the United States. Thus, a car is generally attributed

to the company which imported the vehicle; manufactured the vehicle for its own account as part of a joint venture; or marketed the vehicle. However, NHTSA also gives manufacturers the flexibility to determine contractually which manufacturer would count the car as its own toward the required percentage for a given year of the phase-in. That provision of Standard No. 214 is based on an almost identical provision in Standard No. 208.

This rule also includes a provision allowing manufacturers to request an extension of the deadline for filing a report. This provision is identical to that in the rule establishing reporting for Standard No. 208. NHTSA does not believe that complying with the requirement that reports be submitted within 60 days after the end of each production year will be a problem for manufacturers (including importers), except in extreme situations. However, to accommodate those situations, NHTSA is allowing manufacturers to seek an extension of the deadline for filing a report, by submitting a request for extension at least 15 days before the report is due. As provided in the rule the filing of a request for an extension does not automatically extend the time for filing a report. The rule provides that NHTSA will grant such an extension only if the petitioner shows good cause for the extension and if the extension is consistent with the public interest.

The recordkeeping provisions in this final rule require manufacturers to maintain records of the Vehicle Identification Number (VIN) for each passenger car which meets the new dynamic testing and performance requirements of the amended Standard No. 214. This provision is almost identical to one adopted in connection with Standard No. 208. NHTSA is requiring that the information be maintained by manufacturers until December 31, 1998. The purpose of this requirement is to ensure that such information will be available until the completion of any agency enforcement action begun after the final phase-in report is filed in 1996. Manufacturers are not required to keep the VIN information in a separate file. As long as the VIN information is retrievable, it may be stored in any manner that is convenient to a manufacturer.

III. Regulatory Impacts

A. Executive Order 12291

As indicated earlier in this preamble, this rule supplements a separate final rule establishing new test procedures and performance requirements for side impact under Standard No. 214. This rule establishing reporting and recordkeeping requirements in connection with the phase-in of the new requirements of Standard No. 214 is part of that rulemaking. As such, it is considered a major rule within the meaning of Executive Order 12291. It is also considered to be significant within the meaning of the Department of Transportation's regulatory policies and procedures.

NHTSA has prepared a Final Regulatory Impact Analysis, which describes the economic and other effects of the entire rulemaking. This analysis is available in the docket for the side-impact rulemaking. NHTSA anticipates that the reporting and record-keeping requirements will have a minimal impact on manufacturers.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking under the Regulatory Flexibility Act. I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, NHTSA has not prepared a regulatory flexibility analysis. Few, if any, passenger car manufacturers are considered small entities. Small organizations or governmental units will not likely be significantly affected. Any price increases associated with this final rule will be modest and should not affect the purchasing of new cars by these entities. Accordingly, no regulatory flexibility analysis has been prepared. The impact of the rest of the side impact rulemaking is discussed in other notices.

C. Paperwork Reduction Act

The reporting and recordkeeping requirements in this rule are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, these requirements have been submitted to the OMB for its approval under 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 in 49 CFR Part 586

PART 586

In Consideration of the foregoing, Chapter V, Title 49, Transportation, the *Code of Federal Regulations* is amended by adding a new Part 586 to read as follows:

PART 586

Side Impact Phase-in Reporting Requirements

Sec.

586.1 Scope.

586.2 Purpose.

586.3 Applicability.

586.4 Definitions.

586.5 Reporting requirements.

586.6 Records.

586.7 Petition to extend period to file report.

Authority: 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50.

§ 586.1 *Scope.*

This section establishes requirements for passenger car manufacturers to submit a report, and maintain records related to the report concerning the number of passenger cars manufactured that meet the dynamic test procedures and performance requirements of Standard No. 214, *Side Impact Protection* (49 CFR Part 571.214).

§ 586.2 *Purpose.*

The purpose of the reporting requirements is to aid the National Highway Traffic Safety Administration in determining whether a passenger car manufacturer has complied with the requirements of Standard No. 214 of this Chapter (49 CFR 571.214) concerning dynamic test procedures and performance requirements concerning side impact protection.

586.3 *Applicability.*

This part applies to manufacturers of passenger cars.

586.4 *Definitions.*

(a) All terms defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391) are used in their statutory meaning.

(b) "Passenger car" is used as defined in 49 CFR Part 571.3.

(c) "Production year" means the 12-month period between September 1 of one year and August 31 of the following year, inclusive.

586.5 *Reporting requirements.*

(a) *General reporting requirements.* Within 60 days after the end of each of the production years ending August 31, 1994, August 31, 1995, and August 31, 1996, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirements of S3(c) of Standard No. 214 for its passenger cars produced in that year. Each report shall—

(1) Identify the manufacturer;

(2) State the full name, title, and address of the official responsible for preparing the report;

(3) Identify the production year being reported on;

(4) Contain a statement regarding whether or not the manufacturer complied with the dynamic testing and performance requirements of the amended Standard No. 214 for the period covered by the report and the basis for that statement;

(5) Provide the information specified in § 586.5(b), except that this information need not be submitted with the report due 60 days after August 31, 1994 if the manufacturer chooses the compliance option specified in S3(d) of 49 CFR 571.214;

(6) Be written in the English language, and

(7) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, D.C. 20590.

(b) *Report content—(1) Basis for phase-in production goals.* Each manufacturer shall provide the number of passenger cars manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the current production year. A new manufacturer that is, for the first time, manufacturing passenger cars for sale in the United States must report the number of passenger cars manufactured during the current production year.

(2) *Production.*

Each manufacturer shall report for the production year being reported on, and each preceding production year, to the extent that cars produced during the preceding years are treated under Standard No. 214 as having been produced during the production year being reported on, information on the number of passenger cars that meet the dynamic test procedure and performance requirements of S5 and S6 of Standard No. 214.

(3) *Passenger cars produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by S8.4.2 of Standard No. 214 shall:

(i) Report the existence of each contract, including the names of all parties to the contract, and explain how the contract affects the report being submitted.

(ii) Report the actual number of passenger cars covered by each contract.

§ 586.6 *Records.*

Each manufacturer shall maintain records of the Vehicle Identification Number for each passenger car for which information is reported under § 586.5(b)(2) until December 31, 1997.

§ 586.7 *Petition to extend period to file report.*

A petition for extension of the time to submit a report must be received not later than 15 days before expiration of the time stated in §586.5(a). The petition must be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, D.C. 20590. The filing of a petition does not automatically extend the time for filing a report. A petition will be granted only if the petitioner shows good cause for the extension and if the extension is consistent with the public interest.

Issued on: October 24, 1990.

Jerry Ralph Curry
Administrator

55 F.R. 45768
October 30, 1990

PREAMBLE TO AN AMENDMENT TO PART 586 Side Impact Protection

(Docket No. 88-06; Notice 17)
RIN: 2127-AE05

ACTION: Final rule; corrections.

SUMMARY: On September 17, 1991, NHTSA published in the *Federal Register* a final rule which corrected minor errors in the agency's October 1990 final rules concerning dynamic side impact requirements for passenger cars. The final rule also established an effective date for side impact phase-in reporting requirements. Today's final rule corrects two errors that were made in the September 17, 1991 final rule. First, Figure 2 of Standard No. 214, Side Impact Protection, which provides a schematic of the moving deformable barrier used in the dynamic side impact test, is corrected to include certain specifications that were inadvertently omitted. Second, the final rule establishes an effective date for certain of the side impact phase-in reporting requirements that were inadvertently not covered by the September 1991 final rule.

EFFECTIVE DATE: The amendments in this document and §586.5, published at 55 FR 45770 on October 30, 1990, are effective June 22, 1992.

SUPPLEMENTARY INFORMATION: On October 30, 1990, NHTSA published in the *Federal Register* (55 FR 45722) a final rule adding dynamic test procedures and performance requirements to Standard No. 214, *Side Impact Protection*. The dynamic test requirements of Standard No. 214 are phased in over a three-year period, beginning on September 1, 1993. At the same time, NHTSA also published final rules: (1) establishing the specifications for the side impact dummy to be used in the dynamic crash test (55 FR 45757), (2) establishing the attributes of the moving deformable barrier (MDB) to be used in the dynamic crash test (55 FR 45770), and (3) establishing the reporting and recordkeeping requirements necessary for NHTSA to enforce the phase-in of the new dynamic requirements.

On September 17, 1991, NHTSA published in the *Federal Register* (56 FR 47007) a final rule which corrected minor errors in the October 1990 final rules. The final rule also amended the regulation establishing reporting and recordkeeping requirements, 49 CFR Part 586, *Side Impact Phase-In Reporting Requirements*, to establish an effective date for the regulation's information collection requirements and Budget (OMB) approval number assigned under the Paperwork Reduction Act.

Ford submitted a petition for reconsideration of the September 17, 1991 final rule, expressing concern that in revising the schematic of the MDB used in the dynamic side impact test (Figure 2 of Standard No. 214), NHTSA omitted specifications for face plate thickness, material strength, and aluminum alloy that were included in the earlier version of the schematic. That company stated that if the omission of the specifications was inadvertent, its letter should be considered a request for correcting the specifications promptly so that the existing ambiguity is eliminated.

In a letter dated December 17, 1991, NHTSA advised Ford that the omission of the specifications in the schematic of the MDB was inadvertent and that the agency planned to publish a correction notice. Today's final rule corrects Figure 2 of Standard No. 214 by adding the specifications that were inadvertently omitted in the September 17, 1991 final rule.

NHTSA is also setting an effective date for §586.5 of Part 586. That section was inadvertently not made effective in the September 1991 final rule. In addition, in order to make Part 586 consistent with the rest of NHTSA's regulations, the agency is removing the OMB control number from §586.6. It is NHTSA's standard practice to publish the OMB control numbers for all of its regulations in a single place, 49 CFR Part 509.

OMB Control Number for Information Collection Requirements.

Today's amendments are effective 30 days after publication of this document in the *Federal Register*. The amendments are merely technical corrections of the final rule that was published on September 17, 1991, which itself made technical corrections of final rules published on October 30, 1990. Today's amendments do not impose any new substantive requirements. Therefore, NHTSA finds for good cause that notice and comment on these amendments are unnecessary. Because of the non-substantive nature of the amendments,

NHTSA also finds for good cause that making the rule 30 days after publication is in the public interest.

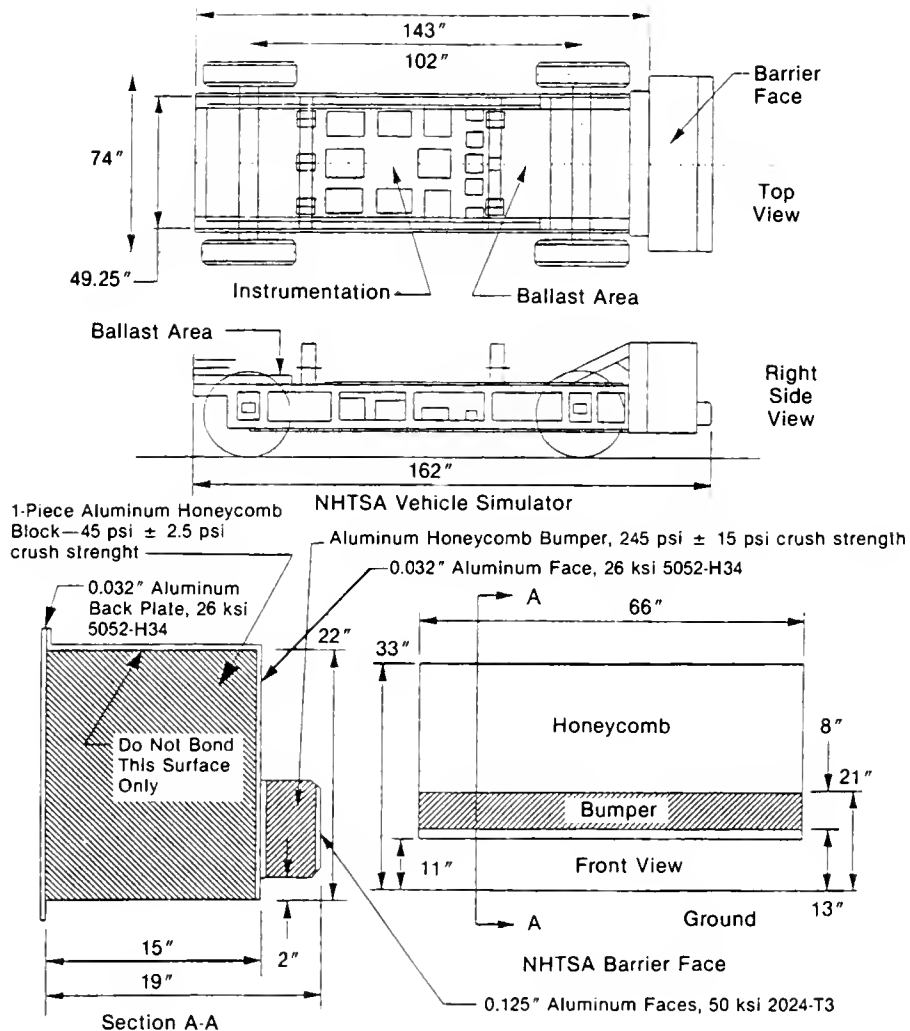
In consideration of the foregoing, 49 CFR Parts 571 and 586 are amended as follows:

PART 571—[AMENDED]

1. The authority section for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407, delegation of authority at 49 CFR Part 1.50.

2. Figure 2 of § 571.214 is revised as follows:



**Howard Smolkin
Executive Director**

57 F.R. 21613
May 21, 1992

PREAMBLE TO AN AMENDMENT TO PART 586 Side Impact Phase-in Reporting Requirements

(Docket No. 88-06; Notice 19)
RIN: 2127-AE32

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: On June 14, 1991, NHTSA published in the *Federal Register* (56 FR 27427) a final rule extending the quasistatic side door strength requirements of Federal Motor Vehicle Safety Standard No. 214, Side Impact Protection, to trucks, buses and multipurpose passenger vehicles with a gross vehicle weight rating of 10,000 pounds or less. The agency established an effective date of September 1, 1993 for the extension of these requirements. NHTSA received one petition for reconsideration of the final rule, from General Motors (GM). The petitioner requested that the agency phase-in the new requirements instead of applying them to all of the newly covered vehicles simultaneously. In response to GM's petition, NHTSA is establishing a brief phase-in period for the new requirements and is delaying by one year the effective date for double opening cargo doors, doors with no windows, and certain contoured doors. The agency notes, however, that it is adopting a different phase-in schedule from that suggested by the petitioner. NHTSA is also establishing the reporting and recordkeeping requirements necessary for it to enforce the phase-in. Finally, NHTSA is adopting a phase-in exclusion for vehicles manufactured in two or more stages and for altered vehicles.

DATES: The amendments in this final rule are effective September 1, 1993. NHTSA notes, however, that the amendments to Standard No. 214 have the effect of providing an additional year's leadtime for certain doors and vehicles.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1991, NHTSA published in the *Federal Register* (56 FR 27427) a final rule extending the quasistatic side door strength

requirements of Federal Motor Vehicle Safety Standard No. 214, Side Impact Protection, to trucks, buses and multipurpose passenger vehicles (MPV's) with a gross vehicle weight rating of 10,000 pounds or less. (These vehicles are collectively referred to as "LTV's.") The agency established an effective date of September 1, 1993 for the extended applicability of the requirements, thus providing a leadtime of just over two years from the time of the final rule. Certain side doors, including ones that are more than a specified distance away from seats and therefore unlikely to have vehicle occupants sitting near them, were excluded from the coverage of the standard.

Standard No. 214's quasi-static requirements, which have applied to passenger cars since January 1, 1973, seek to mitigate occupant injuries in side impacts by reducing the extent to which the side structure of a vehicle is pushed into the passenger compartment during a side impact. The requirements specify that side doors must resist crush forces that are applied against the door's outside surface in a laboratory test. The load is applied by means of a piston pressing a vertical steel cylinder against the middle of the door. Since car manufacturers have generally chosen to meet the requirements by reinforcing the side doors with metal beams, the agency expects that LTV manufacturers will generally do the same.

Petition for Reconsideration

NHTSA received one petition for reconsideration of the final rule extending Standard No. 214's quasi-static side door strength requirements to LTV's, from General Motors (GM). The petitioner requested that, instead of making the requirements effective for all LTV's on September 1, 1993, the agency provide the following phase-in: 75 percent of LTV's manufactured in the production year beginning September 1, 1993, 90 percent of LTV's manufactured in the produc-

tion year beginning September 1, 1994, and 100 percent of LTV's effective September 1, 1995.

GM stated that a phase-in of the requirements is essential for two reasons. First, that company noted that the agency has not yet established the test requirements for double cargo doors and for doors with no windows. GM stated that until the test requirements for double cargo doors and doors without windows are known, it cannot design the modifications needed to meet the requirements for those doors. According to the petitioner, the modifications may include structural or hardware changes as well as the installation of side door beams. GM stated that two years is an absolute minimum leadtime, barely allowing for validation of the design, and thus leaving inadequate time for other considerations such as cost and mass optimization.

GM also argued that because the requirements for some types of side doors are not yet completed, manufacturers cannot yet modify a vehicle to meet the requirements for all available types of side doors in one design iteration. According to GM, manufacturers generally implement design changes on all like models based on the most severe test requirements. Thus, if GM designed a particular model with sliding doors to meet Standard No. 214 and the test requirements for doors without windows or for double cargo doors later turned out to have the most severe implications on product design (e.g., required structural changes), GM's first redesign would be obsolete. The company indicated that a phase-in would help address this concern.

The second reason cited by GM in support of its argument that a phase-in is needed is the possible interaction between the requirements of Standard No. 214 and other safety standards, especially Standard No. 208, Occupant Crash Protection. GM argued that such interaction may require longer leadtime for some vehicles. (Under Standard No. 208, vehicles must meet specified injury criteria, including a head injury criterion (HIC), measured on test dummies in frontal barrier crash tests.)

According to GM, side door beams installed to meet Standard No. 214 can change a vehicle's frontal barrier performance enough to necessitate retesting to recertify the vehicles to Standard No. 208 and other standards. The company stated that the addition of door beams generally stiffens a vehicle's occupant compartment. While this usu-

ally helps reduce the likelihood of dummy head contacts in standard No. 208 testing, GM stated that its experience shows that stiffening the occupant compartment can also increase non-contact HICs in Standard No. 208 tests, particularly when using the Hybrid III test dummy (one of two alternative test dummies specified by the standard). In a meeting with NHTSA staff concerning its petition, GM provided data from crash tests for one model in which the addition of a roof reinforcement increased HIC from 930 to 1010, and the further addition of door beams raised HIC to 1250.

GM stated that the expected modifications for Standard No. 214 will substantially affect the performance in Standard No. 208 tests only in a minority of LTV models. The company argued, however, that some LTV models will likely need significant changes to achieve adequate performance in frontal barrier crashes because of crash pulse changes caused by the installation of side door beams and that it will not know which models need such changes until it completes the frontal barrier tests. GM argued that a phase-in is needed to provide the longer leadtime it believes is required to make the necessary design changes and conduct compliance testing for this group of LTV's.

The petitioner stated that the first year phase-in of 75 percent that it recommends would include all of a manufacturer's LTV's except perhaps one or two van models that have double cargo doors or doors without windows for which test requirements are not yet defined and/or one or two other LTV models that cannot be recertified to meet Standard No. 208 by September 1, 1993 if side door beams are added. GM stated that the second year phase-in of 90 percent that it recommends would include all of a manufacturer's LTV's except perhaps one small-volume LTV model that cannot yet be recertified to meet Standard No. 208 if side door beams are added.

GM also argued that its recommended phase-in would allow manufacturers to meet the new requirements with designs that are more optimized for cost and mass, and that are less likely to degrade other areas of vehicle performance. The company stated that manufacturers may use the phase-in to avoid diverting test and design resources from other important safety and crashworthiness projects, such as implementing air

bags in advance of the mandated automatic restraint phase-in. Finally, GM stated that it believes that its proposed phase-in is reasonable and meets the intent of the agency to extend Standard No. 214's side door strength requirements to LTV's promptly and practicably.

While GM was the only petitioner for reconsideration, Chrysler submitted a letter strongly urging that NHTSA grant 's petition and adopt the phase-in schedule recommended by GM. Chrysler stated that it shared GM's concern that the test requirements for double-opening side cargo doors and doors without windows will not be available in time for it to meet the requirements by September 1, 1993. That company stated that while it does not manufacture any full-size vans/wagons with such doors which are sufficiently close to seats to be covered by the standard, it manufactures many such vans with those types of doors that are sold to van converters who do install seats close to the doors. Chrysler stated that it therefore expects to be asked to provide vehicles that meet door crush requirements to these final stage manufacturers so that they can take advantage of "pass-through" certification. Also, Ford Motor Company expressed its support for a brief phase-in, in a meeting with Department officials.

Summary of Amendments Being Made in Response to GM's Petition

In response to GM's petition, NHTSA is amending Standard No. 214 in several respects. First, the agency is establishing a brief phase-in for the newly-extended requirements. For the production year beginning September 1, 1993, 90 percent of a manufacturer's LTV's will be required to meet the new requirements; 100 percent compliance will be required effective September 1, 1994. Second, NHTSA is delaying by one year, to September 1, 1994, the effective date of the requirements for double opening cargo doors and doors with no windows, since the test procedure for these doors has not yet been established. The agency is also delaying the effective date for certain contoured doors, since it has determined that the test procedure for these doors also needs clarification.

Since NHTSA is adopting a phase-in, it is also establishing the reporting and recordkeeping requirements necessary for the agency to enforce the phase-in. Similar requirements have been

adopted by the agency as an integral part of its phase-ins of other major new safety requirements. Finally, the agency is adopting a phase-in exclusion for vehicles manufactured in two or more stages and for altered vehicles.

Response to GM's Petition

Several commenters on NHTSA's proposal to extend Standard No. 214's side door strength requirements to LTV's requested a phase-in of the requirements. In the preamble to the June 1991 final rule, the agency addressed the related issues of leadtime and the appropriateness of a phase-in as follows:

"After considering [the] comments and other information, NHTSA has decided to make the new requirements effective on September 1, 1993. NHTSA has concluded that manufacturers need this time period to equip all LTV's with side door beams as standard equipment after the necessary design, tooling, and testing. In addition, final-stage manufacturers need this much time to decide how to certify compliance with the requirements. * * *

"NHTSA does not believe that additional leadtime or a phase-in is necessary. Door beam technology has been used with passenger cars since 1973. Further, a few LTV's are currently manufactured with side door beams. While Ford initially asserted that the installation of side door beams in one of its models would require major design changes, Ford has since developed a beam design which can be installed in the door of the specific model without a major design change." 56 FR 27436.

After considering GM's petition for reconsideration, however, NHTSA has concluded that GM's two primary arguments have merit and warrant changes in the standard's effective date. The agency's analysis of GM's arguments and a discussion of the changes being made in response to those arguments follow.

NHTSA agrees with GM's first main argument that the lack of test procedures for double-opening cargo doors and doors without windows makes it impossible for manufacturers to complete the necessary design modifications for these doors. The agency indicated in the June 1991 final rule that it expected "in the near future" to propose amendments to address test procedures for these doors. However, the development of the proposal took longer than expected, and it was

not published until January 15, 1992, with a comment closing date of March 16, 1992. See 57 FR 1716. Thus, the continuing lack of test procedures for these doors has cut much farther into the two-year leadtime period than expected. Assuming that a final rule is issued this summer or early Fall, the remaining leadtime would be little more than one year.

In order to ensure that the "practicability" requirements of the National Traffic and Motor Vehicle Safety Act are met and that manufacturers have sufficient leadtime for the necessary design, tooling, and testing of double-opening cargo doors and doors without windows, NHTSA has decided to extend the effective date for these doors by one year, to September 1, 1994. Assuming that the agency publishes a final rule concerning the test procedures some time this summer or early Fall, this will provide manufacturers with approximately two years leadtime for these doors.

NHTSA does not believe that GM's argument about its desire to modify all like models based on the most severe test requirements justifies relief beyond providing additional leadtime for the types of doors for which test procedures have not yet been established. First, even in the absence of the details of the test procedure, the agency believes that the performance requirements set forth in Standard No. 214 for double-opening cargo doors and doors without windows are sufficient for manufacturers to determine whether structural or other changes beyond adding a door beam will be required. Therefore, manufacturers should be able to determine whether these doors represent the most severe test requirement for a particular model and design other types of doors for the same model with that in mind, thereby avoiding a need for more than one design iteration. Second, given the safety benefits associated with this rulemaking, the agency believes that it would be inappropriate to delay application of the standard to types of doors for which design changes can easily be made merely to facilitate future compliance for other types of doors.

As discussed in the January 1992 notice of proposed rulemaking (NPRM) concerning test procedures for double-opening cargo doors and doors without windows, NHTSA has determined that clarification of the test procedure is also needed for certain contoured doors. The NPRM therefore

proposed amendments to clarify the test procedure for contoured doors.

Standard No. 214's test procedure works well when a door's lower edge is essentially horizontal along its entire length, or only a small portion of the door's lower edge deviates from that description by being contoured upward. Almost all passenger cars have doors of these types. However, as discussed in the January 1992 NPRM, the standard's test procedure is not appropriate when only a small portion of a door's lower edge is horizontal and the edge is contoured significantly upwards for a large part of the door. Some LTV's have such doors. Since, in the absence of clarifying amendments concerning test procedures, these doors pose similar difficulties concerning compliance as those for double-opening cargo doors and doors without windows, NHTSA is also extending the effective date for these doors to September 1, 1994.

After reviewing the information submitted by GM in support of its petition, NHTSA is also persuaded that the possible interaction between the requirements of Standard No. 214 and other safety standards, particularly Standard No. 208, may require longer leadtime for a few vehicles.

As indicated above, NHTSA concluded in the June 1991 final rule that manufacturers required about two years leadtime for the design, tooling and testing necessary to meet the new requirements, and that additional leadtime was not needed in light of the time side door beam technology has been used for passenger cars. The two-year period did not, however, account for the possibility that a few vehicles, after being redesigned for Standard No. 214, might require further redesign to ensure that they continue to meet the dynamic test requirements of Standard No. 208.

NHTSA does not consider it likely, for a particular LTV, that the addition of side door beams would increase HIC in Standard No. 208 testing. The occupant compartments of LTV's are generally stiffer than those of passenger cars, and any incremental stiffness that may result from the addition of side door beams is likely to be extremely small. Further, as indicated by GM, the stiffening of a vehicle's occupant compartment usually reduces the likelihood of dummy head contacts in frontal crash tests. For most current vehicles, this would be expected to reduce HIC. In addition, even if the addition of side door

beams did slightly raise noncontact HIC, this would only affect the compliance of vehicles with Standard No. 208 if the vehicles previously only marginally complied with the standard. The agency believes that the small possibility of a particular vehicle's HIC being increased by the addition of side door beams is demonstrated by the fact that no other manufacturer has presented information to the agency concerning the problem. Further, GM, in responding to the agency's request for data concerning this problem, provided data for only one vehicle.

NHTSA agrees, however, that the test data presented by GM demonstrate that the addition of side door beams may, for a few vehicles, sufficiently affect HIC that further redesign will be necessary to ensure that the vehicles continue to meet Standard No. 208.

The agency has therefore decided to establish a brief phase-in for the new requirements. Accordingly, for the production year beginning September 1, 1993, 90 percent of a manufacturer's LTV's will be required to meet the new requirements; 100 percent compliance will be required effective September 1, 1994. Thus, the agency is providing an extra year's leadtime for up to 10 percent of a manufacturer's production of LTV's.

NHTSA believes that the phase-in being adopted will provide sufficient flexibility to cover the possibility that the compliance of a few LTV's with Standard No. 208 could be affected by the addition of side door beams and therefore need further redesign. The agency has carefully reviewed the information provided by GM and does not believe that the number of vehicles that could be affected would exceed 10 percent of that company's annual LTV production. Further, given the small number of vehicles, if any, that would be involved, the agency believes that an additional year's leadtime is ample for a manufacturer to make any additional changes necessary to ensure continuing compliance with Standard No. 208. Finally, given the fact that the delay in effective date affects no more than 10 percent of a manufacturer's LTV production for a single year and that it appears that not all manufacturers would avail themselves of the phase-in, any reduction in safety benefits is minimized.

NHTSA notes that it is not adopting the specific phase-in recommended by the petitioner, i.e., 75 percent of LTV's for the production year beginning September 1, 1993, and 90 percent of

LTV's for the following year. The agency believes, for the reasons stated above, that the combination of delaying the effective date for double-opening cargo doors and doors without windows and the one-year phase-in adequately addresses the concerns raised by GM's two main arguments.

As indicated above, GM also asserted that its recommended phase-in would allow manufacturers to meet the new requirements with designs that are more optimized for cost and mass and that are less likely to degrade other areas of vehicle performance. That company also asserted that manufacturers may use the phase-in to avoid diverting test and design resources from other important safety and crashworthiness projects, such as implementing air bags in advance of the mandated automatic restraint phase-in. However, GM did not provide any evidence demonstrating that additional leadtime, beyond that provided by this final rule, is needed for design optimization or would result in any safety benefits by facilitating design improvements in other areas. In the absence of such evidence and given the reduced safety benefits that could result from a longer phase-in, the agency does not believe that a longer phase-in is appropriate.

In the NPRM proposing to extend the side door strength requirements of Standard No. 214 to LTV's, the agency requested that any commenters supporting a leadtime longer than two years address whether such longer leadtime is needed for all vehicles or whether the proposed amendments could be phased in for some vehicles at an earlier time. See 54 FR 52832, December 22, 1989. The agency thus addressed in the NPRM the possibility of a phase-in. Several commenters, including GM, Ford and the Motor Vehicle Manufacturers Association, supported a phase-in. Ford requested that the agency adopt in any final rule, provisions such as those in Standard No. 208 for production volumes, carryforward credits, and cars produced by more than one manufacturer.

While NHTSA did not discuss in the NPRM the specific requirements that would be associated with a phase-in, the agency has addressed that issue in three other rulemakings: (1) the establishment of Standard No. 208's automatic crash protection requirements for cars, (2) the extension of those requirements to LTV's, and (3) the establishment of Standard No. 214's dynamic side impact protection requirements for cars. In each

case, for example, reporting and recordkeeping requirements have been integral parts of the phase-ins. Given that the agency raised the possibility of a phase-in in the NPRM and the general understanding commenters had concerning how the agency implemented phase-ins in other rulemakings, NHTSA believes that the establishment of specific phase-in requirements along the lines of those in Standard No. 208 and Standard No. 214 (dynamic side impact requirements for passenger cars) are within the scope of notice for this rulemaking.

As suggested by Ford in its comment on the NPRM, the agency is including provisions similar to those in Standard No. 208 for production volumes and vehicles produced by more than one manufacturer. As in the case of the agency's phase-in of Standard No. 214's dynamic requirements for passenger cars, NHTSA is not, however, including the provisions for carry-forward credits. The purpose of the limited phase-in adopted in response to GM's petition is to provide an additional year's leadtime for up to 10 percent of a manufacturer's LTV production. Carryforward credits are unnecessary to meet this purpose. Further, some LTV's already meet the requirements of Standard No. 214, and a provision permitting manufacturers to count such vehicles toward the 90 percent one-year requirement could unnecessarily dilute that requirement, resulting in reduced safety benefits.

NHTSA is also establishing the reporting and recordkeeping requirements necessary for the agency to enforce the phase-in. The requirements are similar to those adopted for Standards No. 208 and No. 214, although only a single report is required since the phase-in is for one year. For a further explanation of the agency's rationale for the specific requirements, see the preamble to the final rule establishing those requirements for the phase-in of Standard No. 214's dynamic requirements for passenger cars (56 FR 45768, October 30, 1990).

As the agency recognized for the phase-in of Standard No. 208's automatic restraint requirements for LTV's, a phase-in of requirements for LTV's has the possibility of creating significant problems for many final stage manufacturers and alterers. Like other manufacturers, final stage manufacturers and alterers must certify that their vehicles meet all applicable safety standards. Many of these manufacturers are small businesses

and typically complete or modify vehicles based on instructions from the major manufacturers, as a basis for certification.

The potential problems that could be caused by applying a phase-in requirement to these manufacturers can be illustrated by considering the case of a van converter which purchases vans from GM, Ford or Chrysler and then alters them for the specialty market. If the one-year 90 percent phase-in requirement were applied to van converters, each van converter would need to ensure that 90 percent of the vans it altered complied with Standard No. 214. However, many van converters are very small and only alter a few vans each year. If the vehicles a particular van converter wanted to alter happened to be ones for which GM, Ford or Chrysler determined that the extra year's leadtime permitted by the phase-in was needed, it is highly unlikely the van converter could make the necessary design changes to those vehicles to certify that they would meet Standard No. 214.

In light of the potential problems that the phase-in could cause for final stage manufacturers and alterers, NHTSA is excluding LTV's manufactured in two or more stages and LTV's that are altered from Standard No. 214's requirements during the phase-in. This is the same approach that the agency followed for the phase-in of Standard No. 208's automatic crash protection requirements for LTV's. See 56 FR 12479-80, March 26, 1991. Because of this exclusion, this rule also permits original manufacturers the option to either include or exclude their LTV's that are sent to second stage manufacturers and alterers, when determining compliance during the phase-in for Standard No. 214.

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

In consideration of the foregoing, Parts 571 and 586 of Title 49 of the Code of Federal Regulations are amended as follows:

Part 571—[AMENDED]

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

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In S571.214, S2.1, as added at 56 FR 27437, June 14, 1991, effective September 1, 1993, is revised to read as follows:

S2.1. Definitions.

Double cargo doors means a pair of hinged doors with the lock and latch mechanisms located where the door lips overlap.

Walk-in van means a van in which a person can enter the occupant compartment in an upright position.

3. In S571.214, S3, as revised at 56 FR 27437, June 14, 1991, effective September 1, 1993, is amended by revising S3(a) and adding new S3(e)(5) through S3(e)(7) to read as follows:

S3. Requirements. (a)(1) Except as provided in section S3(e), each passenger car shall be able to meet the requirements of either, at the manufacturer's option, S3.1 or S3.2, when any of its side doors that can be used for occupant egress is tested according to S4.

(2) Except as provided in section S3(e), each multipurpose passenger vehicle, truck and bus manufactured on or after September 1, 1994 shall be able to meet the requirements of either, at the manufacturer's option, S3.1 or S3.2, when any of its side doors that can be used for occupant egress is tested according to S4.

(3) Except as provided in section S3(e), from September 1, 1993 to August 31, 1994, at least 90 percent of each manufacturer's combined yearly production of multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less, as set forth in S9, shall be able to meet the requirements of either, at the manufacturer's option, S3.1 or S3.2, when any of its side doors that can be used for occupant egress is tested according to S4.

* * * * *

(e) * * *

(5) for multipurpose passenger vehicles, trucks, and buses manufactured before September 1, 1994, any double cargo doors.

(6) for multipurpose passenger vehicles, trucks, and buses manufactured before September 1, 1994, any doors without one or more windows.

(7) for multipurpose passenger vehicles, trucks, and buses manufactured before September 1, 1994, any doors for which the ratio of the width of the lowest portion of the door to the width of the door at its widest point is not greater than 0.5. The width of the door is measured in a horizontal plane and on the outside surface of the door. The lowest portion of the door is that portion of the lower edge of the door which is lowest to the ground and which is essentially horizontal.

* * * * *

4. In S571.214, S9 through S9.2.3 are added to read as follows:

S9. Phase-in of side door strength requirements for multipurpose passenger vehicles, trucks and buses.

S9.1 Multipurpose passenger vehicles, trucks and buses manufactured on or after September 1, 1993 and before September 1, 1994.

S9.1.1 The combined number of multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less complying with the requirements of S3(a)(3) shall not be less than 90 percent of:

(a) The average annual production of multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less manufactured on or after September 1, 1990 and before September 1, 1993 by each manufacturer, or

(b) The manufacturer's annual production of multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less during the period specified in S9.1.

S9.1.2 Walk-in vans, vehicles which do not have any side doors that can be used for occupant egress, vehicles which exclusively have doors of the types specified in S3(e), and vehicles specified in S9.2.3 may be excluded from all calculations of compliance with S9.1.1.

S9.2 Multipurpose passenger vehicles, trucks and buses produced by more than one manufacturer.

S9.2.1 For the purposes of calculating average annual production of multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less for each manufacturer and the number of multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less manufactured by each manufacturer under S9.1.1, a vehicle produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S9.2.2:

(a) A vehicle which is imported shall be attributed to the importer.

(b) A vehicle manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer which markets the vehicle.

S9.2.2 A vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR Part 586, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S9.2.1.

S9.2.3 Each multipurpose passenger vehicle, truck and bus with a GVWR of 10,000 pounds or less that is manufactured in two or more stages or that is altered (within the meaning of S567.7 of this chapter) after having previously been certified in accordance with Part 567 of this chapter is not subject to the requirements of S3(a)(3).

Part 586 [AMENDED]

5. The authority citation for Part 586 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR Part 1.50.

6. Section 586.1 is revised to read as follows:

S586.1 Scope.

This part establishes requirements for passenger car manufacturers to submit a report, and maintain records related to the report, concerning the number of passenger cars manufactured that meet the dynamic test procedures and performance requirements of Standard No. 214, Side Impact Protection (49 CFR 571.214), and it establishes

requirements for manufacturers of multipurpose passenger vehicles, trucks and buses with a gross vehicle weight rating (GVWR) of 10,000 pounds or less to submit a report, and maintain records related to the report, concerning the number of such vehicles that meet the side door strength requirements of Standard No. 214.

7. Section 586.2 is revised to read as follows:

S586.2 Purpose.

The purpose of the reporting requirements is to aid the National Highway Traffic Safety Administration in determining whether a passenger car manufacturer has complied with the requirements of Standard No. 214, Side Impact Protection (49 CFR 571.214) concerning dynamic test procedures and performance requirements concerning side impact protection, and whether a manufacturer of multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less has complied with the side door strength requirements of Standard No. 214.

8. Section 586.3 is revised to read as follows:

S586.3 Applicability.

This part applies to manufacturers of passenger cars and to manufacturers of multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less. However, this part does not apply to any manufacturers of multipurpose passenger vehicles, trucks and buses whose production consists exclusively of walk-in vans, vehicles which do not have any side doors that can be used for occupant egress, vehicles which exclusively have doors of the types specified in S3(e) of 49 CFR 571.214, vehicles manufactured in two or more stages, and vehicles that are altered after previously having been certified in accordance with Part 567 of this chapter.

9. Section 586.4 is amended by revising paragraph (b) to read as follows:

S586.4 Definitions.

* * * * *

(b) Bus, gross vehicle weight rating or GVWR, multipurpose passenger vehicle, passenger car, and truck are used as defined in S571.3 of this chapter.

* * * * *

10. Section 586.5 is amended by revising the heading to read as follows:

S586.5 Reporting requirements—manufacturers of passenger cars.

* * * * *

11. Section 586.6 is amended by revising the heading to read as follows:

S586.6 Records—passenger cars.

* * * * *

12. Section 586.7 is redesignated as section 586.9 and revised to read as follows:

S586.9 Petition to extend period to file report.

A petition for extension of the time to submit a report must be received not later than 15 days before expiration of the time stated in § 586.5(a) or § 586.7 (a). The petition must be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. The filing of a petition does not automatically extend the time for filing a report. A petition will be granted only if the petitioner shows good cause for the extension and if the extension is consistent with the public interest.

13. Sections 586.7 and 586.8 are added to read as follows:

S586.7 Reporting requirements—manufacturers of trucks, buses and multipurpose passenger vehicles.

(a) *General reporting requirements.* Within 60 days after the end of the production year ending August 31, 1994, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirements of S3(a) of Standard No. 214 for its trucks, buses and multipurpose passenger vehicles produced in that year. Each report shall—

- (1) Identify the manufacturer;
- (2) State the full name, title, and address of the official responsible for preparing the report;
- (3) Contain a statement regarding whether or not the manufacturer complied with S3(a)(3) of Standard No. 214 and the basis for that statement;
- (4) Provide the information specified in § 586.7(b);
- (5) Be written in the English language; and

(6) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(b) *Report content—*(1) *Basis for phase-in production goals.* Each manufacturer shall provide the number of trucks, buses and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the current production year. A new manufacturer that has not previously manufactured trucks, buses and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less for sale in the United States must report the number of such vehicles manufactured during the current production year.

(2) *Production.* Each manufacturer shall report the number of multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less that meet the side door strength requirements (S3.1 or S3.2) of Standard No. 214.

(3) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by 59.2.2 of Standard No. 214 shall:

- (i) Report the existence of each contract, including the names of all parties to the contract, and explain how the contract affects the report being submitted.
- (ii) Report the actual number of vehicles covered by each contract.

S586.8 Records—multipurpose passenger vehicles, trucks and buses.

Each manufacturer shall maintain records of the Vehicle Identification Number for each multipurpose passenger vehicle, truck and bus for which information is reported under § 586.7(b)(2) until December 31, 1996.

Issued on: July 7 1992.

**Frederick H. Grubbe,
Deputy Administrator.**

**57 F.R. 30917
July 13, 1992**

PART 586—SIDE IMPACT PHASE-IN REPORTING REQUIREMENTS

S586.1 Scope.

This part establishes requirements for passenger car manufacturers to submit a report, and maintain records related to the report, concerning the number of passenger cars manufactured that meet the dynamic test procedures and performance requirements of Standard No. 214, *Side Impact Protection* (49 CFR 571.214). [and it establishes requirements for manufacturers of multipurpose passenger vehicles, trucks and buses with a gross vehicle weight rating (GVWR) of 10,000 pounds or less to submit a report, and maintain records related to the report, concerning the number of such vehicles that meet the side door strength requirements of Standard No. 214. (57 F.R. 30917—July 13, 1992. Effective: September 1, 1993)]

S586.2 Purpose.

The purpose of the reporting requirements is to aid the National Highway Traffic Safety Administration in determining whether a passenger car manufacturer has complied with the requirements of Standard No. 214, *Side Impact Protection* (49 CFR 571.214) concerning dynamic test procedures and performance requirements concerning side impact protection. [and whether a manufacturer of multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less has complied with the side door strength requirements of Standard No. 214. (57 F.R. 30917—July 13, 1992. Effective September 1, 1993.)]

S586.3 Applicability.

This part applies to manufacturers of passenger cars, [and to manufacturers of multipurpose passenger vehicles, trucks and buses with a GWR of 10,000 pounds or less. However, this part does not apply to any manufacturers of multipurpose passenger vehicles, trucks and buses whose production consists exclusively of walk-in vans, vehicles which do not have any side doors that can be used for occupant egress, vehicles which exclusively have doors of the types specified in S3(e) of 49 CFR 571.214, vehicles manufactured in two or more stages, and vehicles that are

altered after previously having been certified in accordance with part 567 of this chapter. (57 F.R. 330917—July 13, 1992. Effective: September 1, 1993)]

S586.4 Definitions.

(a) All terms defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391) are used in their statutory meaning.

(b) [Bus, gross vehicle weight rating or GVWR, multipurpose passenger vehicle, passenger car, and truck are used as defined in § 571.3 of this chapter. (57 F.R. 30917—July 13, 1992. Effective: September 1, 1993)]

(c) *Production year* means the 12-month period between September 1 of one year and August 31 of the following year, inclusive.

S586.5 Reporting requirements—manufacturers of passenger cars. (57 F.R. 30917—July 13, 1992. Effective: September 1, 1993)]

(a) *General reporting requirements.* Within 60 days after the end of each of the production years ending August 31, 1994, August 31, 1995, and August 31, 1996, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirements of S3(c) of Standard No. 214 for its passenger cars produced in that year. Each report shall—

- (1) Identify the manufacturer.
- (2) State the full name, title, and address of the official responsible for preparing the report;
- (3) Identify the production year being reported on;
- (4) Contain a statement regarding whether or not the manufacturer complied with the dynamic testing and performance requirements of the amended Standard No. 214 for the period covered by the report and the basis for that statement;
- (5) Provide the information specified in S586.5(b), except that this information need not be submitted with the report due 60 days after August 31, 1994 if the manufacturer chooses the

compliance option specified in 53(d) of 49 CFR 571.214;

(6) Be written in the English language; and

(7) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

(b) *Report contents*—

(1) *Basis for phase-in production goal.* Each manufacturer shall provide the number of passenger cars manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the current production year. A new manufacturer that is, for the first time, manufacturing passenger cars for sale in the United States must report the number of passenger cars manufactured during the current production year.

(2) *Production.*

Each manufacturer shall report for the production year being reported on, and each preceding year, to the extent that cars produced during the preceding years are treated under Standard No. 214 as having been produced during the production year being reported on, information on the number of passenger cars that meet the dynamic test procedure and performance requirements of S5 and S6 of Standard No. 214.

(3) *Passenger cars produced by more than one manufacturer.*

Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by § 58.4.2. of Standard No. 214 shall:

(i) Report the existence of each contract, including the names of all parties to the contract, and explain how the contract affects the report being submitted.

(ii) Report the actual number of passenger cars covered by each contract.

S586.6 Records [—passenger cars. (57 F.R. 30917—July 15, 1992. Effective: September 1, 1993)]

Each manufacturer shall maintain records of the Vehicle Identification Number for each passenger car for which information is reported under § 586.5 until December 31, 1998.

S586.7 Reporting requirements—manufacturers of trucks, buses and multipurpose passenger vehicles.

(a) *General reporting requirements.* Within 60 days after the end of the production year ending August 31, 1994, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirements of 53(a) of Standard No. 214 for its trucks, buses and multipurpose passenger vehicles produced in that year. Each report shall—

(1) Identify the manufacturer;

(2) State the full name, title, and address of the official responsible for preparing the report;

(3) Contain a statement regarding whether or not the manufacturer complied with 53(a) (3) of Standard No. 214 and the basis for that statement;

(4) Provide the information specified in § 586.7(b);

(5) Be written in the English language; and

(6) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

(b) *Report content*—(1) *Basis for phase-in production goals.* Each manufacturer shall provide the number of trucks, buses and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the current production year. A new manufacturer that has not previously manufactured trucks, buses and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less for sale in the United States must report the number of such vehicles manufactured during the current production year.

(2) *Production.* Each manufacturer shall report the number of multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less that meet the side door strength requirements (S3.1 or S3.2) of Standard No. 214.

(3) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by S9.2.2 of Standard No. 214 shall:

(i) Report the existence of each contract, including the names of all parties to the contract,

and explain how the contract affects the report being submitted.

(ii) Report the actual number of vehicles covered by each contract. (57 F.R. 30917—July 13, 1992. Effective: September 1, 1993)

S586.8 Records—multipurpose passenger vehicles, trucks and buses.

Each manufacturer shall maintain records of the Vehicle Identification Number for each multipurpose passenger vehicle, truck and bus for which information is reported under § 586.7(b)(2) until December 31, 1996. (57 F.R. 30917—July 13, 1992. Effective: September 1, 1993)

S586.9 Petition to extend period to file report.

A petition for extension of the time to submit a report must be received not later than 15 days

before expiration of the time stated in S586.5(a) [or S586.7(a)]. The petition must be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. The filing of a petition does not automatically extend the time for filing a report. A petition will be granted only if the petitioner shows good cause for the extension and if the extension is consistent with the public interest. (57 F.R. 30917—July 13, 1992. Effective: September 1, 1993)

**55 F.R. 45768
October 30, 1990**

PREAMBLE TO AN AMENDMENT TO PART 587

Moving Deformable Barrier (Docket 88-06; Notice 9) RIN 2127-AB86

ACTION: Final rule.

SUMMARY: This notice establishes specifications for the weight dimensions, stiffness, and other attributes of the moving deformable barrier that is to be used in the dynamic, barrier-to-car crash test specified under the amendments to Standard No. 214, *Side Impact Protection*, which appear elsewhere in today's *Federal Register*. NHTSA proposed the specifications for the moving deformable barrier on January 27 1988

DATES: The amendments made by this final rule to the *Code of Federal Regulations* are effective November 29, 1990. However, the substantive requirements of the revised Standard No. 214 are phased in over a three-year period beginning on September 1, 1993. Compliance will be required for all new cars manufactured on or after September 1, 1996.

SUPPLEMENTARY INFORMATION:

I. Background

On January 27, 1988, NHTSA proposed to amend Standard No. 214 to supplement the existing quasi-static test procedures and performance requirements with dynamic test procedures and performance requirements for passenger cars. The proposed test procedure was a dynamic simulation of a vehicle striking a car in the side in a typical intersection side impact crash. That notice also proposed to use a moving deformable barrier (MDB) developed by NHTSA in the proposed test procedure. The barrier was described in the preamble of the proposed rule and complete design drawings of the MDB were placed in a rulemaking docket and were available for public comment.

Elsewhere in today's *Federal Register* NHTSA publishes a final rule adopting the dynamic test amendments to Standard No. 214. Under that rule, two alternative compliance schedules are established, the choice of which is at the option of the manufacturer.

Under the first schedule, each manufacturer of passenger cars will have to meet the new side impact performance requirements based on the following phase-in schedule:

- 10 percent of automobiles manufactured during the 12 month period beginning September 1, 1993;
- 25 percent of automobiles manufactured during the 12 month period beginning September 1, 1994;
- 40 percent of automobiles manufactured during the 12 month period beginning September 1, 1995; and

all automobiles manufactured on or after September 1, 1996. Under the other schedule, no compliance will be required during the production year beginning September 1, 1993, but full implementation will be required effective September 1, 1994.

This notice describes the MDB that is to be used for the new test procedures established as part of the amendments to Standard No. 214. The description of the MDB will be codified in a new Part 587, *Moving Deformable Barrier*, The MDB adopted in this final rule is the same as the one described in the January 27, 1988 proposal to amend Standard No 214.

II. Description of the Moving Deformable Barrier

The MDB described in this rule is a steel structure with a 102 inch wheelbase, a 63 inch track width, and two aluminum honeycomb blocks on the front. This latter feature is to simulate the energy absorption characteristics of a striking vehicle. One block has a high compression strength of 245 pounds per square inch (psi), is 4 inches by 8 inches by 66 inches and its centerline is mounted 17 inches above the ground to simulate the bumper/frame of the striking vehicle. The other honeycomb block has considerably lower compressive strength (45 psi), is 15 inches by 22 inches by 66 inches, and is used to simulate the softer, front-end structure of the striking vehicle. The front and rear wheels of the MDB can be turned to accommodate the impact angle specified in amended Standard No. 214.

The following are the inertial properties of the NHTSA MDB in configuration 2 (with two cameras and camera mounts and a light trap vane and ballast reduced). The weight is 3,015 pounds, the track width is 63 inches, and the wheelbase is 102 inches.

The center of gravity is as follows:

- X = 44.2 inches rear of front axle
- Y = 0.3 inches left of longitudinal center line
- Z = 19.7 inches from ground.

The moments of inertia are as follows:

- Pitch = 1669 ft-lb-sec²
- Roll = 375 ft-lb-sec²
- Yaw = 1897 ft-lb-sec²

The drawings and specifications for the MDB, which are incorporated by reference in the final rule, specify the use of Narmco 117 bonding film, or an equivalent, for bonding the honeycomb structure of the MDB. NHTSA understands that Narmco 117 bonding film meets the minimum requirements for Type I Class 2 adhesives under the Military Specification for Adhe-

sives under the Military Specification for Adhesive. Film Form, Metallic Structural Sandwich Construction (MIL-A-25463b, March 31, 1982). Any adhesive which has characteristics equivalent to those of the Narmco 117 bonding film may be used for bonding the honeycomb structure. This would include but is not necessarily limited to, those adhesives which meet the Type I Class 2 requirements under the Military Specification.

III. Brief Summary of Comments on Proposed MDB

NHTSA received many comments concerning the MDB. The following briefly summarizes those comments. NHTSA more fully summarizes and responds to the comments later in this notice and in the Final Regulatory Impact Analysis. A number of commenters advocated the adoption of one of the barriers developed in Europe instead of the NHTSA MDB. Some commenters favored the barrier developed by the European Experimental Vehicle Committee (EEVC), while others favored the barrier developed by the Committee of Common Market Automobile Constructors (CCMC).

A number of commenters suggested a different weight for the MDB. Some commenters thought that the weight should be increased to be more consistent with the weight of the average light truck. Others supported a lower barrier weight, more consistent with the weight of the barriers developed in Europe.

Some commenters suggested a different height for the bumper of the MDB. Some recommended a bumper height similar to that of a light truck.

A number of commenters criticized the dimensions of the MDB's honeycomb face. Some commenters suggested a different width or height above the ground. Others preferred the shape and dimensions of a barrier face developed in Europe.

Some commenters were concerned about the stiffness of the aluminum honeycomb barrier face. Some believed that the barrier was stiffer than the majority of passenger cars and thought that the barrier should be more representative of passenger cars. Others suggested that NHTSA consider a rigid moving barrier.

Some commenters also believed that the bumper of the MDB was too stiff. Some commenters supported a dynamic force-deflection specification for the MDB barrier face. A few commenters stated that the variability of the barrier face stiffness can be significant.

IV. Barrier Weight

NHTSA proposed a side impact compliance test procedure which simulates a typical two-vehicle side impact collision and employs a 3,000 pound MDB as the striking or "bullet" vehicle. As discussed in the proposal, NHTSA set the weight of the barrier to be representative of the weight of future vehicles expected to be involved as the striking vehicle in side impact

crashes in the United States. In the proposal, NHTSA stated that in multiple vehicle accidents resulting in serious injuries and fatalities, passenger cars and light/medium/heavy trucks are about equally likely to be the striking vehicle. As stated in the proposal, NHTSA derived the weight of the barrier from the median curb weight of passenger cars (3,127 pounds in 1986) and light trucks (3,813 pounds in 1986). This resulted in a weighted average of 3,423 pounds, which was adjusted downward to account for the projected lower weight of vehicles in the 1990s. Based on these considerations, NHTSA derived a barrier weight of 3,000 pounds, representing a 2,700 pound vehicle and 300 pounds for passengers and cargo.

NHTSA believes that it is appropriate to use a barrier weight that is based, in part, on the higher weight of light trucks since light trucks are involved as the striking vehicle in a significant percentage of side impact collisions. NHTSA analyzed Fatal Accident Reporting System (FARS) data from 1984 to 1988 for fatal side impact collisions in which a passenger car was the struck vehicle. Based on this analysis, NHTSA determined that collisions involving passenger cars as the striking vehicle type accounted for 47.4 percent of the fatalities, while striking light trucks/vans (LTV's) accounted for 31.3 percent, and striking medium/heavy duty vehicles accounted for 19 percent of the fatalities. In addition, the percentage of fatalities from side impact collisions with an LTV as the striking vehicle has been increasing. The percentage has grown from 29.7 percent of the fatalities in 1984 to 35.5 percent in 1988. Similarly, LTV's as the striking vehicle accounted for 31 percent of the side impact collision injuries classified as Abbreviated Injury Scale (AIS) 3 or greater in 1988. This percentage has increased from 14.7 percent in 1983.

NHTSA received a number of public comments concerning barrier weight, with a number of commenters suggesting a weight different from that proposed. The Center for Auto Safety and Public Citizen suggested increasing the weight of the MDB to 3,500 pounds to be consistent with the higher average light truck weight. Rolls-Royce stated that if the MDB is intended to represent the aggressiveness of a light truck, a higher weight would be needed. The European Experimental Vehicles Committee (EEVC) supported a lower barrier weight of about 2,425 pounds (1,100 kilograms), closer to the weight of the MDB developed in Europe. The Commission of the European Communities suggested a weight of 950 kilograms (2,095 pounds). Ford stated that the MDB weight should represent the weight of the U.S. vehicle fleet. However, in the interest of harmonization, Ford suggested a compromise weight of 2,425 pounds.

The Motor Vehicle Manufacturers Association (MVMA) noted that different barrier weights within the range of 2,000 to 3,000 pounds do not show a

significant influence on test results. Jaguar questioned how the mass of the barrier was determined, asking if the average weight of the U.S. passenger car fleet had been weighted for the number of vehicles in the vehicle class. Chrysler stated that it did not object to the 3,000 pound weight.

NHTSA reexamined the barrier weight issue, using R. L. Polk registration data and vehicle test weight information from the New Car Assessment Program (NCAP) from 1979 to 1988. The NCAP data base consists of domestically manufactured, European, and Japanese cars, all of which are sold in the U.S. market and represent potential striking vehicles. NHTSA derived registration-weighted average and median fleet weights for 1988 which are stated below. The weight includes vehicle curb weight, two Part 572(B) dummies weighing 164 pounds each, and simulated cargo of 50 to 150 pounds. The average weight of passenger cars was 3,189 pounds, while the median weight was 3,067 pounds. For light trucks the average weight was 3,858 pounds, while the median weight was 3,791 pounds. For the combined fleet of passenger cars and light trucks, the average weight was 3,317 pounds and the median weight was 3,250 pounds.

NHTSA also examined the individual and combined equivalent test weights of 1989 domestic and imported passenger cars and light trucks used in EPA's fuel economy driving cycle. Equivalent test weight is defined as curb weight plus 300 pounds to account for two occupants and cargo. The average equivalent test weight for various vehicle types in model year 1989 is shown below:

Table I

<i>Vehicle Type</i>	<i>Avg. Equiv. Test Weight</i>
Passenger cars (PC)	3,181 pounds
PC (imports only)	2,889 pounds
Light trucks and vans (LTV)	3,958 pounds
LTV (imports only)	3,452 pounds
PC and LTV	3,423 pounds

Various European commenters expressed concern about the weight of the MDB proposed by NHTSA. The barrier designs of the European Experimental Vehicles Committee (EEVC) and the Committee of Common Market Automobile Constructors (CCMC) weigh about 1,000 pounds less than the MDB proposed by NHTSA. The European barrier is based on European vehicles which are often smaller and lighter than U.S. vehicles. Thus, the European barrier at 2,095 pounds is not representative of the U.S. passenger car and light truck fleet, which had an average equivalent test weight of about 3,423 pounds in model year 1989.

In the proposal, NHTSA predicted that the average combined weight (curb weight plus 300 pounds) of the passenger car and light truck fleet would be about 3,000 pounds in the mid 1990s. However, the average combined weight of the passenger car and light truck fleet may be higher than this in the mid 1990s. According to EPA figures, the average combined weight of passenger cars and light trucks has stabilized over the last six years at about 3,423 pounds.

After analyzing the comments and the information discussed above, NHTSA concludes that 3,000 pounds is an appropriate weight for the MDB and is representative of the weight of passenger cars and light trucks in the United States fleet. Based on data from NCAP, weighted to reflect registration figures, and 1989 EPA data, weighted to reflect sales, the MDB is six percent lighter than the average passenger car (domestic and imported) and 11 to 14 percent lighter than the average for passenger cars and light trucks combined. If passenger car and light truck weights decline in the future, the MDB weight would be even more representative.

In addition, the difference between a barrier weight of 3,000 pounds and the average combined fleet weight of 3,317 to 3,423 pounds may not be significant. Theoretically, the lighter the striking vehicle the less the kinetic energy which must be absorbed and the less the momentum that will be transferred to the struck vehicle. These reductions, generally result in lower dummy responses and, thus, lower Thoracic Trauma Index (dummy) or TTI(d) values. However, NHTSA examined the sensitivity of side impact dummy responses and TTI(d) to differences in MDB weight for the proposed rule. Comparing the 3,000 pound barrier to an average 3,423 pound weight for the combined passenger car/light truck population, a Department of Transportation computer model (which this notice refers to as the "side impact sensitivity model"), discussed in detail in Section D of the Preliminary Regulatory Impact Analysis, showed that, with a Volkswagen Rabbit as the struck vehicle, rib responses would remain unchanged and the spine and pelvis acceleration responses would be reduced only four percent. Overall, NHTSA expects that the effect on dummy responses of a somewhat lower barrier weight would be negligible.

V. Barrier Shape and Dimensions

The dimensions of the barrier described in the proposal were established using 1979 model year vehicles. The minimum and maximum bumper heights correspond to the sales-weighted median heights for 1979 two-door sedans. Other barrier dimensions were based on sales-weighted dimensions from the highest sales volume 1979 model passenger cars, the Ford Fairmont, Oldsmobile Cutlass, Chevrolet Citation and Chevrolet Impala.

Commenters expressed concern about the bumper height, barrier height, and barrier width of the MDB. In the Preliminary Regulatory Impact Analysis, NHTSA stated that these dimensions of the barrier were important because the above ground height and location of the stiffer honeycomb component (the bumper) controls engagement with the door sill of the struck vehicle, the distance below the window opening or barrier height influences the inner and outer door energy absorption and the deflection characteristics needed to lower thorax responses, and the width of the barrier controls front fender and rear quarter panel engagement.

A. Barrier Bumper Height

NHTSA received a number of comments concerning the barrier bumper height. The Insurance Institute for

Highway Safety (IIHS), the Center for Auto Safety, and Public Citizen recommended a bumper height similar to that of a light truck. Rolls-Royce stated that if the MDB is as stiff as a light truck, then it should also have a higher bumper height, like a light truck.

The MDB described in the proposal has an upper edge that is 21 inches off the ground and a bottom edge that is 13 inches off the ground. This represents an eight-inch high bumper surface, which protrudes four inches from the barrier face. As mentioned in the proposal, the bumper face vertical height (the distance between the upper and lower bumper edges) ranged from 4.9 to 7.5 inches for the ten best selling passenger car models in 1984.

NHTSA reexamined the bumper height issue in light of several sets of current vehicle bumper height data. In two studies, NHTSA measured the distance from the bottom of the bumper to the ground of (1) 19 popular passenger cars from model years 1976 to 1983 and (2) 12 light trucks from model years 1984 to 1988. For the 19 passenger cars, the average measurements were 14.4 inches from the ground to the bottom of the bumper and 20.7 inches from the ground to the top of the bumper. For the 12 light trucks, the average measurements were 16.7 inches from the ground to the bottom of the bumper and 25.8 inches from the ground to the top of the bumper. This compares to the NHTSA MDB, which measures 13.0 inches to the bottom of the bumper and 21.0 inches to the top of the bumper. Based on this data set, the distance to the top edge of the MDB bumper is consistent with the distance to the top edge of the average passenger car bumper, but lower than the average distance for light truck bumpers by 4.8 inches. Based on the same data set, the lower edge of NHTSA's bumper is 1.4 inches lower than the average for passenger cars and 2.7 inches lower than the average for light trucks. The average vertical height of the NHTSA MDB bumper is 8.0 inches, which compares to an average vertical height of 6.1 inches for the 19 passenger cars and 9.1 inches for the 12 light trucks. Based on this data set, the vertical height of the MDB bumper is within the range of popular passenger cars and light trucks.

In addition, NHTSA examined a sample of 36 popular 1987 passenger cars and light trucks and found an average height of 20.8 inches to the top of the bumper. This is consistent with the upper-edge height of the MDB bumper (21.0 inches). NHTSA believes that a larger sample would yield the same results since the Bumper Standard (49 CFR Part 581) specifies a 16 to 20 inch vertical impact position for the pendulum impact strength test for passenger cars.

NHTSA concludes that the upper edge distance of the proposed MDB bumper is consistent with the vehicle population it is intended to represent. NHTSA acknowledges that the vertical height of the MDB bumper may be two to three inches greater than that

of the bumper on a typical passenger car. However, NHTSA believes that this is necessary to represent the range of bumper-to-side-structure engagement. NHTSA believes that the MDB bumper will engage the sill and reinforcing structure of a struck vehicle in the same manner as the bumper of a typical striking passenger car or light truck, even if the MDB bumper has a slightly greater vertical height (i.e., the width of the bumper is slightly greater) than the bumper of a typical passenger car or light truck. Damage patterns of the sills in vehicles struck by the NHTSA MDB are similar to those observed in actual side impact crashes.

B. Barrier Height and Width

A number of commenters criticized the dimensions of the MDB's honeycomb face. For example, comments addressed its overall width and height above the ground. General Motors (GM) claimed that the barrier height specifications were ambiguous. The commenter stated that the four specified dimensions cannot be achieved simultaneously because of build tolerance in the barrier face and its attachment. The Commission of the European Communities (CEC) disagreed with the shape and dimensions of the barrier face. The International Standards Organization (ISO) preferred the shape and dimensions of the EEVC barrier face as being more representative of the average front-end size of world passenger cars. The EEVC stated that it would be easier to meet the requirements of the revised Standard No. 214 with the proposed MDB than with the EEVC barrier, because the stronger parts of the car (e.g., pillars) would be struck by the proposed MDB's barrier face. They stated that this would be because the EEVC barrier is not as wide and they were concerned that the EEVC barrier would result in a more severe test, especially with a more rearward positioned point of impact compared to that proposed by NHTSA. The Japanese Automobile Standards Internationalization Center (JASIC) stated that the barrier face should represent the average dimensions of cars throughout the world. The U.S. Technical Research Company, representing Peugeot and Citroen, was concerned that the barrier face geometry did not represent the front face of a light truck. In response to GM's comment, NHTSA added more information concerning specifications. NHTSA notes that several MDB's have been built and tested by manufacturers and testing organizations without apparent difficulties.

NHTSA believes that the MDB should be representative of cars and light trucks in the United States, rather than of world passenger cars. Since the MDB is designed to represent the striking vehicle in a side impact collision in the United States, it is appropriate for it to represent the vehicles likely to be involved in such crashes in the United States.

NHTSA analyzed whether the MDB dimensions are representative of passenger cars and light trucks in the

United States. NHTSA compared the width and height of the MDB to the width and height of passenger cars and 15 light trucks. NHTSA used bumper width measurements from NCAP test vehicles from 1979 to 1988 to reexamine the barrier width issue. The data were weighted to represent 1988 vehicle registrations. NHTSA found that passenger cars had a weighted average width of 67.0 inches and a median width of 66.6 inches. Light trucks had a weighted average width of 71.8 inches and a median width of 70.4 inches. For passenger cars and light trucks combined, the weighted average width was 67.6 inches and the median width was 66.8 inches. This is nearly identical to the NHTSA barrier face width of 66 inches.

NHTSA also compared the height of the MDB to the height of passenger cars and light trucks. NHTSA compared the distance from the top edge of the barrier to the ground, to the distance from the upper hood edge to the ground, in a sample of 36 popular passenger cars and light trucks selected to be representative of 1987 model year passenger cars and light trucks in the United States. In this sample, the upper hood edge averaged 32.2 inches from the ground. The sales weighted average for the upper hood edge height was 33.2 inches. This is nearly identical to the MDB distance of 33 inches.

Based on the above data, NHTSA concludes that the barrier height and width are representative of the average combined passenger car and light truck population. NHTSA further concludes that it is appropriate for the barrier height and width to represent the combined passenger car and light truck population since light trucks are the striking vehicle in a large percentage of side impact collisions.

VI. Barrier Stiffness

The MDB described in the proposal was designed to have the stiffness or crush characteristics of a 1981 Chevrolet Citation striking another vehicle in the side at an angle of 60 degrees. The stiffness or crush characteristics of the MDB are controlled by two aluminum honeycomb blocks. As stated in the preamble to the proposal, these blocks give the MDB an average stiffness of about 10,000 pounds per inch of deflection for a large magnitude of crush at a 90 degree impact angle. NHTSA acknowledged in the proposal that this value is at the upper end of the passenger vehicle scale. However, many light trucks, which represent a significant portion of the striking vehicle population, are in this range of stiffness. In the proposal, NHTSA tentatively concluded that the MDB front face stiffness should be higher than the stiffness of typical passenger car front structures and more like the stiffness of light trucks. This was because light/medium/heavy trucks, as striking vehicles, are responsible for nearly as many serious injuries and fatalities as are passenger cars. NHTSA received many comments concerning barrier stiffness.

A. Overall Barrier Face Stiffness

Many commenters were concerned about the stiffness of the aluminum honeycomb barrier face. Their primary criticism was that the MDB face is too stiff. General Motors commented that a barrier face which is stiffer than the typical car or light truck will result in different interactions with the test vehicles. As an example, GM stated that the deformation of the barrier has been less than five inches in full scale tests conducted by GM. According to GM, this indicates that the purpose of having a deformable barrier is compromised. GM also stated that twice the energy is required to deform the MDB five inches than to deform the GM Astro, the GM Blazer, or the Mazda B-2000 the same amount. According to GM, this is because the MDB is much stiffer than those vehicles during the first five inches of crush. GM also stated that the NHTSA MDB was stiffer than the GM Oldsmobile Delta 88. GM asserted that further work is necessary to make the barrier more representative. Toyota stated that the proposed barrier exceeded the stiffness of full size cars and trucks. Nissan and Porsche also stated that the MDB is too stiff.

Many commenters stated that the stiffness of the barrier should be like that of a passenger car, not that of a light truck. Some commenters stated that the barrier was stiffer than the majority of passenger cars. The Automobile Importers of America (AIA) stated that the barrier should represent the world passenger car fleet. Nissan, the Japanese Automobile Manufacturers Association (JAMA), and Austin-Rover encouraged NHTSA to consider a rigid moving barrier.

GM was the only commenter to submit data generated at its own test facilities concerning barrier stiffness. GM performed 30 mph frontal rigid barrier impact tests and submitted force-deflection curves that it asserted showed that the proposed NHTSA MDB face is stiffer than the front end of the Oldsmobile Delta-88.

In view of these comments, NHTSA reexamined barrier stiffness. In the Final Regulatory Impact Analysis, NHTSA compares the average frontal stiffness (i.e., the average of the stiffness measured over 10 to 12 inches of displacement) and initial frontal stiffness (i.e., stiffness measured during the first five inches of displacement) of the MDB with that of a selected set of passenger cars and light trucks assessed under the agency's New Car Assessment Program (NCAP). NHTSA also examined the front-end stiffness estimates (using NCAP data) at 4, 6, and 8 inches of displacement for a larger set of passenger cars and light trucks provided by CCMC and JAMA in their comments. The frontal stiffness measurements and estimates were based on fixed rigid barrier tests. For the makes and models analyzed, the MDB average stiffness is greater than that of the average passenger car, but less than that of the average light truck. The

initial MDB stiffness is greater than that of both the average passenger car and the average light truck.

As explained in the Final Regulatory Impact Analysis, NHTSA also reexamined barrier stiffness using the root-energy method employed in the damage algorithm in the CRASH3 accident reconstruction model. The modeling shows that the stiffness of the proposed MDB is 45 percent greater than the mean passenger car stiffness and 17 percent greater than the mean LTV stiffness. NHTSA discusses this modeling data in further detail in the Final Regulatory Impact Analysis.

NHTSA agrees that the initial stiffness (i.e., average stiffness during the first five inches of displacement) of the MDB is greater than that of a Chevy Astro, a Chevy Blazer, a Mazda B-2000, or an Oldsmobile Delta 88. However, neither the barrier nor striking vehicles have a constant frontal stiffness. In addition, the frontal stiffness does not change in a linear fashion. When average stiffness is derived from the actual force-deflection curve (which is non-linear) over a 10 to 12 inch crush distance, the first three vehicles are as stiff or stiffer than the NHTSA MDB.

While the MDB has greater initial frontal stiffness than the average car or light truck when measured in a fixed rigid barrier test, NHTSA does not believe that the MDB will always produce higher occupant injury responses in crash tests than passenger cars or light trucks with lesser stiffness. NHTSA believes that this will depend upon the relative stiffness of the struck vehicle. The Department of Transportation side impact sensitivity model predicts that the higher stiffness of NHTSA's MDB may produce TTI(d) responses up to 25 percent higher in certain test vehicles. However, as explained in the Final Regulatory Impact Analysis, NHTSA believes that the side impact sensitivity model has limitations and, therefore, should only be used to investigate general trends of dummy responses rather than to make precise predictions of those responses.

Therefore, NHTSA also analyzed experimental and empirical data to study the impact of the stiffness of the MDB. First, photographs and slides from accident investigation reports show that the front-ends of striking vehicles in side impact collisions do not crush or absorb a great deal of energy. Nearly all of the kinetic energy of the striking vehicle is generally absorbed in the side of the struck vehicle. The NHTSA MDB behaves similarly, yielding very little and absorbing only four to five percent of the crash energy.

Second, Transport Canada conducted a series of side impact crash tests using Chevrolet Cavaliers as the struck vehicle to examine and compare the proposed NHTSA and European side impact test procedures. One test by Transport Canada was car-to-car, where the striker was a 1988 Ford Taurus (weighing 3,003 pounds and crabbed at 26 degrees) and the struck vehicle was a Cavalier. NHTSA plotted the Cavalier's side deformation (plan or top view) caused by NHTSA's

proposed MDB and compared it to the deformation caused by the Ford Taurus at five different levels (i.e., low door sill, occupant H-point, mid-door height, window sill, and top of the window opening). NHTSA found that they were very similar. These data demonstrate the comparability of the Taurus front-end and the MDB with respect to aggressiveness and stiffness. (As used here, aggressiveness describes the amount of deformation or damage caused by the striking vehicle in the side of the struck vehicle. Aggressiveness is also associated with stiffness, i.e., something that is stiffer is also more aggressive.) The nearly congruent deformation patterns in the Cavalier show that the MDB and the Taurus absorbed about equal amounts of energy. In addition, the front-end of the Ford Taurus showed very little damage, similar to the MDB face.

In view of this empirical data, NHTSA questions the relevancy of frontal stiffness data derived from fixed rigid barrier tests to the frontal stiffness of a striking vehicle in a side impact crash. Relative to the side of a passenger car, front-ends of a striking vehicle (both passenger cars and LTV's) are very aggressive, deform very little, and absorb very little energy. In short, the front-ends of striking vehicles are much stiffer than the sides of struck vehicles.

NHTSA agrees with Ford that the MDB crushes very little in a full scale side impact crash. However, as discussed above, a striking vehicle in a side impact crash also crushes very little.

GM stated that the NHTSA MDB is stiffer than an Oldsmobile Delta-88 and is not representative of typical passenger car frontal stiffness. NHTSA agrees that the NHTSA MDB is stiffer than the average frontal stiffness of a passenger car, measured using a fixed rigid barrier. However, NHTSA believes that this measure of frontal stiffness is not relevant to frontal stiffness in a side impact, where little front-end crush occurs in a striking vehicle. In addition, NHTSA believes that it is somewhat academic whether the proposed NHTSA MDB is stiffer than the Oldsmobile Delta-88. NHTSA believes that the important issue is the relative stiffness of the NHTSA MDB and the front structures of striking vehicles compared to that of struck vehicle side structures. The NHTSA MDB and the front structures of passenger cars and light trucks are all significantly stiffer than the side structure of a struck vehicle. The NHTSA MDB, while having greater frontal stiffness in a fixed rigid barrier test, behaves very much like the front-end of a striking car or light truck in a side impact crash environment.

Many commenters stated that the MDB should be softer. The commenters generally believed that the softer barrier would produce less severe results in a crash test. Based on analysis of test data, NHTSA does not agree with the commenters. First, as part of its research and development program, NHTSA examined the influence of a softer (25 psi) honeycomb barrier

face. NHTSA tested the 25 psi honeycomb along with the 45 psi honeycomb specified for the MDB in side impact tests with Volkswagen Rabbits. The agency concluded from these experimental tests that a significant reduction in barrier stiffness would not significantly change occupant injury probability.

Second, Transport Canada compared the softer and lighter EEVC barrier with the proposed NHTSA barrier in tests using the EuroSID dummy. Transport Canada tested the two barriers with 1988 models of the Chevrolet Cavalier, Pontiac Bonneville, and Hyundai Excel. For these vehicles, the EEVC barrier produced EuroSID responses ranging from 39 to 46 percent higher than those produced by the NHTSA MDB. However, the MVMA also conducted tests with a Ford LTD to compare the NHTSA MDB to the EEVC barrier. These tests demonstrated no difference in responses between the two barriers.

The Transport Canada data, with a higher occupant response with the softer and lighter EEVC barrier face, is contrary to what was predicted by the Department of Transportation's side impact sensitivity model. NHTSA notes that the EEVC barrier tests were run by Transport Canada in the uncrabbed mode. NHTSA is further investigating why the softer and lighter EEVC barrier produced higher occupant responses than the NHTSA MDB in the Transport Canada tests. NHTSA discusses various theories for this in the Final Regulatory Impact Analysis.

NHTSA has also considered comments advocating a rigid moving barrier. NHTSA acknowledges that there would be cost savings with such a barrier, since persons would not have to replace the honeycomb barrier face after each test. However, NHTSA believes that a rigid moving barrier would increase the stringency of the test procedure and result in higher occupant responses as measured by TTI(d). Further, NHTSA believes that a moving rigid barrier would not be representative of actual crash environments. First, the rigid moving barrier would not absorb any energy in a crash and the struck vehicle would, therefore, experience higher side intrusion. Second, in a crash test, the interaction between the occupant and the inner-door might be different because of the greater side intrusion with a rigid moving barrier. In addition NHTSA believes that a rigid moving barrier would be much stiffer than the MDB. As discussed above, NHTSA received comments complaining about the alleged excessive stiffness of the MDB.

NHTSA concludes that the stiffness of the proposed MDB is appropriate for the final rule. While the MDB is stiffer than the average passenger car or light truck, as measured in a fixed frontal barrier test, NHTSA believes that there are significant differences between the barrier test and the side impact crash environment. Volvo recognized this in its comments where it stated that "all these judgments are based on front charac-

teristics measured against a flat fixed barrier. Thus they have limited validity regarding side impact against a car."

In a side impact crash, the front-end of the striking vehicle absorbs very little energy and crushes very little because of its greater relative stiffness compared to the side of the struck vehicle. The NHTSA MDB behaves similarly. The aggressiveness of the MDB was close to the aggressiveness of the Ford Taurus, a popular mid-size passenger car, in the Transport Canada side impact tests using a Chevrolet Cavalier as the struck vehicle. While the NHTSA MDB has a higher frontal stiffness than the Ford Taurus, when measured in a fixed rigid barrier test, both were equally aggressive and created the same deformation pattern in tests with the Cavalier. In addition, the NHTSA MDB produced lower occupant responses in the Cavalier (with the EuroSID dummy) in the Transport Canada tests than did the Ford Taurus. On the basis of the empirical tests discussed above and the above analysis, NHTSA concludes that the MDB face stiffness is reasonable.

B. Bumper Stiffness

NHTSA received a number of comments concerning the stiffness of the MDB bumper. The EEVC stated that requiring tests with the bumper simulation on the proposed barrier face could lead to the wrong car modifications. Ford suggested softening the bumper on the proposed NHTSA barrier face to make it more car-like. Porsche stated that the barrier is too stiff, especially the bumper.

The MDB bumper is constructed of a 245 psi crush strength aluminum honeycomb designed to simulate the stiffness of the hard points in the front structure of a striking vehicle, i.e., the frame rails and engine, planing laterally across the side of the struck vehicle. Thus, the MDB bumper is highly aggressive and does not undergo a great deal of yielding during a crash. This is similar to the front structure of an automobile or light truck in a side impact collision. NHTSA has found that the localized regions of a vehicle's front structure appear to be the dominant factor in the deformation patterns observed on the sides of struck vehicles in actual crashes. These regions are generally associated with the frame rails and the engine. As shown above, the NHTSA MDB, as a whole, behaves like a typical passenger car or light truck striking vehicle in a side impact crash. The barrier face loads the struck vehicle in much the same way that a typical passenger car or light truck would. For the above reasons, NHTSA believes that the stiffness of the MDB bumper is appropriate and that tests using the MDB bumper will properly assess side impact crash protection.

C. Dynamic vs. Static Barrier Face Properties

NHTSA received a number of comments supporting a dynamic force-deflection specification for the MDB barrier face. The proposed rule provided only static crush characteristics of the aluminum honeycomb (45 plus or minus 2.5 psi and 245 plus or minus 15 psi). Nissan commented that the dynamic performance characteristics of the barrier face need to be specified. According to Nissan, specifying the characteristics rather than a type of material would allow a manufacturer to use cost-effective materials in the barrier face. Toyota stated that a honeycomb face produced in Japan to NHTSA's specified static properties differed in dynamic characteristics. It further stated that the energy absorbing material used for a honeycomb face should be specified by dynamic characteristics. The Japanese Automobile Standards Internationalization Center (JASIC) urged that the energy absorbing performance of the barrier face material be stipulated in terms of its characteristics, rather than the type of material (i.e., they requested that NHTSA establish a dynamic certification test). Ford was concerned that the barrier face specifications do not apply to the initial and highest force levels found in crushing the barrier face (i.e., the static crush specification does not establish initial and highest force levels.

NHTSA does not believe that it is necessary to specify the dynamic crush characteristics, including the initial and the highest force levels, of the honeycomb in this rule. NHTSA already specifies the static properties of the barrier. In addition, dynamic force measurements are not as accurate as static measurements. NHTSA believes that it would be both costly and time consuming to develop dynamic certification tests for the MDB faces. Further this type of certification would have low practicality and questionable effectiveness since it would require the destruction of the MDB face being certified.

NHTSA acknowledges that a benefit of specifying dynamic crush characteristics would be to allow manufacturers to use alternative materials (e.g., a foam face) for the honeycomb if they are within the dynamic specifications. However, NHTSA has not identified any material other than the aluminum honeycomb that gives consistent performance.

NHTSA believes that it is most appropriate to specify the static crush characteristics since they can be measured more precisely than the dynamic properties. The side impact test procedure already defines a method for certification of the 45 psi aluminum honeycomb material's static properties so that the crash test results are repeatable. See Aluminum Honeycomb Crush Strength Certification Procedures. Essentially, three samples of aluminum honeycomb material (six inches by six inches by one inch) are cut and crush tested at a rate of 0.20 inches per minute. Measurements of load and deflection are made at three sections between 0.25

inches and 0.65 inches of the one inch sample. The range of acceptability is 42.5 to 47.5 psi. NHTSA has not developed a certification procedure for the 245 psi bumper honeycomb material because the bumper is a flexion member which develops its strength based on the material properties of the front and back aluminum plates that sandwich the honeycomb. NHTSA believes that its design specifications for the bumper and specifications of bumper crush strength are adequate to assure MDB repeatability.

Further, test data indicate that the NHTSA test procedure provides acceptable dynamic repeatability even though the dynamic characteristics of the honeycomb barrier face are not specified. NHTSA conducted load cell barrier tests on three samples of aluminum honeycomb barrier face material. The three resultant test results indicate excellent dynamic repeatability. The dynamic force deflection curves, which show the dynamic repeatability, are provided in the Final Regulatory Impact Analysis. Further, as discussed more fully in the Final Regulatory Impact Analysis, the side-impact test procedure has acceptable repeatability. The variability found in the testing comes from a number of sources (e.g., the test dummy, the test site, the test procedure, and the test vehicle). Since the dynamic variability of the aluminum honeycomb is but a small part of the overall test procedure variability and since the overall variability is acceptable, NHTSA concludes that the dynamic variability of the honeycomb is acceptable. Since the MDB requirements provide repeatable test results, NHTSA does not believe that the additional expenditures of time and money for dynamic certification tests are necessary.

VII. Barrier Face Variability

NHTSA received a number of comments concerning barrier face stiffness variability. GM stated that the variability of the aluminum honeycomb stiffness can be significant. In its comments, Ford attributed test result variability to manufacturing variations in the aluminum honeycomb material. Ford tested undeformed portions of several barrier faces that had been used in crash tests. Although the faces all were certified by the manufacturers as meeting NHTSA's proposed force-deflection specification, Ford stated that the stiffnesses varied widely and many of the barrier faces fell outside the NHTSA specification. Ford also commented that, in a test it conducted, the initial stiffness of the barrier was four times higher than stated in the proposal and that the honeycomb crush distance was very small (i.e., less than two inches). Chrysler stated that, in a test it conducted, the stiffness of the proposed barrier exceeded the 10,000 pounds per inch design target.

NHTSA tested samples of the 45 psi honeycomb material at the NHTSA Vehicle Research and Test Center (VRTC) following the specified procedure.

NHTSA found that the different samples of the material performed in a very similar way and were well within the proposed specifications. While the permitted variation is 45 psi plus or minus 2.5 psi (5.55 percent), the variation in the sample was 46.6 psi plus or minus 0.75 percent. This is well within the acceptable range of 42.5 to 47.5 psi specified by NHTSA. Further details concerning these tests and a table of test results are provided in the Final Regulatory Impact Analysis.

Discussions that NHTSA personnel had with Ford personnel indicated that Ford was not cutting the sample of material correctly. Ford's cutting procedure was causing crush damage to the thin honeycomb wall of the samples, which introduced variability. As a result of this, NHTSA has added blade and cutting specifications to the above procedure.

Ford and Chrysler's comments that their measurements of the initial stiffness of the MDB differ from NHTSA's measurements can in part be explained by the difficulty of measuring dynamic force and deflection. It is more difficult to measure crush characteristics (i.e., force and deflection) dynamically than statically. As discussed above, NHTSA has adopted a static crush test methodology, rather than a dynamic certification test, for certification of the honeycomb barrier face material. Further, as discussed in the main side impact notice, NHTSA is satisfied with the overall side impact test procedure variability and believes that the dynamic variability of the honeycomb material has a small effect on overall variability. NHTSA has also reviewed GM's assertion that honeycomb variability can be significant. NHTSA notes that GM only stated the permissible tolerances specified by NHTSA rather than presenting test data. NHTSA believes that the range of tolerance must be allowed in the specifications if the honeycomb is to be manufactured at a reasonable cost. Further, with the current tolerance specifications, the barrier produces consistent test results. In the test discussed previously, NHTSA selected three samples of aluminum honeycomb barrier face material and conducted load cell barrier tests at 14.7 miles per hour (mph), with a crabbed impact angle of 19 degrees. NHTSA recognizes that these conditions were not identical to those in the side impact test procedure. However, the three test results indicate acceptable dynamic repeatability. The dynamic force deflection curves, which show the dynamic variability, are provided in the Final Regulatory Impact Analysis. NHTSA does not believe that the permissible tolerances will cause noticeable differences in test results.

VIII. Inertial and Dynamic Properties

NHTSA received one comment concerning the inertial and dynamic properties of the MDB described in the proposal. GM stated that the center of gravity and

the front-to-rear mass ratio of the barrier were not specified in the NPRM. GM stated that these inertial properties of the barrier are needed because they affect how the barrier rotates and, therefore, how the struck vehicle is crushed. NHTSA has included information concerning the center of gravity coordinates and the inertial properties of the MDB in the regulatory text. Information concerning the barrier's inertial properties may also be found in Unit II of this preamble and in the Final Regulatory Impact Analysis.

While the MDB's center of gravity coordinates and inertial properties were not specified in the NPRM, that information is listed in a document added to the public docket during the comment period in July, 1988 (Docket item 88-06-NO1-013). All information relating to inertial properties is either provided in the public docket submission or can be calculated from the data provided in the document. The weight, wheelbase, location of the center of gravity, pitch, roll, and yaw moments of inertia are specified in the document. The front-to-rear mass ratio can be calculated from the data concerning center of gravity and weight provided in the public docket submission.

It is important to note that GM did not claim that the inertial properties of the NHTSA MDB were not representative, only that they were not specified in the NPRM. However, NHTSA compared the inertial properties of the barrier (with and without camera equipment) to an aggregate sample of 50 passenger cars and 82 light trucks. The sample, while dominated by later model years, represents a cross section of vehicles manufactured and sold during the 1980s. As shown in the Final Regulatory Impact Analysis, the inertial properties of the NHTSA MDB are all reasonably close to the average inertial properties of the combined sample of 132 passenger cars and light trucks.

IX. Alternative Side Impact Barriers

The proposed rule and the Preliminary Regulatory Impact Analysis discussed barriers developed by the Committee of Common Market Automobile Constructors (CCMC) and the European Experimental Vehicles Committee (EEVC). NHTSA stated in the proposed rule that it was concerned about using either of those barriers because they did not appear to be representative of the striking vehicles in side impact crashes in the United States. The NHTSA MDB is about 50 percent heavier and has a larger barrier face than the European ones. The European barriers appear to be more representative of the lighter and smaller European and Japanese passenger cars. In addition, the NHTSA barrier is made of different material and has a stiffer face than those proposed in Europe. The NHTSA test procedure, using the NHTSA MDB, delivers about 113,000 foot-pounds of energy, compared with the European procedure, which delivers

only 62,980 foot-pounds of energy. NHTSA estimates that only about four to five percent of this crash energy is absorbed by the NHTSA MDB, whereas the EEVC barrier face appears to disintegrate, making estimates of crash energy absorption impossible. The NHTSA, CCMC, and EEVC barriers all must be replaced after each test. A more detailed comparison of the NHTSA MDB with the CCMC and EEVC barriers is contained in the Final Regulatory Impact Analysis.

NHTSA received comments advocating the use of one of the European barriers. The Commission of the European Communities favored the barrier face and barrier front stiffness of the EEVC barrier. Volvo stated that the CCMC barrier, with minor modifications, would have the best characteristics to simulate a car-to-car impact. MVMA stated that the EEVC barrier face should be adopted because it is more representative of the average front-end stiffness characteristics and size of world passenger cars. Austin Rover also stated that the EEVC barrier is more representative of actual world cars. USTRC stated that the different results obtained for the CCMC barrier compared to the NHTSA barrier show that the NHTSA MDB is not representative. The EEVC was concerned that the NHTSA barrier face, made of aluminum, will cost four times as much as the European barrier face, which is made of polyurethane. These comments were generally addressed in prior units of this preamble, but will be addressed further below.

NHTSA has reviewed the results of side impact tests using both the EEVC barrier and the NHTSA barrier. The 2,095 pound EEVC barrier was tested by Transport Canada using the EEVC urethane foam barrier face and the European test procedure of a 90-degree impact angle and the EuroSID dummy. The NHTSA barrier was also tested using the EuroSID dummy. When both barriers were tested with a Chevrolet Cavalier as the struck vehicle, TTI(d) values were 46 percent higher for the EEVC barrier than for the NHTSA barrier. When both barriers were tested with a Hyundai Excel and a Pontiac Bonneville as struck vehicles, and the EuroSID dummy, the Transport Canada tests found TTI(d) values to be 39 percent higher in each case for the EEVC barrier compared to the NHTSA MDB.

These results are not consistent with more recent tests by MVMA. In these tests, MVMA compares the EEVC barrier and procedure to the NHTSA barrier and procedure using the EuroSID dummy and a Ford LTD as the struck vehicle. NHTSA discusses these tests in more detail in the Final Regulatory Impact Analysis.

The results of the Transport Canada tests, where the higher occupant response (as measured with TTI(d) and pelvic g's) was with the softer and lighter EEVC barrier face, are contrary to what was predicted by the Department of Transportation's side impact sensitiv-

ity model. NHTSA is further investigating why the softer and lighter EEVC barrier produced higher occupant responses than the NHTSA MDB in the Transport Canada tests. NHTSA discusses various theories for this in the Final Regulatory Impact Analysis.

NHTSA also studied the variability of the European side impact test procedure, with the EEVC barrier face and the EuroSID dummy, using data generated by MVMA. NHTSA compared the results to the results of the tests MVMA conducted using NHTSA's test procedure (including the SID dummy). The variability comparisons between the test procedures are shown in the table below.

Table II
Test Procedure Variability Range Comparison

	U.S./NHTSA (CV) ⁻	European/EEV (CV) [±]
1. Baseline, No Padding	± 2.34 to 7.55%	± 0.8 to 7.1%
2. Baseline, w/Padding	± 2.62 to 7.07%	± 3.9 to 10.8%
3. Modif. Struct., No Padding	± 0.58 to 9.39%	± 1.3 to 11.2%
4. Modif. Struct., w/Padding	± 0.81 to 5.00%	± 0.1 to 7.4%

¹/MVMA n=16

²/MVMA n=8

Based on these results, NHTSA concludes that the variability of the European side impact test procedure based on a 90 degree impact angle EuroSID, and the EEVC barrier is slightly greater than NHTSA's crabbed side impact test procedure using the NHTSA MDB and the SID. Some of the difference in variability of the procedures may be attributed to the differences between the EuroSID and the SID dummies as well as differences in variability of the deformable barrier faces.

Concerning the comment about the cost of the NHTSA barrier face. NHTSA acknowledges that assembled barrier faces are currently available only from Hexcel Corporation at a cost of about \$1,700 each, if purchased in quantity. NHTSA also acknowledges that the barrier faces must be replaced after each test. However, NHTSA has not identified any other barrier face material that gives consistent performance in crash tests.

As discussed in earlier units of this preamble, NHTSA believes that the NHTSA MDB is sufficiently representative (in terms of weight, dimensions, inertia, and stiffness) of passenger cars and light trucks that are likely to be the striking vehicle in side impact collisions in the United States. NHTSA also believes that it is appropriate that the MDB be representative of such vehicles rather than representative of vehicles used in other nations. NHTSA further believes that the European barriers, because of their light weight, are not representative of vehicles in the United States. In addition, NHTSA would be reluctant to adopt the EEVC barrier as a compliance testing device because of its inconsistent behavior in the Transport Canada tests.

X. Conclusions Concerning the NHTSA MDB

Based on the above discussion, NHTSA concludes that the NHTSA MDB is representative of the average passenger car and LTV population in the United States. NHTSA also concludes that it is appropriate for the NHTSA MDB to be representative of both the passenger car and LTV population in the United States. As discussed above and in the Final Regulatory Impact Analysis, LTV sales have increased dramatically in the last ten years and LTV registrations are increasing as a percentage of total light vehicle registrations. LTV's, as the striking vehicle, accounted for over 35 percent of side impact collision fatalities and for over 30 percent of the side impact collision injuries classified as AIS 3 or greater in 1988. Further, NHTSA has shown above that the MDB weight and stiffness do not make the test procedure more stringent than appropriate to simulate the impact of a striking passenger car or LTV. In addition, NHTSA has shown that the dimensions of the MDB correspond to average specifications for the combined passenger car and LTV fleet. Finally, NHTSA concludes that the NHTSA barrier is superior to the CCMC and EEVC barriers for purposes of this rule. The NHTSA MDB is more representative of the striking vehicles in side impact collisions in the United States.

PART 587

In consideration of the foregoing, Chapter V, Title 49, Transportation, the Code of Federal Regulations is amended by adding a new Part 587 to read as follows:

PART 587—

Side Impact Moving Deformable Barrier

Sec.

587.1 Scope.

587.2 Purpose

587.3 Application

587.4 Definitions

587.5 Incorporated materials

587.6 General description

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 587.1 Scope.

This part describes the moving deformable barrier that is to be used for testing compliance of motor vehicles with motor vehicle safety standards.

§ 587.2 Purpose.

The design and performance criteria specified in this part are intended to describe measuring tools with sufficient precision to give repetitive and correlative results under similar test conditions and to reflect adequately the protective performance of a motor vehicle or item of motor vehicle equipment with respect to human occupants.

§587.3 Applicability.

This part does not in itself impose duties or liabilities on any person. It is a description of tools that measure the performance of occupant protections systems required by the safety standards that incorporate it. It is designed to be referenced by, and become a part of, the test procedures specified in motor vehicle safety standards, such as Standard No. 214, *Side Impact Protection*.

§ 587.4 Definitions.

All terms defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391) are used in their statutory meaning.

§ 587.5 Incorporated materials.

(a) The drawings and specifications referred to in this regulation that are not set forth in full are hereby incorporated in this part by reference. 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 regulation are incorporated. A notice of any change 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) The drawings and specifications incorporated in this part by reference are available for examination in the general reference section of Docket 79-04, Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, D.C. 20590. Copies may be obtained from Rowley-Scher Reprographics, Inc., 1111 14th Street, NW, Washington, D.C. 20005, telephone (202) 628-6667 or (202) 408-8789. The drawings and specifications are also on file in the reference library of the Office of the Federal Register, National Archives and Records Administration, Washington, D.C.

§ 587.6 General description.

(a) The moving deformable barrier consists of component parts and component assemblies which are described in drawings and specifications that are set forth in this Part 587.6 of this Chapter.

(b) The moving deformable barrier specifications are provided in the drawings shown in DSL-1278 through DSL-1287, except DSL-1282.

(1) The specifications for the final assembly of the moving deformable barrier are provided in the drawings shown in DSL-1278.

(2) The specifications for the frame assembly of the moving deformable barrier are provided in the drawings shown in DSL-1281.

(3) The specifications for the face of the moving deformable barrier are provided in the drawings shown in DSL-1285 and DSL-1286.

(4) The specifications for the ballast installation and details concerning the ballast plate are provided in drawings shown in DSL-1279 and DSL-1280.

(5) The specifications for the hub assembly and details concerning the brake are provided in drawings shown in DSL-1283.

(6) The specifications for the rear guide assembly are provided in drawings shown in DSL-1284.

(7) The specifications for the research axle assembly are provided in drawings shown in DSL-1287.

(c) In configuration 2 (with two cameras and camera mounts, a light trap vane, and ballast reduced), the moving deformable barrier, including the impact surface, supporting structure, and carriage, weighs 3,015 pounds, has a track width of 63 inches, and a wheelbase of 102 inches.

(d) In configuration 2, the moving deformable barrier has the following center of gravity:

X = 44.2 inches rear of front axle

Y = 0.3 inches left of longitudinal center line

Z = 19.7 inches from ground.

(e) The moving deformable barrier has the following moment of inertia:

Pitch = 1669 ft-lb-sec²

Roll = 375 ft-lb-sec²

Yaw = 1897 ft-lb-sec²

Issued on October 24, 1990

Jerry Ralph Curry
Administrator

55 F.R. 45770
October 30, 1990

PREAMBLE TO AN AMENDMENT TO PART 587 Side Impact Protection

(Docket No. 88-06; Notice 16)
RIN 2127-AE05

ACTION: Technical amendments.

SUMMARY: On October 30, 1990, NHTSA published in the *Federal Register* a final rule adding dynamic test procedures and performance requirements to Standard No. 214 (55 FR 45722). The dynamic test requirements of Standard No. 214 are phased in over a three-year period, beginning on September 1, 1993. At the same time, NHTSA also published final rules (1) establishing the specifications for the side impact dummy to be used in the dynamic crash test (55 FR 45757), (2) establishing the attributes of the moving deformable barrier (MDB) to be used in the dynamic crash test (55 FR 45770), and (3) establishing the reporting and recordkeeping requirements necessary for NHTSA to enforce the phase-in of the new requirements (55 FR 45768).

This notice makes technical amendments to the rule concerning the specifications of the MDB. The technical amendments concern the axle length of the MDB in the crabbed mode and the wheel hub specified in the MDB drawings incorporated by reference in the rule. The amendments result from petitions for reconsideration of the October 1990 rule. The petitions were denied by NHTSA except with respect to the issues addressed in this notice.

EFFECTIVE DATE: The amendments made by this rule to the text of the *Code of Federal Regulations* are effective April 2, 1992. (202-366-4924).

SUPPLEMENTARY INFORMATION: NHTSA's safety standard for side impact protection is Federal Motor Vehicle Safety Standard No. 214. On October 30, 1990, NHTSA published in the *Federal Register* a final rule adding dynamic test procedures and performance requirements to Standard No. 214 (55 FR 45722). The dynamic test requirements of Standard No. 214 are applicable to passenger cars and are phased in over a three-year

period, beginning on September 1, 1993. At the same time, NHTSA also published final rules (1) establishing the specifications for the side impact dummy to be used in the dynamic crash test (55 FR 45757), (2) establishing the attributes of the moving deformable barrier to be used in the dynamic crash test (55 FR 45770), and (3) establishing the reporting and recordkeeping requirements necessary for NHTSA to enforce the phasing-in of the new dynamic test procedure (55 FR 45768).

NHTSA received petitions for reconsideration of these final rules from (1) the Motor Vehicle Manufacturers Association (MVMA), (2) Ford Motor Company, (3) the Association of International Automobile Manufacturers, and (4) the International Standards Organization. The agency denied the petitions except with respect to requests for certain changes in specifications concerning the axle length of the MDB in the crabbed mode and the wheel hub of the MDB. The agency indicated that it planned to issue a separate final rule concerning those issues shortly.

In its petition, MVMA noted that the regulatory text of the final side impact rules specify the MDB track width as 63 inches. MVMA asserted that drawing DSL-1287, which is incorporated by reference in the final rules, specifies 61.44 inches for the crabbed axle. MVMA stated that the addition of 6.6 inches for the wheel mounting plate and wheel produces a crabbed track width of 68.04 inches. MVMA requested that this discrepancy be corrected. MVMA also stated that the MDB drawings specify old American Motors Corporation (AMC) wheel hubs. MVMA requested that more readily available components be specified to facilitate maintenance and repair.

NHTSA agrees with MVMA that the specification of 63 inches for the MDB track width is incorrect. The 63 inch dimension is for the MDB with a fixed axle. However, the side impact test procedure uses the MDB with a crabbable axle.

The track width for the MDB with a crabbable axle is 74 inches. This specification can be derived from the MDB drawings as follows. The axle length for the crabbable barrier is 67.49 inches. Adding the wheel hub and tires increases the track width to 74.0 inches. NHTSA notes that the specification for the MDB track width appears in both Figure 2 of Standard No. 214 and Part 587. The agency corrected the MDB track width specification in Figure 2 of Standard No. 214 in a notice published in the *Federal Register* (56 FR 47007) on September 17, 1991. The agency is correcting the Part 587 MDB track width specification in this notice.

NHTSA notes that the 61.44 inch dimension cited by MVMA for the crabbed axle is incorrect and does not appear in drawing DSL-1287. That organization may have used the barrier track width of 63.0 inches for the straight configuration to calculate the axle length for the crabbed configuration. This mistake is understandable since the axle length for the crabbed configuration can be obtained only by adding several other dimensions in different parts of the MDB drawings. Therefore, NHTSA is also amending the rule concerning the MDB to incorporate by reference one additional drawing. This drawing, DSL-1290, will alleviate confusion concerning barrier specifications.

In addition, NHTSA is amending the same rule to delete the specifications of the AMC wheel hubs that are not readily available. NHTSA is doing this by incorporating by reference an amended drawing DSL-1283 to replace the one that specified the AMC parts. The amended drawing provides generic specifications for the MDB wheel hubs. Conforming amendments are being made in other drawings. NHTSA is also incorporating by reference an amended drawing DSL-1285 to delete any reference to a particular manufacturer's barrier face. Since another company intends to manufacture barrier faces that meet the specifications of the side impact rules, NHTSA believes that this change is appropriate. The reference to a particular company in the earlier version of the drawing was inadvertent.

These amendments make minor technical changes to the final rule concerning the MDB and their early adoption is necessary to avoid difficulty and confusion. One amendment provides additional clarification to avoid confusion concerning barrier axle length in the crabbed configuration. Another amendment provides relief by deleting reference to wheel hubs for the MDB that are difficult to obtain. Therefore, NHTSA finds good cause to make these amendments effective 30 days after publication of this notice.

PART 587—[AMENDED]

In consideration of the foregoing, 49 CFR Part 587 is amended as follows:

Section 587.6 is amended by revising paragraphs (b) introductory text, (b)(1), (b)(3), (b)(5), (b)(7), (c), and adding paragraph (b)(8) to read as follows:

(b) The moving deformable barrier specifications are provided in the drawings shown in DSL-1278 through DSL-1287, except DSL-1282, and the drawing shown in DSL-1290 (DSL-1278 through DSL-1287, except for DSL-1282, and DSL-1290 are incorporated by reference; see S587.5).

(1) The specifications for the final assembly of the moving deformable barrier are provided in the drawings shown in DSL-1278, dated October 1991.

* * * * *

(3) The specifications for the face of the moving deformable barrier are provided in the drawings shown in DSL-1285, dated October 1991, and DSL-1286, dated August 20, 1980.

* * * * *

(5) The specifications for the hub assembly and details concerning the brake are provided in drawings shown in DSL-1283, dated October 1991.

(7) The specifications for the research axle assembly are provided in drawings shown in DSL-1287, dated October 1991.

(8) The specifications for the compliance axle assembly are provided in drawings shown in DSL-1290, dated October 1991.

(c) In configuration 2 (with two cameras and camera mounts, a light trap vane, and ballast reduced), the moving deformable barrier (crabbable axle), including the impact surface, supporting structure, and carriage, weighs 3,015 pounds, has a track width of 74 inches, and has a wheelbase of 102 inches.

* * * * *

Issued on February 26, 1992.

Jerry Ralph Curry
Administrator

57 F.R. 7556
March 3, 1992



PART 587—SIDE IMPACT MOVING DEFORMABLE BARRIER

S587.1 Scope.

This part describes the moving deformable barrier that is to be used for testing compliance of motor vehicles with motor vehicle safety standards.

S587.2 Purpose.

The design and performance criteria specified in this part are intended to describe measuring tools with sufficient precision to give repetitive and correlative results under similar test conditions and to reflect adequately the protective performance of a motor vehicle or item of motor vehicle equipment with respect to human occupants.

S587.3 Applicability.

This part does not in itself impose duties or liabilities on any person. It is a description of tools that measure the performance of occupant protection systems required by the safety standards that incorporate it. It is designed to be referenced by, and become a part of, the test procedures specified in motor vehicle safety standards, such as Standard No. 214, *Side Impact Protection*.

S587.4 Definitions.

(a) All terms defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391) are used in their statutory meaning.

S587.5 Incorporated materials.

(a) The drawings and specifications referred to in this regulation that are not set forth in full are hereby incorporated in this part by reference. 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 regulation are incorporated. A notice of any change 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) The drawings and specifications incorporated in this part by reference are available for examination in the general reference section of Docket 79-04, Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, D.C. 20590. Copies may be obtained from Rowley-Scher Reprographics, Inc., 1111 14th Street, N.W., Washington, D.C. 20005, telephone (202) 628-6667 or (202) 408-8789. The drawings and specification are also on file in the reference library of the Office of the Federal Register, National Archives and Records Administration, Washington, D.C.

S587.6 General description.

(a) The moving deformable barrier consists of component parts and component assemblies which are described in drawings and specifications that are set forth in this Part 587.6 of this Chapter.

(b) [The moving deformable barrier specifications are provided in the drawings shown in DSL-1278 through DSL-1287, except DSL-1282, and the drawings shown in DSL-1290 (DSL-1278 through DSL-1287, except for DSL-1282, and DSL-1290 are incorporated by reference; see S587.5).

(1) The specifications for the final assembly of the moving deformable barrier are provided in the drawings shown in DSL-1278, dated October 1991. (57 F.R. 7556—March 3, 1992. Effective: April 2, 1992)]

* * * * *

(2) The specifications for the frame assemble of the moving deformable barrier are provided in the drawings shown in DSL-1281,

(3) [The specifications for the face of the moving deformable barrier are provided in the drawings shown in DSL-1285, dated October 1991, and DSL-1286, dated August 20, 1980. (57 F.R. 7556—March 3, 1992. Effective April 2, 1992)]

(4) The specifications for the ballast installation and details concerning the ballast plate are provided in drawings shown in DSL-1279 and DSL-1280.

(5) **【The specifications for the hub assembly and details concerning the brake are provided in drawings shown in DSL-1283, dated October 1991. (57 F.R. 7556—March 3, 1992. Effective: April 2, 1992)】**

(6) The specifications for the rear guide assembly are provided in drawings shown in DSL-1284.

(7) **【The specifications for the research axle assembly are provided in drawings shown in DSL-1287, dated October 1991.**

(8) The specifications for the compliance axle assembly are provided in drawings shown in DSL-1290, dated October 1991.

(c) In configuration 2 (with two cameras and camera mounts, a light trap vane, and ballast

reduced), the moving deformable barrier (crabbable axle), including the impact surface, supporting structure, and carriage, weighs 3,015 pounds, has a track width of 74 inches, and has a wheelbase of 102 inches. **(57 F.R. 7556—March 3, 1992. Effective: April 2, 1992)】**

(d) In configuration 2, the moving deformable barrier has the following center of gravity:

X = 44.2 inches rear of front axle

Y = 0.3 inches left of longitudinal center line

Z = 19.7 inches from ground.

(e) The moving deformable barrier has the following moment of inertia:

Pitch = 1669 ft.-lb.-sec.²

Roll = 375 ft.-lb.-sec.²

Yaw = 1897 ft.-lb.-sec.²

**55 F.R. 45770
October 30, 1990**

PREAMBLE TO PART 588
Child Restraint Systems Recordkeeping

(Docket No. 74-09; Notice 26)
RIN: 2127-AD46

ACTION: Final rule.

SUMMARY: This rule amends Standard 213, *Child Restraint Systems*, to require manufacturers of child restraints to provide a postage paid registration form with each seat. The rule also amends the standard to require manufacturers to provide information to purchasers about the importance of registering the restraint, as well as information necessary to enable subsequent owners to register the restraint. In addition to amending Standard 213, this rule adds a new Part 588 in title 49, CFR, that requires manufacturers to keep records of the names and addresses of persons who have returned a registration form.

These requirements will improve the effectiveness of manufacturer campaigns to recall child restraints that contain a safety-related defect or fail to conform to Standard 213 by requiring manufacturers to take steps that will increase their ability to inform owners of particular child restraints about defects or noncompliances in those restraints and by encouraging child restraint owners to register their restraints. The requirements will also assist NHTSA in determining whether a child safety seat manufacturer has complied with its notification responsibilities established by the National Traffic and Motor Vehicle Safety Act.

This rulemaking proceeding commenced in response to a December 1989 petition for rulemaking from the Center for Auto Safety and Consumer Action of San Francisco.

EFFECTIVE DATE: The amendment is effective on March 9, 1993.

SUPPLEMENTARY INFORMATION:

General introduction.

This rule amends Standard 213 to establish a registration program for child restraint systems.

The rule requires manufacturers to provide a standardized, postage-paid registration form with each restraint system. Manufacturers of built-in restraints installed in new vehicles are excluded from the requirement because the manufacturers are able to identify the vehicle owners through motor vehicle registration files and directly notify them of a recall concerning the built-in restraints.

The rule standardizes the text and layout of the registration form to increase the likelihood that a purchaser will register the restraint. On each form, manufacturers must preprint their return address, along with information identifying the model name or number of the restraint to which the form is attached. The form must be attached to the restraint to ensure that a purchaser will notice the form.

This rule also requires manufacturers to keep records of the names and addresses of persons who have returned a registration form. The manufacturers must maintain the record for at least six years from the date of manufacture of the seat.

NHTSA proposed the registration program in a notice of proposed rulemaking (NPRM) published on February 19, 1991 (56 FR 6603). Today's rule differs from the NPRM in various respects. The registration form is simplified. The labeling on the restraint must include both an address and a telephone number for the manufacturer. Cost estimates are slightly higher. The recordkeeping requirement of six years from the restraint's date of manufacture is two years less than was proposed. These and other changes are discussed further below.

This rule is intended to improve the percentage of recalled restraints that are fixed in a recall campaign for a noncompliance or defect. During 1981-1991, almost 18 million child restraints were recalled. During this period, about 13 percent of the child restraints involved in completed recall campaigns were reported as "campaign units."

Campaigned units refer to those child restraints that were reported remedied as well as those restraints either removed from sale to the public or removed from use by the public. (During 1981-1989, approximately 6 million restraints were recalled. About 10.5 percent of the restraints involved in completed recall campaigns were reported as campaigned units during this period. During 1990-1991, almost 12 million child restraints were recalled. Only about 11 percent of the restraints involved in completed recall campaigns were reported as campaigned during this period.) In general, this indicates that the child restraint campaign rate is considerably lower than the campaign rate for motor vehicles (60.5 percent for 1981-1991).

(At the time of the NPRM, the child restraint average campaign completion rate was 22 percent. That rate reflected the number of seats that had been campaigned at the time of the NPRM. During the period 1990-1991, the average campaign completion rate increased to about 27 percent.) It should be noted that, even though the average campaign completion rate averaged about 27 percent during 1990-1991, for all campaigns in aggregate only about 11 percent of the restraints involved in completed recall campaigns were reported as campaigned.

The low response rate for child restraints does not seem a consequence of a lack of interest in recalls on the part of the owners. The public responded overwhelmingly to a December 1989 press conference by CAS on child seat recalls by calling NHTSA. In the eight months following that press conference, NHTSA's Auto Safety Hotline received over 30,000 calls from concerned parents asking about recalls and the safety of child seats. This intense interest in child safety indicates that many owners are highly motivated and would return a recalled seat for a remedy, if they knew it had been recalled. Stated differently, many owners might not have had the problem remedied because notification of the recall failed to reach them.

NHTSA proposed the registration program to improve the dissemination of the recall information directly to individual owners. In the past, efforts to improve notice of a recall focused on better disseminating the information indirectly, i.e., to the general public. The agency decided to change its focus to individual owners. If owners

are directly notified that their seat is recalled, the response rate should increase.

Pursuant to a contract with the agency, National Analysts conducted a study of consumers' attitudes about the proposed registration program and other child safety issues during the time that the agency was developing the NPRM. A copy of the February 1991 report has been available in the docket. The researchers conducted four group interviews ("focus groups"). Two groups were interviewed in Orange, California and the other two in Philadelphia, Pennsylvania. The groups were comprised of people who acquired a child restraint new and who use the restraint with their child at least once a week. The participants were asked to evaluate five different registration forms, three of which corresponded exactly to the NPRM's alternative Figure 9a, options one through three. The alternatives differed in how they presented a motivational message for the registration form.

National Analysts reported that participants in all four groups were unanimous in their support for a registration program. National Analysts concluded that, based on the findings from the study, "the great majority of child safety seat buyers are likely to appreciate and respond to a recall registration program." The researchers reported that:

participants also indicated that they would be most likely to return a pre-addressed, postage-prepaid card with an uncluttered graphic design that clearly and succinctly communicates the benefits of recall registration, differentiates itself from a warranty registration card, and requires minimal time and effort on the participant's part.

"Child Safety Seat Registration: The Consumer View," National Analysts, February 1991.

Comments on the proposal.

The agency received 22 comments on the NPRM, from manufacturers, researchers, church and consumer groups, state governments and private individuals. The overwhelming majority of the commenters supported a registration program. With the exceptions discussed below, the comments generally consisted of specific suggestions regarding the format and language of the form, the labeling on the restraint, and the record-keeping part of the rule. Evenflo, Cosco and Chrysler Corporation (a manufacturer of built-in

systems) expressed concerns about the effectiveness of registration programs. Evenflo and Cosco also had cost concerns, which will be discussed in the section on "Costs."

Evenflo believed that a registration program would not be effective. Evenflo indicated that a registration program for child restraints can be compared to the "mandatory" registration requirements that Congress in 1982 specifically provided that the agency could not apply to independent tire dealers. *See*, § 158(b) of the National Traffic and Motor Vehicle Safety Act of 1966. The mandatory registration program had required all tire dealers, including independent dealers, to obtain and send specified information (i.e., the purchaser's name and address, the dealer's name and address, and the identification numbers of the tires) to the tire manufacturer. ("Independent tire dealers" means tire dealers and distributors whose businesses are not owned or controlled by a tire manufacturer or brand name owner.)

Compliance with the mandatory registration was uneven. While virtually all tires on new vehicles were registered, about half of all replacement tires were registered. Independent dealers had registered only 20 percent of the requirement tires they sold.

With the goals of improving the registration rate for tires sold by independent dealers and lessening the burden on the dealers, Congress prohibited NHTSA from requiring those dealers to comply with the mandatory registration program. In place of the mandatory program for the dealers, Congress directed NHTSA to establish a voluntary tire registration process. In the voluntary process, which is in effect today, the independent tire dealer furnishes a standardized registration form to each purchaser after the dealer has first filled in the tire identification number on the form. Purchasers wishing to register their tire fill in their name and address on the form and mail the completed form to the tire manufacturer. The form's postage is paid by the purchaser. The registration rate for the voluntary tire registration program is about 11 percent.

In response to Evenflo, NHTSA disagrees that the proposed registration process for child restraints is comparable to the mandatory program that had applied to independent tire dealers. In contrast, the proposed child restraint program has some similarities to the voluntary tire registration

program that Congress directed NHTSA to adopt for the independent dealers. They are similar because in both cases, the semi-completed registration form is provided to the purchaser. Persons wishing to register their product may then do so by filling in their name and address and mailing the completed form to the restraint manufacturer.

However, even though similarities would exist between the two programs, NHTSA does not believe that the voluntary tire program is a good surrogate for what might happen in the child restraint program. First, in the child registration program: (a) every child restraint will be provided with a registration form attached to it; and (b) every registration form will describe to purchasers why the form should be filled and returned to the child restraint manufacturer. As previously mentioned, even though registration rates for independent tire dealers was about 11 percent, a consumer survey indicated that only 22 percent of these dealers' customers had received registration forms from their dealers, and that over 80 percent of the independent dealers' customers did not remember the dealer explaining the reasons why the registration form should be returned to the manufacturer. Second, consumers seem to be far more likely to be concerned with child safety than with tires, and therefore, they are more apt to fill in a registration form on child restraints than on tires. Third, the child restraint registration form is postage paid, a feature that the National Analysts study showed should have a positive effect on registration rates. Other information also shows the positive effect of providing the postage. According to information from the Consumer Product Safety Commission, warranty cards are returned for chain saws at a rate of 20 to 30 percent without postage paid; 40 percent with postage paid. Because of these differences, NHTSA does not believe the voluntary tire registration program is a good surrogate for what might happen in the child registration program.

Several commenters said that the registration process would be more effective if it involved more the retailer who sells the restraint to the purchaser. The CAS suggested that the process should "require consumers to register the child restraint at time of purchase and as a condition of the sale." The Coalition for Consumer Health and Safety said that the registration form should be "returned to the retailer at the point of sale,

instead of enclosed with the seat to be mailed in by the consumer.” Advocates for Highway and Auto Safety also believed that the form should be completed by the consumer with the assistance of the retailer at the time of purchase.

The NPRM explained why the agency did not propose a seller registration process. The preamble stated:

In deciding whether to propose mandating registration by sellers or a lesser alternative, the agency was mindful that the Vehicle Safety Act does not provide NHTSA with explicit authority to require mandatory registration of child safety seats—i.e., to require *sellers* to register all seat purchases. Because of these concerns, and because child safety seats are sold to the public through a complex distribution system involving the manufacturer, major warehouse distributors, local distributors, and a wide variety of retail outlets, NHTSA concluded that a registration program for seats would have a greater likelihood of success in actual practice if the responsibility for registering were placed primarily on the manufacturer (to provide the card and registration information) and the first owner (to fill out the card and mail it). 56 FR at 6604.

NHTSA continues to believe that mandatory registration would be undesirable for the reasons stated in the NPRM. Further, a comparison can be made to the tire registration program. Congress found mandatory tire registration to be overly burdensome for independent businesses. The manufacture, distribution and sale of child seats is accomplished through a complex distribution system involving numerous retail outlets, large and small. A mandatory registration program could impose substantial burdens on these retailers.

Chrysler expressed concerns about the need for registration. Chrysler stated, “we do question the need for and value of the proposed registration requirements, given that the agency’s estimate for card return rate is about 20 to 40 percent, and no estimate is offered for the probable recall response rate.” Chrysler also stated that, because the card return rate might be no higher than 20 to 40 percent, “the manufacturer should be allowed the flexibility to determine for each instance how owners are to be notified, taking into account the nature of the particular defect or cause of noncompliance.” The agency does not have information that would indicate the potential reduction in injuries or fatalities resulting from a

registration requirement. The NPRM requested comments about instances where a child was injured in a safety seat that had been recalled by the manufacturer, but not fixed before the accident. No information was provided. Nevertheless, the agency believes there is a need for registration, to improve the notice end of a recall campaign. Today’s registration requirements standardize the form to increase the likelihood that the purchaser will register. Today’s requirements will increase the likelihood that the registrant will hear of a recall and realize that the recall pertains to the seat. These requirements address the problems referred to by SafetyBeltSafe U.S.A. in its comment: “the vast majority of safety seat owners either do not learn of the recall/repair message; or...do not realize that publicized recall campaigns apply to them.” These problems may have kept the recall response rate low.

Several factors might work to optimize the registration rate for the child restraint program. First of all, the public concern for child safety should have a decidedly positive effect on the return rate. Also, the child restraint registration form is conspicuous to the purchaser and is postage paid, features that should have a positive effect on registration rates.

With regard to flexibility, Chrysler implied that the registration program would obviate the need for public notice of a recall. NHTSA disagrees. Section 153(c)(3) of the Safety Act authorizes NHTSA to require the notification to be provided to known purchasers of the child restraint and to the general public. The agency anticipates that it would be appropriate to require public notice of the recall, in addition to direct notification of registrants, to ensure that notice is provided to the extent possible to owners who did not register, or to those whose address on registration records is not current or complete.

Cosco also had concerns about the program’s effectiveness. Cosco said that the effectiveness of registration is lessened because “a significant number of restraints are passed down from family to family, sold in garage sales, etc.”

NHTSA proposed the registration program keeping in mind that child restraints are frequently acquired “secondhand,” as Cosco stated. To address that situation, the agency proposed labeling requirements to inform secondhand owners how to register with the manufacturer. When

the secondhand owners have registered, they can be directly notified by the manufacturer if the restraint is recalled. Thus, the purpose of the registration program would be fulfilled for second-hand owners through the labeling provisions.

The wording of the exclusion of built-in restraints has been slightly changed from the proposal. The proposal excluded “a built-in child restraint system installed in a vehicle by the vehicle manufacturer.” The rule excludes a “factory-installed built-in child restraint system” from the registration requirements, and defines the term in S4 of Standard 213 as “a built-in child restraint system that was installed in a motor vehicle at the time of its delivery to a dealer or distributor for distribution.” The change from the NPRM is intended only to simplify the wording of the requirements portion of the standard.

1. *Standardized registration form.*

The NPRM proposed requirements to increase the likelihood that the purchaser will notice the form, fill it in and mail it.

Attached form. The NPRM proposed that the form be attached to a “contactable surface” (the term is defined in S4) of the restraint so that the purchaser must, as a practical matter, notice and handle the form after purchasing the restraint and before putting it into use.

Several commenters addressed the proposal that the form be attached to a contactable surface. Evenflo said that “the location of the forms within the packaging or upon the product does not increase the likelihood of registration. Rather, it turns on the education of the consumer, their spare time and their ready access to the U.S. mail.” In contrast, SafetyBeltSafe said having the form be attached so that the purchaser must actively detach it will make it less likely that the form will be lost.

National Analysts found that respondents in the focus group study indicated that seeing and handling the card are important to maximize registration rates:

There is also strong support for the registration card’s being attached to the seat in such a way that it cannot be used without first removing the card. It is thought particularly important for the card to be packaged separately from instructions, warranties and other material enclosed with the CSS [child safety seat]. Suggestions include directly attaching the card

to the seat liner—although some question whether an adhesive tacky enough to securely attach to the seat would not leave the seat sticky—or attaching it by means of a plastic tie, similar to those used to attach price tags to clothes in department stores.

“*Make it so you can’t rip it off but have to use scissors, because then you’ll read it.*”

[Participant’s quotation emphasized in text.](*Id.* at 29)

This rule adopts the requirement that the form must be attached to the child restraint. The National Analysts study indicates that the requirement will improve the likelihood that the form will be noticed and read by the purchaser. However, the rule permits the form to be attached to more surfaces than had been proposed. Under the NPRM, the only permissible surfaces were “contactable surfaces,” i.e., surfaces contactable by a dummy’s head or torso during a compliance test. Under the final rule, the form may be attached to any surface of the restraint that contacts any portion of the dummy when the dummy is positioned in the system in accordance with S6.1.2 of Standard 213. This change from the NPRM is made to allow more flexibility in selecting a location for attaching the form.

Under a contactable surfaces requirement, the form would have had to be attached to surfaces only by a dummy’s head or torso, since “contactable surface” in S4 is limited to head and torso contacts. Thus, attaching the form to parts of the seat cushion that contact the dummy’s thighs would not have been allowed. Such a prohibition does not appear warranted, since attaching the form to surfaces other than “contactable” ones meets the goal of the requirement that the purchaser will notice and handle the form when detaching it.

Text and format. The NPRM sought to standardize the text and format of the registration form to increase the likelihood that the purchaser will fill it in. The agency proposed a two-sided, two-part form that consisted of a motivational message and boxed statement (top part) and a postcard that the purchaser would fill in and mail (bottom part). NHTSA proposed the two-part form to ensure that the information on the form can be easily read, and that the allotted space for the purchaser’s name and address would be sufficiently large to permit the easy, legible recording of all the necessary information.

Several commenters questioned the need to standardize the form. Cosco said that each manufacturer may have differing needs for the forms, which calls for flexibility. Ford Motor Company said that manufacturers should be allowed to use either a fold-over card or a two-part form, and that details of the proposed form should be optional to allow manufacturers the flexibility to design a form that would better facilitate the recording of the information from registrants.

In contrast, SafetyBeltSafe said that a definite, prescribed format is desirable because it “fits with the public image of important, official forms,” which will encourage people to register.

NHTSA is requiring the form to be standardized to increase the likelihood that a purchaser will register. The National Analysts study showed that essentially the same text and format as those adopted in this rule were effective in presenting the necessary information legibly and eliciting a favorable response from the purchaser, factors that are needed to maximize registration rates.

The focus groups widely and enthusiastically accepted the text and format of the parts of the form that did not vary among the proposed options (*id.* at 10-14). (The reaction to the part of the form that varied is also discussed below.) National Analysts found that the participants unanimously praised the boxed statement (top part of proposed Figure 9b—the address side of the form). “The boxed message...clearly and effectively communicates what are perceived to be the two most critical messages contained on the registration cards: That it is important...[and] [t]hat this is a recall registration, not a warranty card.” *Id.* at 10.

The part of the form that the purchaser fills in (bottom part of proposed figure 9a, the product identification number and purchaser information side) was found to draw—

a particularly positive response because it requires minimal information and effort to complete...CSS owners praise the fact that they are only required to fill in their name and address...There is a strong preference to have the serial, model number and manufacturing date preprinted on the card as indicated on the prototypes. Nearly all want the numbers printed on the card. They feel that it saves them the trouble of looking—and that *any* marginal addi-

tion of time and effort serves as a potential barrier to completion and return.

Id. at 12-14.

The portion of the form indicating that the registration postcard is prestamped and preaddressed “is considered essential...Reaction to this was uniformly enthusiastic.”

Id. at 12.

Because the focus groups’ response to the text and format of the unvarying parts of the proposed form was extremely positive, NHTSA is requiring use of the text and format. Prescribing the text and format has the added benefit of ensuring that commercial matters, such as marketing information, are excluded from the form. (In addition, the regulatory text expressly prohibits such information. See, S5.8(e).) If marketing information were allowed to be placed on the form, such information might cause purchasers to misidentify the registration form as a warranty card, which the agency seeks to avoid in view of National Analysts’ finding that participants generally had negative feelings toward warranty registrations (*id.* at 14).

The rule prescribes the text and format for the motivational message, the part of the form that varied among the proposed options. National Analysts found that it is possible for the text and format of the message to elicit a negative response from the purchaser. The text for option two was widely criticized as appearing shallow or manipulative. *Id.* at 19. The text for option three was strongly criticized for its wording, tone and format. Focus group participants said that they would not read option three’s message because of their dislike for the card. *Id.* at 20-22. These findings lead NHTSA to conclude that the text and format and text for the message must be prescribed so that the message itself does not discourage purchasers from registering.

The motivational message has elements that received general support in the National Analysts study. *Id.* at 28. The text is based on option 1, which received the most positive response in the focus group testing. *Id.* at 15. However, the focus groups found the text style of option 1 too hard to read. They preferred a bold print, and that the text be arranged in more of the “bullet” style of option 2. The agency has revised the format in accordance with those preferences.

The motivational message adopted today was suggested by National Analysts in its February

1991 report. National Analysts made the suggestion after evaluating the reaction of the focus groups to the messages proposed as options in the NPRM. Contrary to one commenter's belief, NHTSA did not receive National Analysts' suggestion for the "optimal" card until after the NPRM was developed. For that reason, the optimal card was not among those proposed in the NPRM. However, NHTSA placed the National Analysts report in the public docket when the NPRM was published, to make the card and the report publicly available for review. *See*, item number three in the NPRM docket, 74-09-N20.

One commenter suggested that the card should have a sentence in Spanish that directs the reader to a resource for a translated version of the registration form. The effect of such a requirement would be to require manufacturers to have forms available in Spanish. The burden of such a requirement on manufacturers does not appear warranted, for the reasons discussed in the agency's November 20, 1990 denial of Texas's petition for rulemaking on requiring Spanish instructions for child restraints. 55 FR 48262.

The focus group study showed that participants reacted favorably to the idea of being assured by the manufacturer that their names would not be placed on a mailing list if they registered their restraints. Although the agency is not restricting use of the names, it expects that manufacturers will respect owners' preferences that their names be kept separate from other customer lists.

This rule specifies a minimum size for the form so that the part to be returned to the manufacturer would be mailable as a postcard. That part of the form, i.e., the postcard part, and the part of the form to which the postcard is attached must both be not less than 3 1/2 by 5 inches, and have a thickness of not less than 0.007 inches and not more than 0.0095 inches. These dimensions are taken from postal regulations for cards mailable without envelopes under first class postage.

2. Labeling requirements.

The NPRM proposed requirements to enable owners of secondhand restraints to register. The NPRM proposed that each restraint (other than factory-installed built-in ones) must be permanently labeled with information about the importance of registration, and instructions for telephoning or mailing the necessary registration information to the manufacturer. In addition, the

labeling would have to include information about NHTSA's Auto Safety Hotline. The proposal also included requirements that the registration information be provided in the printed instructions that accompany the restraint.

Several commenters said that the proposed labeling is too long for the limited space available on the restraint, or has words that imply that the restraint is unsafe. NHTSA has shortened and revised the message in response to those comments. Some commenters suggested a new text and format and other changes (e.g., using a triangular warning symbol) that they believed would more effectively urge the purchaser to register. The agency reviewed the suggestions, but could not conclude that the suggestions improved what had been proposed, tested in the focus groups and revised for this rule.

Fisher Price said that labeling the NHTSA Hotline number is unnecessary since the owner can contact the manufacturer about recalls. The agency disagrees. The Hotline number is necessary to increase the public's awareness of that recall information resource. Also, consumer complaints to the Hotline have historically provided NHTSA an important source of data on safety-related defects. For that reason, the agency requires vehicle manufacturers to include the Hotline in the vehicle owner's manual. *See*, 49 CFR Part 575. NHTSA is requiring the Hotline number on each child restraint to ensure that the Hotline can be readily used by each owner, even persons owning secondhand restraints that are missing the instructions.

This rule also requires manufacturers to provide a mailing address and telephone number on the label. The NPRM proposed either an address or telephone number, but several commenters said that both should be required to enable the owner to contact the manufacturer in more than one way. The CAS said that two companies (Virso/Pride-Trimble and Century) recently changed their toll-free telephone numbers which made it more difficult for owners to contact the companies. CAS stated, "Requiring *both* company address and telephone number will help consumers get the information they need." NHTSA is requiring both an address and telephone number to make it easier for a person to register.

Readers should note that Standard 213's labeling requirements are further amended by a final rule published elsewhere in today's edition of the

Federal Register. That rulemaking relates to a warning label requirement in the standard. In addition, NHTSA published an NPRM to amend certain labeling and other requirements for built-in restraint systems. 57 FR 870; January 9, 1992. Any amendments that might ultimately be adopted based on the January 1992 notice may modify existing labeling requirements, including the requirements adopted today.

3. Recordkeeping.

This rule establishes a new Part 588 in title 49, CFR, to require manufacturers to establish a record of registrants and maintain this record for at least six years from the date of manufacture of the seat. The record includes the name and mailing address of each registrant, and the model name or number and date of manufacture (month, year) of the restraint.

The notice proposed an eight year period, but comments were requested on whether a shorter period, e.g., six years, should be required. Commenters were sharply divided about the recordkeeping requirement. Commenters suggested a length of recordkeeping ranging from four to 10 years.

The agency is adopting a six year requirement because NHTSA's records indicate that all restraints recalled to date were recalled within six years of the production date of the seat. (As stated above, during 1981–1991, almost 18 million child restraints were recalled. The average length of time between date of production and date of recall was about 28 months.) Some commenters said that a 10 year requirement is warranted because restraints more than 10 years old are still being used. NHTSA does not agree that those restraints, relatively few in number, justify recordkeeping for longer than six years, given the average age of recalled child restraints. NHTSA is concerned that a period longer than six years could impose an unwarranted recordkeeping burden on manufacturers.

4. Costs.

The agency has revised its cost estimates for this rulemaking. The NPRM and preliminary regulatory evaluation (PRE) estimated that the rule would have an average cost impact of \$0.25 to \$0.31 per seat. The estimated cost was \$0.13 to \$0.19 for high volume sales, \$0.33 to \$0.39 for medium volume sales, and \$0.93 to \$0.99 for low

volume sales. The estimate included the cost for providing and attaching the registration form, labeling the restraint, recordkeeping, and providing postage. The ranges in the cost estimate were based on a 20 percent to 40 percent return rate for the forms.

Evenflo and Cosco disagreed with NHTSA's cost estimates. Evenflo said that the estimated cost for the low volume manufacturer was too low. Evenflo also said that the agency's estimate does not account for the cost doubling or tripling for each level of the distribution chain through which the restraint passes. "The ultimate cost to the consumer (assuming that the cost is passed on to the consumer) will actually be three to ten times the estimated \$1 cost."

Cosco said that the agency's estimated costs are too low. Cosco believed that the true manufacturing costs would be about \$1.00 per seat. "This cost translates into a retail price increase of as much as 10% for the moderately priced restraints and considerably more than that for lower-priced booster seats and infant-only restraints, which very well might result in lower purchases of new car seats."

NHTSA contacted Evenflo and Cosco for information about their cost estimates. Evenflo provided information showing some of the basis for its estimate. Cosco did not.

The agency used the information from Evenflo to revise the cost estimates. The final regulatory evaluation for this rule discusses the cost estimates in detail. The evaluation, available in the docket, explains that NHTSA did not agree with some of Evenflo's assumptions about costs. For example, the manufacturer's estimate for postage costs was very high. However, Evenflo's information enabled NHTSA to estimate that the rule will cost \$0.47 to \$0.52 per restraint for high volume manufacturers, and \$0.95 to \$1.26 for medium volume manufacturers. These costs are based on a manufacturing cost of \$0.20 to \$0.22 per restraint for high volume manufacturers, and \$0.40 to \$0.53 for medium volume manufacturers. The agency determined the retail cost increase based on Evenflo's information that the markup from manufacturing cost to retail price is 2.37 times.

These costs were based on a 30 to 40 percent return rate for the forms. The agency has decided to change the estimated return rate for the child restraint registration forms from 20 to 40 percent

in the NPRM, to 30 to 40 percent, since, as explained above, the percentage of the remedied seats has increased.

5. *Nomenclature unchanged.*

The NPRM proposed a nomenclature change to Standard 213, to replace the term “child restraint system” with “child safety seat.” Two commenters supported the change. About nine commenters ranging from manufacturers to researchers to safety groups adamantly opposed it. Many of the commenters opposing the change said the term child safety seat could mislead consumers into believing that the device will provide absolute protection in a crash. Manufacturers said that such an expectation of absolute protection could result in severe liability implications for them in the event a child is injured or killed in the device. Some commenters said that the term child safety seat is not descriptive enough to make clear that it covers devices such as car beds, vests and harnesses. As a result, the term would be confusing in Standard 213.

By proposing the nomenclature change, the agency sought to get consumers to better understand the importance of the seat to the child’s safety in the automobile and on aircraft. NHTSA did not intend to change manufacturers’ potential legal liability, nor did NHTSA intend to unsettle or confuse the current understanding concerning which devices are included within the term “child restraint systems.” While the effectiveness of child restraints is beyond question in view of data indicating they reduce a child’s risk of death or serious injury by 70 percent, the agency agrees that the proposed nomenclature change could be confusing, and defers to commenters’ assessment that the change might have unintended, undesirable effects on manufacturers’ legal liability. NHTSA is therefore retaining the term “child restraint system” in Standard 213.

The final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal Standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards.

That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

1. Chapter V, Title 49, Transportation, the Code of Federal Regulations, is amended by adding the following new Part:

Part 588—Child restraint systems record-keeping requirements.

Secs.

588.1 Scope.

588.2 Purpose.

588.3 Applicability.

588.4 Definitions.

588.5 Records.

588.6 Record retention.

Authority: 15 U.S.C. 1392, 1401, 1497; delegation of authority at 49 CFR 1.50.

§ 588.1 Scope.

This part establishes *requirements for manufacturers* of child restraint systems to maintain lists of the names and addresses of child restraint owners.

§ 588.2 Purpose.

The purpose of this part is to aid manufacturers in contacting the owners of child restraints during notification campaigns conducted in accordance with 49 CFR Part 577, and to aid the National Highway Traffic Safety Administration in determining whether a manufacturer has met its recall responsibilities.

§ 588.3 Applicability.

This part applies to manufacturers of child restraint systems, except factory-installed built-in restraints.

§ 588.4 Definitions.

(a) *Statutory definitions.* All terms defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391) are used in their statutory meaning.

(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 571 of this subchapter (hereinafter “the Standards”), are used as defined in the Standards.

(c) *Definitions used in this part.*

Child restraint system is used as defined in S4 of 49 CFR § 571.213, *Child Restraint Systems*.

Factory-installed built-in child restraint system is used as defined in S4 of 49 CFR § 571.213.

Owners include purchasers.

Registration form means the form provided with a child restraint system in compliance with the requirements of 49 CFR § 571.213, and any communication from an owner of a child restraint to the manufacturer that provides the restraint's model name or number and the owner's name and mailing address.

§ 588.5 *Records.*

Each manufacturer, or manufacturer's designee, shall record and maintain records of the owners of child restraint systems who have submitted a registration form. The record shall be in a form suitable for inspection such as computer information storage devices or card files, and shall include the names and mailing addresses of the

owners, and the model name or number and date of manufacture (month, year) of the owners' child restraint systems.

§ 588.5 *Record retention.*

Each manufacturer, or manufacturer's designee, shall maintain the information specified in § 588.5 of this part for a registered restraint system for a period of not less than six years from the date of manufacture of that restraint system.

Issued on September 4, 1992.

Howard M. Smolkin
Executive Director

57 F.R. 41423
September 10, 1993

PART 588—Child Restraint Systems Recordkeeping

S588.1 Scope.

This part establishes requirements for manufacturers of child restraint systems to maintain lists of the names and addresses of child restraint owners.

S588.2 Purpose.

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Child restraint system is used as defined in S4 of 49 CFR 571.213, *Child Restraint Systems*.

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Owners include purchasers.

Registration form means the form provided with a child restraint system in compliance with the requirements of 49 CFR 571.213, and any communication from an owner of a child restraint to the manufacturer that provides the restraint’s model name or number and the owner’s name and mailing address.

S588.5 Records.

Each manufacturer, or manufacturer’s designee, shall record and maintain records of the owners of child restraint systems who have submitted a registration form. The record shall be in a form suitable for inspection such as computer information storage devices or card files, and shall include the names and mailing addresses of the owners, and the model name or number and date of manufacture (month, year) of the owners’ child restraint systems.

S588.6 Record retention.

Each manufacturer, or manufacturer’s designee, shall maintain the information specified in 588.5 of this part for a registered restraint system for a period of not less than six years from the date of manufacture of that restraint system.

57 F.R. 41428
September 10, 1992

PREAMBLE TO PART 590—MOTOR VEHICLE EMISSIONS INSPECTION CRITERIA

(Docket No. 72-24; Notice 2)

This notice issues a regulation to establish emissions inspection criteria for a diagnostic inspection demonstration projects funded pursuant to the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901, *et seq.*). The regulation is based upon a notice of proposed rulemaking published June 11, 1974 (39 F.R. 20501) and upon comments submitted in response to the notice, and is issued in consultation with the Administrator of the Environmental Protection Agency.

Under Title 15 U.S.C., Section 1962(a), a State may obtain a grant from the Federal government for the purpose of establishing and operating a diagnostic inspection demonstration project. The purpose of the grant program is to explore the feasibility of using diagnostic test devices to conduct diagnostic safety and emission inspection of motor vehicles. The demonstration projects are also designed to help the Federal and State governments determine the best means of structuring safety and emissions inspection programs. Pursuant to the requirements of section 1962(b), this rule establishes emissions inspection criteria to be met by projects funded under this program. The criteria established govern the manner of operation of five Federally-funded State diagnostic inspection demonstration projects to be conducted in Alabama, Arizona, the District of Columbia, Puerto Rico, and Tennessee, and do not, in themselves, impose requirements on any other State or upon any individual.

The subject most commonly discussed in the comments was whether a loaded test mode or a high speed no load test mode would be more effective than the basic idle-only mode inspection procedure in detecting vehicles with very high emission levels and in diagnosing problems. Because this program calls for demonstration projects and is in the nature of a feasibility

study, the NHTSA considers that the most appropriate course is to compare the alternative procedures and, in this way, generate data which may ultimately resolve the question. Accordingly, the States will be allowed to choose between loaded-mode and no-load inspection procedures. For similar reasons no-load inspection procedures will include both low and high speed measurements until such time as the data collected indicates that unloaded high-speed measurements are unwarranted.

Since one of the major purposes of the program is to determine whether this type of inspection is both feasible and cost beneficial, the criteria do not specify that the emission levels be the lowest attainable, but represent a fair balance between low rejection rates which would result in limited program effectiveness and high rejection rates which would result in adverse public reaction. In the event that the actual rejection rate varies significantly from our estimate of approximately 30 percent, the emissions criteria will be modified to bring the rate to the desired level. Because the emission criteria are less stringent than those permitted under the Federal Emission Certification Test criteria, it is not anticipated that conflicting requirements on engine design will result from their application in this program.

Two comments were addressed to the point that the mechanical dynamometer suggested for use in the loaded mode inspection may not simulate normal road loading as well as an electric dynamometer. The purpose of the dynamometer is to provide an adequate load to the engine to allow detection of carburetor main and power circuit malfunctions and ignition misfiring under load. Because this function does not require true road load duplication NHTSA does not consider that the more expensive electric dynamometer should be required.

Effective: July 5, 1975

General Motors Corporation suggested that oxides of nitrogen (NO_x) measurement be included in the emission inspection criteria. The Environmental Protection Agency recommended waiting until such time as NO_x controlled vehicles account for a more significant part of the vehicle population in order to make such a program meaningful. NO_x measuring instruments suitable for this type of inspection have not been developed to a point where low cost, reliable instruments are readily available. Furthermore, tuning a car without NO_x controls tends to increase the NO_x emissions slightly while reducing the hydrocarbon and carbon monoxide emissions. Therefore, NHTSA agrees with the EPA that until newer vehicles with NO_x control devices begin to account for a more substantial part of the overall vehicle population, the level of reduction of emissions of oxides of nitrogen that might be obtained is not large enough to warrant the inclusion of NO_x inspection at this time.

While the criteria developed in this rulemaking would be appropriate for emissions inspection of light duty trucks and other light duty vehicles, NHTSA has decided not to include these vehicles in the data pool for the demonstration projects. The rule requires that the idle speed of the vehicle at the time of inspection must not be more than 100 rpm greater than that recommended by the manufacturer. The purpose of this requirement is to ensure that

high idle speeds are not masking excessive idle carbon monoxide levels. At the suggestion of the American Motors Corporation the units of measure for proposed emission levels are more specifically identified than in the notice of proposed rulemaking. The unit of measurement of carbon monoxide concentration is Mole percent, while that for hydrocarbon concentration is ppm as hexane.

Therefore, a new Part 590, Motor Vehicle Emission Inspections, is added in Chapter V, Title 49, Code of Federal Regulations. . . .

Effective date: This part becomes effective July 5, 1975. The notice of proposed rulemaking had proposed an effective date 30 days after issuance of the final rule. Because the five States that have received grants have all developed their emission inspection in accordance with the proposed criteria, they will not be adversely affected by an immediate effective date. Good cause is accordingly found for an immediate effective date.

(Section 302(b)(1), Pub. L. 92-513, 86 Stat 947, 15 U.S.C. 1901; delegation of authority at 49 CFR 1.51.)

Issued on June 5, 1975.

James B. Gregory
Administrator

40 F.R. 24904
June 11, 1975

PART 590—EMISSION INSPECTIONS

§ 590.1 Scope.

This part specifies standards and procedures for motor vehicle emission inspections by State or State-supervised diagnostic inspection demonstration projects funded under Title III of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901, *et seq.*).

§ 590. Purpose.

The purpose of this part is to support the development of effective regulation of automobile exhaust emissions and thereby improve air quality, by establishing appropriate uniform procedures for diagnostic emission inspection demonstration projects.

§ 590.3 Applicability.

This part does not impose requirements on any person. It is intended to be utilized by State diagnostic inspection demonstration projects operating under Title III of the Cost Savings Act for diagnostic emission inspections of passenger cars powered by spark-ignition engines.

§ 590.4 Definitions.

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.

§ 590.5 Requirements.

A diagnostic inspection demonstration project shall test vehicles in accordance with either the no-load inspection criteria specified in section 590.6, or the loaded-mode inspection criteria specified in section 590.7.

§ 590.6 No-load inspection.

(a) *Criteria.* The vehicle must meet the following criteria when tested by the no-load inspection method.

(1) The vehicle's idle speed, measured with the transmission in the position recommended by the manufacturer for adjusting the idle speed, shall not be more than 100 rpm higher than the idle speed recommended by the manufacturer.

(2) Concentrations of emission samples taken from each exhaust outlet shall not exceed the following levels:

(i) For model years 1967 and earlier: hydrocarbons (HC) 1200 ppm as hexane, and carbon monoxide (CO) 9.0 mole percent.

(ii) For model years 1968 through 1973: HC 600 ppm as hexans, and CO 7.0 mole percent.

(b) *Method.* No-load inspection is conducted by measuring two emission samples from each exhaust outlet. The first emission sample is collected with the vehicle's transmission in neutral and the engine operating at 2250 rpm. The second sample is collected with the vehicle's transmission in the position recommended by the manufacturer for adjusting the idle speed, and the engine idling.

§ 590.7 Loaded-mode inspection.

(a) *Criteria.* When the loaded-mode inspection is conducted, concentrations of the emission samples taken from each exhaust outlet for each of the three phases of the driving cycle in Table I, conducted in the sequence indicated, shall not exceed the levels given in Table II. For the purpose of determining the weight classification of a motor vehicle for the loaded-mode inspection, 300 pounds are added to the vehicle's unladen curb weight.

(b) *Method.* Loaded-mode inspection for the first two phases of the driving cycle described in Table I is conducted by measuring the levels of emission concentrations from each exhaust outlet

TABLE I

Curb weight plus 300 lbs	Driving cycle (speed-load combination)		
	1st phase high cruise	2d phase low cruiser	3d phase idle
3,801 lbs and up	48 to 50 mi/h at 27 to 30 hp	32 to 35 mi/h at 10 to 12 hp	At idle.
2,801 to 3,800 lbs	44 to 46 mi/h at 21 to 24 hp	29 to 32 mi/h at 8 to 10 hp	Do.
2,000 to 2,800 lbs	36 to 38 mi/h at 13 to 15 hp	22 to 25 mi/h at 4 to 6 hp	Do.

TABLE II

High cruise	Low cruise	Idle
1967 and earlier model years		
HC 900 ppm as hexane	HC 900 ppm as hexane	HC 1,200 ppm as hexane
CO 4.5 mole percent	CO 5.5 mole percent	CO 9.0 mole percent
1968 through 1973		
HC 450 ppm as hexane	HC 450 ppm as hexane	HC 600 ppm as hexane
CO 3.75 mole percent	CO 4.25 mole percent	CO 7.0 mole percent

of a motor vehicle operated on a chassis dynamometer, with the vehicle's transmission in the setting recommended by the vehicle manufacturer for the speed-load combination being tested. For the idle phase, vehicles with automatic transmissions are tested in drive, and vehicles with standard transmissions are tested in neutral.

§ 590.8 Inspection conditions.

(a) The vehicle engine is at its normal operating temperature, as specified by the vehicle manufacturer.

(b) An engine speed indicator with a graduated scale from zero to at least 2500 rpm is used for the unloaded inspection procedure.

(c) The equipment used for analyzing the emission concentration levels—

(1) Has a warm-up period not to exceed 30 minutes;

(2) Is able to withstand sustained periods of continuous use;

(3) Has a direct and continuous meter readout that allows readings for concentration levels of carbon monoxide (CO) from 0-10 mole percent, and of hydrocarbon (HC from 0-2000 ppm as hexane; and if used for the loaded-mode inspection, has at least one additional expanded direct and continuous readout for concentration levels of carbon monoxide and of hydrocarbon, such as from 0-5 mole percent and from 0-1000 ppm as hexane respectively;

(4) Has an accuracy of better than $\pm 5\%$ of the full scale reading for each concentration range;

(5) Permits a reading for each emission concentration level, within 10 seconds after the emission sample has been taken, that is not less than 90% of the final reading; and

(6) Has a calibration system using a standard gas, or an equivalent mechanical or electrical calibration system itself is based on a standard gas.

40 F.R. 24904
June 11, 1975

PREAMBLE TO PART 591

Importation of Vehicles and Equipment Subject to Federal Motor Vehicle Safety Standards (Docket No. 89-5; Notice 2) RIN: 2127-AD00

ACTION: Final rule.

SUMMARY: The purpose of this rule is to adopt procedures that will govern the importation of motor vehicles and equipment subject to Federal safety standards on and after January 31, 1990. This rule supersedes the existing joint regulation of the Departments of Treasury and Transportation on this subject, 19 CFR 12.80, which has been in effect since 1968. In most instances, the new rules are mandated by the Imported Vehicle Safety Compliance Act of 1988, and primarily affect importation of motor vehicles not manufactured to comply with the Federal motor vehicle safety standards. Requirements concerning vehicles and equipment that conform to the Federal safety standards, and nonconforming equipment, remain unchanged.

The Supplementary Information of this notice contains a full discussion of the present regulation, the proposal, and the changes made in response to that proposal.

EFFECTIVE DATE: January 31, 1990.

SUPPLEMENTARY INFORMATION: Although NHTSA provided a full discussion of the proposed amendments in its prior proposal, it is repeating much of that discussion in this notice because of the major changes that the rule occasions, and the need that interested persons be fully informed as to the changes and their effect upon importation procedures that have been in effect for over 20 years.

On October 31, 1988, the President signed P.L. 100-562, the Imported Vehicle Safety Compliance Act of 1988 ("the 1988 Act"). Notice of its enactment was published by the agency in the *Federal Register* on December 5, 1988 (53 FR 49003), and a notice of proposed rulemaking to establish Part 591 was published on April 25, 1989 (54 FR 17772). As the notice stated, the 1988 Act amends those provisions of the National Traffic and Motor Vehicle Safety Act of 1966 ("the Vehicle Safety Act") that relate to the importation of motor vehicles subject to the Federal motor vehicle safety standards (section 108(b), 15 U.S.C. 1397(b)).

Specifically, the 1988 Act revokes 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 may appear to them appropriate to ensure that a noncomplying vehicle or equipment item will be brought into conformance or will be exported or abandoned to the United States. The temporary admission of nonconforming used vehicles and equipment items by exempted persons was also permitted. Pursuant to this authority, the two Secretaries issued an implementing regulation, 19 CFR 12.80, which has governed the importation of merchandise subject to Federal motor vehicle safety standards since 1968, and will continue to do so through January 31, 1990.

Under the 1988 Act, new sections (c) through (j) are added to section 108 to replace revoked sections (b)(3) and (b)(4). The authority to issue joint regulations is replaced by a rulemaking authority vested alone in the Secretary of Transportation (and delegated to NHTSA through existing delegation of authority).

The purpose of this notice is to promulgate a final rule to implement the 1988 Act, and to explain how importation of motor vehicles and equipment will be affected by this new authority. First, the existing regulation, 19 CFR 12.80, will continue to be a regulation under the joint authority of the two Departments with respect to the importation provisions of the Motor Vehicle Information and Cost Savings Act under which the Bumper Standard (49 CFR Part 581) and the Theft Prevention Standard (49 CFR Part 541) were issued. With respect to the Vehicle Safety Act, however, the new NHTSA regulation, 49 CFR Part 591, will become the primary importation regulation, and 19 CFR 12.80 will become the conforming regulation of the U.S. Customs Service. In the future, substantive changes to importation procedures will be effected by NHTSA alone, through amendments to Part 591, and Customs will make conforming amendments to 19 CFR 12.80, as required.

A similar relationship presently exists between regulations of the Environmental Protection Agency ("EPA") and Customs (*see*, respectively, 40 CFR 85.1501 *et seq.* and 19 CFR 12.73). This relationship has established a precedent for Customs to amend its regulations without notice and opportunity for comment on the basis that full notice and opportunity had been offered by EPA in promulgating its regulations, and that the amendments by Customs were merely conforming in nature (*See* 53 FR 26240).

In establishing Part 591, NHTSA has attempted to formulate a program that will ensure that all imported motor vehicles conform to the Federal motor vehicle safety standards without imposing unnecessary burdens on importers. Therefore, NHTSA has tried in this rule to impose only those requirements that are mandated by the 1988 Act, with amplifications only where it appeared necessary to implement the safety intent of the statute.

In response to the proposal published on April 25, 1989, NHTSA received 19 written comments, and, as well, several inquiries by telephone. Seven comments were received from the following motor vehicle manufacturers: BMW of North America, Freightliner Corp., Austin Rover Cars of North America, General Motors Corp., Volkswagen of America, Ford Motor Co., and Chrysler Corp. Five comments were received from the following manufacturing firms in Canada: Intercontinental Truck Body Ltd., Barber Industries Ltd., Cancade Co., Western-Hydro Air Drilling Ltd., and Canterra Equipment Inc. Also commenting from Canada was an import/export consulting firm, All Alta. Agencies Ltd. Two comments were received from importers of vehicles not originally manufactured to conform to Federal motor vehicle safety standards: U.S. Trade Corp. and Auburn Motors/Superior Auto Sales (whose submission was supported by the National Federation of Independent Businesses). Two comments were received from trade organizations: National Automobile Dealers Association and The Dealer Action Association. Written comments were submitted by the State of Texas, and a private citizen, George Ziolo. During the pendency of the rulemaking action, questions were raised in telephone conversations, reported to the Docket, and these will be addressed in this notice where appropriate.

The principal paragraphs of Part 591 are those dealing with the importer's declarations (591.5), documents accompanying declarations (591.6), and restrictions upon importation and bond requirements (591.7). As paragraphs 591.6 and 591.7 relate directly to paragraph 591.5, issues that were raised in connection with them will be discussed in the appropriate portions of paragraph 591.5.

IMPORTATION OF MOTOR VEHICLES

Under existing 12.80, a motor vehicle offered for importation into the United States is admitted pursuant

to one of nine declarations regarding the status of the vehicle in relation to the motor vehicle safety and bumper standards (12.80 is in the process of being amended to incorporate reference to the theft prevention standard). The requirements of the 1988 Act affect some of these declarations, and establish new exceptions. A discussion of these changes follows.

1. The vehicle is not a "motor vehicle".

Under 19 CFR 12.80(b)(1)(viii), a vehicle is not required to be brought into compliance if it is not a motor vehicle as defined by the Vehicle Safety Act, *i.e.*, if it is not "designed primarily for use on the public streets, roads, and highways" (15 U.S.C. 1391(3)). Because of the uncertainty regarding certain types of vehicles (*e.g.*, golf carts, construction equipment) NHTSA has required that all importers of self-propelled wheeled vehicles execute a declaration, which has allowed the agency to review the status of vehicles for which an exemption is claimed, and to require re-entry as a nonconforming vehicle when it disagrees with the importer's assessment that the vehicle is not subject to the Federal motor vehicle safety standards. This exemption remains (paragraph 591.5(a)(i)) because this agency has no jurisdiction regarding non-motor vehicles under the Vehicle Safety Act and the 1988 Act makes no jurisdictional change. There were no comments on this issue.

2. The vehicle conforms and is so certified.

Under the existing regulation, a motor vehicle is allowed immediate entry without the posting of bond upon a declaration that it conforms to all applicable Federal motor vehicle safety standards and bears a certification label to that effect permanently affixed by the original manufacturer (12.80(b)(1)(ii)). This same paragraph also allows immediate entry if a vehicle is only technically noncompliant, *i.e.*, because readily attachable equipment items are not attached, but will be installed before the vehicle is offered for sale.

The 1988 Act makes no change affecting this category of importation. The agency interprets the new amendments, however, as imposing new restrictions upon the importation of vehicles that may have been conformed prior to entry but bear a certification by a person other than the original manufacturer. The 1988 Act amends 15 U.S.C. 1397(a)(1)(A) to add the words "and is covered by a certification issued under section 114" as an addition to the existing requirement that a vehicle may not be imported "unless it is in conformity." A certification issued under section 114 is that of the "manufacturer", the entity which is responsible for the original assembly of the vehicle, and not that of a converter, whose operation consist of alterations to a previously assembled vehicle. To reflect this amendment, the agency proposed, and is now adopting, a definition of the term "original manufacturer" (paragraph 591.4) which excludes converters outside the United States who certify and

conform vehicles to the standards after the vehicles have been manufactured in fully assembled form by a person other than the converter. The agency believes that the 1988 Act justifies this interpretation. The definition was specifically supported by The Dealer Action Association. An interpretation that would allow entry of a vehicle pursuant to a declaration of conformity and a certification by a person other than its original manufacturer could well result in the importation of vehicles for which the Administrator had made no determination of capability of modification to meet Federal standards, and defeat the purpose of the 1988 Act. However, even if the converted vehicle is one that the Administrator has deemed eligible for entry and is certified as conforming by its converter, under Part 591 it must enter the country only through a registered importer (or through one who has a contract with a registered importer), under bond, and its compliance must be established after entry in accordance with the new procedures.

One commenter, U.S. Trade Corp., though headquartered in the U.S., apparently owns a conversion facility in Germany. Assuming that it will become a registered importer, it commented that it ought to be able to import its converted vehicles without bond, provided that it submitted documentation to NHTSA 30 days in advance of the arrival of its vehicles. NHTSA notes, however, that these are vehicles imported pursuant to 15 U.S.C. 1397(c)(3), and paragraph (c)(2) specifically requires a bond to be furnished "in the case of any motor vehicle imported under paragraph (3). . ." Though sympathetic to U.S. Trade Corp.'s desire for expedited treatment, NHTSA believes that it is contrary to the 1988 Act for it to receive certification from an importer in advance of the arrival of a vehicle. Section 1397(c)(3)(E)(i) allows a registered importer to release custody of a vehicle 30 days after certification to the Secretary (if the Secretary has not in the interim demanded an inspection of the vehicle). Acceding to U.S. Trade Corp.'s request for early submission of certification could result in the 30-day period expiring before arrival of the vehicle in the U.S., and its immediate release from custody upon entry. NHTSA does not deem it desirable to demand *pro forma* an inspection of each such vehicle to delay its release from custody. Accordingly, it is informing U.S. Trade Corp. and others who are contemplating becoming registered importers that it will not accept certification data in advance of the arrival of a vehicle in the United States, and that the earliest date on which certification documentation may be submitted is the date of the importation declaration. Consequently, a motor vehicle that has been modified by a registered importer after its manufacture and before entry, will be treated as a nonconforming motor vehicle, and subject to the same entry requirements as a nonconforming vehicle.

Although the exclusory language in the definition of "Original manufacturer" remains as proposed, a modification has been made in the preliminary portion which defined the term as "the entity responsible for the original design, engineering, and manufacturer of a motor vehicle. . . ." Volkswagen commented that the definition was overly restrictive by its inclusion of design and engineering, and recommended a definition that would be consistent with the definition of "manufacturer" in the Vehicle Safety Act (15 U.S.C. 1391(5)). NHTSA concurs with this analysis and recommendation. The agency is aware that on occasion a vehicle manufacturer in one country may contract with a firm in another for design and engineering studies for future production vehicles. Accordingly, the preliminary portion of the final definition reads "the entity responsible for the original manufacture or assembly of a motor vehicle. . . ." VW also recommended that the definition include motor vehicle equipment. The agency has not adopted this recommendation, as the amendments of the 1988 Act do not affect motor vehicle equipment.

Other issues regarding interpretations of conformity were raised by commenters. Canadian companies who appeared to be final stage manufacturers, and who were concerned that their vehicles would be treated as "nonconforming" under the amendments, asked for a clarification. The agency wishes to reassure these commenters that the new requirements do not affect final stage manufacturers outside the United States who complete chassis-cabs manufactured and certified in the United States, and certify compliance of the finished vehicle with those U.S. Federal motor vehicle safety standards for which the manufacturer of the chassis-cab has not previously furnished certification. The final stage manufacturer is and remains the "original manufacturer" for purposes of the certification that it furnishes, and vehicles certified by Canadian final stage manufacturers will be admissible as conforming vehicles under new paragraph 591.5(b).

With respect to vehicles certified as conforming to the Canadian motor vehicle safety standards, Auburn Motor/Superior Auto Sales, importers of such vehicles, commented that NHTSA had not addressed the issue of vehicles manufactured to meet the Federal motor vehicle safety standards, but which may not be so certified. In their view, Canadian vehicles do meet the U.S. standards, and special accommodation should be provided for them. Auburn/Superior cited *The Free Trade Act* between Canada and the United States in support, as well as a settlement with EPA which was published in the *Federal Register* on July 8, 1988 (53 FR 25331), which, according to Auburn/Superior recognized the identicality of standards. After reviewing Auburn/Superior's comments, NHTSA cannot concur with the conclusion that a special accommodation

ought to be made. In many respects, the Canadian standards may be identical, but they also differ in certain other significant respects. For example, the Canadian vehicle lighting standard allows the use of headlamps meeting ECE standards. Federal Motor Vehicle Safety Standard No. 108 does not allow the use of European light sources, or of replaceable bulb headlamps that do not meet stringent environmental standards which are not specified in European regulations. Another example: the Canadian standard on controls and displays requires the use of metric speedometers and odometers; the primary U.S. requirement is that they be in miles per hour, though metric markings are permissible. The fact that similarity exists between the standards of the two nations today does not preclude either the U.S. or Canada from adopting significantly different ones in the future, as allowed by Article 603 of *The Free Trade Act*, if the demonstrable purpose is to achieve a legitimate domestic objective, such as enhancement of the public safety. The EPA "settlement" cited by Auburn/Superior was, in fact, simply a 3-month conditional stay of the applicability of that agency's new importation regulation, to expire October 1, 1988, based upon a petition for reconsideration of the rule. NHTSA notes that only one Federal standard was involved, engine emission, and that the Federal safety standards are far greater in number. Even if vehicles certified to the Canadian safety standards do meet U.S. emission requirements, that fact is of no relevance to the quantum of compliance with the U.S. safety standards. A manufacturer's certification attached to a vehicle remains the statutorily approved method of establishing a presumption of compliance with the U.S. safety standards.

A telephone call was received from Barry Wood, a customs broker, about the treatment of reentry into the United States of a used certified vehicle that was driven to Canada for modifications involving the installation of a different load-carrying structure. An associated issue is the treatment of new certified vehicles sent to Canada for modification requiring the affixation of an alterer's certificate as required by 49 CFR 567.7. NHTSA replies that the thrust of the 1988 Act is to regulate vehicles that were not originally manufactured to comply with Federal safety standards, and not to ensure continuing compliance of those that were. Assuming that the original manufacturer's certification remains affixed to an altered vehicle, whether that vehicle is new or used, the vehicle should be readmitted to the United States under paragraph 591.5(b) as a conforming vehicle. Of course, the U.S. owner/importer should ensure with the Canadian alterer that its modifications do not result in changes (such as installation of tinted glass that may not conform with Standard No. 205, or an increase in GVWR) that would raise a question of conformity with

the U.S. Customs Service, so as to delay reentry, or require its readmission as a nonconforming vehicle in spite of the presence of its certification label.

Ford Motor Company raised the issue of discovery in transit of a noncompliance in vehicles it imports from abroad for sale under its nameplate, but which are manufactured and certified by a second party. Ford stated that Part 591 ought to permit importation for modification by Ford as the agent of the foreign manufacturer, and asked that the final rule allow such modifications to be made in the U.S., or confirmation that the rule already allows it. The agency's analysis differs from Ford's although its conclusion should meet Ford's concern. Where a noncompliance is discovered in transit, NHTSA believes that only a technical violation of the Vehicle Safety Act would occur with the importation of a motor vehicle certified as conforming to the safety standards, but in fact known to the importer to be noncompliant with at least one of them. As an importer for resale, Ford becomes the "manufacturer" under the Vehicle Safety Act and responsible for all notification and remedial responsibilities imposed by that Act. Thus, it will be required to file a Part 573 Noncompliance Report with NHTSA not later than 5 days after its determination of the existence of the noncompliance. As the Act forbids sale of a nonconforming vehicle, Ford will be under a legal obligation to remedy the noncompliance before it is sold. Provided that the noncompliance is corrected before the vehicles are offered for sale, there would appear to be no harm to the public safety by allowing the importation.

The agency responds similarly to a comment by General Motors. Under the proposal, a technically noncompliant vehicle could be admitted pursuant to the declaration that "the vehicle will conform when readily attachable equipment items carried within it are attached." This represents a slight departure from the current declaration which does not require the equipment items to be carried within the vehicle. GM points out that it may well be that components will be added from domestic sources prior to sale, or arrive from abroad by separate shipments. Because of the importer's legal obligation not to offer a vehicle for sale in a noncompliant condition, it is irrelevant whether or not the equipment items are carried within the vehicle, and NHTSA has eliminated the proposed restriction from the final rule, adopting language virtually identical to that presently existing in 12.80(b)(1)(ii). GM also suggested that a manufacturer's "agents" be permitted to attach the detached equipment items. Given the fact that the vehicle must fully comply when offered for sale, NHTSA believes that the answer must be a practical one, and that the items may be attached by the manufacturer or the dealer, as appears best.

One further comment regarding paragraph 591.5(b) resulted in minor modifications in the final rule. Under

the proposal, the vehicle or equipment item to be imported must bear a certification label or tag affixed by the original manufacturer "to the vehicle or to the equipment item or its container." NADA commented that the language could be construed as allowing certification of vehicles on vehicle containers rather than on the vehicle itself. To meet this concern, NHTSA has placed a comma between the word "vehicle" and the disjunctive "or." In agreement with NADA's suggestion that the paragraph contain an appropriate citation to labeling regulations as is currently done in 12.80, NHTSA has added the statutory references. This should help clarify that the labeling requirement remains the same in spite of the advent of a new importation regulation.

3. The vehicle is intended solely for export.

A nonconforming vehicle is allowed immediate entry without bond upon the declaration that the importation is solely for purposes of export, and bears a label to that effect (12.80(b)(1)(iv)). This declaration is allowed pursuant to a specific statutory exclusion in the Vehicle Safety Act, section 108(b)(5). Under the 1988 Act, the section becomes 108(b)(3), but is otherwise unchanged, and the exclusion remains (Paragraph 591.5(c)). There were no comments on this issue.

4. Nonresident temporary importations.

If the importer is a nonresident of the United States and is importing the nonconforming vehicle primarily for personal use for a period of 1 year or less, the current regulations allow entry without bond and conformance, but the declaration must also state that the importer will not sell the nonconforming vehicle in the United States during that period (12.80(b)(1)(v)). There is no similar provision in the 1988 Act.

This provision was intended to benefit two classes of importers. The first class is comprised of U.S. citizens who are between foreign work assignments, and need to use their noncomplying cars while in transit, on home leave, or on temporary assignment in the U.S. The second class of importer is comprised of non-U.S. citizens. They may be Mexican or Canadian residents who use the American roads on an infrequent basis, or citizens of other countries who bring their campers or cars with them to facilitate their vacations in the U.S.

One authority for the previously existing allowance was section 1397(b)(4) which authorized the adoption of regulations allowing the "temporary importation" of noncomplying vehicles or equipment items. This authority has been deleted by the 1988 Act. However, a further authority for the nonresident exemption was the existence of two international treaties to which the United States is a signatory that address the movement of vehicles among various countries (I. Customs Convention on the Temporary Importation of Private Road Vehicles opened for signature June 4, 1954, 8 U.S.T. 2097, T.I.A.S. No. 3943, entered into force December 15, 1957. II. Convention on the Regulation of

Inter-American Automotive Traffic, opened for signature December 15, 1943, 61 Stat. 1129, T.I.A.S. No. 1567, entered into force October 29, 1946). NHTSA believes that elimination of the present allowance may be inconsistent with the intent of the treaties, and proposed that it be retained in clarified form, allowing the temporary importation of any vehicle by a nonresident that is registered in a country other than the United States, provided it is for personal use, imported for a period not to exceed one year, will not be resold in the U.S. during that time, and will be exported at the end of that time (Paragraph 591.5(d)).

No commenter disagreed with the concept of temporary importation, though concern was expressed as to the effect of the requirement. Texas commented that the proposal was unclear whether nonconforming vehicles of Mexican or Canadian registry will continue to be treated as before. This was also the concern of Western Hydro-Air Drilling of Canada, a mineral drilling specialist operating in both the U.S. and Canada using the same units in both countries from time to time. The Dealer Action Association was concerned with the possible sale of nonconforming vehicles by nonresidents, as well as NHTSA's lack of substantive proposals to guard against abuse. It sought to encourage NHTSA to work with Customs to ensure that neither Canada nor Mexico become a "grey market export platform." George Ziolo commented that the phrase "for personal use" should not be adopted as "this includes commercial carriers and may confuse Customs".

The agency believes it must interpret Congressional intent in light of the realities of cross-border traffic, and the existence of treaties and agreements to which the U.S. is a party. Under long-standing NHTSA interpretations, cross-border traffic involved in daily operation in the United States over an extended period of time (as opposed to the casual tourist) is deemed subject to the *Vehicle Safety Act* and to the Federal motor vehicle safety standards. However, it must defer to the U.S. Customs Service to identify such vehicles, to refuse entry as a nonresident, and then to require entry as a nonconforming vehicle which must be conformed or exported. Because of the substantial nature of cross-border traffic, it is obvious that Customs cannot require a written declaration of every vehicle of Mexican or Canadian registry, and NHTSA's legal interpretation has not been capable of rigorous enforcement. These practical considerations are not changed by the 1988 Act, nor does NHTSA read the 1988 Act as a mandate from Congress to enhance motor vehicle safety by increasing restrictions on the use of Canadian or Mexican vehicles operated in the U.S. To respond to the comment of The Dealer Action Association, the *modus vivendi* with respect to these vehicles has not, as of the present time, resulted in the border countries becoming a grey market export plat-

form to any discernible extent. Given the present low volume of grey market cars expected, less than 3000 per year, it does not appear likely that this is a realistic concern for the near future. As for Mr. Ziolo's comment, NHTSA seeks to retain as much of the presently existing regulatory language as is consistent with the 1988 Act, and thus has not stricken "for personal use" from the final rule. The agency is not aware of any confusion that use of this term has caused in the existing regulation.

5. The vehicle does not conform to Federal safety standards.

This is the category of motor vehicle whose importation is most affected by the 1988 amendments. Under 19 CFR 12.80, a nonconforming vehicle is imported pursuant to a declaration that it will be brought into conformance within 120 days of entry. The importer gives a bond for the production of a statement, after conformance, certifying that the conformance work has been accomplished. The statement describes the conformance work, identifies the conformer, and certifies that the vehicle will not be sold until NHTSA has issued an approval letter to the district director of Customs that the bond may be released. The bond is for the dutiable value of the vehicle (12.80(b)(1)(iii) and (e)).

The 1988 amendments impose criteria which motor vehicles must meet in order to be imported. Under new section 108(c)(3)(A), a vehicle cannot be imported at all (with certain exceptions set out below) unless NHTSA determines that it is capable of modification to meet the Federal safety standards. Determinations may be made on NHTSA's own initiative, or upon petition of any registered importer (see discussion below) or any motor vehicle manufacturer, and will be subject to public comment.

A nonconforming vehicle that is not offered for importation under one of the exceptions discussed herein may be imported under either of the following two scenarios. The first scenario, specified by section 108(c)(3)(A)(i)(I), will involve the making of two determinations: (1) that the nonconforming vehicle is substantially similar to a motor vehicle of the same model year originally manufactured for importation into and sold in the U.S., (and thus in compliance with the safety standards) and (2) that the vehicle is capable of being readily modified to conform.

The second scenario, specified by section 108(c)(3)(A)(i)(II), will arise if the agency does not make a determination of substantial similarity regarding a vehicle. In that case, it will still be permissible to import the vehicle if the agency determines that the vehicle's safety features comply with the U.S. standards, or are capable of being modified to comply with those standards, "based on destructive crash data or such other evidence" as NHTSA determines is adequate.

Under either scenario, a positive determination regarding a vehicle will permit *any* registered importer to modify vehicles of the same model covered by the determination.

If the agency makes a negative determination regarding a model's ability to be modified, the agency will be temporarily prohibited from taking up the issue of that model's importability again. If the negative determination was made in response to a petition, section 108(c)(3)(C)(ii) of the Act prohibits the agency from considering a petition regarding the same model of vehicle until at least 3 months after that decision. If the negative determination was made in a proceeding begun at the agency's own initiative, the agency will not be able to make another determination regarding the same model of motor vehicle until at least 3 months after the negative one (section 108(c)(3)(C)(iii)). The agency addresses these matters in companion final rules published simultaneously with this one, Part 592, *Registered Importers of Vehicles Not Originally Manufactured to Conform to Federal Motor Vehicle Safety Standards*, and Part 593, *Determinations That a Vehicle Not Originally Manufactured to Conform to Federal Motor Vehicle Safety Standards is Eligible for Importation*.

Once a vehicle has been determined eligible for importation, it may then be imported by a registered importer who will undertake to conform it with the safety standards (Paragraph 591.5(f)(i)). The importer is required by section 108(c)(2) to give a bond to ensure conformance or alternatively to ensure that the vehicle will be exported or abandoned to the United States. The bond is to be not less than the "dutiable value" of the vehicle as determined by the Secretary of the Treasury, and not more than 150 per cent of the "dutiable value." The U.S. Customs Service has recommended that the term "entered value" be used, as under recent changes to its regulations vehicles imported from certain areas may not have duties imposed. It views "entered value" as the equivalent of the statutory term "dutiable value" for purposes of importations of vehicles under Part 591. Both NHTSA and Customs view this bond as one that is separate from the general importation bond, which will continue to be required. Further, the statute is interpreted as requiring a separate bond for each vehicle imported. This means that the 1988 Act requires an individual bond to be given for each vehicle imported. A bond is not blanket in nature, covering any vehicle that may be imported by a registered importer. In other words, the required bond will be of a single entry nature, and not of a continuous nature. The bond is acquired by the vehicle owner. Thus, a Registered Importer may not import a vehicle in which it has no ownership interest.

The new requirements were set forth in proposed 591.5(f). NADA expressed its general support. General Motors commented that Part 591 as proposed did not

state the conditions of the bond, nor that the vehicle was being imported under bond for conformance purposes. It recommended eliminating the ambiguity by including a statement of purpose in the declaration required in paragraph 591.5(f), specifically that “the vehicle is being imported under bond to ensure conformance, delivery to the Secretary of the Treasury for export at no cost to the United States, or abandonment to the United States.” NHTSA agrees with this comment, and an appropriate addition has been made to the declaration required by paragraph 591.5(f).

Because the bond is given to secure performance to the requirements of the Vehicle Safety Act, rather than to fulfill obligations under Customs’ regulations, it will be a bond of the Department of Transportation. No mitigation of the bond is contemplated for vehicles that appear to conform only partially, unlike the practice today. If full conformance is not achieved, the vehicle must be exported, or abandoned to the U.S. If none of these occur, the bond is forfeited. NHTSA has decided that the bond shall be 150 percent of the entered value of the vehicle, as determined by Customs. The bond must have been obtained prior to, or at the time of, entry of the vehicle, and attached to the declaration form. If the bond is not attached, or in an improper amount, the vehicle will be refused entry.

6. The vehicle requires further manufacturing operations.

Under new section 108(e), the prohibitions in subsections (a)(1)(A) and (a)(1)(C) shall not apply to any motor vehicle if it requires further manufacturing operations to perform its intended function (as determined under regulations prescribed by the Secretary), and is accompanied at the time of entry by its manufacturer’s written statement which indicates the applicable Federal motor vehicle safety standard with which the vehicle does not comply. The corresponding current provision is 12.80(b)(1)(ix): a vehicle may be imported if it is an “incomplete vehicle” as defined by 49CFR Part 568 *Vehicles Built in Two or More Stages*. Under Part 568, an incomplete vehicle manufacturer must provide with an incomplete vehicle a document that contains the information specified in paragraph 568.4. With respect to the safety standards, the document must list the specific vehicle types into which the incomplete vehicle may be appropriately manufactured, and, with respect to each standard that applies to each such type, make one of three statements. These statements are (1) that the vehicle when completed will conform to the standard if no alterations are made to the specified components of the vehicle (2) the specific conditions of final manufacture under which the manufacturer specifies that the completed vehicle will conform to the standard, or (3) 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 of conformity

with the standard. The justification for this exception in 12.80 has been that the vehicle must conform, and be certified as conforming, upon completion by its final stage manufacturer, and that this is an obligation that exists independent of the importation process which serves to ensure that safety needs are met.

As NHTSA noted in its proposal, the question of the type and extent of manufacturing required for performance of intended function, will, of course, vary. However, the existing requirements for alterers of certified vehicles (paragraph 568.8) afforded a basis for proposing criteria that distinguish between completed vehicles and those that require further manufacturing. Accordingly, NHTSA proposed paragraph 591.5(e), the declaration that “The vehicle or equipment item requires further manufacturing operations to perform its intended function, other than the addition of readily attachable equipment items, or minor finishing operations.” By so doing, NHTSA also intended to establish a clear dividing line between entry under the technical nonconformance conditions of paragraph 591.5(b), applicable to completed vehicles, and the greater manufacturing operations required for entry under paragraph 591.5(e).

Virginia Department of Motor Vehicles asked what are vehicles requiring further manufacturing operations. In commenting on the proposal, The Dealer Action Association found the declaration insufficiently comprehensive to limit its application, and recommended that NHTSA limit this exception to original equipment manufacturers, to enable them to manufacture vehicles in stages, initially outside the United States, and completion within. NADA commented that the further manufacturing specification should be clearly stated as applying to Part 568-type vehicles which must ultimately comply with Federal safety standards. Freightliner stated that it imports “kits” that are “incomplete vehicles” as defined under Part 568, and asked whether it would have to be registered as an importer.

NHTSA has carefully considered these comments. The question raised by Virginia is, of course, fundamental to this provision. The proposal indicated that at a minimum the term included vehicles fitting the definition of “incomplete vehicle” in Part 568. This conclusion is reinforced by reading *in pari passu* the definitions of both “completed vehicle” and “incomplete vehicle” established by Part 568, definitions that are mutually exclusive. If a vehicle is not incomplete, it is complete. Therefore a vehicle requiring further manufacturing operations to perform its intended function is an “incomplete vehicle” as defined by Part 568.

The issue raised by The Dealer Action Association is whether importation under this provision can be limited to original equipment manufacturers. No such limitation appears upon the face of the statute. The thrust of the requirement is towards the vehicle itself:

it is one requiring further manufacturing, and it is accompanied by an appropriate document. While the vehicle must ultimately conform, the statute does not impose the obligation of conformance upon the importer. NHTSA is loath to read a restriction of this nature into the 1988 Act that does not appear on its face. Even were it sympathetic to the comment, it believes that such a restriction would have to be formally proposed for comment. However, NHTSA will monitor importations under this section and if remedial action appears required for motor vehicle safety, will propose an appropriate restrictive amendment.

With respect to NADA's comment, NHTSA has decided to clarify that the document accompanying the declaration be a statement in the form specified in Part 568. This document in its essential respects complies with the language of section 108(e). If the vehicle is not in compliance with an applicable standard, that fact will be reflected in the statement made with respect to such standard pursuant to paragraph 568.4. As for a description of the further manufacturing operations required for the vehicle to perform its intended function, NHTSA believes that this must be read within the safety context of the 1988 Act. An incomplete vehicle manufacturer will not in many instances know the manner in which a specific vehicle will be completed, as for example, whether a chassis-cab will be finished with a school bus body, or with a dumping apparatus. But he must make statements relevant to the further manufacturing operations connected with completion of the vehicle in accordance with the Federal safety standards. NHTSA therefore has decided that this document will satisfy the intent of section 108(e). The only new requirement imposed is that the document must accompany the declaration.

Finally, with respect to Freightliner's question whether an importer of a vehicle requiring further manufacturing operations must be registered, the answer is no. There are no safety standards that apply to an incomplete vehicle, and the obligation of conformance arises after importation, upon completion of manufacture. However, if the incomplete vehicle is a chassis-cab and is not certified as required, its importer must be a registered importer who undertakes to bring it into conformance with applicable standards. Where manufacture has been completed before importation and the vehicle was not originally manufactured to conform to the standards, the importer of that type of vehicle is required to be registered.

Finally, NHTSA wants to make plain that it will countenance no importations under paragraph 591.5(e) that appear to be subterfuges to avoid compliance responsibility. Instances have arisen in the past in which an importer offered for importation a motor vehicle without its engine, or other running gear parts, claiming that the merchandise was, in fact, equipment

to which no standard applied, and the importer separately imported the engine or parts. The agency has treated these cases as *de facto* importations of noncomplying motor vehicles, and required them to be entered as nonconforming motor vehicles and evidence of conformity to be subsequently submitted. The agency intends to follow this policy, and will not consider such an assemblage to be a vehicle requiring further manufacturing operations.

7. The importer has a contract with a registered importer.

The primary eligibility requirements placed by the 1988 Act on persons importing nonconforming vehicles are that they will have to be, subject to certain exceptions, registered as importers, or they will have to have contracts with registered importers to conform the vehicles. A person importing under contract with a registered importer will have to furnish, at the time of entry, an appropriate bond (which, under the 1988 amendments, is not less than 100 percent of the dutiable value of the vehicle and not more than 150 percent), a copy of the contract or other agreement with a registered importer, and certification that an affirmative decision has been made regarding the eligibility of the vehicle for importation. These matters, specified in section 108(f), are covered in paragraph 591.5(f)(ii). Under paragraph 591.6(d), the declaration must be accompanied by a copy of the contract or agreement. The purpose of the new requirements is to increase the likelihood that nonconforming vehicles will be properly modified and actually brought into compliance with the safety standards.

8. The importer is eligible to import under present requirements.

Nonresidents are affected in another way by the 1988 Act. Under certain circumstances, and for a limited time, section 108(g) of the Vehicle Safety Act permits a nonresident (including any member of the Armed Forces) to continue to import a vehicle under the present regulation, that is, to have it conformed by a person other than a registered importer. This exception applies to a single vehicle imported, for personal use and not for resale, between January 31, 1990, and October 31, 1992, by an individual whose assigned place of employment was outside the United States for the total period between October 31, 1988, and the date of importation, provided that the vehicle was acquired (or was subject to a binding contract to acquire) before October 31, 1988, and that the individual has not previously imported a nonconforming motor vehicle. This amendment is reflected in paragraph 591.5(g). There were no comments on this subject. However, the Virginia Department of Motor Vehicles asked what standard a vehicle purchased or ordered before October 31, 1988, would have to meet when it is imported. The answer is, those standards that applied to such a vehicle on the day of its manufacture, i.e.,

assembly. This requirement of the Vehicle Safety Act is unchanged by the 1988 Act.

9. Importation by diplomats and foreign military personnel.

Any person who is a member of the armed forces of a foreign country on assignment in the U.S., or any person who is a member of the Secretariat of a public international organization so designated under the International Organization Immunities Act and who is within the class of persons for whom free entry of motor vehicles has been authorized by the Secretary of State may currently import a nonconforming vehicle for the duration of their stay pursuant to the declaration that the vehicle is for personal use only (12.80(b)(1)(vi)). Section 108(h) of the Vehicle Safety Act specifically retains this exclusion, but in addition requires NHTSA to ensure that any such vehicle will be exported or abandoned when the importer ceases to reside in the U.S. It also forbids the sale while within the United States of any motor vehicle imported under this provision.

The enforcement of this provision would appear to rest with the Office of Foreign Missions of the Department of State. NHTSA understands that foreign personnel in the exempted categories who import nonconforming vehicles into the United States, are required to register their vehicles with this Office. Under the registration process, the Office takes possession of the foreign title of the vehicle, and issues registration plates to the importer after verifying that the vehicle is insured. The importer does not take repossession of the title until the registration plates are returned to the Office. At that time, the Office asks for an explanation. The usual reason is that the importer's assignment in the United States has ended, and that the importer is leaving the country. Documentary proof is required, such as a copy of the importer's orders. Heretofore, however, no documentary proof has been required that the vehicle is being, or has been, exported. Thus, it is possible that a nonconforming vehicle could be sold between the time the importer repossesses the title and actually leaves the country, but the Office believes that this is only an infrequent occurrence. NHTSA has informally approached the Office as to the possibility that it could require proof of exportation of diplomatic vehicles, and has found the Office amenable to that suggestion. This approach appears less cumbersome than requiring a bond for the exportation of diplomatic vehicles. Accordingly, NHTSA is adopting as one of the declarations a diplomatic importer must make under paragraph 595.5(h) that (s)he will provide the Office of Foreign Missions, at the conclusion of a tour of duty and before departure from the United States, with documentary proof that the vehicle is being, or has been, exported.

Under the existing law and regulations, it has been the practice to allow an exempted diplomatic importer to sell his or her nonconforming vehicle to another person in one of the exempted categories. The justification for this practice is that the exempted buyer is himself eligible to import a nonconforming vehicle. The agency does not construe the 1988 Act as forbidding this type of sale between exempted importers.

However, the 1988 Act has another effect. Heretofore, the agency had no objection if sale of a nonconforming diplomatic vehicle to a nonexempted party occurred after the vehicle had been brought into conformance with applicable Federal safety standards. NHTSA commented in the preamble to the April proposal that if this practice is to continue, it would have to be greatly modified. If an exempted importer wishes to sell a nonconforming vehicle in the United States, NHTSA indicated that the importer be prohibited from doing so unless (1) the vehicle is one which the Administrator has determined is modifiable to conform to the safety standards, and (2) the vehicle will be conformed through a registered importer. In so suggesting, NHTSA believed that this type of transaction was also within the intent of the 1988 Act, and that otherwise, a nonconforming vehicle may not be sold if imported pursuant to the diplomatic exemption. The sole commenter on this declaration, The Dealer Action Association, recommended forbidding this type of transaction, and restricting sales to those between diplomatic personnel. As an alternative, it suggested establishing procedures analogous to those under paragraph 591.5(f)(2) by which an individual would contract with a registered importer.

The agency has reviewed this comment, and has concluded that sales should be restricted to those between diplomatic personnel. After reviewing the 1988 amendments, NHTSA believes that vehicles imported pursuant to the diplomatic exemption should be exported at the end of the diplomatic-importer's tour of duty, unless the vehicle is sold to a person who would have been eligible to have imported it under such exemption. If a diplomat wishes to enter a nonconforming vehicle with the intent of selling it in the United States, he must do so outside the diplomatic exception and through either a registered importer, or pursuant to a contract with one. As both a practical and legal matter, NHTSA would find it difficult to enforce a no sale provision against diplomatic personnel, and the regulation has not been adopted so as to allow this type of sale.

10. The vehicle is 25 or more years old.

A motor vehicle is allowed immediate entry under 12.80(b)(1)(i) if it was manufactured before any applicable Federal motor vehicle safety standards were in effect. All motor vehicles, other than motorcycles,

manufactured on or after January 1, 1968, have been covered by safety standards. Accordingly, this declaration has been used only for the entry of vehicles manufactured *before* January 1, 1968. Under section 108(i), added by the 1988 Act, a motor vehicle may be allowed entry without the necessity of conformance if it is 25 years old or older. Thus, after January 1, 1993, vehicles that were manufactured on or after January 1, 1968, will be relieved of the necessity to conform as they reach 25 years of age. The existing declaration will be retained until January 1, 1993, although clarified by specifying the January 1, 1968 date (paragraph 591.5(i)). This is necessary to prevent the importers of vehicles which are less than 25 years old but manufactured before January 1, 1968, from being inadvertently required to enter their vehicles pursuant to the 1988 amendments. During 1992, the agency will amend paragraph 591.5(i) to implement the 25-year old exclusion effective January 1, 1993. There were no comments on this aspect of the regulation.

11. Importation for research, investigations, studies, etc.

Importation of nonconforming vehicles without bond is presently allowed if the importation is solely for the purpose of show, test, experiment, competition, repair, or alteration (12.80(b)(1)(vii)). If the vehicle is imported for test or experiment, it may be licensed for use on the public roads for a period not to exceed one year, extendable for two successive year periods, or a period of three years in all. Importation for this class of noncomplying motor vehicles has been permitted pursuant to the assumption that motor vehicle safety would not be affected by the temporary importation of noncomplying motor vehicles not generally used on the public roads, and whose appearance on them would be limited.

Section 108(j) of the Vehicle Safety Act modifies these categories. It provides NHTSA with authority to exempt a vehicle from importation and certification violations upon such terms and conditions as may be necessary solely for the purpose of research, investigations, studies, demonstrations or training, or competitive racing events. It does not include the terms "show" and "repair" currently in use. In the notice of proposed rulemaking, NHTSA observed that prospective importers ought not to be unduly concerned at this. In NHTSA's experience, importation for repair has averaged, perhaps, one vehicle every two years. Manufacturers who have imported nonconforming products for display at auto shows to gauge public reaction to new styling or engineering features will not be precluded from declaring that such importation is for "research" or "demonstrations". And museums will be able to bring in nonconforming vehicles under the 25-year exception. NHTSA proposed to allow importation for the statutory purposes specified, provided that the declaration is accompanied by certain

information and statements. If this information indicates that on-road use for a period that is greater than 1 year is required for these purposes, the importer will not be required to petition NHTSA for yearly extensions, as is presently the case. At the end of 3 years, the importer is subject to termination of the Customs Temporary Importation Bond under which the vehicle entered. At that point, the vehicle must be destroyed, exported, or abandoned to the United States. Alternatively, if duty is paid at the time of importation of the nonconforming vehicle, the vehicle must not remain in the United States for a period longer than 5 years after entry. The proposal also prohibited an importer of a vehicle imported for competitive racing events from licensing it for use on the public roads.

NHTSA also stated in the proposal that it envisioned that a registered importer who intends to file a petition under Part 593 for a determination that a vehicle is eligible for importation because it is capable of modification could avail itself of the demonstration exception to import such vehicles as may be necessary in order to develop the documentation needed to demonstrate the vehicle's capability for modification.

Comments to this proposal varied in nature and content. A number of commenters pointed out a contradiction between the blanket prohibition against licensing for on-road use contained in proposed paragraph 591.5(j), and the associated provision in paragraph 591.6(f) requiring submission of certain information if the vehicle is to be licensed for on-road use during its stay in the United States. BMW suggested that NHTSA conform its provisions to accord with similar ones of EPA contained in 19 CFR 12.73(h) and 40 CFR 85.1511(b)(2). General Motors, Volkswagen, and Ford recommended specifying the exceptions, such as allowing on-road use when such use is an integral part of the purpose for which it was imported. Austin Rover asked NHTSA to clarify that the licensing for use prohibition applies only to vehicles imported for competitive racing events, and Volkswagen wanted the prohibition struck for this type of vehicle. Barry Wood noted in a phone call that the proposal did not cover vehicles imported from Canada for repair and returned to that country. He observed that this was a not infrequent practice in his part of the United States. Finally, General Motors asked that this exception not terminate after 5 years, but be available for an unlimited period of time, citing the allowance by EPA of unlimited use of vehicles not conforming to Federal emission requirements.

The agency agrees that the proposal appears to present a conflict between paragraphs 591.5(j) and 591.6(f). The comments have caused NHTSA to review closely the new statutory language, and the agency has concluded that it provides sufficient flexibility to respond favorably to many of the comments. The specific language of new section 108(j) is "The Secretary

may exempt any motor vehicle or item of motor vehicle equipment from subsections (a)(1) and (c)(1) upon such terms and conditions as the Secretary may find necessary solely for the purpose of research, investigations, studies, demonstrations or training, or competitive racing events". Subsection (a)(1) contains the statutory prohibition against importation of non-complying vehicles, and their introduction into interstate commerce. Subsection (c)(1) contains the requirement of vehicle certification. In other of the 1988 Act amendments, Congress has flatly stated that subsections (a)(1) and (c)(1) shall not apply provided specified steps are taken. Subsection (j), on the other hand, implies that subsections (a)(1) and (c)(1) do apply, but that NHTSA has the flexibility to determine when they do not. For example, if NHTSA has allowed importation and on-road use for a period of 4 years, and the vehicle is not exported at the end of that time, NHTSA may impose a civil penalty. As a further example, if NHTSA has determined that indefinite on-road use is required to achieve the importer's stated purpose, NHTSA could inform the importer that it would not find that the Vehicle Safety Act had been violated. If licensing for on-road use is an absolute requirement of a competitive event, NHTSA could allow it for a limited period of time, and under circumstances prescribed in its letter of permission. Thus, the final rule has been modified to reflect the agency's conclusions. Under 591.6(f), any person seeking to import a motor vehicle under 591.5(j) must write NHTSA in advance of such importation with a full and complete statement of the purposes of the importation, and whether on-road use is contemplated. NHTSA's reply, if affirmative, will impose such terms and conditions as may seem required for motor vehicle safety. Violations of any of these terms and conditions will be considered a violation of section 108(a)(1)(A) of the Vehicle Safety Act, for which a civil penalty may be imposed. A copy of NHTSA's letter of permission must be provided Customs upon entry of the vehicle, attached to the declaration form. Under 591.7(f) in its final form, vehicles imported pursuant to paragraph 591.5(j) for which duties have been paid, must be exported not later than 5 years after entry, unless permission has been obtained from NHTSA.

There remains the question raised by Barry Wood, whether a nonconforming vehicle may be imported for "repair" in the absence of any express statutory authority allowing it, or any discussion of it in the legislative history of the 1988 Act. Although the joint regulations have permitted this practice for over 20 years, it was omitted from the categories of vehicles importable pursuant to paragraph 591.5(j). There are really two issues here, rather than one. The situation mentioned by Mr. Wood involves vehicles that are returned to Canada after repair. That is to say, they do not appear to be vehicles temporarily imported by U.S.

residents, but vehicles that are temporarily exported by their Canadian owners. As such, they appear to be vehicles involved in international traffic, imported for a limited period of time by nonresidents of the United States. In NHTSA's view, Canadian-owned vehicles that are repaired in the United States and returned to Canada at the completion of repairs are properly entered pursuant to paragraph 591.5(d). The other issue is importation by U.S. residents of nonconforming vehicles for repair. The agency has no knowledge of any importation by U.S. residents of nonconforming vehicles for repair, followed by their subsequent exportation. At most, it appears highly infrequent, so that the failure of Congress to include it in the 1988 Act ought not to work a hardship.

Importance of Motor Vehicle Equipment

Under 19 CFR 12.80, the first seven of the nine declarations applicable to motor vehicles also apply to motor vehicle equipment. The primary focus of the 1988 Act is upon motor vehicles, however, and some of the new exceptions do not apply to motor vehicle equipment. An analysis of the equipment provision and final rules follows.

First, the agency has no jurisdiction over an item that does not fit the definition of motor vehicle equipment, as contained in 15 U.S.C. 1391(4). Thus, such an item may be entered pursuant to the declaration that it is not a system, part, or component of a motor vehicle (paragraph 591.5(a)(2)).

The 25-year old exception for motor vehicles does not extend to motor vehicle equipment. This means that equipment covered by an equipment standard continues to be importable without the necessity for conformance (absent other exceptions) only if manufactured on a date before a standard applied to it (paragraph 591.5(i)(2)).

An equipment item that is certified as conforming to applicable equipment standards continues to be admissible upon a simple declaration that it conforms (paragraph 591.5(b)).

Because the importation for export exception is provided for by the Vehicle Safety Act, and not affected substantively by the 1988 Act, nonconforming equipment may continue to be imported for export, provided that it or its container bears a label or tag to that effect at the time of importation. (See section 108(b)(5) of the Vehicle Safety Act, redesignated as 108 (b)(3) by the 1988 Act and paragraph 591.5(c)).

Under new section 108(e), an equipment need not comply upon importation if it requires further manufacturing operations to perform its intended function. In the final rule, the agency has decided to adopt terminology from Part 568 to implement this requirement for motor vehicles. Manifestly, Part 568 does not apply to "incomplete" equipment, and the agency is adopting the exact language of the 1988 Act as the

requirement for entry of motor vehicle equipment subject to section 108(e).

The new provisions regarding importation for purposes of research, investigation, studies, demonstrations or training, or competitive racing events (section 108(j)) expressly include motor vehicle equipment as well as vehicles, and thus supersede existing requirements which make no provision for them. This change is reflected in paragraph 591.5(j).

Because the 1988 Act is specific about the conditions under which nonconforming equipment items may be admissible, there appear to be certain areas in which a right to import a nonconforming equipment item no longer exists. Although 12.80(b)(1)(iii) allows importation of a nonconforming equipment item under bond for conformance within 120 days of entry, no similar provisions appear in the 1988 Act; the bond, registered importer, and eligibility determination provisions apply only to importation of motor vehicles. Therefore, as of January 31, 1990, nonconforming equipment may no longer be imported pursuant to a declaration that it will be brought into conformance. Although NHTSA has incorporated nonresident importation procedures for motor vehicles without specific authority in the 1988 Act, it does not believe that is required to extend those procedures to cover nonconforming equipment items (other than those attached and in use on a vehicle), as is presently provided for under 12.80(b)(1)(v). Similarly, the diplomatic/foreign military exception will no longer cover nonconforming equipment items, as it presently does in 12.80(b)(vi). Although the agency did not call specific attention to these omissions in the preamble to the proposal, the omissions are readily apparent in the text of the proposed regulation.

Provision of New Declaration forms

NADA asked that the agency either revise or publish a new HS-7 importation form as part of the final rule, or indicate how that form will be revised as part of a new Customs Service regulation.

Development of a new form in its definitive state must await receipt and action upon petitions for reconsideration, if any, regarding this final rule. However, NHTSA believes that it would be in the public interest to publish the new form in the *Federal Register* at the earliest practicable time, and will endeavor to do so in a further notice under Docket 89-5.

Impacts

NHTSA has considered the impacts of this rule-making action and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation." It implements P.L. 100-562 under which primary authority to establish regulations governing the importation of motor vehicles and equipment into

the United States is shifted to NHTSA, rather than being jointly shared with the U.S. Customs Service. As such, it establishes the rights and duties of those who may import nonconforming motor vehicles, and the types of nonconforming motor vehicles that may be imported. It is not significant under Department of Transportation regulatory policies and procedures. Less than 3000 motor vehicles a year are currently imported, and it is anticipated that this number will not increase. There is no substantial impact upon a major transportation safety program, and the action does not involve any substantial public interest or controversy. There is no substantial effect on state and local governments. The impact upon the Federal government is that certain present obligations of the U.S. Customs Service are transferred to the Department of Transportation. As discussed previously, many of the new requirements are specified by the 1988 Act, and thus do not reflect any exercise of agency discretion. These include not only importation through or by contract with a registered importer, but also importation of vehicles and equipment requiring further manufacturing to perform their intended function, importation of vehicles by specified foreign diplomatic and military personnel, importation of vehicles more than 25 years old, and importation of vehicles for the purpose of research, investigations, studies, demonstrations or training, or competitive racing events, and importation under a separate performance bond. Nevertheless, a regulatory evaluation analyzing the economic impacts of this and the related final rules required by P.L. 100-562 has been prepared, and is available for review in the docket, as part of the Regulatory Flexibility Analysis.

In consideration of the foregoing, a new Part 591, *Importation of Vehicles and Equipment Subject to Federal Motor Vehicle Safety Standards*, is added to Title 49, Chapter V, to read as follows:

PART 591, *Importation of Vehicles and Equipment Subject to Federal Motor Vehicle Safety Standards*
Sec.

591.1 Scope.

591.2 Purpose.

591.3 Applicability.

591.4 Definitions.

591.5 Declarations required for importation.

591.6 Documents accompanying declarations.

591.7 Restrictions on importations.

Authority: P.L. 100-562, 15 U.S.C. 1401, 1407; delegations of authority at 49 CFR 1.50 and 501.8.

591.1 Scope.

This part establishes procedures governing the importation of motor vehicles and motor vehicle equipment subject to the Federal motor vehicle safety standards.

591.2 Purpose.

The purpose of this part is to ensure that motor vehicles and motor vehicle equipment permanently imported into the United States conform with, or are brought into conformity with, all applicable Federal motor vehicle safety standards issued under Part 571 of this chapter, and to ensure that vehicles and equipment items imported on a temporary basis are ultimately either exported or abandoned to the United States.

591.3 Applicability

This part applies to any person offering a motor vehicle or item of motor vehicle equipment for importation into the United States. Regulations prescribing further procedures for importation of motor vehicles and items of motor vehicle equipment into the Customs territory of the United States, as defined in 19 U.S.C. 1202, are set forth in 19 CFR 12.80.

591.4 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.

“Administrator” means the Administrator of NHTSA.

“NHTSA” means the National Highway Traffic Safety Administration of the Department of Transportation.

“Original manufacturer” means the entity responsible for the original manufacture or assembly of a motor vehicle, and does not include any person (other than such entity) who converts the motor vehicle after its manufacture to conformance with the Federal motor vehicle safety standards.

591.5 Declarations required for importation.

No person shall import a motor vehicle or item of motor vehicle equipment into the United States unless, at the time it is offered for importation, its importer files a declaration, in duplicate, which declares one of the following:

(a)(1) The vehicle was not manufactured primarily for use on the public roads and thus is not a motor vehicle subject to the Federal motor vehicle safety standards; or

(2) The equipment item is not a system, part, or component of a motor vehicle and thus is not an item of motor vehicle equipment subject to the Federal motor vehicle safety standards.

(b) The vehicle or equipment item conforms with all applicable safety standards (or the vehicles does not conform solely because readily attachable equipment items which will be attached to it before it is offered for sale to the first purchaser for purposes other than resale are not attached), and bears a certification label or tag to that effect permanently affixed by the original manufacturer to the vehicle, or to the equipment item or its delivery container, in accordance with, as

applicable, 49 CFR Parts 555, 567, 568, or 571 (for certain equipment items).

(c) The vehicle or equipment item does not comply with all applicable Federal motor vehicle safety standards, but is intended solely for export, and the vehicle or equipment item, and the outside of the container of the equipment items, if any, bears a label or tag to that effect.

(d) The vehicle does not conform with all applicable Federal motor vehicle safety standards, but the importer is eligible to import it because:

(1) (S)he is a nonresident of the United States and the vehicle is registered in a country other than the United States,

(2) (S)he is temporarily importing the vehicle for personal use for a period not to exceed one year, and will not sell it during that time,

(3) (S)he will export it not later than the end of one year after entry, and

(4) The declaration contains the importer's passport number and country of issue.

(e) The vehicle or equipment item requires further manufacturing operations to perform its intended function, other than the addition of readily attachable equipment items such as mirrors, wipers, or tire and rim assemblies, or minor finishing operations such as painting, and upon completion of such further manufacturing operations will comply with all applicable Federal motor vehicle safety standards.

(f) The vehicle does not conform with all applicable Federal motor vehicle safety standards, but the importer is eligible to import it because:

(1) The importer has furnished a bond, which is attached to the declaration, in amount equal to 150 per cent of the entered value of the vehicle as determined by the Secretary of the Treasury, to ensure that the vehicle will be brought into compliance with all applicable Federal motor vehicle safety standards, or, in the absence of such compliance, that it will be delivered to the Secretary of the Treasury for export, or abandoned to the United States, and that if the Administrator determines that the vehicle has not been brought into compliance with all such standards, the importer states that (s)he will deliver to the Secretary of the Treasury for export, or abandon to the United States, such vehicle within the time limit imposed by the Administrator; and

(2)(A) The importer has registered with NHTSA pursuant to Part 592 of this chapter, and such registration has not been revoked or suspended, and the Administrator has determined pursuant to Part 593 of this chapter that the model and model year of the vehicle to be imported is eligible for importation into the United States; or

(B) The importer has executed a contract or other agreement with an importer who has registered with NHTSA pursuant to Part 592 of this chapter and

whose registration has not been suspended or revoked; and the Administrator has determined pursuant to Part 593 of this chapter that the model and model year of the vehicle to be imported is eligible for importation into the United States;

(g) The vehicle does not conform with all applicable Federal motor vehicle safety standards, but the importer is eligible to import it because:

(1) The importer's assigned place of employment has been outside the United States at all times between October 31, 1988, and the date the vehicle is entered into the United States;

(2) The importer has not previously imported a motor vehicle into the United States that was subject to the Federal motor vehicle safety standards;

(3) The importer has acquired (or entered into a binding contract to acquire) the vehicle before October 31, 1988; and

(4) The vehicle will be entered into the United States not later than October 31, 1992.

(h) The vehicle does not conform with all applicable Federal motor vehicle safety standards, but the importer is eligible to import it because:

(1) (S)he is a member of:

(A) The armed forces of a foreign country on assignment in the United States; or

(B) The Secretariat of a public international organization so designated under the International Organizations Immunities Act (22 U.S.C. 288), as listed in 19 CFR 148.47, on assignment in the United States; or

(C) The personnel of a foreign government for whom free entry of vehicles has been authorized by the Department of State; and

(D) The motor vehicle is being imported on a temporary basis, and for the personal use of the importer.

(2) (S)he will not sell the vehicle to any person in the United States, other than a person eligible to import a vehicle under this subsection; and

(3) (S)he will provide the Office of Foreign Missions of the State Department, before departing the United States at the conclusion of a tour of duty, with documentary proof that the vehicle is being, or has been, exported.

(i)(1) The vehicle was manufactured before January 1, 1968, or, if a motorcycle, before January 1, 1969; or

(2) The equipment item was manufactured on a date when no applicable safety standards were in effect.

(j) The vehicle or equipment item does not conform with all applicable Federal motor vehicle safety standards, but is being imported solely for the purpose of:

(1) research;

(2) investigations;

(3) studies;

(4) demonstrations or training; or

(5) competitive racing events;

and the importer has received written permission from NHTSA.

591.6. Documents accompanying declarations.

Declarations of eligibility for importation made pursuant to paragraph 591.5 must be accompanied by the following certification and documents, where applicable.

(a) A declaration made pursuant to paragraph 591.5(a) shall be accompanied by a statement substantiating that the vehicle was not manufactured for use of the public roads, or that the equipment item was not manufactured for use on a motor vehicle or is not an item of motor vehicle equipment.

(b) A declaration made pursuant to paragraph 591.5(e) shall be accompanied by:

(1) (for a motor vehicle) a document meeting the requirements of Paragraph 568.4 of Part 568 of this chapter.

(2) (for an item of motor vehicle equipment) a written statement issued by the manufacturer of the equipment item which states the applicable Federal motor vehicle safety standard(s) with which the equipment item is not in compliance, and which describes the further manufacturing required for the equipment item to perform its intended function.

(c) A declaration made pursuant to paragraph 591.5(f) shall be accompanied by a bond in an amount equal to 150 per cent of the entered value of the vehicle as determined by the Secretary of the Treasury for the conformance of the vehicle with all applicable Federal motor vehicle safety standards, or, if conformance is to be achieved, for the delivery of such vehicle to the Secretary of the Treasury for export at no cost to the United States, or for its abandonment.

(d) A declaration made pursuant to paragraph 591.5(f) by an importer who is not a Registered Importer shall be accompanied by a copy of the contract or other agreement that the importer has with a Registered Importer to bring the vehicle into conformance with all applicable Federal motor vehicle safety standards.

(e) A declaration made pursuant to paragraph 591.5(g) shall be accompanied by certification, including appropriate documentary proof that the vehicle for which declaration is made had been acquired by the importer as of October 31, 1988, or, if not so acquired, by a copy of a contract to acquire the vehicle, dated before October 31, 1988, which was binding upon the importer.

(f) A declaration made pursuant to paragraph 591.5(h) shall be accompanied by a copy of the importer's official orders, or, if a qualifying member of the personnel of a foreign government on assignment in the United States, the name of the embassy to which the importer is accredited. A declaration made pursuant to paragraph 591.5(j) shall be accompanied by a letter from the Administrator authorizing importation pursuant to that paragraph. Any person seeking to import a motor vehicle or item of motor vehicle equipment pursuant to paragraph 591.5(j) shall submit in advance of such importation, a written request to the Admin-

istrator containing a full and complete statement identifying the specific purpose(s) of importation, which describes the use to be made of the vehicle or equipment item. If use on the public roads is an integral part of the purpose for which the vehicle or equipment item is imported, the statement shall request permission to license the vehicle for use (or use the equipment item) on the public roads, describing the purpose for which such use is necessary, and stating the estimated period of time necessary to use the vehicle or equipment item on the public roads. The statement shall also state the intended disposition to be made of the vehicle or equipment item after completion of the purpose for which it is imported. Any violation of a term or condition imposed by the Administrator shall be considered a violation of 15 U.S.C. 1397(a)(1)(A) for which a civil penalty may be imposed.

591.7 Restrictions on importations.

(a) A vehicle or equipment item which has entered the United States under a declaration made pursuant to paragraph 591.5(j), and for which a temporary Importation Bond has been provided to the Secretary

of the Treasury, shall not remain in the United States for a period that exceeds 3 years from its date of entry.

(b) A vehicle or equipment item which has entered the United States under a declaration made pursuant to paragraph 591.5(j), and for which duty has been paid, shall not remain in the United States for a period that exceeds 5 years from its date of entry, unless written permission has been obtained from the Administrator, NHTSA.

(c) An importer of a vehicle which has entered the United States under a declaration made pursuant to paragraph 591.5(j) may license it for use on the public road only if written permission has been granted by the Administrator, NHTSA, pursuant to paragraph 591.5(f).

Issued on: September 26, 1989

Jeffrey R. Miller
Acting Administrator

54 F.R. 40069
September 29, 1989



PREAMBLE TO AN AMENDMENT TO PART 591
(Docket No. 89-5; Notice 4)
Importation of Motor Vehicles and Equipment
RIN 2127-AD00

ACTION: Action on petitions for reconsideration and rulemaking; final rule.

SUMMARY: The purpose of this notice is to act upon petitions for reconsideration of the final rule of the National Highway Traffic Safety Administration governing importation of motor vehicles and equipment subject to the Federal motor vehicle safety standards. The petitions were filed by Volkswagen of America, and Superior Auto Sales. The notice grants Volkswagen's petition for deletion of the requirement that the Administrator provide prior approval for vehicles imported for purposes of research, etc., and for substitution of the proposed (and existing) requirement that a statement of purpose accompany the importation declaration. This issue was also raised by Mazda of North America in a petition for rulemaking, which is also granted. The notice amends a reference to certification in section 591.5(b), thereby curing an inconsistency for whose correction Volkswagen had petitioned.

The notice also clarifies ambiguities and makes technical corrections. It clarifies that the agency has treated chassis-cabs for many years as vehicles that must bear a form of certification upon entry, as do completed motor vehicles, and that they are not vehicles requiring further manufacturing operations under the revised regulatory scheme. Pursuant to a letter from Ford pointing out that importers of vehicles requiring further manufacturing operations cannot be expected to declare that the vehicle will conform upon final manufacture when finishing operations are done by other persons, the declaration, section 591.5(e), is amended to remove reference to conformity upon completion of manufacture.

The notice also addresses Mazda's concern for confidentiality of vehicles imported for research, and for NHTSA's consideration of a test fleet permit system.

With respect to Superior's petition for reconsideration of treatment of Canadian-manufactured motor vehicles, the notice denies it for the reasons stated below.

Finally, pursuant to informal consultations with the State Department, the notice amends in minor respects section 591.5(h), relating to importation by foreign military personnel, members of the Secretar-

iat of a public international organization, and other personnel of foreign governments. This amendment is necessary to make this agency's regulations conform with existing practices of that Department's Office of Foreign Missions.

EFFECTIVE DATE: February 5, 1990.

SUPPLEMENTARY INFORMATION: On October 31, 1988, the President signed P.L. 100-562, the Imported Vehicle Safety Compliance Act of 1988 ("the 1988 Act"). A notice of proposed rulemaking to establish 49 CFR Part 591 was published on April 25, 1989 (54 FR 17772), and a final rule on September 29, 1989 (54 FR 40069). As the notices stated, the 1988 Act amends those provisions of the National Traffic and Motor Vehicle Safety Act of 1966 ("the Vehicle Safety Act") that relate to the importation of motor vehicles subject to the Federal motor vehicle safety standards (section 108(b), 15 U.S.C. 1397(b)).

Two petitions for reconsideration of the final rule were received, one from Volkswagen of America (VW), on behalf of itself, its parent Volkswagen, AG, and Audi AG, and the other from Auto Enterprises, Inc./Superior Auto Sales (Superior). Even though the Superior petition was not officially received until after the 30th day following publication of the final rule, it was sent by UPS on the 26th day, and apparently arrived at NHTSA on the 30th day but for reasons unknown was returned to the petitioner. The agency, therefore, has chosen to consider it timely filed. Mazda Research & Development of North America, Inc., also petitioned for reconsideration, but its petition was received on the 31st day following publication of the rule, and in accordance with agency regulations (49 CFR 553.35) has been treated as a petition for rulemaking. Informal comments were received from the Office of Foreign Missions of the State Department, calling the agency's attention to its registration procedures for vehicles imported by foreign diplomats, and its lack of registration authority for vehicles imported by foreign military personnel. To the extent that these differ from Part 591, corrective conforming amend-

ments have been made, as more fully discussed below.

A. Importation by Foreigners Excepted by Statute

In section 591.5(h), the agency sought to follow the statute, and its understanding of the Department of State's practices, in specifying provisions regarding the importation of nonconforming motor vehicles by certain foreign citizens. Section 591.5(h) provides that such vehicles may be imported by a member of one of three categories specified by statute, pursuant to the declaration that the importer will not sell the vehicle to any person in the United States (other than a buyer in one of the three excepted categories), and that the Office of Foreign Missions (OFM) of the State Department will be provided with documentary proof that the vehicle is being, or has been exported, before the importer departs the United States at the conclusion of a tour of duty.

After reviewing section 591.5(h), OFM has informed this agency that that section differs in several respects from established practices of the Department of State. On the basis of these further comments, this agency is restructuring section 591.5(h) to conform to OFM's regulations and practices. These comments have reassured NHTSA that nonconforming vehicles subject to OFM's procedures are not likely to be sold to American citizens by their importers.

1. Personnel of a Foreign Government or International Organization

Under the regulations of the Department of State, personnel of a foreign government on assignment in the United States, or members of the Secretariat of a public international organization within the meaning of the International Organizations Immunities Act, who have been authorized by the Department of State to enter their vehicles duty free, must register with OFM all vehicles they own or operate in the United States, including nonconforming vehicles they have imported. Under the registration process, OFM takes and keeps the vehicle title. Thus, if the vehicle owner wishes to dispose of the vehicle, (s)he must petition OFM for a title. The petition must indicate the reason the title is requested, such as sale, export, or re-registration in the importer's State of residence at the end of a tour of duty.

This is a category of importer currently covered by the joint NHTSA-Customs Service rule, 19 CFR 12.80(b)(i)(v), and which will be covered by the new NHTSA rule, section 591.5(h). Owners of nonconforming vehicles imported pursuant to these provisions may not sell the vehicle in the United States except to another person eligible to import the vehicle under these paragraphs. In these cases, OFM requires a corresponding petition from the new owner of the vehicle, and automatically registers the

nonconforming vehicle in the name of the new owner. Since no title is needed to transfer ownership, none is issued.

OFM will not issue a title for a nonconforming vehicle that an owner who is remaining in the U.S. at the end of the tour of duty wishes to register in the State of residence.

OFM issues (and will continue to issue) titles to the owners importing vehicles under these provisions, but only for purposes of export. The character of these titles and the nonconforming nature of the vehicle are clearly noted on the front of the export title. Because of this, it is unlikely that a State would ever register a vehicle based upon an OFM export title. The export title will be a surrogate for the documentary proof of export that paragraph (h), as adopted, will require. Therefore, to accord with OFM's practices, instead of specifying that the importer will provide OFM with documentary proof that the vehicle has been or will be exported, NHTSA is amending paragraph (h) to specify that an importer will obtain from OFM, before departure at the conclusion of a tour of duty, an ownership title to the vehicle good for export only.

2. Members of Foreign Armed Forces on Assignment in the U.S.

Section 591.5(h) as adopted also requires members of the armed forces of a foreign country on assignment in the U.S. to provide OFM with documentary proof of export. However, OFM advises that members of this category are generally not required to register their vehicles with OFM, and that therefore they cannot be included with the two other categories for which OFM is able to provide export titles. This means it is possible for a sale of the vehicle and transfer of a foreign title to a U.S. buyer to occur, as there is no Federal intermediary to regulate the transaction. In this event, the vehicle would have to meet the registration requirements of the individual States, some of which may specify compliance with the Federal motor vehicle safety standards. In restructuring paragraph (h) to reflect the comments of OFM, the agency has removed the requirement for provision of documentary proof of export, and replaced it with an affirmative declaration to export the vehicle at the conclusion of the tour of duty. The existing prohibition against sale of the vehicle to any person in the United States, except to another member of the armed forces of a foreign country on assignment in the United States, is retained.

B. Importation for Purposes of Research, etc. *1. Submittal of Substantiating Information Prior to Entry*

Under Section 591.5(j), a motor vehicle not originally manufactured to conform to the Federal motor

vehicle safety standards may be imported pursuant to the declaration that it is being imported for the purposes of research, investigation, studies, demonstrations or training, or competitive racing events, provided that the importer has received written permission from the NHTSA. Under the second sentence of section 591.6(g) (reparagraphed by this notice; see below), each such declaration must be accompanied by a letter from the Administrator authorizing such importation. As the regulation further states, an importer shall submit in advance of such importation a written request to the Administrator, containing the information the regulation requires.

VW has petitioned for deletion of this requirement, arguing that the proposed rule published in April 1989 did not include a requirement that a letter of authorization be submitted, and would have required only a statement from the manufacturer to Customs of the nature currently provided. Thus, VW believes that it had no opportunity to comment upon this requirement.

NHTSA has considered VW's comment, as well as a similar concern raised by Mazda. Although the agency believes that enforcement of the Act will be enhanced by this provision, and that the requirement it adopted was within the scope of the notice, it nevertheless believes it desirable to have further comment upon the provision. Accordingly, sections 591.5(j) and 591.6(f) are being amended to continue the existing requirements beyond January 31, 1990. The agency, however, is considering the issuance of a notice of proposed rulemaking formally proposing the requirements that are being deleted by this notice.

However, section 591.5(j) as amended differs in one minor respect from the text proposed. Paragraph (j) lists five categories of permissible purposes of importation contained by the declaration. The proposed text ended with the secondary declaration applicable to all five categories that the vehicle would not be licensed for use on the public roads. The agency does, in fact, allow licensing for use on the public roads when a vehicle has been imported for purposes of test or experiment (19 CFR 12.80(b)(2)). Although these terms are not used by the 1988 Act, which added section 103(j) to the National Traffic and Motor Vehicle Safety Act, the agency has concluded that "research, investigations, studies, and demonstrations or training," terms that appear in section 103(j), are so substantially similar to "test or experiment" that on-road licensing should be allowed. Consequently, section 591.5(j) is being amended to apply the prohibition that was proposed to apply to all categories only to vehicles imported for "competitive racing events." This accords with the informal definition in 19 CFR 12.80(b)(1)(vii) that "a vehicle the configuration of which at the time of entry is such that it cannot be licensed for use on the public

roads is considered to be imported for the purpose of competition."

C. Importations Requiring Further Manufacturing

Section 108(e) of the Act provides that there will be no violation of the Act by the importation of a vehicle or equipment item if the vehicle or equipment item requires further manufacturing operations to perform its intended function, as determined by NHTSA, and is accompanied at the time of entry by the written statement of its manufacturer indicating the applicable Federal standard with which the vehicle or equipment item fails to comply. In implementation of this requirement, the agency adopted section 591.5(e), containing the basic declaration that the vehicle requires further manufacturing operations to perform its intended function, and section 591.6(b) requiring the statement to accompany the declaration. Section 591.5(e) concludes with the phrase that upon completion of further manufacturing operations, the vehicle "will comply with all applicable Federal motor vehicle safety standards." This language assumes that an importer of a vehicle requiring further manufacturing operations is the person who will complete the vehicle.

In a letter to the agency, Ford noted that it is impossible for those importers of incomplete vehicles who do not complete the vehicles to declare that the vehicle when completed will comply with all applicable standards. Further, the obligations to complete the vehicle in a conforming manner and to certify conformance already exist independently as requirements of section 108(a)(1)(A) and section 108(a)(1)(C). A civil penalty may be imposed if they are not met. Therefore, it is not legally necessary as a condition of admission to require those importers who will perform further manufacturing operations to the point of completion to declare that they will do so in a conforming manner. NHTSA therefore is revising section 591.5(e) to remove the language of conformance completion.

The agency noted in the preamble to the final rule (p. 40074) that "a vehicle requiring further manufacturing operations to perform its intended function is an 'incomplete vehicle' as defined by part 568." However, there is a subcategory of "incomplete vehicle" which existing agency regulations (Part 567) have required to bear a form of certification of partial compliance. This type of vehicle is a "chassis-cab," defined under the certification regulation as "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" (section 567.3). The manufacturer of the chassis-cab is required to affix a label stating conformity with the standards with which the chassis-cab complies (*e. g.*,

controls and displays, wiping and washing systems, brake hoses) and certain statements with respect to the remaining standards (section 567.5(a)). Certification of chassis-cabs has been required for over 11 years, and, in enforcing the existing importation provisions, the agency has required entry of uncertified chassis-cabs as nonconforming vehicles. They have been imported under bond, and required to demonstrate conformance with chassis-cab requirements before the bond has been released. The agency did not intend to alter the manner in which it has treated chassis-cabs for many years, as reflected in its statement in the preamble to the final rule (p. 40075) that "if the incomplete vehicle is a chassis-cab and is not certified as required, its importer must be a registered importer who undertakes to bring it into conformance with applicable standards". That is to say, a chassis-cab is a type of motor vehicle to which section 108(c) applies, rather than section 108(e). The agency wishes to clarify this point.

On a related matter, the agency notes that it is considering making in the near future a determination that chassis-cabs that are substantially similar to chassis-cabs certified for sale in the United States are capable of being readily modified to conform to chassis-cab requirements.

2. Whether Each Vehicle Must Have a Separate Statement

In its petition, Mazda apprised the agency of its frequent importation of multiple units of motor vehicles, and asked whether Part 591 will require a separate request for each. It advised that the California Air Resources Board (CARB) had determined that the issuance of individual permits was impractical, and, consequently implemented a fleet permit system. Under this system, the manufacturer is required to maintain records on these vehicles and to open these records for inspection by CARB on its request. Mazda asked that NHTSA consider adopting a fleet permit program similar to CARB's.

NHTSA has considered this petition. The agency does not wish to create any undue burden upon importers of vehicles under this section. Therefore, when more than one vehicle is imported, at the same time, for identical or substantially similar purposes, NHTSA is willing to accept a single HS-7 Form and pre-importation approval letter with reference to the vehicles, provided that the VIN or other identifier of each is furnished, and to issue a single letter in reply. In circumstances other than these, the agency believes that separate statements must be submitted, and approvals given. To the extent discussed herein, therefore, Mazda's petition is granted.

3. Confidentiality of Information

Mazda expressed concern about the confidentiality of the applications that would be submitted under

section 591.6(f). According to Mazda, the applications, if made available to the public, and most notably to other manufacturers, could provide insight into future product plans and emerging technology.

NHTSA wishes to reassure Mazda and other manufacturers that the information to be submitted does not differ from that Mazda has provided in the past to substantiate its importations for research, testing, and the like. NHTSA is not aware that this has heretofore resulted in requests for confidentiality, or a compromise of a manufacturer's product plans. If a manufacturer believes that its statements will contain confidential material, it may, of course, request appropriate treatment.

D. Original Equipment Manufacturer

VW reiterated its request in comments on the proposal (Notice 1) that the definition of "original manufacturer" include reference to motor vehicle equipment. Although the agency addressed this issue in the preamble to the final rule (Notice 2) by saying that it was not adopted because the 1988 amendments did not affect motor vehicle equipment, VW comments that section 591.5(b) includes a reference to motor vehicle equipment "which paragraph utilizes the term 'original manufacturer'". Thus, it believes that an inconsistency exists, and that the definition in section 591.4 should be amended to include equipment.

The agency adopted the definition of "original manufacturer" for the specific purpose of excluding as manufacturers those who conform vehicles after their original production and before their importation into the United States. As a general rule, an equipment item such as a tire must be manufactured to comply, and cannot be brought into compliance after its manufacture. Thus, unlike a motor vehicle, an equipment item will generally have only one entity involved in the manufacturing or assembling process. To the extent that there is an inconsistency, NHTSA has removed it by amending section 591.5(b) to add the words "or by the manufacturer" with reference to certification of equipment items or their containers. To that extent, it grants VW's petition for reconsideration.

E. Treatment of Canadian-Manufactured Motor Vehicles

Superior purchases new vehicles from franchised dealers in Canada for importation into the United States, where most of them are sold to dealers holding the same franchise. Typically, the Canadian vehicles are models with U.S. counterparts which U.S. dealers have been unable to obtain in sufficient quantity from the U.S. manufacturer because of high demand. Superior assists the U.S. dealers in meeting demand for a specific vehicle by supplying it with

the Canadian counterpart. Many of the models are certified as conforming to the Federal motor vehicle safety standards. However, vehicles manufactured by General Motors (GM) and BMW are certified only as complying with the Canadian Motor Vehicle Safety Standards (CMVSS). Superior concedes that the CMVSS are not in all respects identical to the U.S. ones, but represents that the GM and BMW cars it imports do comply in all essential respects with the U.S. standards, and that they require only one modification, the substitution of a speedometer/odometer that measures miles rather than kilometers. The vehicles have been imported under bond, and proof of conformance submitted to NHTSA. With respect to vehicles manufactured by GM of Canada, the documentation submitted to verify conformance includes a copy of a "Service Parts Identification Label" which contained the code "V73". According to Superior, this indicates that the vehicle is manufactured in accordance with U.S. safety standards. Thus, heretofore, it has not been required to submit "lengthy documentation of modification details. . . ."

Petitioner submits that "there is nothing in the record upon which the Final Rule was adopted which indicates that DOT considered the impact of the rule on Canadian-U.S. trade in vehicles, which, but for the absence of a manufacturer's certification label, otherwise complied in all respects with DOT standards." Accordingly, it concludes that the rule is arbitrary, capricious, and an abuse of discretion. Further, the petitioner contends that "the scope of the Final Rule is overly broad since in not considering the subject of non-labeled FMVSS complying Canadian market vehicles, DOT has exceeded the statutory powers of the Act." It also terms this "in direct contravention of the expressed foreign policy of the United States, to wit, the U.S.-Canada Free Trade Agreement, which has as its objective, the reduction of non-tariff barriers to trade." Petitioner cites Canada's treatment of U.S.-manufactured used vehicles as consistent with the Agreement, allowing them entry without conformance even though speedometers and odometers are not expressed in kilometers, and bumpers are designed to a less stringent standard. Superior also argues that NHTSA violated Section 605 of the Agreement by failing to provide any agency of the Canadian government with a copy of the proposal published in April 1989.

Noting that the final rule has substituted "entered value of the vehicle" as a determinant of the amount of the bond given for conformance for the statutory term "dutyable value of the vehicle," Superior argues that this "arbitrary" substitution serves to create additional non-tariff barriers to trade. Because the Agreement provides for duty-free treatment of vehicles, the duty is zero; therefore

Superior argues that the "dutyable value" is zero, and hence, the vehicles are exempt from the bonding requirement of the Act.

Petitioner also sought review of "the 30-day hold period required by Section 592.8", saying that it was "unnecessary and unreasonable when applied to the import of Canadian market vehicles" that require modification only of the speedometer.

Finally, petitioner believes that the final rules impose "expensive preapproval petition . . . fees" that will create a situation in which it is not economically practicable to modify the vehicles, given the small profit margin on these cars.

NHTSA understands Superior's concerns, and the agency has sought to implement the Act and regulations in a practical manner so as not to create an undue burden upon Superior and other importers of vehicles manufactured in Canada, and NHTSA will continue to do so. But the agency must work within the framework required by the 1988 Act.

The Act imposes two additional requirements upon the way Superior has done business in the past. First, in order to continue its operations, Superior must become a registered importer. The Act requires that a fee be paid to cover the costs of administering the registration program. The fee to apply to become a registered importer is \$255. This, or a similar fee, will be a cost that recurs annually if the importer chooses to renew its registration.

Second, a vehicle without the certification label of its original manufacturer, such as the GM vehicles and BMWs imported by Superior, is admissible only following a determination by NHTSA that it is capable of being modified to conform to Federal standards. The Act requires that a fee be paid to cover the costs of making such a determination, whether that determination is made on the Administrator's own initiative, or upon petition by a manufacturer or a registered importer.

NHTSA is exploring the possibility of making a determination on its own initiative before January 31, 1990, that would cover all passenger cars manufactured in Canada that have counterparts that are certified and sold in the United States. Because of the similarity of Canadian and U.S. standards, such a determination need not be time-consuming, and would be a single determination covering a wide range of makes and model years. The fee for a single determination on the Administrator's initiative is payable by the first person who imports a vehicle covered by the determination. Should Superior apply for and receive registered importer status, and should it be the first importer to take advantage of the Administrator's determination, the total direct costs imposed by the Act upon Superior that are in addition to those presently incurred will be the registration fee plus the vehicle petition fee (plus

\$4.35 per vehicle to reimburse Customs for its bond processing costs). This is a cost of business that should not exceed \$2,500 at the most, far less than the cost of a single motor vehicle, and is easily passed on to Superior's purchasers. In fact, Superior may achieve a cost reduction in the bond itself, 150 percent of the entered value of the vehicle, if the bonds presently required for its Canadian imports have exceeded this amount.

The agency rejects the contention that the 30-day hold period will add to Superior's costs. Under the present regulation, an importer is under an obligation of indefinite length not to sell the vehicle or offer it for sale until the bond has been released; under the new regulation, the vehicle may be released from custody at the end of 30 days following submission to NHTSA of certification information, if NHTSA has not released the bond or informed the importer of the need for an inspection. In actuality, where conformance with only one standard is required, NHTSA will be able to act well before the end of the 30-day period.

NHTSA wishes to provide these reassurances of a practical nature to Superior, as it has found no legal merit in any of its arguments. The 1988 Act establishes a framework for the importation of vehicles that are not originally manufactured to conform with Federal motor vehicle safety standards, and certified by their original manufacturers as conforming to those standards. The Act establishes terms and conditions under which these vehicles may be imported, and did not establish special terms and conditions for Canadian-manufactured vehicles. Instead, it provided the Administrator with authority to admit vehicles not originally manufactured for sale in the U.S. upon a finding that they are substantially similar to vehicles manufactured for sale in the U.S., and are capable of being readily conformed to comply with the U.S. standards. Surely, this provision of the Act addresses the fact situation raised by the petitioner. NHTSA was well within its authority to adopt Parts 591-594 in the manner that it did, and did not do so in a manner that was arbitrary and capricious.

Nor can NHTSA accept Superior's characterizations of the rules as contrary to the letter or spirit of the Free Trade Agreement, or that NHTSA failed to consult with Transport Canada in their adoption. The relevant portion of the Agreement, Chapter Ten, is directed to waivers of customs duties, and the phasing out of restrictions by Canada on the importation of used cars. Section 605, referenced by Superior, is, in actuality, section 607. It obligates each country to provide the other with copies of proposed standards-related measures and product approval procedures. Although NHTSA interprets this as relating more to rulemakings affecting the Federal motor vehicle safety stan-

dards, it did provide Transport Canada and the Canadian Embassy in Washington with informal briefings on the regulations during the time the final rules were being developed, and on their potential effect on the Canadian vehicle modifiers who had commented upon the proposals. In addition, NHTSA, formally provided a copy of the proposed rule to Transport Canada during the comment period, and responded to its comments in the final rule.

Finally, there is petitioner's argument that because Canadian vehicles may enter duty-free, a bond based upon the statutory term "dutiable value" may not be imposed where the duty is zero. Requiring a bond is not inconsistent with the goal of the Free Trade Agreement that Canadian vehicles be entered duty-free. Those vehicles would still enter duty-free. However, they would do so in a way that is consistent with the goals of the 1988 amendments to the Act. The importer's obligation under the Act is to furnish "an appropriate bond" to secure conformance of a nonconforming vehicle. To adopt petitioner's argument and admit the vehicle without a bond would be to defeat the purpose of the 1988 amendments.

As for use of the term "entered value" instead of the statutory term "dutiable value, as determined by the Secretary of the Treasury", the agency explained in the final rule (p. 40073) that the Secretary of the Treasury now uses the term "entered value" in recognition that vehicles entering from certain areas are duty-free, but regards the two phrases as identical in effect. "Dutiable value" and "entered value" both mean the economic value of the vehicle as determined by Customs. Since the statute uses the term "dutiable value," the agency is substituting that term for the term "entered value" in section 591.5(f)(1), but is also amending section 591.4 by adding a provision defining "dutiable value" as meaning "entered value, as determined by the Secretary of the Treasury." Otherwise, Superior's petition is denied in every respect for the reasons discussed above.

F. Miscellaneous

NHTSA's review of this matter brought to its attention that when the final rule was published, it inadvertently failed to place provisions regarding importation information in a separate paragraph in section 591.6, and instead included them in 591.6(f), which relates to documents accompanying declarations by diplomats and foreign military personnel. A corrective amendment is adopted designating these provisions in section 591.6 as paragraph (g). The agency also noted that the written permission required under section 591.5(j) is from "NHTSA", whereas elsewhere it is from "the Administrator". For consistency, and to reflect the fact that the Administrator acts as the Secretary's delegate under

the National Traffic and Motor Vehicle Safety Act, section 591.5(j) is also amended, to substitute "the Administrator" for "NHTSA".

Notice

The agency does not believe that any of the amendments made in this document need be preceded by notice and opportunity for comment. They are generally either technical or conforming amendments. Further, the agency needs to proceed expeditiously because of the imminence of the January 31, 1990 statutory effective date for the statutory amendments regarding the importation of nonconforming vehicles, and because of the need to print and distribute new importation forms prior to that date.

In consideration of the foregoing, Part 591 of 49 CFR is amended as follows:

1. In section 591.4, the following definition is added immediately following the definition of "Administrator":

"*Dutiable value* means entered value, as determined by the Secretary of the Treasury."

2. In section 591.5(b), the phrase "by the manufacturer" is inserted between the words "or" and "to the equipment item".

3. In section 591.5(e), the phrase that follows the comma appearing after the word "painting" is deleted. The comma is removed and replaced with a period.

4. In section 591.5(f)(1), the term "entered value" is deleted and the term "dutiable value" is substituted in its place.

5. Section 591.5(h) is revised to read:

(h) The vehicle does not conform with all applicable Federal motor vehicle safety standards, but the importer is eligible to import it because (s)he:

(1)(i) is a member of the personnel of a foreign government on assignment in the United States, or a member of the Secretariat of a public international organization so designated under the International Organization Immunities Act, and within the class of persons for whom free entry of motor vehicles has been authorized by the Department of State;

(ii) is importing the motor vehicle on a temporary basis for the personal use of the importer, and will register it through the Office of Foreign Missions of the Department of State;

(iii) will not sell the vehicle to any person in the United States, other than a person eligible to import a vehicle under this paragraph; and

(iv) will obtain from the Office of Foreign Missions of the Department of State, before departing the United States at the conclusion of a tour of duty, an ownership title to the vehicle good for export only; or
(2)(i) is a member of the armed forces of a foreign country on assignment in the United States;

(ii) is importing the vehicle on a temporary basis, and for the personal use of the importer;

(iii) will not sell the vehicle to any person in the United States, other than to a person eligible to import a vehicle under this subsection; and

(iv) will export the vehicle upon departing the United States at the conclusion of a tour of duty.

6. In section 591.5(j), the semicolon in subsection (j)(5), and the concluding phrase of section (j) "and the importer has received written permission from NHTSA." are removed. Subsection (j)(5) is revised to read "(5) competitive racing events, and will not be licensed for use on the public roads."

7. In section 591.6(f), all text after the first sentence is deleted.

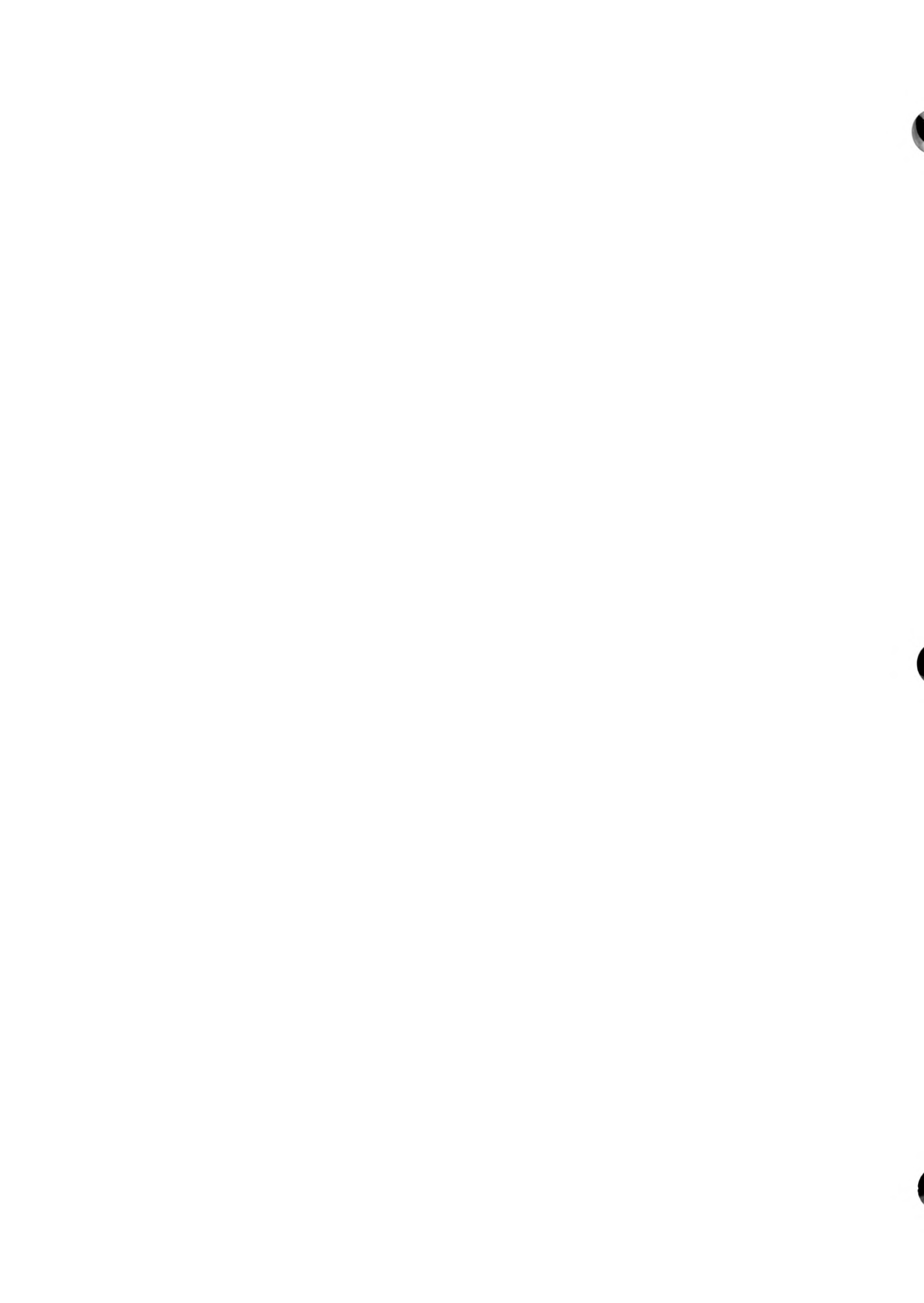
8. A new section 591.6(g) is added to read:

(g) A declaration made pursuant to section 591.5(j) shall be accompanied by a full and complete statement identifying the specific purpose(s) of importation, describing the use to be made of the vehicle or equipment item, and stating the estimated period of time necessary to use the vehicle or equipment item on the public roads, if any, and the disposition to be made of the vehicle or equipment item after completion of the purpose for which it was imported. If the importer does not intend to conform, export, or destroy the vehicle or equipment item not later than 3 years after its entry, the importer shall request permission in writing from the Administrator for the vehicle or equipment item to remain in the United States for an additional period of time, subject to the limitations of section 591.7(c).

Issued on January 31, 1990

Jeffrey R. Miller
Deputy Administrator

55 F.R. 3742
February 5, 1990



PREAMBLE TO AN AMENDMENT TO PART 591
Importation of Motor Vehicles and Equipment
(Docket No. 89-5; Notice 5)
RIN 2127-AD00

ACTION: Final rule; corrections.

SUMMARY: On February 5, 1990, NHTSA published its response to petitions for reconsideration of the final rule on the importation of motor vehicles and equipment subject to the Federal motor vehicle safety standards. NHTSA deleted the requirement under section 591.6(f) that an importer obtain written permission to license nonconforming vehicles which are imported under section 591.5(j) for use on the public roads. Through an oversight, the corresponding provision in section 591.7(c) was not deleted. This notice makes such a deletion. Section 591.5(f)(1) was amended to substitute the term "dutiabale value" for "entered value," but an identical change was not made to section 591.6(c). This notice makes the change. Finally, the agency notes that sections other than section 591.6(g) are referred to in the text as "paragraphs," whereas the preferred Federal Register usage is "section." Conforming changes are made where appropriate.

DATE: The corrections are effective February 28, 1990.

SUPPLEMENTARY INFORMATION: On February 5, 1990, NHTSA published its response (Notice 4) to the petitions for reconsideration of 49 CFR Part 591 *Importation of Vehicles and Equipment Subject to the Federal Motor Vehicle Safety Standards* (55 FR 3742). In response to these petitions, NHTSA deleted the requirement that written approval be obtained from the Administrator under section 591.6(f) prior to the importation of vehicles intended to be imported pursuant to section 591.5(j), that is, imported for the purpose of research, investigations, studies, demonstrations or training, and competitive racing events. Part of the deleted paragraph (f) required the prospective importer to request permission to license the vehicle on the public roads if use on the public roads was an integral part of the purpose for which the vehicle was imported. In making this deletion, NHTSA overlooked the restriction upon importation contained in section 591.7(c), that an importer of a vehicle which had entered the United States under a declaration made pursuant to section 591.5(j) may

license it for use on the public roads only if written permission has been granted by the Administrator pursuant to section 591.6(f). Thus, the notice published on February 5 deleted the referent and the requirement it contained. This notice completes the prior rulemaking by also deleting section 591.7(c).

The Imported Vehicle Safety Compliance Act of 1988 specifies that conformance bonds shall be based upon "dutiabale value." Part 591 as originally adopted used the term "entered value," which the agency understood was the term now in use by the U.S. Customs Service. However, upon reflection, NHTSA adopted a definition of "dutiabale value" in the February 5 notice, specifying it to be the entered value of merchandise as determined by the Secretary of the Treasury. The term "entered value" appeared in two places in Part 591, but through an oversight, only one of these (section 591.5(f)(1)) was changed. This notice corrects the second of these, appearing in section 591.6(c).

The February 5 notice also used the term "section" in an internal reference to another part of the regulation. However, review of the regulation indicates that the word "paragraph" is in general use. NHTSA understands that the usage preferred by the Federal Register is "section" when a complete citation is given, i.e., "section 591.6(c)," and that the word "paragraph" should be used when the citation is to an internal part of a section, e.g., "paragraph (c) of this section." Corrections are made where required. Finally, a typographical error appearing in new section 591.6(g) is corrected.

Because these amendments are corrective in nature, it is hereby found that notice and public comment thereon are unnecessary, and that they may become effective upon publication in the *Federal Register*. As they make no substantive changes, they do not affect any of the impacts previously considered in relation to Part 591.

In consideration of the foregoing, Part 591 of 49 CFR is amended as follows:

1. In section 591.6(c) the phrase "entered value of the vehicle as determined by the Secretary of the

Treasury” is deleted, and the phrase “dutiabile value of the vehicle” is substituted.

2. In the final sentence of section 591.6(g), the word “of” is changed to “or.”

3. The word “paragraph” is changed to “section” wherever it appears in the introductory text to section 591.6, and in paragraphs (a), (b), (b)(1), (c), (d), (e), and (f) of section 591.6, and in sections 591.7(a) and (b).

4. Section 591.7(c) is deleted.

Issued on: February 22, 1990

Jeffrey R. Miller
Deputy Administrator

55 F.R. 6994
February 28, 1990

PREAMBLE TO AN AMENDMENT TO PART 591
Importation of Motor Vehicles and Equipment
(Docket No. 89-5; Notice 6)
RIN 2127-AD00

ACTION: Final rule.

SUMMARY: The purpose of this notice is to amend the recently adopted regulation of the National Highway Traffic Safety Administration governing importation of motor vehicles and equipment subject to the Federal motor vehicle safety standards. The first amendment adds the agency's bumper and theft prevention standards to those Federal standards for which conformity is necessary for permanent importation of a motor vehicle into the United States. Although conformity of imported cars with these standards is required by statute, current importation regulations have never been amended to include them. The second amendment extends coverage of the bond required by NHTSA for a demonstration of conformity with the safety standards, to vehicles imported between January 31, 1990, and October 31, 1992, by importers who owned the vehicle as of October 31, 1988, and whose assigned place of employment was outside the U.S. at times from that date until the time of importation. This bond supersedes the current equivalent Customs bond. The third amendment specifies the terms and conditions of the two NHTSA bonds. The final amendment adopts procedures for submitting petitions for remission and mitigation of bond forfeiture.

EFFECTIVE DATE: March 28, 1990.

SUPPLEMENTARY INFORMATION: On October 31, 1988, the President signed P.L. 100-562, the Imported Vehicle Safety Compliance Act of 1988 ("the 1988 Act"). A notice of proposed rulemaking to establish Part 591 was published on April 25, 1989 (54 FR 17772), and a final rule on September 29, 1989 (54 FR 40069). As the notices stated, the 1988 Act amends those provisions of the National Traffic and Motor Vehicle Safety Act of 1966 ("the Vehicle Safety Act") that relate to the importation of motor vehicles subject to the Federal motor vehicle safety standards (section 108(b), 15 U.S.C. 1397(b)). The importation of motor vehicles subject to the Federal motor vehicle bumper standard (15 U.S.C. 1916), and the Federal motor vehicle theft prevention standard (15 U.S.C. 601) was not included in these changes.

Importation of passenger motor vehicles subject to the bumper standard is to be governed by joint regulations of both NHTSA and the Secretary of the Treasury (15 U.S.C. 1916(b)(3)), under terms and conditions (including the furnishing of a bond) sufficient to ensure their conformance, or their exportation or abandonment to the United States. Importation of vehicles and equipment subject to the theft prevention standard is flatly prohibited unless vehicles and equipment conform at time of entry. In reviewing agency programs, NHTSA and Customs have agreed that regulatory simplicity requires that all vehicles subject to NHTSA's standards should be imported pursuant to a NHTSA regulation. Accordingly, a notice was published on November 29, 1989, proposing amendments of Part 591 to add the Federal bumper and theft prevention standards to its coverage (54 FR 49098). Comments on the notice were received from Ford Motor Co., Mercedes-Benz of North America, and National Automobile Dealers Association. The comments were non-substantive in nature, and supported the proposal. Because of the importance of this matter, the agency is repeating the preamble of the proposal.

The Federal Bumper Standard

Title I of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 *et seq.*) was enacted in 1972, and required NHTSA to promulgate bumper standards applicable to all passenger motor vehicles imported into the United States. In implementation of this requirement, NHTSA issued 49 CFR Part 581, *Bumper Standard*, effective September 1, 1978. The importation provisions in the Cost Saving Act for vehicles subject to the bumper standards were substantially similar to those for vehicles subject to the safety standards. No standard was to apply to a vehicle intended solely for export and so labeled or tagged. No person was to import a passenger motor vehicle manufactured on or after the effective date of a bumper standard unless it was in conformity with such a standard. However, it could be admitted under the joint regulations of the Secretaries of Treasury and Transportation under such terms and

conditions (including the furnishing of a bond) as appeared appropriate to ensure conformity, or exportation or abandonment to the United States. The joint regulations could also provide for the "importation" (as contrasted with the "temporary importation" allowed by the Vehicle Safety Act) of any passenger motor vehicle after its first purchase for purposes other than resale.

However, the joint regulation that applied to the importation of vehicles subject to the Federal safety standards, 19 CFR 12.80, was never amended to incorporate the bumper standard, although NHTSA enforced it as part of its importation compliance procedures. With the advent of NHTSA's own vehicle importation regulation, 49 CFR Part 591, this notice adds bumper standard importation requirements to the declarations required for entry, and amends the bond provisions to include compliance with the bumper standard. To fulfill the statutory requirement for joint issuance, the final rule is jointly issued under the authority of both regulatory agencies.

The bumper declarations and requirements are virtually identical with those required for the safety standards. There is one exception, however. NHTSA has interpreted the 1988 Act as requiring a showing of total compliance with the safety standards, or exportation or abandonment of the motor vehicle to the United States. NHTSA does not read the Cost Savings Act as imposing the same punishment in the absence of such a showing regarding the bumper standard. Therefore, in the event that a passenger motor vehicle demonstrates compliance with the safety standards, but not the bumper standard, the agency may choose to levy a penalty upon the bond instead of demanding export or abandonment of the vehicle, if the facts appear to justify it.

The Theft Prevention Standard

Title VI of the Cost Savings Act (15 U.S.C. 601 *et seq.*) requires NHTSA to issue a vehicle theft prevention standard that applies to "covered major parts which are installed by manufacturers into passenger motor vehicles in lines designated . . . as high theft lines," and the major replacement parts for those major parts. In implementation of this requirement, NHTSA issued 49 CFR Part 541, *Federal Motor Vehicle Theft Prevention Standard*, effective April 24, 1986. Conformance with this standard requires the marking of certain original and replacement parts in the manner specified in the standard. Unlike the statutory importation requirements for safety and bumper standards, Title VI contains a flat prohibition against the importation of vehicles and parts which are subject to the theft prevention standard, but are not marked in accordance with it. Therefore, vehicles and parts covered by the theft prevention standard must comply before their impor-

tation into the United States, whether the marking is affixed by the importer, or original manufacturer. In terms of Part 591, this means that an importer must declare that his vehicle meets the theft prevention standard, even if it is accompanied by a declaration of nonconformance with the safety and bumper standards. If, in the first instance, the vehicle does not meet the theft prevention standard, it will not be allowed entry under bond or otherwise for the eventual production of a conformity statement. Admission under a false declaration may constitute a violation of the regulations of the Customs Service, and result in seizure of the vehicle.

This notice adopts appropriate changes in the language of the declarations, and also a new paragraph 591.5(k) that applies to replacement parts. It requires a declaration of conformity with the theft prevention standard by the importer of any major part covered by the standard.

Bonds for Those Eligible to Import Under Present Regulation.

Under certain circumstances, and for a limited time, section 108(g) of the Vehicle Safety Act permits a nonresident (including any member of the Armed Forces) to continue to import a vehicle under the present regulation, that is, the Administrator need not have made a determination that it is capable of conformance, and conformance work need not be performed by a registered importer. This exception applies to a single vehicle imported, for personal use and not for resale, between January 31, 1990, and October 31, 1992, by an individual whose assigned place of employment was outside the United States for the total period between October 31, 1988, and the date of importation, provided that the vehicle was acquired (or was subject to a binding contract to acquire) before October 31, 1988, and that the individual has not previously imported a nonconforming motor vehicle. Importation under this amendment is reflected in section 591.5(g).

NHTSA and Customs have agreed that as of January 31, 1990, all bonds given for conformance with the safety standards should be those of NHTSA. Therefore, appropriate inclusory language is adopted in this notice.

Conditions of the Conformance Bond

In its response to the proposal of Part 591, General Motors commented that Part 591 did not state the conditions of the bond. With the determination by Customs and NHTSA that the bond will be that of NHTSA, it is now possible for this agency to state those conditions. In general, they include the acts that the statute requires importers or registered importers to perform after entry of a vehicle and before its release. The bond is given to secure com-

pliance with the Federal motor vehicle safety standards, and, if the vehicle has been imported under section 108(c) of the Vehicle Safety Act, no mitigation of the bond is contemplated for vehicles that appear to conform only partially with the safety standards. If full conformance with the safety standards is not achieved, the vehicle must be exported, or abandoned to the U.S. If none of these actions occur, the bond is forfeited. If a vehicle has been brought into full conformance with the safety standards, but not the bumper standard, NHTSA may not demand export or abandonment, but only a partial forfeiture of the bond. This differs from the practice under the present bond (in effect until January 31, 1990), which will continue until October 31, 1992, for vehicles imported pursuant to section 108(g). Under this condition, the principal submits a statement identifying the conforming party, and discussing the nature and extent of the work performed in the conformance process, within 120 days after entry (or longer, if the Administrator allows it). It has been the practice of Customs to release vehicles under a partial forfeiture of the bond when complete compliance has not been documented, and the vehicle has not been returned for export. A further condition of the bond for vehicles imported pursuant to section 108(c) is that the principal will make the vehicle available for inspection upon demand by NHTSA, and will not release it from custody before 30 days had passed after its submission of conformance certification to NHTSA. A further condition of the bond for vehicles imported pursuant to section 108(g) is that the principal will not sell the vehicle, or offer it for sale, until a statement had been issued by NHTSA that it is acceptable to do so.

These conditions are now set forth in sections 591.8(f) and (g). The bond that will apply to importers of vehicles pursuant to section 108(c) of the Act is depicted at Annex A. The bond that will apply to importers of vehicles pursuant to section 108(g) is depicted at Annex B.

Petitions for Remission or Mitigation

In the event a bond is forfeited, a principal and/or surety may petition the Administrator for remission of the forfeiture. If the Administrator finds that all conditions of the bond have been, in fact, fulfilled, the forfeiture is remitted.

A petition may also be submitted for mitigation of the forfeiture. However, given the intent of the 1988 Act that the Federal motor vehicle safety standards be enforced more strictly than before, the agency has concluded that mitigation of forfeiture is inappropriate if a vehicle has been imported pursuant to new section 108(c) of the Vehicle Safety Act, and is not brought into compliance with all safety standards. Arguably, fail-

ure to conform should occur infrequently in the future. This is because a vehicle will not be admitted unless the agency has determined that it is capable of conformance, and the conformance work will be performed by those who have registered with NHTSA as undertaking to provide certifications that vehicles have been brought into conformity.

This restriction will not apply to importers of vehicles under section 108(g). Vehicles imported pursuant to this provision are exempt from eligibility determinations and need not be conformed by registered importers. If these vehicles fail to comply fully with the standards, and are not exported or abandoned, the bond will be forfeit, but the Administrator will entertain petitions for mitigation, just as the Customs Service does under the existing regulations.

Nor will the restriction apply to either category of importer if the condition of the bond that is not met relates to compliance with Part 581, the Federal bumper standard. The primary purpose of this standard is the preservation of property, rather than the prevention of deaths and injuries. The fact that Congress draws a distinction is found in the permissive authority of the two Secretaries that allows importation of used passenger motor vehicles whether or not they comply with the bumper standard (15 U.S.C. 1916(b)(4)), but forbids the importation of vehicles that do not comply with safety standards unless the vehicles are brought into compliance with them.

These provisions are adopted as section 591.9.

Miscellaneous

The signature of the Assistant Secretary of Treasury on this notice represents that Department's exercise of its share of the joint authority provided for implementation of importation provisions of Title I (relating to bumpers) of the Motor Vehicle Information and Cost Savings Act. It is understood that implementation of Title VI (relating to theft) of that Act is under the sole authority of the Department of Transportation.

In consideration of the foregoing, PART 591 of 49 CFR is amended to read as follows:

1. The authority section is revised to read:

Authority: P.L. 100-562, 15 U.S.C. 1401, 1407, 1912, 1916, 2022, 2027; delegation of authority at 49 CFR 1.50.

2. The title of Part 591 is revised to read "PART 591—IMPORTATION OF VEHICLES AND EQUIPMENT SUBJECT TO FEDERAL SAFETY, BUMPER, AND THEFT PREVENTION STANDARDS"

3. Under the section heading "Sec.," new sections 591.8 and 591.9 are added to read:

591.8 Conformance bond and conditions.

591.9 Petitions for remission or mitigation of forfeiture.

4. Sections 591.1, 591.2, and 591.3 are revised to read:

591.1 Scope.

This part establishes procedures governing the importation of motor vehicles and motor vehicle equipment subject to the Federal motor vehicle safety, bumper, and theft prevention standards.

591.2 Purpose.

The purpose of this part is to ensure that motor vehicles and motor vehicle equipment permanently imported into the United States conform with theft prevention standards issued under Part 541 of this chapter and that they conform with, or are brought into conformity with, all applicable Federal motor vehicle safety standards issued under Part 571 of this chapter and bumper standards issued under Part 581 of this chapter. The purpose of this part is also to ensure that nonconforming vehicles and equipment items imported on a temporary basis are ultimately either exported or abandoned to the United States.

591.3 Applicability.

This part applies to any person offering a motor vehicle or item of motor vehicle equipment for importation into the United States.

5. The first sentence of paragraph 591.4 is revised to read:

591.4 Definitions.

All terms used in this part that are defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391), and section 2 and section 601 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 and 2021), are used as defined in the Acts, except that the term “model year” is used as defined in Part 593 of this chapter.

6. Sections 591.5(a), (b), and (c) are revised to read:

591.5 Declarations required for importation.

No person shall import a motor vehicle or item of motor vehicle equipment into the United States unless, at the time it is offered for importation, its importer files a declaration, in duplicate, which declares one of the following:

(a)(1) The vehicle was not manufactured primarily for use on the public roads and thus is not a motor vehicle subject to the Federal motor vehicle safety, bumper, and theft prevention standards; or

(2) The equipment item is not a system, part, or component of a motor vehicle and thus is not an item of motor vehicle equipment subject to the Federal motor vehicle safety, bumper, and theft prevention standards.

(b) The vehicle or equipment item conforms with all applicable safety standards (or the vehicle does not conform solely because readily attachable equipment items which will be attached to it before it is offered for sale to the first purchaser for purposes other than resale are not attached), and bumper and

theft prevention standards, and bears a certification label or tag to that effect permanently affixed by the original manufacturer to the vehicle, or to the equipment item or its delivery container, in accordance with, as applicable, Parts 541, 555, 567, 568, and 581, or 571 (for certain equipment items) of this chapter.

(c) The vehicle or equipment item does not comply with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, but is intended solely for export, and the vehicle or equipment item, and the outside of the container of the equipment item, if any, bears a label or tag to that effect.

7. The incomplete sentence in section 591.5(d) is revised to read:

(d) The vehicle does not conform with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, but the importer is eligible to import it because:

8. Section 591.5(e) is revised to read:

(e) The vehicle or equipment item requires further manufacturing operations to perform its intended function, other than the addition of readily attachable equipment items such as mirrors, wipers, or tire and rim assemblies, or minor finishing operations such as painting, and any part of such vehicle that is required to be marked by Part 541 of this chapter is marked in accordance with that Part.

9. Sections 591.5(f) and (f)(1) are revised to read:

(f) The vehicle does not conform with all applicable Federal motor vehicle safety and bumper standards (but does conform with all applicable Federal theft prevention standards), but the importer is eligible to import it because:

(1) The importer has furnished a bond, which is attached to the declaration, in an amount equal to 150% of the dutiable value of the vehicle, containing the terms and conditions specified in section 591.8; and

10. The incomplete sentence in section 591.5(g) is revised to read:

(g) The vehicle does not conform with all applicable Federal motor vehicle safety and bumper standards (but it does conform with all applicable Federal theft prevention standards), but the importer is eligible to import it because:

11. In section 591.5(g), new subparagraphs (g)(5), (g)(6), and (g)(7) are added to read:

(5) The importer has furnished a bond, which is attached to the declaration, in an amount equal to 150% of the entered value of the vehicle as determined by the Secretary of the Treasury, containing the terms and conditions specified in section 591.8;

(6) The vehicle was not manufactured in conformity with all applicable safety and bumper standards, but it has been or will be brought into

conformity; furthermore, within 120 days after entry or such additional time not to exceed 180 days after entry as the Administrator may allow, the importer will submit a true and complete statement to the Administrator, identifying the manufacturer, contractor, or other person who has brought the vehicle into conformity, describing the exact nature and extent of the work performed, and certifying that the vehicle or equipment item has been brought into conformity; and

(7) The importer will not sell the vehicle, or offer it for sale, until the Administrator issues a statement that the conditions of the bond required by section 591.6(c) have been satisfied.

12. The incomplete sentence in section 591.5(h) is revised to read:

(h) The vehicle does not conform with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, but the importer is eligible to import it because:

13. Section 591.5(i)(2) is revised to read:

(i)(2) The equipment item was manufactured on a date when no applicable safety or theft prevention standard was in effect.

14. The incomplete sentence in section 591.5(j) is revised to read:

(j) The vehicle or equipment item does not conform with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, but is being imported solely for the purpose of:

15. A new section 591.5(k) is added to read:

(k) The equipment item is subject to the theft prevention standard, and is marked in accordance with the requirements of Part 541 of this chapter.

16. Section 591.6(c) is revised to read:

(c) A declaration made pursuant to section 591.5(f) or section 591.5(g) shall be accompanied by a bond in the form shown in Annex A or Annex B of this Part, respectively, in an amount equal to 150% of the dutiable value of the vehicle for the conformance of the vehicle with all applicable Federal motor vehicle safety and bumper standards, or, if conformance with the safety standards is not achieved, for the delivery of such vehicle to the Secretary of the Treasury for export at no cost to the United States, or for its abandonment.

17. New sections 591.8 and 591.9 are added to read:

591.8 Conformance bond and conditions.

(a) The bond required under section 591.6(c) for importation of a vehicle not originally manufactured to conform with all applicable standards issued under Part 571 and Part 581 of this chapter shall cover only one motor vehicle, and shall be in an amount equal to 150% of the dutiable value of the vehicle.

(b) The principal on the bond shall be the importer of the vehicle.

(c) The surety on the bond shall possess a certificate of authority to underwrite Federal bonds. (See list of certificated sureties at 54 FR 27800, June 30, 1989)

(d) In consideration of the release from the custody of the U.S. Customs Service or the withdrawn from a Customs bonded warehouse into the commerce of, or for consumption in, the United States, of a motor vehicle not originally manufactured to conform to all applicable standards issued under Part 571 and Part 581 of this chapter, the obligors (principal and surety) shall agree to the following conditions of the bond:

(i) To have such vehicle brought into conformity with all applicable standards issued under Part 571 and Part 581 of this chapter within 120 days after the date of entry;

(ii)

(1) In the case of a vehicle imported pursuant to section 591.5(f), to file (or if not a Registered Importer, to cause the Registered Importer of the vehicle to file) with the Administrator, a certificate that the vehicle complies with each Federal motor vehicle safety and bumper standard in the year that the vehicle was manufactured and which applies in such year to the vehicle; or

(2) In the case of a vehicle imported pursuant to section 591.5(g), to submit a true and complete statement to the Administrator, identifying the manufacturer, contractor, or other person who has brought the vehicle into conformity, describing the exact nature and extent of the work performed, and certifying that the vehicle has been brought into conformity with each Federal motor vehicle safety and bumper standard in the year that such vehicle was manufactured and which applies in such year to the vehicle.

(iii) In the case of a Registered Importer, not to release custody of the vehicle to any person for license or registration for use on public roads, streets, or highways, or license or register the vehicle from the date of entry until 30 calendar days after it has certified compliance of the vehicle to the Administrator, unless the Administrator has notified the principal before 30 calendar days that (s)he has accepted such certification, and that the vehicle and bond may be released, except that the vehicle shall not be released if the principal has received written notice from the Administrator that an inspection of the vehicle will be required, or that there is reason to believe that such certification is false or contains a misrepresentation;

(iv) In the case of a Registered Importer, to cause the vehicle to be available for inspection, if the principal has received written notice from the Administrator that an inspection is required.

(v) In the case of a Registered Importer, not to

release the vehicle until the Administrator is satisfied with the certification and any modification thereof, if the principal has received written notice from the Administrator that there is reason to believe that the certificate is false or contains a misrepresentation.

(vi) If the principal has received written notice from the Administrator that the vehicle has been found not to comply with all applicable Federal motor vehicle safety standards, and written demand that the vehicle be abandoned to the United States, or delivered to the Secretary of the Treasury for export (at no cost to the United States), to abandon the vehicle to the United States, or to deliver the vehicle, or cause the vehicle to be delivered to, the custody of the District Director of Customs of the port of entry listed above, or to any other port of entry, and to execute all documents necessary for exportation of the vehicle from the United States, at no cost to the United States; or in default of abandonment or redelivery after proper notice by the Administrator to the principal, to pay to the Administrator the amount of the bond.

(e) If the principal defaults on the obligation of paragraph (d)(vi) of this section, to abandon the vehicle to the United States or to redeliver the vehicle to the custody of a District Director of Customs and to execute all documents necessary for its exportation, the obligors shall pay to the Administrator the amount of the bond given under the provisions of this section.

591.9 Petitions for remission or mitigation of forfeiture.

(a) After a bond has been forfeited, a principal and/or a surety may petition for remission of forfeiture. A principal and/or a surety may petition for mitigation of forfeiture only if the motor vehicle has been imported pursuant to section 591.5(g), or, if imported pursuant to section 591.5(f), only if the condition not met relates to the compliance of a passenger motor vehicle with Part 581 of this chapter.

(b) A petition for remission or mitigation shall:

(1) Be addressed to the Administrator, identified as either a petition for remission or for mitigation,

submitted in triplicate, and signed by the principal and/or the surety.

(2) State the make, model, model year, and VIN of the vehicle involved, and contain the Customs Entry number under which the vehicle entered the United States.

(3) State the facts and circumstances relied on by the petitioner to justify remission or mitigation.

(4) Be filed within 30 days from the date of the mailing of the notice of forfeiture incurred.

(c) A false statement contained in a petition may subject the petitioner to prosecution under the provisions of 18 U.S.C. 1001.

(d) If the Administrator finds that all conditions of the bond have, in fact, been fulfilled, the forfeiture is remitted.

(e) A decision to mitigate a forfeiture upon condition that a stated amount is paid shall be effective for not more than 60 days from the date of notice to the petitioner of such decision. If payment of the stated amount is not made, or arrangements made for delayed or installment payment, the full claim of forfeiture shall be deemed applicable. The Administrator shall collect the claim, or, if unable to collect the claim within 120 days, shall refer the matter to the Department of Justice.

18. Annex A and Annex B are added to this Part as follows:

Issued on: March 19, 1990

Jerry Ralph Curry
Administrator

Acting Assistant Secretary
(Enforcement)
Department of the Treasury

55 F.R. 11375
March 28, 1990

Department of Transportation
National Highway Traffic Safety Administration

BOND TO ENSURE CONFORMANCE WITH MOTOR VEHICLE SAFETY AND BUMPER STANDARDS

(To redeliver vehicle, to produce documents, to perform conditions of release, such as to bring vehicle into conformance with all applicable Federal motor vehicle safety and bumper standards)

Know All Men by These Presents That _____

_____ name of principal or surety; if a corporation, the State of incorporation

of _____, as principal,
street address or post office box number; city; state; ZIP code

and _____ of _____,
name; State of incorporation, if any address

and _____ of _____,
name; State of incorporation, if any address

as sureties, are held and firmly bound unto the UNITED STATES OF AMERICA

in the sum of _____

_____ dollars (\$ _____),

which represents 150% of the entered value of the following described motor vehicle as determined by the U.S. Customs Service:

_____ model year, make, series, engine and chassis numbers

for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns (jointly and severally), firmly by these presents

WITNESS our hands and seals this _____ day of _____, 199__

WHEREAS, motor vehicles may be entered under the provisions of section 108 of the National Traffic and Motor Vehicle Safety Act, and section 106 of the Motor Vehicle Information and Cost Savings Act; and

DOT Form XXXX

WHEREAS, pursuant to 49 CFR Part 591, a regulation promulgated under the provisions of section 108, National Traffic and Motor Vehicle Safety Act of 1966, the above-bounden principal desires to import permanently the motor vehicle described above, which is a motor vehicle that was not originally manufactured to conform with the Federal motor vehicle safety and bumper standards; and

WHEREAS, pursuant to 49 CFR Part 592, a regulation promulgated under the provisions of section 108, National Traffic and Motor Vehicle Safety Act of 1966, as amended, the above-bounden principal has been granted the status of Registered Importer of motor vehicles not originally manufactured to conform with the Federal motor vehicle safety standards (or, if not a Registered Importer, has a contract with a Registered Importer covering the motor vehicle described above); and

WHEREAS, pursuant to 49 CFR Part 593, a regulation promulgated under the provisions of section 108, National Traffic and Motor Vehicle Safety Act of 1966, as amended, the Administrator of the National Highway Traffic Safety Administration has determined that the motor vehicle described above is eligible for importation into the United States; and

WHEREAS, the motor vehicle described above has been imported at the port of _____, and entered at said port for consumption on entry No. _____, dated _____, 199__,

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT—

(1) The above-bounden principal (the “principal”), in consideration of the permanent admission into the United States of the motor vehicle described above (the “vehicle”), voluntarily undertakes and agrees to have such vehicle brought into conformity with all applicable Federal motor vehicle safety and bumper standards within a reasonable time after such importation, as specified by the Administrator of the National Highway Traffic Safety Administration (the “Administrator”);

(2) The principal shall then file, or if not a Registered Importer, shall then cause the Registered Importer of the vehicle to file, with the Administrator, a certificate that the vehicle complies with each Federal motor vehicle safety standard in the year that the vehicle was manufactured and which applies in such year to the vehicle, and that the vehicle complies with the Federal bumper standard (if applicable);

(3) The principal, if a Registered Importer, shall not release custody of the vehicle to any person for license or registration for use on public roads, streets, or highways, or license or register the vehicle from the date of entry until 30 calendar days after it has certified compliance of the vehicle to the Administrator, unless the Administrator notifies the principal before 30 calendar days that (s)he has accepted such certification and the vehicle and bond may be released, except that no such release shall be permitted, before or after the 30th calendar day, if the principal has received written notice from the Administrator that an inspection of such vehicle will be required, or that there is reason to believe that such certification is false or contains a misrepresentation;

(4) And if the principal has received written notice from the Administrator that an inspection is required, the principal shall cause the vehicle to be available for inspection, and the vehicle and bond shall be promptly released after completion of an inspection showing no failure to comply. However, if the inspection shows a failure to comply, the vehicle and bond shall not be released until such time as the failure to comply ceases to exist;

(5) And if the principal has received written notice from the Administrator that there is reason to believe that the certificate is false or contains a misrepresentation, the vehicle or bond shall not be released until the Administrator is satisfied with the certification and any modification thereof;

(6) And if the principal has received written notice from the Administrator that the vehicle has been found not to comply with all applicable Federal motor vehicle safety and bumper standards, and written demand that the vehicle be abandoned to the United States, or delivered to the Secretary of the Treasury for export (at no

cost to the United States), the principal shall abandon the vehicle to the United States, or shall deliver the vehicle, or cause the vehicle to be delivered to, the custody of the District Director of Customs of the port of entry listed above, or any other port of entry, and shall execute all documents necessary for exportation of the vehicle from the United States, at no cost to the United States; or in default of abandonment or redelivery after proper notice by the Administrator to the principal, the principal shall pay to the Administrator the amount of this obligation;

Then this obligation shall be void; otherwise it shall remain in full force and effect.

Signed, sealed, and delivered in the presence of—

Name Address

Name Address

(Principal) (SEAL)

Name Address

Name Address

(Surety) (SEAL)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____ certify that I am the _____
of the corporation named as principal in the within bond; that _____
_____, who signed the bond on behalf of the principal, was then
_____ of said corporation; that I know his/her signature, and his/her
signature thereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said
corporation by authority of its governing body.

_____ [Corporate Seal]

To be used when a power of attorney has been filed with NHTSA
May be executed by secretary, assistant secretary, or other officer

ANNEX A

Bond for importations of motor vehicles under section 591.5(f)

Department of Transportation
National Highway Traffic Safety Administration

BOND TO ENSURE CONFORMANCE WITH MOTOR VEHICLE SAFETY AND BUMPER STANDARDS

(To redeliver vehicle, to produce documents, to perform conditions of release, such as to bring vehicle into conformance with all applicable Federal motor vehicle safety and bumper standards)

Know All Men by These Presents That _____

_____ name of principal or surety; if a corporation, the State of incorporation

of _____, as principal,
street address or post office box number; city; state; ZIP code

and _____ of _____,
name; State of incorporation, if any address

and _____ of _____,
name; State of incorporation, if any address

as sureties, are held and firmly bound unto the UNITED STATES OF AMERICA

in the sum of _____
dollars (\$ _____),

which represents 150% of the entered value of the following described motor vehicle as determined by the U.S. Customs Service:

_____ model year, make, series, engine and chassis numbers

for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns (jointly and severally), firmly by these presents

WITNESS our hands and seals this _____ day of _____, 199__

WHEREAS, motor vehicles may be entered under the provisions of section 108 of the National Traffic and Motor Vehicle Safety Act, and section 106 of the Motor Vehicle Information and Cost Savings Act; and

DOT Form XXXX

WHEREAS, pursuant to 49 CFR Part 591, a regulation promulgated under the provisions of section 108, National Traffic and Motor Vehicle Safety Act of 1966, the above-bounden principal desires to import permanently the motor vehicle described above, which is a motor vehicle that was not originally manufactured to conform with the Federal motor vehicle safety and bumper standards; and

WHEREAS, pursuant to paragraph 591.5(g) of 49 CFR Part 591, a regulation promulgated under the provisions of section 108, the above-bounden principal is eligible to import a motor vehicle under the provisions thereof: to wit, the above-bounden principal's assigned place of employment was outside the United States as of October 31, 1988, and (s)he has not had an assigned place of employment in the United States between that date and the date of entry of the motor vehicle described above, and (s)he has not previously imported a motor vehicle into the United States manufactured on or after January 1, 1968, and (s)he had acquired (or had entered into a binding contract to acquire) the motor vehicle described above not later than October 31, 1988, and (s)he will enter the motor vehicle described above not later than October 31, 1992; and

WHEREAS, the motor vehicle described above has been imported at the port of _____, and entered at said port for consumption on entry No. _____, dated _____, 199___,

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT—

(1) The above-bounden principal (the "principal"), in consideration of the permanent admission into the United States of the motor vehicle described above (the "vehicle"), voluntarily undertakes and agrees to have such vehicle brought into conformity with all applicable Federal motor vehicle safety and bumper standards within 120 days after such importation, or such longer time not to exceed 180 days after such importation, as specified by the Administrator of the National Highway Traffic Safety Administration (the "Administrator");

(2) When the vehicle has been brought into conformity, the principal shall then file with the Administrator, a true and complete statement that the vehicle complies with each Federal motor vehicle safety standard in the year that the vehicle was manufactured and which applies in such year to the vehicle, and that the vehicle also complies with the Federal bumper standard;

(3) The principal shall not offer the vehicle for sale, or sell the vehicle, until the principal has received written notice from the Administrator that the principal has fulfilled all the conditions of the bond.

(4) And if the principal has received written notice from the Administrator that an inspection is required, the principal shall cause the vehicle to be available for inspection, and the vehicle and bond shall be promptly released after completion of an inspection showing no failure to comply. However, if the inspection shows a failure to comply, the vehicle and bond shall not be released until such time as the failure to comply ceases to exist;

(5) And if the principal has received written notice from the Administrator that there is reason to believe that the statement is false or contains a misrepresentation, the vehicle or bond shall not be released until the Administrator is satisfied with the statement and any modification thereof;

(6) And if the principal has received written notice from the Administrator that the vehicle has been found not to comply with all applicable Federal motor vehicle safety and bumper standards, and written demand that the vehicle be abandoned to the United States, or delivered to the Secretary of the Treasury for export (at no cost to the United States), the principal shall abandon the vehicle to the United States, or shall deliver the vehicle, or cause the vehicle to be delivered to, the custody of the District Director of Customs of the port of entry listed above, or any other port of entry, and shall execute all documents necessary for exportation of the vehicle from the United States, at no cost to the United States; or in default of abandonment or redelivery after proper notice by the Administrator to the principal, the principal shall pay to the Administrator the amount of this obligation;

Then this obligation shall be void; otherwise it shall remain in full force and effect.

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____ certify that I am the _____
of the corporation named as principal in the within bond; that _____
_____, who signed the bond on behalf of the principal, was then
_____ of said corporation; that I know his/her signature, and his/her
signature thereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said
corporation by authority of its governing body.

_____ [Corporate Seal]

To be used when a power of attorney has been filed with NHTSA
May be executed by secretary, assistant secretary, or other officer

ANNEX B

Bond for importation of motor vehicles under section 591.5(g)

55 F.R 11375
March 28, 1990

Signed, sealed, and delivered in the presence of

Name Address

Name Address

Principal

(SEAL)

Name Address

Name Address

Surety

(SEAL)

PREAMBLE TO AN AMENDMENT TO PART 591
Importation of Motor Vehicles and Equipment
(Docket No. 89-5; Notice 7)
RIN 2127-AD00

ACTION: Final rule; correction.

SUMMARY: On March 28, 1990, NHTSA published an amendment to the final rule on the importation of motor vehicles and equipment subject to the Federal motor vehicle safety standards, that added Federal bumper and theft prevention standards. NHTSA amended section 591.5(b) and section 591.5(h) in a manner inadvertently omitting language that had been added by a prior amendment on February 5, 1990. This notice restores the omissions.

DATE: The correction is effective April 25, 1990.

SUPPLEMENTARY INFORMATION: On February 5, 1990, NHTSA published a response to the petitions for reconsideration of 49 CFR Part 591 *Importation of Vehicles and Equipment Subject to the Federal Motor Vehicle Safety Standards* (Notice 4, 55 FR 3742). That notice amended section 591.5(b) to add the phrase "by the manufacturer" between the words "or" and "to the equipment item." The notice also amended section 591.5(h) in a way that the referent to the importer, "(s)he," appeared in the introductory text to the section, rather than in the subsections. However, a draft amendment to Part 591, eventually published on March 28, 1990 as

Notice 6 (55 FR 11375), had been prepared prior to the preparation of Notice 4. Section 591.5(b) and Section 591.5(h) were not updated before the publication of Notice 6, with the result that a minor corrective amendment is required to reinsert the language added by Notice 4.

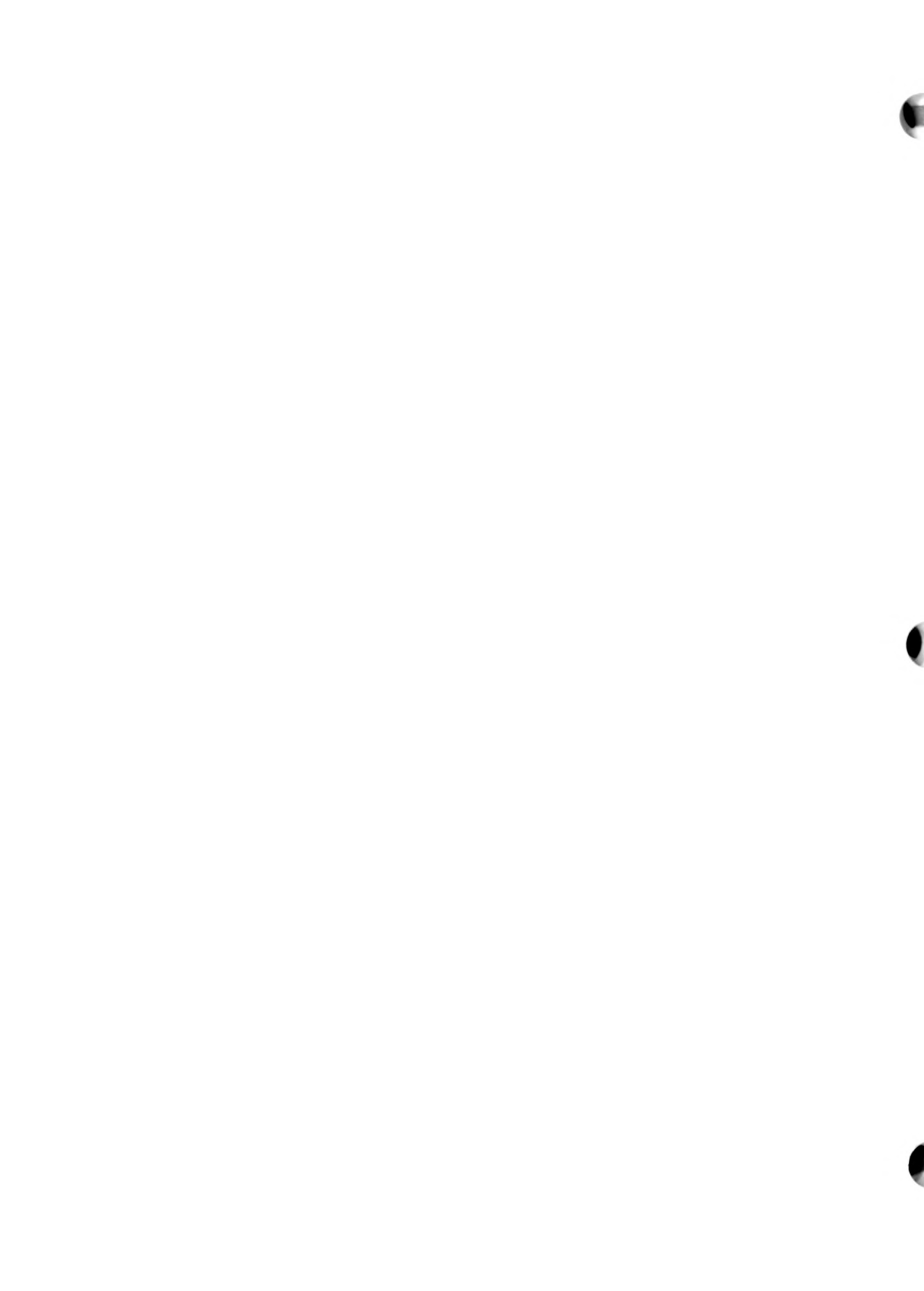
In consideration of the foregoing, Part 591 of 49 CFR is amended as follows:

1. In section 591.5(b), the phrase "by the manufacturer" is inserted between the words "or" and "to the equipment item."

2. In section 591.5(h), the introductory text is amended by adding "(s)he" after the word "because" and before the colon.

Issued on: April 19, 1990

Jeffrey R. Miller
Deputy Administrator
55 F.R. 17438
April 25, 1990



PREAMBLE TO AN AMENDMENT TO PART 591
Importation of Motor Vehicles and Equipment Subject to Federal Safety,
Bumper, and Theft Prevention Standards

(Docket No. 89-5; Notice 9)

RIN 2127-AD00

ACTION: Final rule.

SUMMARY: This notice amends 49 CFR Part 591 to require that persons (other than original motor vehicle manufacturers who certify compliance to all applicable Federal motor vehicle safety standards) who wish to import nonconforming vehicles or equipment items for purposes of research, investigation, studies, demonstrations or training, or competitive racing events, submit, in advance of such importation, information in support of a request for admission, and obtain a letter of permission from NHTSA.

The purpose of the requirement is to ensure that the request to import nonconforming vehicles and equipment for these purposes is, in fact, not a subterfuge. In addition, if the requester intends to use the vehicle on the public roads, (s)he would have to obtain written permission from NHTSA for such use.

EFFECTIVE DATE: The effective date of the final rule is February 18, 1992.

SUPPLEMENTARY INFORMATION: On January 29, 1991, NHTSA published a notice of proposed rulemaking on which this final rule is based (56 FR 3236). As the preamble explained, under 15 U.S.C. 1397(j) NHTSA may allow the importation into the United States of any motor vehicle or item of motor vehicle equipment that does not conform to all applicable Federal motor vehicle safety standards "upon such terms and conditions as [NHTSA] may find necessary solely for the purpose of research, investigation, studies, demonstrations or training, or competitive racing events."

On April 25, 1989, in prospective implementation of section 1397(j), NHTSA proposed 49 CFR section 591.5(j), which, in essence, proposed the adoption of the previously existing requirement in 19 CFR 12.80(b)(1)(vii), the joint importation

regulations of the U.S. Customs Service and NHTSA, that an appropriate information statement accompany declarations of entry for purposes, of test, experiment, repairs or alterations, show, or competition (54 FR 17772). However, in developing the final rule, NHTSA realized that it had no authority of its own to seize motor vehicles entered pursuant to false declarations. It therefore sought a means to ensure the *bona fide* nature of imports under section 591.5(j) before they entered the United States and passed out of the agency's control. This effort was necessary because there is no requirement that these vehicles enter under a conformance bond. NHTSA was particularly concerned because the volume of imports under section 12.80(b)(1)(vii) during 1989 was approaching the number of nonconforming vehicles for which conformance verification is required. Further, with the restrictions placed upon nonconforming vehicles by amendments (Public Law 100-562, The Imported Vehicle Safety Compliance Act) to the National Traffic and Motor Vehicle Safety Act intended to reduce the number of "grey market" cars, the agency envisioned that a greater proportion of people would attempt to enter vehicles under claims that importation was for the purpose of tests, experiments, demonstrations and the like. NHTSA recalled that some importers seeking vehicle entry under section 12.80(b)(2)(vii) had submitted statements of purpose whose truthfulness the agency had questioned. In those instances, the agency could only object to the entry under section 12.80(b)(2)(vii), and request Customs to require reentry of the nonconforming vehicle under section 12.80(b)(2)(iii), the declaration that the nonconforming vehicle would be brought into conformance.

At the conclusion of this review, the agency determined that NHTSA's authority to exempt a nonconforming vehicle from the importation prohibitions for reasons of testing, experimentation,

etc., would be better exercised before vehicle entry rather than after, and that it could adopt a pre-approval requirement as one of the "terms and conditions" authorized by the 1988 Act. Accordingly, when the final rule was published on September 29, 1989 (54 FR 40069), section 591.5(j) required that the importer's declaration at the time of entry include a statement that the importer had previously received written permission from NHTSA. Section 591.6(f) set forth the requirement that the prospective importer submit in advance of such importation a written request containing the information previously required to accompany the declaration.

Petitions for reconsideration of this requirement were received, commenters claiming that the requirement was unduly burdensome and objecting to the fact that the requirement had been adopted without a specific proposal for it. In response to these petitions, the agency rescinded the requirement for prior approval, and issued its April 1989 proposal which continued the existing practice of simultaneous submission. This action occurred on February 5, 1990 (55 FR 3742).

In developing the proposal published in January of this year, the agency reviewed the substantive arguments that the petitioners had raised, and tried to accommodate their concerns. NHTSA realized that the inclusiveness of the former requirement for prior approval of importation might indeed create an unnecessary burden upon original manufacturers of motor vehicles who sell their products in the United States, and who, in the course of product development and evaluation, are accustomed to importing prototypes, or completed vehicles manufactured by their foreign subsidiaries, joint venturers, or other unrelated vehicle manufacturers. NHTSA had no wish to encumber petitioners such as Volkswagen, Mazda, GM, and others, who are "original manufacturers" as that term is defined in Part 591, and whose purpose in importation is directly related to legitimate business concerns of research, studies, and the other categories listed in section 108(j). Given that such manufacturers have been meeting NHTSA's requirements over the years and given the certain continuity and high public visibility of their activities, NHTSA believed it reasonable to expect that importations by them will be in good faith. Therefore, it appeared that there wasn't any

need to require prior approval for their vehicle importations.

However, since adoption of Section 591.5(j), NHTSA has noted an increasing number of importations, both accomplished and attempted, of personal vehicles by private importers under test declarations. Once a vehicle has been admitted by Customs under section 591.5(j) (Box 7 on Importation Form HS-7), there is no DOT bond or other enforcement mechanism available to the agency (other than a possible civil penalty of up to \$1,000) to compel the importer either to conform it or to export it.

Accordingly, NHTSA did not propose that the current requirement be changed for original manufacturers of motor vehicles that are certified as conforming to all applicable Federal motor vehicle safety standards, and who wish to import a motor vehicle of the same type that they manufacture (though such vehicle may be of a type the manufacturer does not sell in the United States). However, it did propose that any other person wishing to import a vehicle pursuant to section 591.5(j) obtain prior approval.

NHTSA also proposed reinstatement of the previous restriction upon importation (section 591.7(c)) that a vehicle imported pursuant to section 591.5(j) may not be used on the public roads without the written approval of the Administrator, and added to it the proposed requirement that the importer retain title to the vehicle at all times that it is in the United States, and, further, that it not lease it during that time.

Comments on the Proposal

Seven comments were received in response to the proposal, five from major motor vehicle manufacturers, one from a motor vehicle trade organization, and one from a law firm. These were, respectively, Mazda Research & Development of North America, Inc., Volkswagen of America, Inc., Ford Motor Company, Chrysler Corporation, General Motors Corporation, Motor Vehicle Manufacturers Association, and Pillsbury, Madison & Sutro. Under the proposal, modifications would be made in sections 591.5, 591.6, and 591.7. With respect to each of these sections, a discussion follows on the comments received and their resolution.

Proposed section 591.5(j)(1)

A. Omission of reference to theft prevention standard

This declaration begins with the statement that “The vehicle or equipment item does not conform with all applicable Federal motor vehicle safety and bumper standards.” Ford called attention to omission of reference to the theft prevention standard in the declaration. This omission of previously existing language was deliberate. Whereas all imported vehicles are required to conform to safety and bumper standards, only those that have been designated by the agency as high theft are required to meet the theft prevention standard. Thus, the standard does not apply *ab initio* to all motor vehicles. It does apply, however, to foreign-manufactured counterparts of vehicles certified by their manufacturers as meeting U.S. safety and bumper standards, and which the agency has designated as a high theft line. For example, the agency has designated the BMW 3 series as a high theft line. This designation also applies to 3 series cars manufactured for markets other than the United States. If a 3 series car is offered for importation under section 108(j), and does not comply with the theft prevention standard at the time it is offered for importation, it cannot be admitted. Under U.S.C. 2027, vehicles and equipment that are subject to the Theft Prevention Standard and that do not conform to it may not be imported under any circumstances. However, NHTSA believes that the type of vehicle most likely to be imported for the purposes of section 108(j) will not be grey market vehicles with U.S. high theft line counterparts, but vehicles of an experimental nature or of types and models which are not substantially similar to U.S.-certified vehicles. Therefore, the omission of a declaration of noncompliance with the Theft Prevention Standard should not create difficulty.

B. No allowance of importation for display

Section 591.5(j) allows importation of nonconforming vehicles and equipment for a temporary period solely for the purpose of research, investigations, studies, demonstrations or training, or competitive racing events. Pillsbury requested that the provision be expanded to allow importation for a further category, display, in order to be consistent with EPA requirements. The law firm argued that the 1988 amendments to the Vehicle

Safety Act provide sufficient safeguards against abuse of a display-only exemption, and that NHTSA could provide that the vehicle not be sold until an appropriate certificate of conformity was received.

In promulgating Part 591, NHTSA explained that, although the previous importation regulation permitted importation for “show”, Congress did not include this category in 15 U.S.C. 1397(j), the authority for importations under section 591.5(j). The agency has previously stated (54 FR at 17776 and 55 FR 40876) that section 591.5(j) does not preclude original vehicle manufacturers who import nonconforming vehicles for display at auto shows to gauge public reaction to new styling or engineering features from declaring that such importation is for “research” or “demonstrations.” But in the absence of specific authority from Congress to allow importations for show or display, the agency has adopted a conservative attitude towards entities other than original vehicle or vehicle equipment manufacturers who wish to import nonconforming vehicles for “research” or “demonstrations.”

NHTSA is aware that there is an interest in the general public in importing vehicles for static display that may not have reached the 25-year age mark entitling them under 15 U.S.C. 1397(i) to entry without conformance. According it has begun to examine the statutory language to see if a sufficient set of safeguards can be devised, with a view towards proposing a regulation sufficient to accommodate importation of vehicles for display purposes, by persons other than original vehicle manufacturers.

Proposed section 591.5(j)(2)(ii)

A. Breadth of term “original manufacturer”

A declarant under subparagraph (j)(2)(ii) is an “original vehicle manufacturer of motor vehicles that are certified to comply with all applicable Federal motor vehicle safety standards.” Mazda and Volkswagen were concerned that “original manufacturer” might be construed so narrowly that subsidiaries, distributors, and marketing arms owned or controlled by them would not be included in the term, and hence, would be subject to the more restrictive importation requirements proposed.

NHTSA wishes to reassure the industry that this requirement was not intended to exclude

United States subsidiaries of foreign manufacturers who sell their products in the United States. The agency regards entities that are wholly owned by original motor vehicle manufacturers (including subsidiaries that are distributors or marketing arms) as standing in the shoes of their corporate parent. For example, it regards Mazda Research & Development of North America as having the same right as its corporate parent, Mazda Motor Corporation, to import vehicles under 591.5(j) as an "original vehicle manufacturer." By the same token, it regards Volkswagen of America as an "original manufacturer of motor vehicles", and entitled to import vehicles made by Volkswagen de Mexico or other companies in which Volkswagen A.G. may have an interest, without the necessity of obtaining prior approval from NHTSA. Therefore, the agency is amending this subsection to add "(or wholly owned subsidiary thereof)" after the words "original vehicle manufacturer." However, if a prospective importer is not 100 percent owned by an original vehicle manufacturer, the agency is not prepared, absent a convincing argument regarding the nexus between the person and the vehicle assembler, to interpret the term, "original vehicle manufacturer," to include such person. NHTSA will be willing to consider each such case on the merits.

Volkswagen has requested the name and telephone number of an individual or office to which inquiries on importations under section 591.5(j) may be addressed. For an interpretation of regulatory language, the reader may call Taylor Vinson, Office of Chief Counsel, 202-366-5263. (NB: Requests for interpretation generally should be in writing. Further, with the exception of routine issues, requests for interpretation are answered in writing only.) For questions regarding implementation of import procedures such as submission of documentation, or for advice on the actual importation of a vehicle, the reader should call Ted Bayler, Office of Enforcement, 202-366-5306.

B. Omission of manufacturer of "motor vehicle equipment"

Subparagraph (j)(2)(ii) extends only to manufacturers of motor vehicles. Volkswagen and Ford note the omission of original equipment manufacturers, and believe that they should be added for consistency and clarity.

The purpose of this subparagraph is to relieve original manufacturers of motor vehicles from a requirement to obtain prior approval from NHTSA for importation and use on the public roads of nonconforming motor vehicles. As such, the subparagraph does not apply either to original manufacturers of motor vehicle equipment, or motor vehicle equipment. Thus, manufacturers of original motor vehicle equipment who wish to import motor vehicles must obtain prior approval. In the absence of any request from an equipment manufacturer for inclusion, the agency has not made the change suggested by Ford and Volkswagen.

C. Ambiguity of term "type of motor vehicle"

Under the remainder of the declaration in subparagraph (j)(2)(ii), the motor vehicle manufacturer-importer avers that it is "a manufacturer of the (same) type of motor vehicle as the motor vehicle it seeks to import." Chrysler commented that there is a potential for misinterpretation in the term "type of motor vehicle" because it was not defined, and that delays are likely to result at the time of importation because of ambiguities. In addition, both Chrysler and Mazda argued that original manufacturers should not be restricted in the kinds of nonconforming motor vehicles they import.

The purpose of this proposed language was to foreclose the possibility that, say, a manufacturer of heavy trailers might wish to import a 200 mph passenger car without obtaining prior approval by NHTSA. Importation of such a disparate vehicle on its face appears unrelated to the manufacturer's business needs arising from manufacturing truck trailers. However, balancing the desirability that original vehicle manufacturers not be restricted in the types of vehicles they import for section 591.5(j) purposes against the possibility that they will abuse the privilege, NHTSA finds it in the public interest to adopt subparagraph (j)(2)(ii) without the type similarity declaration proposed. If an abuse appears to exist, NHTSA will demand reentry under an appropriate provision as it has heretofore done.

Proposed section 591.5(j)(3)

A. Documentary proof of export or destruction

Subparagraph (j)(3) would require all importers under section 591.5(j) to provide NHTSA with

documentary proof of export or destruction not later than 30 days following the end of the period for which the vehicle has been admitted into the United States.

This proposed new requirement that would apply to original vehicle manufacturers as well as other importers was objected to by Mazda, Volkswagen, Motor Vehicle Manufacturers Association (and by endorsement, Ford and GM) insofar as it would be a requirement for original manufacturers. VW suggested that manufacturers could retain appropriate documentation for 3 years. Mazda argued that sufficient safeguards exist under Customs regulations because destruction of non-conforming vehicles admitted pursuant to Temporary Importation Bonds is documented on Customs Form 3499. Conversely, copies of shipping documents evidencing export are provided to Customs when an importer requests release of the Temporary Importation Bond under which the vehicle entered.

The documentation referenced by Mazda is not furnished to NHTSA but to another Federal agency, the Customs Service. Further, this documentation does not address the situation in which the vehicle remains in the United States after liquidation of the Temporary Importation Bond through payment of duty, and for such longer period of time as NHTSA may allow. After payment of duty, Customs ceases to have any jurisdiction over the vehicle, and will have no concern over its eventual disposition. Under all these circumstances, NHTSA must insist upon documentary proof of export or destruction. Therefore, subparagraph (j)(3) is adopted as proposed.

B. Inoperability as a substitute for destruction

Subparagraph (j)(3), in effect, requires that a nonconforming vehicle either be destroyed or exported at the end of the period for which it is admitted. Chrysler asked whether the requirement for destruction would be satisfied by rendering a vehicle permanently inoperable before its donation for educational purposes to a bona fide educational institution.

Earlier in this notice, the agency stated its interest in reviewing the statutory provisions relating to the possible allowance of importation for display purposes. As the operability of a vehicle may bear some relation to a decision to allow importation for display purposes, NHTSA will

consider Chrysler's question regarding destructability at that time.

Proposed section 591.6(g)(1): acceptability of post-test conformity

Under this proposed section, information to be submitted by an importer includes a statement of "the intended means of final disposition (and disposition date) of the vehicle or equipment item after completion of the purpose for which it is imported." Chrysler interprets the proposed language as contemplating conformity as an option to export or destruction at the end of the importation period. It asks for clarification of this point, believing that it should be an option for original vehicle manufacturers.

This question cannot be answered in a vacuum. By analogy, the Safety Act provides the Administrator with authority to grant temporary exemptions if they will facilitate the development and field evaluation of new motor vehicle safety features providing a level of safety at least equivalent to the standard from which exemption is sought. It is therefore possible that an original vehicle manufacturer would wish to import one of its vehicles that is technically noncompliant with a standard in order to test an innovative feature relating to that standard, and, after testing, to bring the vehicle into compliance with it. Under this circumstance, NHTSA might be amenable to accepting a statement from an original vehicle manufacturer that the intended means of disposition of the vehicle is post-test conformity. On the other hand, if the noncompliant aspects of the vehicle are unrelated to the purpose for which it is imported, and at the time of entry the importer announces an intent to conform it at the end of the importation period, NHTSA believes that the vehicle ought to be manufactured to conform, or be conformed immediately after its importation by a registered importer, in order that full protection may be provided the public during the time the vehicle is operated on the public roads.

Proposed section 591.6(g)(2): clarification of ambiguity

As proposed, this section would require that original manufacturer declarations be accompanied by a written statement containing the information required in (g)(1). One of the items specified in (g)(1) is a letter from the Administrator authorizing importation, i.e., a letter of prior

approval. MVMA (and by endorsement, Ford and Chrysler) asked for a clarification that NHTSA does not intend to require original manufacturers to obtain prior approval. NHTSA regrets this inadvertent ambiguity, and is amending subsection (g)(2) to clarify that the information required of original manufacturers does not include a prior approval statement.

Existing sections 591.7(a) and (b): congruity of importation periods

Volkswagen and Ford commented that vehicles imported pursuant to Customs Temporary Importation Bonds (TIBs) may not remain in the U.S. longer than three years, while those for which duty has been paid may remain longer. Ford asked for an amendment of subsection (a) that would extend the three-year period upon written approval from NHTSA. It recommended a similar amendment to subsection (e). Volkswagen recommended that NHTSA ask Customs to amend its TIB provisions to be identical with the NHTSA time frame. Ford would also amend subsection (b) to clarify that the permission in writing is that specified in subsection (e).

It is not legally possible for either NHTSA or the U.S. Customs Service to grant these requests, as NHTSA learned when developing the regulation. Under the Tariff Schedules established by Congress, merchandise (including motor vehicles) may be conditionally admitted under TIBs for a period not to exceed 3 years. Thus, only Congress can extend the time period. Neither NHTSA nor Customs has the regulatory authority to do so.

Upon review of Ford's request to amend subsection (b) to reflect subsection (e), NHTSA has found a certain degree of redundancy, and is therefore amending subsection (b) to incorporate the non-redundant portions of subsection (e).

Proposed section 591.7(c):

A. Restriction upon leasing imported vehicles

Under the proposal, a motor vehicle imported pursuant to section 591.5(j) could not be leased. Chrysler, Ford, and MVMA opposed this prohibition, and recommended that it not be adopted, or at least that it exclude original vehicle manufacturers from its coverage.

NHTSA proposed the leasing restriction as an effort to ensure that importers retain both title and possession of motor vehicles. However, in some

situations the purposes of experimentation may not be fully realized unless a fleet of test vehicles is fielded over an extended period of time, and in these situations, a lease may be desirable. Accordingly, the requirement adopted will allow original vehicle manufacturers to lease vehicles they have imported under section 591.5(j).

B. Administrator's prior approval for on-road use

As proposed, vehicles imported pursuant to section 591.5(j) may be used on the public roads only if permission has been obtained in writing from NHTSA. Ford requested a clarification as to whether this applied to original vehicle manufacturers. MVMA (and by endorsement, GM) stated that section 591.6(g)(1) already controls the use on the public roads of grey market vehicles, and that such a requirement would be burdensome on original manufacturers of vehicles.

NHTSA has no intention of placing such a requirement on original vehicle manufacturers. Accordingly, it is clarifying in the final rule that the written permission referenced in subsection (c) for on road use is required for vehicles that have entered under the declaration that the importer has received written permission from NHTSA for the importation (subsection (j)(2)(i)). This declaration does not apply to original vehicle manufacturers who are permitted to enter their vehicles without written permission (subsection (j)(2)(ii)).

Proposed section 591.7(e):

A. Addition of "equipment item"

This section begins "If the importer of a vehicle under section 591.5(j) does not intend to export or destroy the vehicle or equipment item", and Ford suggested adding "equipment item" after the initial reference to "vehicle." The agency has done so.

B. Addition and deletion of language

As proposed, subsection (e) requires an importer to request permission in writing to allow retention of a vehicle or equipment item in the U.S. beyond the three-year period "subject to the limitations of" subsection (b). Ford suggested adding language that identifies those limitations, and strikes the reference to subsection (b). As NHTSA has noted previously, proposed sub-

section (c) has been incorporated into subsection (b).

In consideration of the foregoing, Title 49 Code of Federal Regulations Part 591 is revised as follows:

1. Section 591.5(j) is revised to read:

(j)(1) The vehicle or equipment item does not conform with all applicable Federal motor vehicle safety and bumper standards, but is being imported for a temporary period solely for the purpose of:

- (i) research;
- (ii) investigations;
- (iii) studies;
- (iv) demonstrations or training; or
- (v) competitive racing events;

(2)(i) The importer has received written permission from NHTSA; or

(ii) The importer is an original manufacturer of motor vehicles (or a wholly owned subsidiary thereof) that are certified to comply with all applicable Federal motor vehicle safety standards; and

(3) The importer will provide the Administrator with documentary proof of export or destruction not later than 30 days following the end of the period for which the vehicle has been admitted into the United States.

2. Section 591.6(g) is revised to read:

(g) A declaration made pursuant to section 591.5(j) shall be accompanied by the following documentation:

(1) A declaration made pursuant to section 591.5(j)(2)(i) shall be accompanied by a letter from the Administrator authorizing importation pursuant to that section. (Any person seeking to import a motor vehicle or item of motor vehicle equipment pursuant to that section shall submit, in advance of such importation, a written request to the Administrator containing a full and complete statement identifying the vehicle or equipment item, its make, model, model year or date of manufacture, VIN if a motor vehicle, and the specific purpose(s) of importation. The discussion of purpose(s) shall include a description of the use to be made of the vehicle or equipment item. If use on the public roads is an integral part of the purpose for which the vehicle or equipment item is imported, the statement shall request permission for use on the public roads, describing the purpose which makes such use necessary, and stating

the estimated period of time during which use of the vehicle or equipment item on the public roads is necessary. The request shall also state the intended means of final disposition (and disposition date) of the vehicle or equipment item after completion of the purpose for which it is imported.)

(2) A declaration made pursuant to section 591.5(j)(2)(ii) shall be accompanied by the written statement of its importer describing the use to be made of the vehicle or equipment item. If use on the public roads is an integral part of the purpose for which the vehicle or equipment item is imported, the statement shall describe the purpose which makes such use necessary, state the estimated period of time during which use of the vehicle or equipment item on the public roads is necessary, and state the intended means of final disposition (and disposition date) of the vehicle or equipment item after completion of the purpose for which it is imported.

3. Section 591.7(b) is revised to read:

(b) If the importer of a vehicle or equipment item under section 591.5(j) does not intend to export or destroy the vehicle or equipment item not later than 3 years after the date of entry, and intends to pay duty to the U.S. Customs Service on such vehicle or equipment item, the importer shall request permission in writing from the Administrator for the vehicle or equipment item to remain in the United States for an additional period of time not to exceed 5 years from the date of entry. Such a request must be received not later than 60 days before the date that is 3 years after the date of entry. Such vehicle or equipment item shall not remain in the United States for a period that exceeds 5 years from the date of entry, unless further written permission has been obtained from the Administrator.

4. Sections 591.7(c) and (d) are added to read:

(c) An importer of a vehicle which has entered the United States under a declaration made pursuant to section 591.5(j)(2)(i) shall at all times retain title to and possession of it, shall not lease it, and may use it on the public roads only if written permission has been granted by the Administrator, pursuant to section 591.6(g)(1). An importer of a vehicle which has entered the United States under a declaration made pursuant to section 591.5(j)(2)(ii) shall at all times retain title to it.

(d) Any violation of a term or condition imposed by the Administrator in a letter authorizing importation or on-road use under section 591.5(j) shall be considered a violation of 15 U.S.C. 1397(a)(1)(A) for which a civil penalty may be imposed.

Issued on January 3, 1992.

Jerry Ralph Curry
Administrator

57 F.R. 2043
January 17, 1992

PREAMBLE TO AN AMENDMENT TO PART 591
Importation of Vehicles and Equipment Subject to Federal Safety Bumper and
Theft Protection Standards

(Docket No. 89-5; Notice 12)
RIN 2127-AD00

ACTION: Technical amendment; final rule.

SUMMARY: This notice contains a technical amendment of the final rule published on September 29, 1989, which established requirements for the importation of motor vehicles and motor vehicle equipment subject to the Federal motor vehicle safety, bumper, and theft prevention standards. The amendment clarifies that vehicles, other than motorcycles, manufactured on and after January 1, 1968, and motorcycles manufactured on and after January 1, 1969, may be imported without the necessity of conformance to the safety standards if their date of entry is a date that is 25 years or more after their date of manufacture.

EFFECTIVE DATE: January 1, 1993.

SUPPLEMENTARY INFORMATION: This notice adopts a technical rule that conforms 49 CFR 591.5(i)(1) to the wording of 15 U.S.C. 1397(i).

Section 108(i) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1397(i)), enacted in 1988 with other amendments pertaining to the importation of motor vehicles, exempts from the necessity of conformance to the Federal motor vehicle safety standards "any motor vehicle that is 25 or more years old." At the time the regulation implementing this exemption became effective, January 31, 1990, the safety standards for vehicles other than motorcycles had been in effect for less than 25 years, specifically, only 22 years, having become effective on January 1, 1968. Motorcycle standards became effective a year later. To avoid confusion concerning the importation of vehicles more than 22 years old, but less than 25 years old, the agency phrased the relevant regulatory language in terms of the dates that the safety standards became effective for motor vehicles. Importation without conformance was allowed upon the declaration

that "The vehicle was manufactured before January 1, 1968 or if a motorcycle, before January 1, 1969." (49 CFR 591.5(i)(1), 54 FR 40069)

At that time, the agency noted that, after January 1, 1993, vehicles that were manufactured on or after January 1, 1968, will be relieved of the necessity to conform as they reach 25 years of age. The agency further noted that, during 1992, it would amend paragraph 591.5(i) to implement the 25-year old exclusion effective January 1, 1993. NHTSA also noted that there were no comments from the public on this aspect of the importation regulation. Therefore, as it stated on September 29, 1989, the agency is adopting an appropriate amendment to implement this statutory provision.

Because the amendment is technical in nature and has no substantive impact beyond conforming the regulation to the Vehicle Safety Act, and because NHTSA advised the public in 1989 that it would make a conforming amendment in 1992, it is hereby found that notice and public comment thereon are unnecessary. The amendment is effective on January 1, 1993.

PART 591—[AMENDED]

1. The authority citation for part 591 continues to read as follows:

Authority: Pub. L. 100-562, 15 U.S.C. 1401, 1407; delegation of authority at 49 CFR 1.50.

Sec. 591.5 [Amended]

Paragraph 591.5(i)(1) is revised to read:

(i)(1) The vehicle is 25 or more years old.

Issued on September 16 1992.

Marion C. Blakey
Acting Administrator

57 F.R. 44703
September 29, 1992



PART 591—IMPORTATION OF VEHICLES AND EQUIPMENT SUBJECT TO FEDERAL SAFETY, BUMPER, AND THEFT PREVENTION STANDARDS

S591.1 Scope.

【This part establishes procedures governing the importation of motor vehicles and motor vehicle equipment subject to the Federal motor vehicle safety, bumper, and theft prevention standards. (55 F.R. 11375—March 28, 1990. Effective: March 28, 1990)】

S591.2 Purpose

【The purpose of this part is to ensure that motor vehicles and motor vehicle equipment permanently imported into the United States conform with theft prevention standards issued under Part 541 of this chapter and that they conform with all applicable Federal motor vehicle safety standards issued under Part 571 of this chapter and bumper standards issued under Part 581 of this chapter. The purpose of this part is also to ensure that nonconforming vehicles and equipment items imported on a temporary basis are ultimately either exported or abandoned to the United States. (55 F.R. 11375—March 28, 1990. Effective: March 28, 1990.)】

S591.3 Applicability.

This part applies to any person offering a motor vehicle or item of motor vehicle equipment for importation into the United States.

S591.4 Definitions.

【All terms used in this part that are defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391), and section 601 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 and 2021), are used as defined in the Acts, except that the term “model year” is used as defined in Part 593 of this chapter. (55 F.R. 11375—March 28, 1990. Effective: March 28, 1990.)】

Administrator means the Administrator of NHTSA.

Dutiable value means entered value, as determined by the Secretary of the Treasury.

NHTSA means the National Highway Traffic Safety Administration of the Department of Transportation.

Original manufacturer means the entity responsible for the original manufacture or assembly of a motor vehicle, and does not include any person (other than such entity) who converts the motor vehicle after its manufacture to conformance with the Federal motor vehicle safety standards.

S591.5 Declarations required for importation.

No person shall import a motor vehicle or item of motor vehicle equipment into the United States unless, at the time it is offered for importation, its importer files a declaration, in duplicate, which declares one of the following:

【(a)(1) The vehicle was not manufactured primarily for use on the public roads and this is not a motor vehicle subject to the Federal motor vehicle safety, bumper, and theft prevention standards, or

(2) The equipment item is not a system, part, or component of a motor vehicle and thus is not an item of motor vehicle equipment subject to the Federal motor vehicle safety, bumper, and theft prevention standards.

(b) The vehicle or equipment item conforms with all applicable safety standards (or the vehicle does not conform solely because readily attachable equipment items which will be attached to it before it is offered for sale to the first purchaser for purposes other than resale are not attached), and bumper and theft prevention standards, and bears a certification label or tag to that effect permanently affixed by the original manufacturer to the vehicle, or by the manufacturer to the equipment item or its delivery container, in accordance with, as applicable, Parts 541, 555, 567, and 581, or 571 (for certain equipment items) of this chapter.

(c) The vehicle or equipment item does not comply with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, but is intended solely for export, and the vehicle or equipment item, and the outside of the container of the equipment item, if any, bears a label or tag to that effect. (55 F.R. 11375—March 28, 1990. Effective: March 28, 1990.)】

(d) The vehicle does not conform with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, but the importer is eligible to import it because:

(1) (S)he is a nonresident of the United States and the vehicle is registered in a country other than the United States.

(2) (S)he is temporarily importing the vehicle for personal use for a period not to exceed one year, and will not sell it during that time.

(3) (S)he will export it not later than the end of one year after entry, and

(4) The declaration contains the importer's passport number and country of issue.

(e) The vehicle or equipment item requires further manufacturing operations to perform its intended function, other than the addition of readily attachable equipment items such as mirrors, wipers, or tire and rim assemblies, or minor finishing operations such as painting, [and any part of such vehicle that is required to be marked by Part 541 of this chapter is marked in accordance with that Part. (55 F.R. 11375—March 28, 1990. Effective: March 28, 1990.)]

(f) [The vehicle or equipment does not conform with all applicable Federal motor vehicle safety standards (but does conform with all applicable federal theft prevention standards), but the importer is eligible to import it because:

(1) The importer has furnished a bond, which is attached to the declaration, in an amount equal to 150% of the dutiable value of the vehicle, containing the terms and conditions specified in section 591.8; and (55 F.R. 11375—March 28, 1990. Effective—March 28, 1990)]

(2)(A) The importer has registered with NHTSA pursuant to Part 592 of this chapter, and such registration has not been revoked or suspended, and the Administrator has determined pursuant to Part 593 of this chapter that the model and model year of the vehicle to be imported is eligible for importation into the United States, or

(B) The importer has executed a contract or other agreement with an importer who has registered with NHTSA pursuant to Part 592 of this chapter and whose registration has not been suspended or revoked, and the Administrator has determined pursuant to Part 593 of this chapter that the model and model year of the vehicle to be imported is

eligible for importation into the United States;

(g) The vehicle does not conform with all applicable Federal motor vehicle safety and bumper standards (but it does conform with all applicable Federal theft prevention standards), but the importer is eligible to import it because:

(1) The importer's assigned place of employment has been outside the United States at all times between October 31, 1988, and the date the vehicle is entered into the United States;

(2) The importer has not previously imported a motor vehicle into the United States that was subject to the Federal motor vehicle safety standards;

(3) The importer has acquired (or entered into a binding contract to acquire) the vehicle before October 31, 1988, and

(4) The vehicle will be entered into the United States not later than October 31, 1992.

[(5) The importer has furnished a bond, which is attached to the declaration, in an amount equal to 150% of the entered value of the vehicle as determined by the Secretary of the Treasury, containing the terms and conditions specified in section 591.8;

(6) The vehicle was not manufactured in conformity with all applicable safety and bumper standards, but it has been or will be brought into conformity; furthermore, within 120 days after entry as the Administrator may allow, the importer will submit a true and complete statement to the Administrator, identifying the manufacturer, contractor, or other person who has brought the vehicle into conformity, describing the exact nature and extent of the work performed, and certifying that the vehicle or equipment item has been brought into conformity; and

(7) The importer will not sell the vehicle, or offer it for sale, until the Administrator issues a statement that the conditions of the bond required by section 591.6(e) have been satisfied. (55 F.R. 11375—March 28, 1990. Effective: March 28, 1990.)]

(h) [The vehicle does not conform with all applicable Federal motor vehicle safety, standards, and bumper standards (but it does conform with all applicable Federal Theft prevention standards) but the importer is eligible to import it because (s)he:

(1)(i) Is a member of the personnel of a foreign government on assignment in the United States, or a member of the Secretariat of a public international organization so designates under the International Organization Immunities Act, and within the class of persons for whom free entry of motor vehicles has been authorized by the Department of State:

(ii) Is importing the motor vehicle on a temporary basis for the personal use of the importer, and will register it through the Office of Foreign Missions of the Department of State;

(iii) Will not sell the vehicle to any person in the United States, other than a person eligible to import a vehicle under this paragraph; and

(iv) Will obtain from the Office of Foreign Missions of the Department of State, before departing the United States at the conclusion of a tour of duty, an ownership title to the vehicle good for export only; or

(2)(i) Is a member of the armed forces of a foreign country on assignment in the United States;

(ii) Is importing the vehicle on a temporary basis, and for the personal use of the importer;

(iii) Will not sell the vehicle to any person in the United States, other than to a person eligible to import a vehicle under this subsection; and

(iv) Will export the vehicle upon departing the United States at the conclusion of a tour of duty. **(F.R. 3742—February 5, 1990. Effective: February 5, 1990)**

(i)(1) **【The vehicle is 25 or more years old. (57 F.R. 44703—September 29, 1992. Effective: January 1, 1993)】**

(2) The equipment item was manufactured on a date when no applicable safety or theft prevention standards were in effect.

(j) The vehicle or equipment item does not conform with all applicable Federal motor vehicle safety, standards, but is being imported solely for the purpose of:

(1) research;

(2) investigations;

(3) studies;

(4) demonstrations or training; or

【(5) competitive racing events, and will not be licensed for use on the public roads. (55 F.R.

3742—February 5, 1990. Effective: February 5, 1990)】

S591.6 Documents accompanying declarations.

Declarations of eligibility for importation made pursuant to paragraph 591.5 must be accompanied by the following certification and documents, where applicable.

(a) A declaration made pursuant to paragraph 591.5(a) shall be accompanied by a statement substantiating that the vehicle was not manufactured for use on the public roads, or that the equipment item was not an item of motor vehicle equipment.

(b) A declaration made pursuant to paragraph 591.5(e) shall be accompanied by:

(1) (For a motor vehicle) a document meeting the requirements of S568.4 of Part 568 of this chapter.

(2) (For an item of motor vehicle equipment) a written statement issued by the manufacturer of the equipment item which states the applicable Federal motor vehicle safety standard(s) with which the equipment item is not in compliance, and which describes the further manufacturing required for the equipment item to perform its intended function.

(c) **【A declaration made pursuant to section 591.5(f) or section 591.5(g) shall be accompanied by a bond in the form shown in Annex A or Annex B of this Part, respectively, in an amount equal to 150% of the dutiable value of the vehicle for the conformance of the vehicle with all applicable Federal motor vehicle safety and bumper standards, or, if conformance with the safety standards is not achieved, for the delivery of such vehicle to the Secretary of the Treasury for export at no cost to the United States, or for its abandonment. (55 F.R. 3742—February 5, 1990. Effective: February 5, 1990.)】**

(d) A declaration made pursuant to S591.5(f) by an importer who is not a Registered Importer shall be accompanied by a copy of the contract or other agreement that the importer has with a Registered Importer to bring the vehicle into conformance with all applicable Federal motor vehicle safety standards.

(e) A declaration made pursuant to S591.5(g) shall be accompanied by certification, including appropriate documentary proof that the vehicle for

which declaration is made had been acquired by the importer as of October 31, 1988, or, if not so acquired, by a copy of a contract to acquire the vehicle dated before October 31, 1988, which was binding upon the importer.

(f) A declaration made pursuant to §591.5(h) shall be accompanied by a copy of the importer's official orders, or, if a qualifying member of the personnel of a foreign government on assignment in the United States, the name of the embassy to which the importer is accredited.

(g) A declaration made pursuant to §591.5(j) shall be accompanied by a full and complete statement identifying the specific purpose(s) of importation, describing the use to be made of the vehicle or equipment item, and stating the estimated period of time necessary to use the vehicle or equipment item on the public roads if any, and the disposition to be made of the vehicle or equipment item after completion of the purpose for which it was imported. If the importer does not intend to conform, export, or destroy the vehicle or equipment item not later than 3 years after its entry, the importer shall request permission in writing from the Administrator for the vehicle equipment item to remain in the United States for an additional period of time, subject to the limitations of §591.7(c).

§591.7 Restrictions on importations.

(a) A vehicle or equipment item which has entered the United States under a declaration made pursuant to §591.5(j), and for which a Temporary Importation Bond has been provided to the Secretary of the Treasury, shall not remain in the United States for a period that exceeds 3 years from its date of entry.

(b) A vehicle or equipment item which has entered the United States under a declaration made pursuant to §591.5(j), and for which duty has been paid, shall not remain in the United States for a period that exceeds 5 years from its date of entry, unless written permission has been obtained from the Administrator, NHTSA.

§591.8 Conformance bond and conditions.

(a) The bond required under section 591.6(c) for importation of a vehicle not originally manufactured to conform with all applicable standards issued under Part 591 and Part 581 of this chapter shall cover only one motor vehicle, and shall be

in an amount equal to 150% of the dutiable value of the vehicle.

(b) The principal on the bond shall be the importer of the vehicle.

(c) The surety on the bond shall possess a certificate of authority to underwrite Federal bonds. (See list of certificated sureties at 54 FR 27800, June 30, 1989)

(d) In consideration of the release from the custody of the U.S. Customs Service or the withdrawn from a Customs bonded warehouse into the commerce of, or for consumption in, the United States, of a motor vehicle not originally manufactured to conform to all applicable standards issued under Part 571 and Part 581 of this chapter, the obligors (principal and surety) shall agree to the following conditions of the bond:

(1) To have such vehicle brought into conformity with all applicable standards issued under Part 571 and Part 581 of this chapter within 120 days after the date of entry.

(2)(i) In the case of a vehicle imported pursuant to section 591.5(f), to file (or if not a Registered Importer, to cause the Registered Importer of the vehicle to file) with the Administrator, a certificate that the vehicle complies with each Federal motor vehicle safety and bumper standard in the year that the vehicle was manufactured and which applies in such year to the vehicle; or

(ii) In the case of a vehicle imported pursuant to section 591.5(g), to submit a true and complete statement to the Administrator, identifying the manufacturer, contractor, or other person who has brought the vehicle into conformity, describing the exact nature and extent of the work performed, and certifying that the vehicle has been brought into conformity with each Federal motor vehicle safety and bumper standard in the year that such vehicle was manufactured and which applies in such year to the vehicle.

(3) In the case of a Registered Importer, not to release custody of the vehicle to any person for license or registration for use on public roads, streets, or highways, or license or register the vehicle from the date of entry until 30 calendar days after it has certified compliance of the vehicle to the Administrator, unless the Administrator has notified the principal before 30 calendar days that (s)he has accepted such certification.

and that the vehicle and bond may be released, except that the vehicle shall not be released if the principal has received written notice from the Administrator that an inspection of the vehicle will be required, or that there is reason to believe that such certification is false or contains a misrepresentation: (iv) In the case of a Registered Importer, to cause the vehicle to be available for inspection, if the principal has received written notice from the Administrator that an inspection is required.

(4) In the case of a Registered Importer, to cause the vehicle to be available for inspection, if the principal has received written notice from the Administrator that an inspection is required.

(5) In the case of a Registered Importer, not to release the vehicle until the Administrator is satisfied with the certification and any modification thereof, if the principal has received written notice from the Administrator that there is reason to believe that the certificate is false or contains a misrepresentation.

(6) If the principal has received written notice from the Administrator that the vehicle has been found not to comply with all applicable Federal motor vehicle safety standards, and written demand that the vehicle be abandoned to the United States, or delivered to the Secretary of the Treasury for export (at no cost to the United States), to abandon the vehicle to the United States, or to deliver the vehicle, or cause the vehicle to be delivered to, the custody of the District Director of Customs of the port of entry listed above, or to any other port of entry, and to execute all documents necessary for exportation of the vehicle from the United States, at no cost to the United States; or in default of abandonment or redelivery after proper notice by the Administrator to the principal, to pay to the Administrator the amount of the bond.

(e) If the principal defaults on the obligation of paragraph (d)(vi) of this section, to abandon the vehicle to the United States or to redeliver the vehicle to the custody of a District Director of Customs and to execute all documents necessary for its exportation, the obligors shall pay to the Administrator the amount of the bond given under the provisions of this section. **(55 F.R. 11375—March 28, 1990. Effective: March 28, 1990.)**]

S591.9 Petitions for remission or mitigation of forfeiture.

(a) After a bond has been forfeited, a principal and/or a surety may petition for remission of forfeiture. A principal and/or a surety may petition for mitigation of forfeiture only if the motor vehicle has been imported pursuant to section 591.5(g), or, if imported pursuant to section 591.5(f), only if the condition not met relates to the compliance of a passenger motor vehicle with Part 581 of this chapter.

(b) A petition for remission or mitigation shall:

(1) Be addressed to the Administrator, identified as either a petition for remission or for mitigation, submitted in triplicate, and signed by the principal and/or the surety.

(2) State the make, model, model year, and VIN of the vehicle involved, and contain the Customs Entry number under which the vehicle entered the United States.

(3) State the facts and circumstances relied on by the petitioner to justify remission or mitigation.

(4) Be filed within 30 days from the date of the mailing of the notice of forfeiture incurred.

(c) A false statement contained in a petition may subject the petitioner to prosecution under the provisions of 18 U.S.C. 1001.

(d) If the Administrator finds that all conditions of the bond have, in fact, been fulfilled, the forfeiture is remitted.

(e) A decision to mitigate a forfeiture upon condition that a stated amount is paid shall be effective for not more than 60 days from the date of notice to the petitioner of such decision. If payment of the stated amount is not made, or arrangements made for delayed or installment payment, the full claim of forfeiture shall be deemed applicable. The Administrator shall collect the claim, or, if unable to collect the claim within 120 days, shall refer the matter to the Department of Justice. **(55 F.R. 11375—March 28, 1990. Effective: March 28, 1990.)**]

**55 F.F. 11375
March 28, 1990**

Department of Transportation
National Highway Traffic Safety Administration

BOND TO ENSURE CONFORMANCE WITH MOTOR VEHICLE SAFETY AND BUMPER
STANDARDS

(To redeliver vehicle, to produce documents, to perform conditions of release, such as to bring vehicle into conformance with all applicable Federal motor vehicle safety and bumper standards)

Know All Men by These Presents That _____

Name of principal or surety; if a corporation, the State of incorporation,

of _____ as principal,

Street address or post office box number, city, state; ZIP code,

and _____ of _____,

Name, State of incorporation, if any,

Address

and _____ of _____,

Name, State of incorporation, if any,

Address

as sureties, are held and firmly bound unto the UNITED STATES OF AMERICA in the sum of

_____ dollars (\$ _____),

which represents 150% of the entered value of the following described motor vehicle as determined by the U.S. Customs Service:

Model year, make, series, engine and chassis numbers,

for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns (jointly and severally), firmly by these presents

WITNESS our hands and seals this _____ day of _____, 199__

WHEREAS, motor vehicles may be entered under the provisions of section 108 of the National Traffic and Motor Vehicle Safety Act, and section 106 of the Motor Vehicle Information and Cost Savings Act; and

WHEREAS, pursuant to 49 CFR Part 591, a regulation promulgated under the provisions of section 108, National Traffic and Motor Vehicle Safety Act of 1966, the above-bounden principal desires to import permanently the motor vehicle described above, which is a motor vehicle that was not originally manufactured to conform with the Federal motor vehicle safety and bumper standards; and

WHEREAS, pursuant to 49 CFR Part 593, a regulation promulgated under the provisions of section 108, National Traffic and Motor Vehicle Safety Act of 1966, as amended, the Administrator of the National Highway Traffic Safety Administration has determined that the motor vehicle described above is eligible for importation into the United States; and

WHEREAS, the motor vehicle described above has been imported at the port of _____, and entered at said port for consumption on entry No. _____, dated _____, 199 _____,

NOW, THEREFORE, THE CONDITION OF THAT OBLIGATION IS SUCH THAT—

(1) The above-burden principal (the "principal"), in consideration of the permanent admission into the United States of the motor vehicle described above (the "vehicle"), voluntarily undertakes and agrees to have such vehicle brought into conformity with all applicable Federal motor vehicle safety and bumper standards within a reasonable time after such importation, as specified by the Administrator of the National Highway Traffic Safety Administration (the "Administrator"),

(2) The principal shall then file, or if not a Registered Importer shall then cause the Registered Importer of the vehicle to file, with the Administrator, a certificate that the vehicle complies with each Federal motor vehicle safety standard in the year that the vehicle was manufactured and which applies in such year to the vehicle, and that the vehicle complies with the Federal bumper standard (if applicable),

(3) The principal, if a Registered Importer, shall not release custody of the vehicle to any person for license or registration for use on public roads, streets, or highways, or license or register the vehicle from the date of entry until 30 calendar days after it has certified compliance of the vehicle to the Administrator, unless the Administrator notifies the principal before 30 calendar days that (s)he has accepted such certification and the vehicle and bond may be released, except that no such release shall be permitted, before or after the 30th calendar day, if the principal has received written notice from the Administrator that an inspection of such vehicle will be required, or that there is reason to believe that such certification is false or contains a misrepresentation.

(4) And if the principal has received written notice from the Administrator that an inspection is required, the principal shall cause the vehicle to be available for inspection, and the vehicle and bond shall be promptly released after completion of an inspection showing no failure to comply. However, if the inspection shows a failure to comply, the vehicle and bond shall not be released until such time as the failure to comply ceases to exist;

(5) And if the principal has received written notice from the Administrator that there is reason to believe that the certificate is false or contains a misrepresentation, the vehicle or bond shall not be released until the Administrator is satisfied with the certification and any modification thereof.,

(6) And if the principal has received written notice from the Administrator that the vehicle has been found not to comply with all applicable Federal motor vehicle safety and bumper standards, and written demand that the vehicle be abandoned to the United States, or delivered to the Secretary of the Treasury for export (at no cost to the United States), the principal shall abandon the vehicle to the United States, or shall deliver the vehicle, or cause the vehicle to be delivered to, the custody of the District Director of Customs of the port of entry listed above or any other port of entry, and shall execute all documents necessary for exportation of the vehicle from the United States, at no cost to the United States, or in default of abandonment or redelivery after proper notice by the Administrator to the principal, the principal shall pay to the Administrator the amount of this obligation;

Then this obligation shall be void; otherwise it shall remain in full force and effect.

Signed, sealed, and delivered in the presence of—

Name Address

Name Address

(Principal) (Seal)

Name Address

Name Address

(Surety) (Seal)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____ certify that I am the _____ of the corporation named as principal in the within bond; that _____, who signed the bond on behalf of the principal, was then _____ of said corporation; that I know his/her signature, and his/her signature thereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

_____ (Corporate Seal)

To be used when a power of attorney has been filed with NHTSA.
May be executed by secretary, assistant secretary, or other officer.

ANNEX A

Bond for importations of motor vehicles under section 591.5(f).

Department of Transportation
National Highway Traffic Safety Administration

BOND TO ENSURE CONFORMANCE WITH MOTOR VEHICLE SAFETY AND BUMPER
STANDARDS

(To redeliver vehicle, to produce documents, to perform conditions of release, such as to bring vehicle into conformance with all applicable Federal motor vehicle safety and bumper standards)

Know All Men by These Presents That

Name of principal or surety; if a corporation, the State of incorporation,

of _____ as principal,

Street address or post office box number, city, state, ZIP code,

and _____ of _____,

Name, State of incorporation, if any,

Address

and _____ of _____,

Name, State of incorporation, if any,

Address

as sureties, are held and firmly bound unto the UNITED STATES OF AMERICA in the sum of _____ dollars (\$ _____),

which represents 150% of the entered value of the following described motor vehicle as determined by the U.S. Customs Service:

Model year, make, series, engine and chassis numbers.

for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns (jointly and severally), firmly by these presents

WITNESS our hands and seals this _____ day of _____, 199__

WHEREAS, motor vehicles may be entered under the provisions of section 108 of the National Traffic and Motor Vehicle Safety Act, and section 106 of the Motor Vehicle Information and Cost Savings Act; and

DOT Form XXXX

WHEREAS, pursuant to 49 CFR Part 591, a regulation promulgated under the provisions of section 108, National Traffic and Motor Vehicle Safety Act of 1966, the above-bounden principal desires to import permanently the motor vehicle described above, which is a motor vehicle that was not originally manufactured to conform with the Federal motor vehicle safety and bumper standards; and

WHEREAS, pursuant to 591.5(g) of 49 CFR Part 591, a regulation promulgated under the provisions of section 108, the above-bounden principal is eligible to import a motor vehicle under the provisions thereof: to wit, the above-bounden principal's assigned place of employment was outside the United States as of October 31, 1988, and (s)he has not had an assigned place of employment in the United States between the date and the date of entry of the motor vehicle described above, and (s)he has not previously imported a motor vehicle into the United States manufactured on or after January 1, 1968, and (s)he had acquired (or had entered into a binding contract to acquire) the motor vehicle described above not later than October 31, 1988, and (s)he will enter the motor vehicle described above not later than October 31, 1992; and

WHEREAS, the motor vehicle described above has been imported at the port of _____, and entered at said port for consumption on entry No. _____, dated _____, 199____,

NOW, THEREFORE, THE CONDITION OF THAT OBLIGATION IS SUCH THAT—

(1) The above-burden principal (the "principal"), in consideration of the permanent admission into the United States of the motor vehicle described above (the "vehicle"), voluntarily undertakes and agrees to have such vehicle brought into conformity with all applicable Federal motor vehicle safety and bumper standards within 120 days after such importation, or such longer time not to exceed 180 days after such importation, as specified by the Administrator of the National Highway Traffic Safety Administration (the "Administrator");

(2) When the vehicle has been brought into conformity, the principal shall then file with the Administrator, a true and complete statement that the vehicle complies with each Federal motor vehicle safety standard in the year that the vehicle was manufactured and which applies in such year to the vehicle, and that the vehicle also complies with the Federal bumper standard;

(3) The principal shall not offer the vehicle for sale, or sell the vehicle, until the principal has received written notice from the Administrator that the principal has fulfilled all the conditions of the bond.

(4) And if the principal has received written notice from the Administrator that an inspection is required, the principal shall cause the vehicle to be available for inspection, and the vehicle and bond shall be promptly released after completion of an inspection showing no failure to comply. However, if the inspection shows a failure to comply, the vehicle and bond shall not be released until time as the failure to comply ceases to exist;

(5) And if the principal has received written notice from the Administrator that there is reason to believe that the statement is false or contains a misrepresentation, the vehicle or bond shall not be released until the Administrator is satisfied with the certification and any modification thereof;

(6) And if the principal has received written notice from the Administrator that the vehicle has been found not to comply with all applicable Federal motor vehicle safety and bumper standards, and written demand that the vehicle be abandoned to the United States, or delivered to the Secretary of the Treasury for export (at no cost to the United States), the principal shall abandon the vehicle to the United States, or shall deliver the vehicle, or cause the vehicle to be delivered to, the custody of the District Director of Customs of the port of entry listed above, or any other port of entry, and shall execute all documents necessary for exportation of the vehicle from the United States, at no cost to the United States, or in default of abandonment or redelivery after proper notice by the Administrator to the principal, the principal shall pay to the Administrator the amount of this obligation;

Name Address

Name Address

Name Address

Name Address

(Principal) (Seal)

(Surety) (Seal)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____ certify that I am the _____
of the corporation named as principal in the within bond; that _____
_____, who signed the bond on behalf of the principal, was then
_____ of said corporation; that I know his/her signature, and his/
her signature thereto is genuine; and that said bond was duly signed, sealed, and attested for and
in behalf of said corporation by authority of its governing body.

_____ (CORPORATE SEAL)

To be used when a power of attorney has been filed with NHTSA.
May be executed by secretary, assistant secretary, or other officer.

ANNEX B

Bond for importations of motor vehicles under section 591.5(g).

55 F.R. 11375
March 28, 1990



PREAMBLE TO AN AMENDMENT TO PART 592

Registered Importers of Vehicles Not Originally Manufactured to Conform to Federal Motor Vehicle Safety Standards (Docket No. 89-6; Notice 2) RIN: 2127-AC97 Safety

ACTION: Final Rule

SUMMARY: With certain exceptions, the National Traffic and Motor Vehicle Safety Act, as amended by the Imported Vehicle Safety Compliance Act of 1988, will 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.

In partial implementation of the 1988 amendments, this rule adopts procedures and requirements regarding the registration of importers and the duties and obligations of registered importers. In most instances, the particular provisions of these procedures and requirements are mandated by the 1988 amendments.

Part 592 establishes eligibility requirements for persons wishing to acquire and maintain registration. Among the requirements are ones regarding record-keeping, allowance of inspection of records and facilities relating to the motor vehicles which the importer has imported and/or modified, certification to the Administrator that the vehicles have been brought into compliance, and insurance to ensure that the importer will be able technically and financially to carry out noncompliance and defect notification and remedy responsibilities should they arise. Part 592 also adopts procedures for revocation or suspension of importer registration (and reinstatement) for failures to pay required fees or comply with regulations, or for filing a misleading or false certification. The rule also adopts post-modification vehicle inspection and bond release procedures.

EFFECTIVE DATE: October 30, 1989.

SUPPLEMENTARY INFORMATION: On October 31, 1988, the President signed P.L. 100-562, the Imported Vehicle Safety Compliance Act of 1988 ("the 1988 Act"). Notice of its enactment was published in the *Federal Register* on December 5, 1988 (53 FR 49003),

and a notice of proposed rulemaking with respect to Part 592 was published on April 25, 1989 (54 FR 17780). As the notice stated, the 1988 Act amends those provisions of the National Traffic and Motor Vehicle Safety Act of 1966 ("the Vehicle Safety Act") (15 U.S.C. 1381, at 1397) that relate to the importation of motor vehicles subject to the Federal motor vehicle safety standards. Specifically, the amendments strike paragraphs (b)(3) and (b)(4) of 15 U.S.C. 1397, (Section 1397 may also be cited as Section 108 of the Vehicle Safety Act), redesignates paragraph (b)(5) as paragraph (b)(3), redesignates paragraph (c) of 15 U.S.C. 1397 as paragraph (k), and adds new paragraphs (c) through (j).

As the agency explained in its proposal, and now repeats so that readers will have an overview of Part 592, the category of importer primarily affected by the 1988 Act is the importer of a motor vehicle that was not originally manufactured to conform to the Federal motor vehicle safety standards that applied to vehicles of its type at the time of its original manufacture. Under the current regulation, 19 C.F.R. 12.80(b)(1)(iii), a nonconforming vehicle may be imported by any person. Under the 1988 Act, an importer will have to be, subject to certain exceptions, a "registered importer" (one who meets the statutory criteria and has registered with the agency pursuant to the terms and conditions of the regulation that this notice adopts), or an individual who has contracted with a registered importer. The principal obligations of the Registered Importer with respect to the vehicles it imports are (1) to bring those vehicles into compliance, or to demonstrate that they have been brought into compliance before importation, (2) to provide the Administrator with certification that the vehicles conform, and (3) in the event that noncompliances of safety related defects occur in vehicles it certifies, to notify owners, and provide a remedy. With respect to those vehicles it imports for resale, a Registered Importer falls within the long-standing definition of "manufacturer" under the Vehicle Safety Act and is responsible for notification of purchasers and remedy of noncompliances and safety related defects determined to exist in those vehicles. The 1988 Act adds a further responsibility; it

makes the Registered Importer responsible for notification and remedy covering any vehicle covered by its certificate of conformity to the standards, including vehicles imported by individuals who have contracted with the Register Importer, if a noncompliance or defect is determined to exist in substantially similar vehicles originally manufactured and certified for sale in the United States. However, the manufacturer or Registered Importer would be afforded an opportunity to demonstrate to NHTSA that the vehicles covered by the certification do not contain the noncompliance or defect.

NHTSA is attempting in this rulemaking action to formulate a program that will ensure that all imported motor vehicles conform to the Federal motor vehicle safety standards without imposing unnecessary burdens on importers. Therefore, NHTSA has tried in Part 592 to impose only those requirements that are mandated by the 1988 Act, with amplifications only where it appeared necessary to implement the safety intent of the statute.

There were 10 substantive comments on the proposed rule, including questions raised by telephone or letter. Four were received from manufacturers or authorized importers (General Motors Corporation, Volkswagen of America, Mercedes-Benz of North America, and IVECO), and on each from a foreign converter (Gerhard Feldevert), authorized import dealer association (The Dealer Action Association), an importer of Canadian vehicles (Auburn Motors, Inc.), a dealer association (National Automotive Dealer Association), a truck importer (LaPine Truck Sales and Equipment Co.), and a member of the public (George Ziolo). General comments and questions to other dockets by the States of Texas and Virginia, and U.S. Trade Corp. appeared relevant, and will be discussed.

Requirements for Registration as Importer

The requirements for registration as an importer and maintenance of registration are established by paragraph 592.5. Under the regulation adopted by this notice, any person who wishes to become a Registered Importer, and who has not previously has a registration revoked, may file an application with the Administrator (new section 108(c)(3)(D)(i)). Comments to the docket raised basic questions as to who is permitted to register, and under what circumstances registration is required. IVECO, a manufacturer, asked whether it is required to register when its activities include importing nonconforming vehicles for test purposes, or vehicles requiring further manufacturing operations. Volkswagen raised the possibility that it might import nonconforming cars, and conform then before sale in the United States. While seemingly recognizing that it would have to acquire registered status, it nevertheless argues that insurance and recordkeeping requirements

that NHTSA proposed for Registered Importers would be unnecessary, and it recommended that the final rule exempt original manufacturers from insurance and recordkeeping requirements. A letter from a foreign national, Gerhard Felevert, expressing a wish to become a Registered Importer, raises the question whether the 1988 Act permits a Registered Importer to be located outside the United States.

The principal obligation of a Registered Importer is to certify that a vehicle not originally manufactured in conformance with the Federal motor vehicle safety standards has been brought into conformity with them before it is licensed for use on the public roads. Since a vehicle requiring further manufacturing operations is a vehicle whose original manufacture is incomplete, its importer need not be a Registered Importer. This type of importation is governed exclusively by the special provision for it in section 108(e), thus excluding it from vehicles subject to Registered importer provisions of section 108(f). Similarly, vehicles imported for test purposes are governed by section 108(j), at section 108(f), and IVECO need not be a Registered Importer for these types of importations. On the other hand, Volkswagen correctly surmises that its hypothetical importation of nonconforming vehicles which it intends to conform before sale subjects it to the Registered Importer requirements. The 1988 Act does not distinguish between U.S. subsidiaries of major foreign automotive corporations and corner garages; any person wishing to import a nonconforming motor vehicle for sale in the United States must be a Registered Importer, or have a contract with a Registered Importer. Furthermore, the vehicle itself is subject to a determination by NHTSA of its eligibility for importation, and Volkswagen is required to petition for an agency decision under Part 593. To be sure, the sheer size of a company such as Volkswagen may justify a different treatment of the issue of financial capability. although NHTSA cannot adopt a different requirement in this final rule, it will study the matter with a view towards proposing, at an early date, an alternative method for factory-authorized importers, or corporations of a certain size, to demonstrate their financial capability to fulfill notification and remedy responsibilities.

Finally, it seems clear from the obligations imposed by statute upon Registered Importers that they must be a resident in the United States. The ability of NHTSA to inspect vehicles, records, and facilities to verify conformance and the capabilities of Registered Importers would be severely hampered if those entities were located beyond the direct jurisdiction of the Department of Transportation and subject to the laws of another country. Accordingly, NHTSA will consider and grant applications only from Registered Importers who are residents of, and whose facilities are located in

a "State" as defined by 15 U.S.C. 1391(8): the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Commonwealth of the Northern Marianas.

Because section 108(c)(3)(D)(i) also provides that registration may be denied "to any person who is or was, directly or indirectly, owned or controlled by, or under common ownership or control with, a person who has had a registration revoked. . . .", as part of its application, an applicant will be required to disclose the names of its owners, shareholders, or partners (paragraph 592.5(a)(4)). In the opinion of Mercedes-Benz, the agency should define "common ownership" to include any ownership interest, no matter how small, in order to identify an importer whose registration has been revoked and who may hold a minority interest. The agency believes that its requirements will accomplish this, and that a definition is not required. If any of the owners are corporations, a requirement to provide the names of all shareholders might be unduly burdensome, and the regulation requires only that the names of shareholders whose ownership interest is 10 percent or more be supplied (paragraph 592.5(a)(5)). If the agency discovers that a revoked registrant has an ownership position in a Registered Importer or applicant, and may profit by the actions of the Importer (such as providing the facilities where the conversion work will occur), the agency will take this fact into consideration when it is reviewing applications or their renewals.

Chief among the registration requirements stated in section 108(c)(3)(D)(ii) is proof of financial ability to carry out notification and remedy responsibilities should a noncompliance or safety related defect be found in any vehicle the Registered Importer has imported and/or for whom it has furnished a certificate of conformity. In developing a provision addressing the financial ability of a Registered Importer to carry out its notification and remedial obligation, the agency was guided by the experience of the Environmental Protection Agency ("EPA") in developing and promulgating regulatory provisions addressing the financial ability of Independent Commercial Importers ("ICIs") to honor emissions warranties. (40 CFR 85.1510(b)(2)(i), 52 FR 36136). ICIs are importers of motor vehicles and engines, and have registered with the EPA. Some of them may register with NHTSA. Thus, a NHTSA requirement that parallels the EPA one is not likely to add significantly to the regulatory burden of those who import nonconforming vehicles subject to Federal regulations.

Commenters on EPA's regulations at the proposal stage, principally original equipment vehicle and engine manufacturers, and the State of California, suggested that ICIs acquire prepaid insurance and/or bonds to cover ICI warranty and recall liability for the useful life of each vehicle. There was no opposition from ICIs

regarding this concept. Based on its experiences under the California emissions standards for motor vehicles, the California Air Resources Board (CARB) noted that the modification industry is composed of small businesses, and argued that it is likely that a number of firms will fail over time. Without a requirement for an insurance policy or bond to cover warranty and recall repairs, owners of vehicles obtained from firms that are no longer in business would have to bear the warranty costs. CARB offers modifiers a choice between obtaining insurance or a bond.

EPA decided to require a prepaid mandatory service insurance policy that, in effect, assures effective warranty coverage. That agency reasoned that it was necessary to require a bond to assure an effective recall and warranty program. Because the prepaid mandatory service insurance policy seemed acceptable to modifiers as a means of assuring their performance regarding recalls and warranties, NHTSA proposed in paragraph 592.5(a)(8) that the application contain "a copy of a contract to acquire, effective upon its registration as an importer, a prepaid mandatory insurance policy underwritten by an independent insurance company, in an amount sufficient to ensure that the applicant will be able financially to remedy any noncompliance or safety related defect determined to exist in any vehicle for which it has furnished a certificate of conformity to the Administrator. . . ." However, NHTSA has no knowledge of the burden the insurance requirement might impose upon an applicant, and requested comments on this point. NHTSA also requested comments upon alternate appropriate means of assuring financial ability to carry out notification and remedial activities. Finally, NHTSA requested comments on the amount of insurance that would be necessary to demonstrate "sufficient financial responsibility," (section 108(d)(2)). The premium paid for such a policy would appear to encompass the relatively low costs of notification (i.e., discerning, through records or R.L. Polk, the names and addresses of vehicle owners), and the somewhat higher costs of remedy (through repair, repurchase, or replacement), as affected by the yearly number of vehicles for which the registered importer estimates it will submit certification. NHTSA understands that one company is currently insuring ICI's under EPA's program, but given the difference between Federal safety and emission standards the cost experience is not directly comparable.

Substantive comments were received on this issue from Mercedes-Benz, the Dealer Action Association, National Automotive Dealers Association, and U.S. Trade Corp. Mercedes stated that its remedial experience indicated that a prepaid insurance policy in an amount equal to \$2,000 per vehicle should be sufficient (adjusted annually for inflation), or 5% of the dutiable value of the vehicle), whichever is the lessor.

A similar comment was forthcoming from the Dealer Action Association, which suggested a surety bond as an alternative to the prepaid insurance policy, but for 5% of the dutiable value of the vehicle. It also commented that \$2,000, self-adjusting for inflation, seemed a fair estimate of remedial costs. U.S. Trade Corp., a potential applicant to become a Registered Importer, commented that a financial ability requirement parallel to that of EPA would probably not add much to the Registered Importer's burden, but would add to the costs to the consumer. It argued that possession of standard liability insurance that covers the work of each Registered Importer should be sufficient to cover the vehicle owner.

The agency has reviewed these comments. Given the historical fact that a large portion of nonconforming vehicles have been originally manufactured by Mercedes-Benz, NHTSA has carefully considered the comments of Mercedes-Benz of North America. The figure of \$2,000 per vehicle was supported by the Dealer Action Association, and, to NHTSA, appears a reasonable estimate of the costs to repair or replace a major component of a motor vehicle. The agency will review campaigns involving Registered Importers to determine whether this figure requires adjustment for inflation or other factors, but is not requiring a self-adjusting feature. Although a Registered Importer would be required, when repair is impossible, to replace the vehicle with an equivalent one, or repurchase the vehicle, at a cost that might well exceed \$2,000, such a contingency has occurred so infrequently in NHTSA's history that, for the present, the agency has concluded that it need not be a part of a Registered Importer's showing of financial capability. With respect to the alternative suggestion that the policy amount be 5% of the entered value of the vehicle, the agency observes that repair costs for older vehicles of low value could be as expensive as for newer models. Further, percentage calculations would appear to add variables into the process whereas a flat figure of \$2,000 per vehicle treats all vehicles on an equal basis.

Additional comments were offered. The Dealer Action Association recommended that the policy be sufficient to compensate authorized dealers when Registered Importers are unable to perform recall work. NADA suggested that NHTSA consider EPA's approach toward vehicle repair in the final rule, to ensure that repairs are adequately performed and paid for, if not performed by, the Registered Importer. It recommended that the vehicle owner be provided with a transferable copy of the service insurance contract to facilitate repairs at facilities other than those of the Registered Importer. Although oriented towards compensation of authorized dealers, these comments are directed towards situations where it may not be practicable for the owner of a vehicle to return the vehicle to the facilities of the Registered Importer, such as when the

Registered Importer is located at a great distance from the vehicle owner.

This possibility is a likely one, and of concern to NHTSA. In the agency's opinion, the Registered Importer's obligation to remedy without charge is an absolute one, and cannot be contingent upon the Importer itself performing the repairs, even for defects or noncompliances it has introduced in the conversion process. Thus the question is, how may NHTSA best ensure that repairs without charge be furnished a vehicle owner when repairs are performed by persons other than the Registered Importer. It was suggested that NHTSA consider EPA's approach, but the agency does not find this exactly on point. Under the provisions of the Clean Air Act, converters are required to supply owners with engine performance warranties. The warranties are required to be insured, transferable, and provide that warranty work may be performed anywhere if the converter's facility is not reasonably available (i.e., within 50 miles) 40 CFR 85.1510(b)(2). The regulation thus does not touch upon the mechanics of compensation for warranty work performed elsewhere. In the absence of regulatory guidance, NHTSA assumes that an owner pays for the repairs at the non-converter service facility, and presents the bill to the converter for reimbursement. If such a course were followed by owners of vehicles converted to meet the safety standards, it would meet the statutory requirement of remedy without charge, although the owner would be temporarily out of pocket for the repair expenses. However, a Registered Importer should have the right to impose reasonable restrictions upon the type of facility to which a vehicle for which it has remedial responsibility may be taken. A reasonable restriction would be that the vehicle must be repaired at a factory-authorized dealership for its make (e.g., a gray market Jaguar must be repaired by the service facilities of a Jaguar new-car dealership). Because the remedial obligation exists with respect to the vehicle and not the owner, no specific requirement for transferability of insurance is required. Some of the comments indicate that a form of insurance may be available under which a claim for compensation may be made by a non-converter repair facility directly to an insurance company. Remedy without charge through this mechanism would also fulfill the statutory requirement. The agency believes that the method of ensuring remedy without charge should be the choice of the person who is required to provide it. The requirement it is adopting in response to these comments is one that follows the EPA specification for allowance of repairs at alternate locations when the Registered Importer's facility is not reasonably available, and one which requires an explanation of how remedy without charge will be ensured. The agency notes that the Registered Importer must provide NHTSA with copies of its communications to vehicle owners, and must supply

the owner with NHTSA's address for complaints in the event remedy without charge is not provided. NHTSA therefore anticipates that no serious problems will arise. Further, it expects that authorized dealers, or others performing campaign repairs, will be adequately compensated.

In developing Part 592, the agency proposed that the application contain a statement whether the Registered Importer would modify the vehicles for which it will furnish certificates of conformity, and if not, to provide the names and address of all agents who would be the actual modifiers.

The concept that a Registered Importer could delegate actual conformance work was opposed by Mercedes-Benz and The Dealer Action Association. Both commenters argued that this did not fulfill the statutory purpose of increased accountability for conversions, and cited statements from the Congressional Record in support. In Mercedes' opinion, NHTSA would open an area of potential dispute when the object of the 1988 Act was to clarify NHTSA's jurisdiction. Conformance operations must be carried out by Registered Importers, their employees, or subsidiaries. The legal line between an "agent" and an "independent contractor" is not always clear, raising the possibility that a Registered Importer might structure a relationship to avoid acts of a modifier, including fraud.

NHTSA has carefully considered these comments. It believes that the provisions of the 1988 Act are complex enough that regulations should not be adopted that open additional avenues of potential dispute or complications with Registered Importers that might dilute the responsibility imposed by the 1988 Act, and which might result in less than full achievement of the intent of Congress when these approaches have not been specifically directed by Congress. Therefore, it agrees with the comments of Mercedes and The Dealer Action Association, and has not adopted those aspects of the proposal that countenanced delegation of conformance responsibilities to an agent.

The 1988 Act also requires that the regulation contain "provision for ensuring that the importer (or any successor in interest) will be able . . . to carry out the importer's responsibilities. . . relating to discovery, notification, and remedy of defects." Paragraph 592.5(a)(9) requires that the applicant show that it will maintain a system of VINs, and names and addresses of owners of vehicles for which it provides certifications. Although the 1988 Act contemplates that a Registered Importer could have a "successor in interest", NHTSA proposed that registrations not be transferable. Such a prohibition appears the most feasible way to ensure that notification responsibilities are met, as well as ensuring that transfers do not occur to Importers whose registration may have been revoked or suspended. There was no comment on this point, and, accordingly, the agency has adopted paragraph

592.5(g) which states that registrations are not transferable. If there is a change in ownership interest, such as a transfer resulting in a new person acquiring more than 10% of ownership, a Registered Importer must notify NHTSA (paragraph 592.5(f)). This paragraph requires notification of changes in any of the information supplied with the application. A registration will continue indefinitely until revoked or suspended. However, a Registered Importer, in order to maintain its registration, will be required to affirm annually that there has been no change in previously provided information (paragraph 592.5(e)). This should ensure that the financial ability of a Registered Importer can be monitored, and that fees are received in a timely manner.

Duties of a Registered Importer

Paragraph 592.6 sets forth the duties of a Registered Importer. The first duty specified is to provide a bond for each vehicle that it imports to ensure that it will bring the vehicle into conformance, or that it will be exported or abandoned to the United States (paragraph 592.6(a)).

The second duty required for a Registered Importer is that it establish, maintain, and retain for 8 years from the date of entry of a vehicle for which it furnishes a certificate of conformity the records specified in paragraph 592.6(b)(1) through (5), generally relating to substantiation of conformance work and vehicle ownership. Eight years was proposed because it is the period specified in the National Traffic and Motor Vehicle Safety Act for which a manufacturer is obligated to remedy a noncompliance or safety related defect at no cost to the vehicle owner (15 U.S.C. 1414(a)(1)(4)). For a fuller interpretation as to how the 8-year limit affects the obligations of a Registered Importer, the reader should consult the section of this notice discussing paragraph 592.6(f).

Comments on record-keeping were submitted by NADA and Mercedes-Benz. NADA commented that the final rule should emphasize the continuing duty of Registered Importers towards the vehicle, by requiring that they continually update their owner lists since notification obligations extend beyond first purchasers. It is true that there is a continuing obligation towards the vehicle, but NHTSA believes that existing notification procedures, which will be applicable to Registered Importers, sufficiently meet the need for safety. To require an updated list of owners would create an obligation that does not exist with respect to original manufacturers, and would be of questionable success should an owner fail to respond to a Registered Importer's query. Such a requirement would impose an unnecessary burden upon a Registered Importer. The vehicle is identifiable through its VIN and in the event of notification, the Registered Importer is required by 15 U.S.C. 1413(c)(1) to notify owners "whose

name and address is reasonably ascertainable by the manufacturer through State records or other sources available to him.” Mercedes-Benz commented that based upon past experience it is not likely that many gray market importers will remain in business for the normal useful life of the vehicles they certify. It recommended that the final rule address the issue of retention of records on dissolution of a business, and that Registered Importers be required to deliver all vehicle conformance records to NHTSA in this event in order to assure the ability to reach gray market owners. NHTSA believes that one effect of the 1988 Act will be that the number of gray market importers will be substantially reduced, and that those which remain will be relatively stable financially. Mercedes’ comment appears based upon the assumption that, in the absence of a Registered Importer *qua* manufacturer, NHTSA must make its own determination or non-compliance or safety related defect, and that its ability to notify owners in the aftermath of such determinations will be impaired without such records. This assumption is based upon an erroneous understanding of NHTSA’s procedures. The statutory purpose of NHTSA’s determinations is to order the manufacturer to notify and remedy when the manufacturer fails to make its own determination. If there is no viable manufacturer (or Registered Importer), NHTSA will not proceed to such a determination. Should safety considerations warrant, NHTSA may issue a press release advising owners of the conditions giving rise to concern and advise precautions to be taken. Thus, NHTSA has not adopted this suggestion.

The third major responsibility of a Registered Importer is to affix a certification label to each vehicle it conforms in the manner required of original vehicle manufacturers, which identifies the Registered Importer (paragraph 592.6(c)). NADA recommended that the certification label specifically designate the vehicle as “Nonconforming Import”, consistent with labels required for incomplete or intermediate vehicle manufacturers, that it include specific reference to conformance with Theft Prevention Act requirements, as well as language consistent with certification by alterers pursuant to 49 CFR 567.7(a). The agency declines to adopt the suggestions. The imported vehicle will presumably no longer be “Nonconforming” after its modification. Under existing regulations, certification to Theft Prevention requirements must be provided separately from certification to other standards (paragraph 567.4(k)), and no good reason has been advanced to require otherwise. Unlike the alterer, who supplements an existing certification, a Registered Importer certifies *de novo*, and thus must certify according to 49 CFR 567.4. As the person affixing the label to the vehicle under that regulation, the Registered Importer will be clearly identified, as will the original manufacturer or assembler of the vehicle.

The fourth duty of a Registered Importer is to provide NHTSA with certification upon completion of modifications that the vehicle conforms and that it is the party responsible for conformity (paragraph 592.6(d)). NHTSA proposed that substantiation of certification through photographic and documentary evidence be submitted for the initial certification provided for a specific model and model year only, and with subsequent certifications of that model and model year only if requested by NHTSA. The proposal has been adopted as written (paragraph 592.6(e)), although the Dealer Action Association argued that NHTSA should require full documentary evidence for each vehicle. In essence, NHTSA does: paragraph 592.6(b)(4) requires the Registered Importer to keep records both photographic and documentary reflecting the modifications made and submitted to NHTSA pursuant to paragraph 592.6(e), which must be made available to NHTSA to inspect (paragraph 592.6(g)). NHTSA does not wish to create unnecessary burdens upon either a Registered Importer or itself by requiring excessive documentation. If a Registered Importer fails in its obligations to conform the vehicle (not always apparent through photographic evidence), its registration may be suspended or revoked, and civil penalties imposed.

A Registered Importer also has notification and remedial obligations imposed by the 1988 Act. These obligations have been incumbent upon manufacturers of motor vehicles since enactment of the Vehicle Safety Act. Although a “manufacturer” includes any person importing motor vehicles for resale, these obligations have not always been understood or followed by importers for resale of nonconforming vehicles, nor have they always been enforced by NHTSA. However, Congress has specifically indicated its intent that these importers fulfill this sometimes dormant responsibility (section 103(d)), and broadened its applicability. For purposes of notification and remedy, the Registered Importer shall be treated as the manufacturer with respect to any motor vehicle that it imports (regardless of whether or not it imports the vehicle for resale), or brings into conformity on behalf of an individual importer who has a contract with it. Furthermore, if the vehicle is one that is substantially similar (as determined under Part 593) to one certified for sale in the United States by its original manufacturer, and a noncompliance or safety related defect is determined to exist in the substantially similar vehicle, the 1988 Act deems it to exist in the conformed vehicle as well, unless the manufacturer or Registered Importer can show otherwise. These obligations are reflected in paragraphs 592.6(f). NADA commented that the final rule should emphasize that this responsibility encompasses conditions created by the modification process, as well as incorporated into the vehicle by its original manufacturer. NHTSA regards this sug-

gestion as well made, and paragraph 592.6(f)(2) incorporates it.

In reviewing the relationship of the notification/remedial requirements of the 1988 Act to those already existing in the Vehicle Safety Act, NHTSA has identified an ambiguity as to the length of time for which remedy without cost must be provided. According to 15 U.S.C. 1414(a)(4), the requirement shall not apply "if the motor vehicle. . . was purchased by its first purchaser more than 8 years. . . before. . . notification is furnished. . . ." The general intent of Congress appears to be that manufacturers should not be required to provide free remedy for vehicles whose age exceeds 8 years, even if no corresponding limitation is imposed upon notification. If the date of first purchase is known for used imported nonconforming vehicles (such as through title documents accompanying it), there will be no difficulty determining when the 8-year period begins. However, if the date of first purchase is not known, NHTSA believes that any vehicle manufactured within 8 years of the date of notification should be eligible for remedy without charge. However, non-compliances or safety related defects could be created by a Registered Importer in the conformance process, and they may be introduced in an imported vehicle approaching or beyond an age of 8 model years. It seems fairest in this instance to regard conformance operations as a "manufacturing" process, and to commence the 8-year with the sale of the vehicle to its first purchaser, regardless of its age. Disagreements may arise as to whether a safety related defect is attributable to the manufacturer or the Registered Importer, but these will simply have to be handled on a *ad hoc* basis.

The agency also notes that one duty of a Registered Importer arises under the bond given upon importation of each vehicle: the fulfillment of the condition that if vehicle conformance is not achieved, the vehicle will be exported at no cost to the United States by the Secretary of the Treasury, or abandoned to the United States (section 108(c)(2)(B)). If this duty, set forth in paragraph 592.6(f), is not fulfilled, and the vehicle is sold without full conformance, not only will the bond be forfeit but grounds will then exist to suspend or revoke the Importer's registration.

A final question relating to the duties of a Registered Importer was asked by LaPine: who establishes the amount of charges to be made by the Registered Importer for conformance work? These charges are a matter of contract between the Registered Importer and the person for whom the work is done, and are not established by Federal regulations.

Revocation, suspension, and reinstatement of registration.

Paragraph 592.7 establishes the requirements for revocation, suspension, and reinstatement of the registration of Registered Importers.

Section 108(c)(3)(D)(iii) requires the Secretary to establish procedures for revoking or suspending the registration of any Registered Importer for failure to comply with any requirement of section 108 of the Vehicle Safety Act or of any regulation issued under that section. Those procedures are also required to provide for automatically suspending the registration of a Registered Importer which knowingly files a false or misleading certification, or fails to pay a required fee in a timely manner. To cover the expenses of the registration program and certain other activities, the statute provides that each Registered Importer will have to pay an annual fee; this fee will be established on a fiscal year basis. A Registered Importer under suspension may be reinstated when the cause giving rise to the suspension ceases to exist. In determining revocation or suspension, other than automatic suspension as provided by section 108(c)(3)(D)(iii) for non payment of fees or for knowingly filing a false or misleading certification, the Administrator will provide notice in writing to the Registered Importer, affording it an opportunity to present data, views, and arguments as to why its registration should not be suspended or revoked. Other than its provision for automatic suspension, the 1988 Act does not distinguish suspension for revocation; either may be invoked for failure to comply with any requirement of section 108 or the regulations issued under section 108. The agency interprets the 1988 Act as leaving the decision whether to suspend or to revoke to the discretion of the Administrator, with the exception of the automatic suspension provisions discussed above.

No comments were received on this aspect of the rulemaking, and it is adopted as proposed.

Inspection; release of vehicles and bond.

Paragraph 592.8 establishes the requirements for inspection of modified vehicles, and their release for registration, as well as release of the performance bond under which they entered. As is currently required, an importer of record, whether a Registered Importer or one who has a conformance contract with a Registered Importer, will have to furnish the Secretary of the Treasury (the U.S. Customs Service, acting for NHTSA), a bond for each vehicle it imports to ensure that the vehicle is brought into compliance with the safety standards, or that it is exported at no cost to the United States, or abandoned to the United States. When the modifications of an imported vehicle are completed, the Registered Importer will have to attach its label to the vehicle stating that it complies with the safety standards, and to certify that conformance to NHTSA. If the vehicle is one that the Administrator has determined to be substantially similar to one certified by its original manufacturer for sale in the U.S., the Registered Importer may rely in making its certification on the original manufacturer's certification with respect to identical safety features if it

certifies to the Administrator that its modifications did not affect compliance of the vehicle's safety features. Under the 1988 Act, the Registered Importer will be able to license the vehicle, or release the vehicle from its custody for licensing, 30 days after its submission of the certification to NHTSA. NHTSA, however, can demand an inspection of the vehicle within the 30-days period, or ask for certification verification. In that event, the vehicle can be released only upon the agency's written notice of its acceptance of the certification or written notice of its completion of an inspection that does not show any failure to comply. The vehicle and the performance bond can be released immediately upon issuance of either notification. Section 108(c)(3)(E)(v), added by the 1988 Act, provides that any release of bond, however, does not constitute a determination under section 152 of the Vehicle Safety Act that the vehicle conforms with all applicable standards.

Section 108(c)(3)(E)(i) requires NHTSA and the Secretary of the Treasury to establish procedures to ensure the release of a motor vehicle and bond at the expiration of the 30-day period, and this was proposed as paragraph 592.8(f). At the time of the proposal, it had not been determined whether the bond would be one of the U.S. Customs Service, or of NHTSA. The determination has been made that the bond will be NHTSA's, and therefore no such provision is required in the final rule. NHTSA will continue to inform Customs when requirements subject to the general importation bond (bumper and theft prevention standards) have been met, and will make these determinations contemporaneously with those regarding compliance with the safety standards.

These requirements were the subject of little comment. In paragraph 592.8(b), NHTSA had proposed that each submission shall be provided either by certified mail (return receipt requested), or electronically in a manner specified by NHTSA. George Ziolo found this too restrictive, and recommended allowing submission through private concerns and in person as well. This comment is well taken. It is important that a Registered Importer know when its submission has been received, and, hence, when the 30-day period has begun. Given the agency's own experience with failure to receive certified mail return receipts, it believes that a Registered Importer must be able to submit its certification in the manner it believes will best inform it of the date of receipt. The final rule is adopted as suggested. Further, NHTSA has specified in the final rule the electronic means it prefers, and has provided the FAX number of the agency.

Auburn Motors, an importer of cars from Canada, thought that Registered Importers of such cars should not have to wait 30 calendar days after submission of certification to be informed by NHTSA of their release. It should be noted that 30 days is the maximum period,

and it may well be that in practice bonds may be released more expeditiously.

The State of Texas asked for clarification of the events that would transpire in the event the bond was forfeited. In the event that NHTSA determines that the primary condition of the performance bond, the conformance of the vehicle, has not been met, the agency will demand fulfillment of one of the remaining two alternative conditions: the export of the vehicle at no cost to the United States, or its abandonment to the United States. NHTSA shall specify a time in which this is to be accomplished. Because the 1988 Act requires strict adherence to these provisions, it does not appear to allow the agency to consider petitions for mitigation on such grounds as hardship, or the achievement of partial compliance. If the bond is forfeited through failure to fulfill any of the three conditions of performance, NHTSA will review the circumstances of the case and, when appropriate, inform Customs that the importer appears to have made a false declaration under the conforming regulation, 19 CFR 12.80. Customs has appropriate sanctions, including the seizure of the vehicle, when violations of its regulations occur. Civil penalty sanctions may be also imposed by NHTSA. As discussed previously, if a Registered Importer forfeits a performance bond, its registration will be subject to suspension or revocation.

Commenting that in some jurisdictions a DOT bond release letter is required before registration of vehicles is allowed, Texas also asked what would occur if a vehicle is automatically released at the end of 30 days without a bond release letter having been issued. If a vehicle is automatically released from custody of the Registered Importer at the end of 30 days without a bond release letter having been issued, there are two possible scenarios. The first is that such a letter will be forthcoming if the certification is found acceptable. If the certification is unacceptable, no such letter will be forthcoming, and conformance problems will have to be resolved between NHTSA, the Registered Importer, and the owner of the car who presumably will have taken possession of it, but may have found himself unable to license it.

Virginia Department of Motor Vehicles wondered if NHTSA and EPA could issue a single release notice. NHTSA has previously considered the feasibility of parallel action with EPA such as a common declaration form. This does not appear practicable. Two different Federal agencies are involved, proceeding under two different legislative authorities, with their own distinctive requirements. Although the regulated persons are of the same class (importers of motor vehicles) there is not a sufficient identity of regulatory action to allow common forms or time frames. In fact, the motor vehicle standards administered by NHTSA itself that must be met by imported vehicles originate in three distinctly different regulatory authorities: Title I of

the National Traffic and Motor Vehicle Safety Act (safety standards), and Titles I (bumper standard) and VI (theft prevention) of the Motor Vehicle Information and Cost Savings Act.

In consideration of the foregoing, a new Part 592, *Registered Importers of Vehicles not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards*, is added to Title 49, Chapter V, to read as follows:

Part 592 *Registered Importers of Vehicles not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards*

Sec.

592.1 Scope.

592.2 Purpose.

592.3 Applicability.

592.4 Definitions.

592.5 Requirements for registration and its maintenance.

592.6 Duties of a Registered Importer.

592.7 Revocation, suspension and reinstatement of registration.

592.7 Inspection; release of vehicle and bond.

Authority: Pub. L. 100-562, 15 U.S.C. 1401, 1407; delegation of authority at 49 CFR 1.50.

592.1 Scope. This part establishes procedures under section 108(c)(3)(D) of the National Traffic and Motor Vehicle Safety Act, as amended (15 U.S.C. 1397(c)(3)(D)), for the registration of importers of motor vehicles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards. This part also establishes the duties of Registered Importers.

592.2 Purpose. The purpose of this part is to provide content and format requirements for person who wish to register with the Administrator as importers of motor vehicles not originally manufactured to conform to all applicable Federal motor vehicle safety standards, to provide procedures for the registration of importers and for the suspension, revocation and reinstatement of registration, and to set forth the duties required of Registered Importers.

592.3 Applicability. This part applies to any person who wishes to register with the Administrator as an importer of nonconforming vehicles, and to any person who is registered as an importer.

592.4 Definitions. All terms in this part that are defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391) are used as defined therein.

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

"NHTSA" means the National Highway Traffic Safety Administration.

"Registered Importer" means any person that the Administrator has registered as an importer pursuant to paragraph 592.5(b).

592.5 Requirements for registration and its maintenance.

(a) Any person wishing to register as an importer of motor vehicles not originally manufactured to conform to all applicable Federal motor vehicle safety standards must file an application which:

(1) Is headed with the words "Application for Registration as Importer", and submitted in three copies to: Administrator, National Highway Traffic Safety Administration, Washington, D.C. 20590, Attn: Importer Registration.

(2) Is written in the English language.

(3) Sets forth the full name, address, and title of the person preparing the application, and the name, address, and telephone number of the person for whom application is made.

(4) Sets forth, as applicable, the names of all owners, including shareholders, partners, or sole proprietors, of the person for whom application is made.

(5) If any of the owners listed in (4) above are corporations, sets forth the names of all shareholders of such corporation whose ownership interest is 10 per cent or greater.

(6) Contains a statement that the applicant has never had a registration revoked pursuant to paragraph 592.7, nor is it or was it, directly or indirectly, owned or controlled by, or under common ownership or control with, a person who has had a registration revoked pursuant to paragraph 592.7.

(7) Contains a certified check payable to the Treasurer of the United States, for the amount of the initial annual fee established pursuant to Part 594 of this chapter.

(8) Contains a copy of a contract to acquire, effective upon its registration as an importer, a prepaid mandatory service insurance policy underwritten by an independent insurance company, or a copy of such policy, in an amount that equals \$2,000 for each motor vehicle for which the applicant will furnish a certificate of conformity to the Administrator, for the purpose of ensuring that the applicant will be able financially to remedy any noncompliance or safety related defect determined to exist in any such motor vehicle in accordance with Part 573 and Part 577 of this chapter. If the application is accompanied by a copy of a contract to acquire such a policy, the applicant shall provide NHTSA with a copy of the policy within 10 days after it has been issued to the applicant.

(9) Sets forth in full data, views, and arguments of the applicant sufficient to establish that the applicant will be able, through a records system of acquiring and maintaining names and addresses of owners of vehicles for which it furnishes a certificate of conformity, and

Vehicle Identification Numbers (VINs) of such vehicles, to notify such owners that a noncompliance or safety related defect exists in such vehicles, and that it will be financially able to remedy a noncompliance or safety related defect through repurchase or replacement of such vehicles, or technically able through repair of such vehicles, in accordance with Part 573 and Part 577 of this chapter.

(10) Segregates and specifies any part of the information and data submitted under this part that the applicant wishes to have withheld from public disclosure in accordance with Part 512 of this chapter.

(11) Contains a statement that the applicant will fully comply with all duties of a registered importer as set forth in paragraph 592.6.

(12) Has the applicant's signature acknowledged by a notary public.

(b) If the information submitted is incomplete, the Administrator notifies the applicant of the areas of insufficiency, and that the application is in abeyance.

(c) If the Administrator deems it necessary for a determination upon the application, NHTSA conducts an inspection of the applicant and/or its agents. Subsequent to the inspection, NHTSA calculates the costs attributable to such inspection, and notifies the applicant in writing that such costs comprise a component of the initial annual fee and must be paid before a determination is made upon its application.

(d) When the application is complete (and, if applicable, when a sum representing the inspection component of the initial annual fee is paid), it is reviewed and a determination made whether the applicant should be granted the status of Registered Importer. Such determination may be based, in part, upon an inspection by NHTSA of the conformance, storage, and recordkeeping facilities of the applicant and agents, if any. If the Administrator determines that the application is acceptable, (s)he informs the applicant in writing that its application is approved, and issues it a Registered Importer Number. If the information is not acceptable, the Administrator informs the applicant in writing that its application is not approved. No refund is made of those components of the initial annual fee representing the remaining costs of administration of the registration program.

(e) In order to maintain its registration, a Registered Importer shall provide an annual statement that affirms that all information provided under paragraph (a)(4), (a)(5), (a)(6), (a)(9), and (a)(11) remains correct, and that includes a current copy of its insurance policy procured pursuant to paragraph (a)(8). Such statement shall be titled "Yearly Statement of Registered Importer", and shall be filed not later than October 31 of each year. A Registered Importer shall also pay such annual fee or fees as the Administrator may from time to time establish under Part 594 of this chapter. An

annual fee shall be paid not later than October 31 of any calendar year, and shall be the annual fee for the fiscal year than began on October 1 of that calendar year. Any other fee shall be payable not later than 30 calendar days after the date that the Administrator has notified the Registered Importer of it in writing.

(f) A Registered Importer shall notify the Administrator in writing of any change that occurs in the information which it submitted in its application, not later than the end of the 30th calendar day after such change.

(g) A registration granted under this part is not transferable.

592.6 Duties of a Registered Importer. Each Registered Importer shall:

(a) With respect to each motor vehicle that it imports into the United States, furnish to the Secretary of the Treasury (acting on behalf of the Administrator) a bond in an amount not less than the entered value of the vehicle, as determined by the Secretary of the Treasury, nor more than 150 per cent of such value, to ensure that such vehicle either will be brought into conformity with all applicable Federal motor vehicle safety standards prescribed under Part 571 of this chapter within 120 calendar days after such importation, or will be exported (at no cost to the United States) by the importer or the Secretary of the Treasury, or abandoned to the United States.

(b) Establish, maintain, and retain for 8 years from the date of entry of any nonconforming vehicle for which it furnishes a certificate of conformity pursuant to paragraph (e), organized records, correspondence and other documents relating to the importation, modification, and substantiation of certification of conformity to the Administrator, including but not limited to:

(1) The declaration required by paragraph 591.5 of this chapter, and 19 CFR 12.80.

(2) All vehicle or equipment purchase or sales orders or agreements, conformance agreements with importers other than Registered Importers, and correspondence between the Registered Importer and the owner or purchaser of each vehicle for which it has furnished a certificate of conformity.

(3) The last known name and address of the owner or purchaser of each motor vehicle for which it has furnished a certificate of conformity, and the VIN number of such vehicle.

(4) Records, both photographic and documentary, reflecting the modifications made and submitted to the Administrator pursuant to paragraph (e).

(5) Records, both photographic and documentary, sufficient to substantiate each subsequent certificate furnished to the Administrator for a vehicle of the same model and model year for which documentation

has been furnished NHTSA in support of the initial certificate.

(c) Permanently affix to each motor vehicle, upon completion of modifications, a label that meets the requirements of paragraph 567.4 of this chapter, which identifies the Registered Importer, and provide to the Administrator a photocopy of the label attesting that such vehicle has been brought into conformity with all applicable Federal motor vehicle safety and bumper standards.

(d) Certify to the Administrator, upon completion of modifications, that the vehicle has been brought into conformity with all applicable Federal motor vehicle safety and bumper standards, and that it is the person legally responsible for bringing the vehicle into conformity.

(e) In substantiation of the initial certification provided for a specific model and model year, submit to the Administrator photographic and documentary evidence of conformance with each applicable Federal motor vehicle safety and bumper standard, and with respect to subsequent certifications of such model and model year, such information, if any, as the Administrator may request.

(f) With respect to any motor vehicle for which it has furnished a certificate of conformity to the Administrator, provide notification and remedy according to Part 573 and Part 577 of this chapter, upon any determination:

(1) that a vehicle to which it is substantially similar, as determined under Part 593 of this chapter, incorporates a safety related defect or fails to conform with an applicable Federal motor vehicle safety standard. However, this obligation does not exist if the manufacturer of the vehicle or Registered Importer demonstrates to the Administrator that the defect or noncompliance is not present in such vehicle.

(2) that the vehicle incorporates a safety related defect or fails to conform with an applicable Federal motor vehicle safety standard, without reference to whether such may exist in a vehicle to which it is substantially similar, or whether such exists because it was created by the original manufacturer or by the Registered Importer.

The requirement of 15 U.S.C. 1414(a)(2)(B) that remedy shall be provided without charge shall not apply if the noncompliance or safety related defect exists in a motor vehicle whose first sale after importation occurred more than 8 calendar years before notification respecting the failure to comply is furnished pursuant to Part 577 of this chapter, except that if a safety related defect exists and is attributable to the original manufacturer and not the Registered Importer, the requirements of 15 U.S.C. 1414(a)(2)(B) shall not apply to a motor vehicle whose date of manufacture, as determined by the Administrator, is

more than 8 years from the date on which notification is furnished pursuant to Part 577 of this chapter.

Notification furnished pursuant to this paragraph and Part 577 of this chapter shall include the statement that in the absence of the Registered Importer's facility being within 50 miles of the owner's mailing address for performance of repairs, such repairs may be performed at a specific facility designated by the Registered Importer within 50 miles, or, if no such facility is designated, anywhere, and shall also include an explanation of how repair is to be accomplished without charge to the vehicle owner.

(g) In order to allow the Administrator to determine whether a Registered Importer is meeting its statutory responsibilities, admit representatives of NHTSA during operating hours, upon demand, and upon presentation of credentials, to copy documents, or to inspect, monitor, or photograph any of the following:

(1) Any facility where any vehicle, for which a Registered Importer has the responsibility of providing a certificate of conformity to applicable safety standards, is being modified, tested, or stored;

(2) Any facility where any record or other document relating to modification, testing, or storage of vehicles being conformed, is filed;

(3) Any part or aspect of activities relating to the modification, testing, and/or storage of vehicles by the Registered Importer.

(4) Any motor vehicle for which it has provided a certification of conformity to the Administrator, and which remains in its custody or under its control.

(h) Maintain in effect a prepaid mandatory service insurance policy underwritten by an independent insurance company as a guarantor of its performance under paragraph (f).

(i) With respect to any motor vehicle it has imported and for which it has furnished a performance bond, to deliver such vehicle to the Secretary of the Treasury for export, or to abandon it to the United States, upon demand by the Administrator if such vehicle has not been brought into conformity with all applicable Federal motor vehicle safety standards.

592.7 Revocation, suspension and reinstatement of registration.

(a) If the Administrator has not received any fee assessed and owing by the end of the 30th calendar day after such fee is due and payable, a registration is automatically suspended at the beginning of the 31st calendar day, and the Registered Importer is immediately notified in writing of the suspension at the address contained in its most recent annual statement or amendment thereof.

(b) If the Administrator has reason to believe that a Registered Importer has knowingly filed a false or misleading certification, and that its registration should be automatically suspended or revoked, (s)he notifies

the Registered Importer in writing of the facts giving rise to such reason to believe, affording an opportunity to present data, views, and arguments, either in writing or in person, within 30 calendar days after receipt of the Administrator's letter, as to whether it has submitted false or misleading certification, and as to why the registration ought not to be revoked or suspended. The Administrator then makes a decision after the 30-day period on the basis of all information then available. If, after consideration of all the data available, the Administrator determines that the Registered Importer has knowingly filed a false or misleading certification, the registration is automatically suspended or revoked, and the Registered Importer notified in writing. Any suspension or revocation is effective as of the date of the Administrator's determination. The Administrator shall state the period of any suspension in the notice to the Registered Importer.

(c) The Administrator may suspend a registration if a Registered Importer fails to comply with any requirement set forth in 15 U.S.C. 1397(c)(3)(D), paragraph 592.5(c), or paragraph 592.6, or if (s)he denies an application filed under paragraph 592.5(d). The Administrator may revoke a registration after any failure to comply with any such requirement, or if (s)he denies an application filed under paragraph 592.5(d). If the Administrator has reason to believe that there has been such a failure to comply and that the Registered Importer's registration should be revoked or suspended, (s)he notifies the Registered Importer in writing, affording an opportunity to present data, views, and arguments, either in writing or in person, within 30 calendar days after receipt of the Administrator's letter, as to whether there has been a failure to comply and as to why the registration ought not to be revoked or suspended. The Administrator then makes a decision after the 30-day period on the basis of all information then available. If the Administrator determines that a registration should be revoked or suspended, (s)he notifies the Registered Importer in writing. A revocation is effective immediately. A suspension is effective beginning with a date specified in the written notification.

(d) A Registered Importer whose registration has been revoked or suspended may request reconsideration of the revocation or suspension if the request is supported by factual matter which was not available to the Administrator at the time the registration was suspended or revoked.

(e) If its registration has been revoked, a Registered Importer is ineligible to apply for reregistration under this part. No refund is provided of any annual or other fees the Registered Importer has paid for the fiscal year in which its registration is revoked. If its registration has been suspended it may file an application for reinstatement of its registration.

(f) The Administrator shall reinstate a suspended registration if the cause that led to the suspension no

longer exists, as determined by the Administrator, either upon the Administrator's motion, or upon the submission of further information or fees by the Registered Importer.

592.8 Inspection; release of vehicle and bond.

(a) With respect to any motor vehicle for which it is obligated to provide a certificate of conformity to the Administrator as required by paragraph 592.6(d), a Registered Importer shall not obtain licensing or registration of the motor vehicle for use on the public roads, or release custody of it for such licensing and registration, except in accordance with the provisions of this section.

(b) When conformance modifications to a motor vehicle have been completed, a Registered Importer shall submit the certification required by paragraph 592.6(d) to the Administrator. In certifying a vehicle that the Administrator has determined to be substantially similar to one that has been certified by its original manufacturer for sale in the United States, the Registered Importer may rely on any certification by the original manufacturer with respect to identical safety features if it also certifies that any modification that it undertook did not affect the compliance of such safety features. Each submission shall be mailed by certified mail, return receipt requested, or by private carriers such as Federal Express, to: Administrator, National Highway Traffic Safety Administration, Washington D.C. 20590 ATTN: NEF-32, or be submitted electronically by FAX (202-366-2536), or in person. Each submission shall identify the location where the vehicle will be stored and is available for inspection, pending NHTSA action upon the submission.

(c) Before the end of the 30th calendar day after receipt of certification of a motor vehicle pursuant to paragraph 592.6(d), the Administrator may inform the Registered Importer in writing that an inspection of the vehicle is required to ascertain the veracity of the certification. Written notice includes a proposed inspection date, which is as soon as practicable. If inspection of the vehicle indicates that the vehicle has been properly certified, at the conclusion of the inspection the Registered Importer is provided an instrument of release. If inspection of the vehicle shows that the vehicle has not been properly certified, the Registered Importer shall either make the modifications necessary to substantiate its certification, and provide a new certification for the standard(s) in the manner provided for in paragraph (b), or deliver the vehicle to the Secretary of the Treasury for export, or abandon it to the United States. Before the end of the 30th calendar day after receipt of new certification, the Administrator may require a further inspection in accordance with the provisions of this subsection.

(d) The Administrator may by written notice request certification verification by the Registered Importer before the end of the 30th calendar day after the date

the certification was received by the Administrator. If the basis for such request is that the certification is false or contains a misrepresentation, the Registered Importer shall be afforded an opportunity to present written data, views, and arguments as to why the certification is not false or misleading or does not contain a misrepresentation. The Administrator may require an inspection pursuant to paragraph (c). The motor vehicle and performance bond involved shall not be released unless the Administrator is satisfied with the certification.

(e) If a Registered Importer has received no written notice from the Administrator by the end of the 30th calendar day after it has furnished a certification to the Administrator, the Registered Importer may release from custody the vehicle that is covered by the certification, or have it licensed or registered for use on the public roads.

(f) If the Administrator accepts a certification without requiring an inspection, (s)he notifies the Registered Importer in writing, and provides a copy to the importer of record. Such notification shall be provided

not later than the 25th calendar day after the Administrator has received such certification.

(g) Release of the performance bond shall constitute acceptance of certification or completion of inspection of the vehicle concerned, but shall not preclude a subsequent determination by the Administrator pursuant to section 152 of the Act (15 U.S.C. 1451) that the vehicle fails to conform to any applicable Federal motor vehicle safety standard.

Issued on: September 26, 1989

Jeffrey R. Miller
Acting Administrator

54 F.R. 40083
September 29, 1989

PREAMBLE TO AN AMENDMENT TO PART 592

Registered Importers of Vehicles Not Originally Manufactured to Conform to Federal Motor Vehicle Safety Standards (Docket No. 86-6; Notice 3) RIN: 2127-AC97

ACTION: Technical amendments; final rule

SUMMARY: This notice contains technical amendments of the final rule published on September 29, 1989, which established requirements for the registration of importers of motor vehicles not originally manufactured to conform to the Federal motor vehicle safety standards. References to agents of the registered importer in section 592.5(c) and (d) are deleted. The amount of the bond referred to in section 592.6(a) is corrected to accord with that prescribed in Part 591. A redundancy in paragraphing in that section is corrected by redesignating certain paragraphs. A word inadvertently omitted in section 592.8(g) is inserted.

EFFECTIVE DATE: November 19, 1989.

SUPPLEMENTARY INFORMATION: On September 29, 1989, the agency established 49 CFR Part 592 *Registered Importers of Vehicles Not Originally Manufactured to Conform to Federal Motor Vehicle Safety Standards* (54 FR 40083). This action was in partial implementation of P.L. 100-562 The Imported Vehicle Safety Compliance Act of 1988. Under section 592.8(a), one of the duties of a registered importer is to furnish a bond "in an amount not less than the entered value of the vehicle, as determined by the Secretary of the Treasury, nor more than 150% of such value", to ensure that the vehicle is brought into compliance with the Federal safety standards. This was the bond amount specified by the 1988 Act, and proposed by NHTSA. However, in developing the final rules implementing the 1988 Act, NHTSA decided to require that the performance bond be the higher value, 150% of the entered value of the vehicle. This decision was reflected in the final rule on importation of motor vehicles, 49 CFR Part 591 *Importation of Vehicles and Equipment Subject to Federal Motor Vehicle Safety Standards* (54 FR 40069). In this rule, an importer of a nonconforming vehicle declares, in pertinent part that he has furnished a bond equal to 150% of the entered value of the vehicle (section 591.5(f)(1)), and the importer's declaration must be accompanied by a bond

in an amount equal to 150% of the entered value of the vehicle (section 591.6(c)). Accordingly, NHTSA is amending section 592.8(a) to specify the amount of the bond required by Part 591.

When Part 592 was proposed, it was contemplated that a registered importer could have agents to perform the actual compliance modifications on vehicles for which it was obliged to provide a certification of conformity to the Administrator. Because of comments to the docket, the agency decided that the purpose of the legislation would be better accomplished if registered importers had direct responsibility for conformance work, and the final rule sought to delete all references to agents. However, the agency overlooked two references to agents, and sections 592.5(b) and (c) are amended to remove these references.

As published, section 592.6(b) is followed by another paragraph, also designated (b). This error is corrected by redesignating the second paragraph (b) as paragraph (c), and redesignating succeeding paragraphs as appropriate. There do not appear to be any cross-references in part 592 or any other regulation requiring correction.

Finally, in section 592.8(g), the word "bond" was inadvertently omitted after the word "performance", and has been reinstated.

In consideration of the foregoing Part 592 of 49 CFR is amended as follows:

The first sentence of section 592.5(c) is amended by deleting the phrase "and/or its agents" so that the sentence ends with the word "applicant."

The second sentence of section 592.5(d) is amended by deleting the phrase "and agents, if any" so that the sentence ends with the word "applicant."

Section 592.6(a) is amended by deleting the phrase "a bond in an amount not less than the entered value of the vehicle, as determined by the Secretary of the Treasury, nor more than 150 per cent of such value," and replacing it with the phrase "a bond in an amount equal to 150 per cent of the entered value of the vehicle, as determined by the Secretary of the Treasury,".

In section 592.6, the second paragraph (b) is redesignated paragraph (c). Paragraphs (c), (d), (e), (f), (g), (h),

and (i) of that section are redesignated respectively paragraphs (d), (e), (f), (g), (h), (i), and (j).

Section 592.8(g) is amended by adding the word "bond" between the words "performance" and "shall."

Issued on: November 3, 1989

George L. Parker
Associate Administrator
for Enforcement

54 F.R. 47087
November 9, 1989

PREAMBLE TO AN AMENDMENT TO PART 592

Registered Importers of Vehicles Not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards

(Docket No. 89-6; Notice 4)
RIN 2127-AC97

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

ACTION: Technical Amendments; final.

EFFECTIVE DATE: The amendments are effective September 11, 1990.

SUMMARY: This notice contains technical amendments of the final rule published on September 29, 1989, which established requirements for the registration of importers of vehicles not originally manufactured to conform to the Federal motor vehicle safety standards. The amendments provide a more complete mailing address and a corrected FAX number.

SUPPLEMENTARY INFORMATION: On September 29, 1989, NHTSA published a notice that established 49 CFR Part 592, *Registered Importers of Vehicles Not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards* (54 FR 40083).

In section 592.5(a)(1), the address to which applications for registration as importers should be sent was stated simply as "Washington, D.C. 20590, Attn: Importer Registration." In section 592.8(b), the address or FAX number to which registered importers must submit certifications of compliance was stated simply as "Washington, D.C. 20590, Attn: NEF-32, or be submitted electronically by FAX (202-366-2536)."

NHTSA wishes to add a more complete address as well as to provide a new FAX number. Therefore it is adding a room number and street address to the addresses previously given, and revising the referenced FAX number. Because the amendments are technical in nature and have no substantive impact, it hereby found that notice and public comment thereon are unnecessary. Further, because the amendments are technical in nature, they are effective upon publication in the *Federal Register*.

In consideration of the foregoing part 592 of 49 CFR is amended as follows:

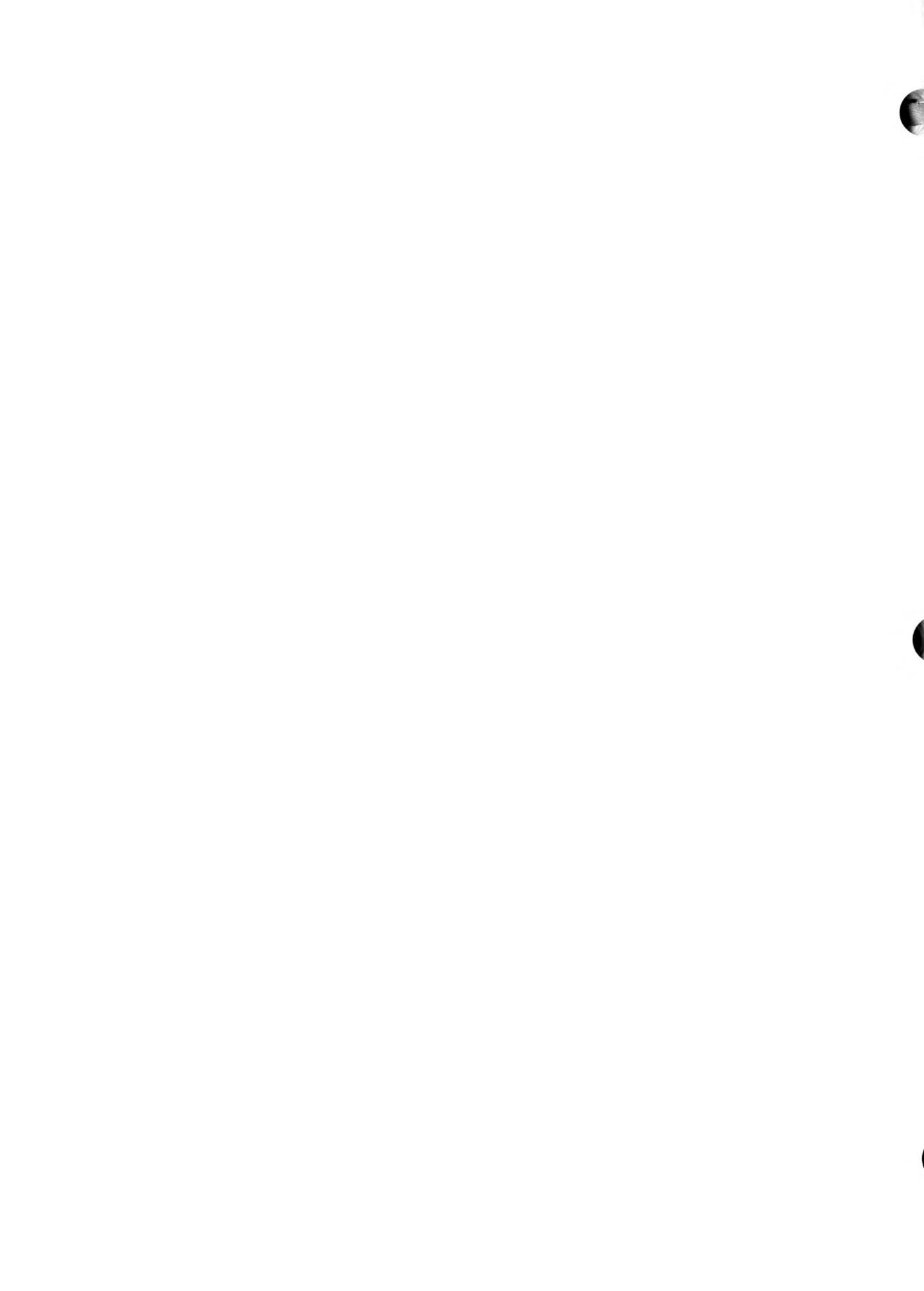
In section 592.5 (a)(1), the phrase "Washington, D.C., 20590 Attn: Importer Registration" is removed, and the phrase "Room 6115, 400 7th Street, S.W., Washington, D.C. 20590, Attn: NEF-32 Importer Registration" is inserted in its place.

In section 592.8(b), the phrase "Washington, D.C. 20590, Attn: NEF-32, or be submitted electronically by FAX (202-366-2536)" is removed and the phrase "Room 6115, 400 7th Street, S.W. Washington, D.C. 20590 Attn: NEF-32, or be submitted electronically by FAX (202-366-1024)" is inserted in its place.

Issued: September 1, 1990.

Jeffrey R. Miller
Deputy Administrator

55 F.R. 37329
September 11, 1990



PART 592—REGISTERED IMPORTERS OF VEHICLES NOT ORIGINALLY MANUFACTURED TO CONFORM TO THE FEDERAL MOTOR VEHICLE SAFETY STANDARDS

S592.1 Scope.

This part establishes procedures under section 108(c)(3)(D) of the National Traffic and Motor Vehicle Safety Act, as amended (15 U.S.C. 1397(c)(3)(D)), for the registration of importers of motor vehicles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards. This part also establishes the duties of Registered Importers.

S592.2 Purpose.

The purpose of this part is to provide content and format requirements for persons who wish to register with the Administrator as importers of motor vehicles not originally manufactured to conform to all applicable Federal motor vehicle safety standards, to provide procedures for the registration of importers and for the suspension, revocation and reinstatement of registration, and to set forth the duties required of Registered Importers.

S592.3 Applicability.

This part applies to any person who wishes to register with the Administrator as an importer of nonconforming vehicles, and to any person who is registered as an importer.

S592.4 Definitions.

All terms in this part that are defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391) are used as defined therein.

“Administrator” means the Administrator, National Highway Traffic Safety Administration.

“NHTSA” means the National Highway Traffic Safety Administration.

“Registered Importer” means any person that the Administrator has registered as an importer pursuant to section 592.5(b).

S592.5 Requirements for Registration and its Maintenance.

(a) Any person wishing to register as an importer of motor vehicles not originally manufactured to conform to all applicable Federal motor vehicle safety standards must file an application which:

(1) Is headed with the words “Application for Registration as Importer”, and submitted in three copies to: Administrator, National Highway Traffic Safety Administration, [Room 6115, 400 7th Street, S.W., Washington, D.C. 20590, Attn: NEF-32 Importer Registration. (55 F.R. 37329—September 11, 1990. Effective: September 11, 1991.)]

(2) Is written in the English language.

(3) Sets forth the full name, address, and title of the person preparing the application, and the name, address, and telephone number of the person for whom application is made.

(4) Sets forth, as applicable, the names of all owners, including shareholders, partners, or sole proprietors, of the person for whom application is made.

(5) If any of the owners listed in (4) above are corporations, sets forth the names of all shareholders of such corporation whose ownership interest is 10 percent or greater.

(6) Contains a statement that the applicant has never had a registration revoked pursuant to paragraph 592.7, nor is it or was it, directly or indirectly, owned or controlled by, or under common ownership or control with, a person who has had a registration revoked pursuant to paragraph 592.7.

(7) Contains a certified check payable to the Treasurer of the United States, for the amount of the initial annual fee established pursuant to Part 594 of this chapter.

(8) Contains a copy of a contract to acquire, effective upon its registration as an importer, a prepaid mandatory service insurance policy underwritten by an independent insurance company, or a copy of such policy, in an amount that equals

\$2,000 for each motor vehicle for which the applicant will furnish a certificate of conformity to the Administrator, for the purpose of ensuring that the applicant will be able financially to remedy any non-compliance or safety-related defect determined to exist in any such motor vehicle in accordance with Part 573 and Part 577 of this chapter. If the application is accompanied by a copy of a contract to acquire such a policy, the applicant shall provide NHTSA with a copy of the policy within 10 days after it has been issued to the applicant.

(9) Sets forth in full data, views, and arguments of the applicant sufficient to establish that the applicant will be able, through a records system of acquiring and maintaining names and addresses of owners of vehicles for which it furnishes a certificate of conformity, and Vehicle Identification Numbers (VINs) of such vehicles, to notify such owners that a noncompliance or safety-related defect exists in such vehicles, and that it will be financially able to remedy a noncompliance or safety related defect through repurchase or replacement of such vehicles, or technically able through repair of such vehicles, in accordance with Part 573 and Part 577 of this chapter.

(10) Segregates and specifies any part of the information and data submitted under this part that the applicant wishes to have withheld from public disclosure in accordance with Part 512 of this chapter.

(11) Contains a statement that the applicant will fully comply with all duties of a registered importer as set forth in paragraph 592.6.

(12) Has the applicant's signature acknowledged by a notary public.

(b) If the information submitted is incomplete, the Administrator notifies the applicant of the areas of insufficiency, and that the application is in abeyance.

(c) If the Administrator deems it necessary for a determination upon the application, NHTSA conducts an inspection of the applicant. Subsequent to the inspection, NHTSA calculates the costs attributable to such inspection, and notifies the applicant in writing that such costs comprise a component of the initial annual fee and must be paid before a determination is made upon its application.

(d) When the application is complete (and, if applicable, when a sum representing the inspection component of the initial annual fee is paid), it is reviewed and a determination made whether the applicant should be granted the status of Registered Importer. Such determination may be based, in part, upon an inspection by NHTSA of the conformance, storage, and recordkeeping facilities of the

applicant. If the Administrator determines that the application is acceptable, (s)he informs the applicant in writing that its application is approved and issues it a Registered Importer Number. If the information is not acceptable, the Administrator informs the applicant in writing that its application is not approved. No refund is made of those components of the initial annual fee representing the costs of processing the application, and conducting an inspection. Refund is made of that component of the initial annual fee representing the remaining costs of administration of the registration program.

(e) In order to maintain its registration, a Registered Importer shall provide an annual statement that affirms that all information provided under paragraphs (a)(4), (a)(5), (a)(6), (a)(9), and (a)(11) remains correct, and that includes a current copy of its insurance policy procured pursuant to paragraph (a)(8) of this section. "Such statement shall be titled Yearly Statement of Registered Importer", and shall be filed not later than October 31 of each year. A Registered Importer shall also pay such annual fee or fees as the Administrator may from time to time establish under Part 594 of this chapter. An annual fee shall be paid not later than October 31 of any calendar year, and shall be the annual fee for the fiscal year that began on October 1 of that calendar year. Any other fee shall be payable not later than 30 calendar days after the date that the Administrator has notified the Registered Importer of it in writing.

(f) A Registered Importer shall notify the Administrator in writing of any change that occurs in the information which is submitted in its application, not later than the end of the 30th calendar day after such change.

(g) A registration granted under this part is not transferable.

592.6 Duties of a Registered Importer.

Each Registered Importer shall:

(a) With respect to each motor vehicle that it imports into the United States, furnish to the Secretary of the Treasury (acting on behalf of the Administrator) [a bond in an amount equal to 150 percent of the entered value of the vehicle, as determined by the Secretary of the Treasury,] to ensure that such vehicle either will be brought into conformity with all applicable Federal motor vehicle safety standards prescribed under Part 571 of this chapter within 120 calendar days after such importation, or will be exported (at no cost to the United States) by the importer or the Secretary of the Treasury, or abandoned to the United States.

[(b)] Establish, maintain, and retain for 8 years from the date of entry of any nonconforming vehicle for which it furnishes a certificate of conformity pursuant to paragraph (e) of this section, organized records, correspondence and other documents relating to the importation, modification, and substantiation of certification of conformity to the Administrator, including but not limited to:

(1) The declaration required by paragraph 591.5 of this chapter, and 19 CFR 12.80.

(2) All vehicle or equipment purchase or sales orders or agreements, conformance agreements with importers other than Registered Importers, and correspondence between the Registered Importer and the owner or purchaser of each vehicle for which it has furnished a certificate of conformity.

(3) The last known name and address of the owner or purchaser of each motor vehicle for which it has furnished a certificate of conformity, and the VIN number of such vehicle.

(4) Records, both photographic and documentary, reflecting the modifications made and submitted to the Administrator pursuant to paragraph (e) of this section.

[(c)] Records, both photographic and documentary, sufficient to substantiate each subsequent certificate furnished to the Administrator for a vehicle of the same model and model year for which documentation has been furnished NHTSA in support of the initial certificate.

[(d)] Permanently affix to each motor vehicle, upon completion of modifications, a label that meets the requirements of paragraph 567.4 of this chapter, which identifies the Registered Importer, and provide to the Administrator a photocopy of the label attesting that such vehicle has been brought into conformity with all applicable Federal motor vehicle safety and bumper standards.

[(e)] Certify to the Administrator, upon completion of modifications, that the vehicle has been brought into conformity with all applicable Federal motor vehicle safety and bumper standards, and that it is the person legally responsible for bringing the vehicle into conformity.

[(f)] In substantiation of the initial certification provided for a specific model and model year, submit to the Administrator photographic and documentary evidence of conformance with each applicable Federal motor vehicle safety and bumper standard, and with respect to subsequent certifi-

cations of such model and model year, such information, if any, as the Administrator may request.

[(g)] With respect to any motor vehicle for which it has furnished a certificate of conformity to the Administrator, provide notification and remedy according to Part 573 and Part 577 of this chapter upon any determination:

(1) That a vehicle to which it is substantially similar, as determined under Part 593 of this chapter, incorporates a safety-related defect or fails to conform with an applicable Federal motor vehicle safety standard. However, this obligation does not exist if the manufacturer of the vehicle or Registered Importer demonstrates to the Administrator that the defect or noncompliance is not present in such vehicle.

(2) That the vehicle incorporates a safety-related defect or fails to conform with an applicable Federal motor vehicle safety standard, without reference to whether such may exist in a vehicle to which it is substantially similar, or whether such exists because it was created by the original manufacturer or by the Registered Importer.

(i) The requirement of 15 U.S.C. 1414(a)(2)(B) that remedy shall be provided without charge shall not apply if the noncompliance or safety-related defect exists in a motor vehicle whose first sale after importation occurred more than 8 calendar years before notification respecting the failure to comply is furnished pursuant to Part 577 of this chapter, except that if a safety-related defect exists and is attributable to the original manufacturer and not the Registered Importer, the requirements of 15 U.S.C. 1414(a)(2)(B) shall not apply to a motor vehicle whose date of first purchase, if known, or, if not known, whose date of manufacture, as determined by the Administrator, is more than 8 years from the date on which notification is furnished pursuant to Part 577 of this chapter.

(ii) Notification furnished pursuant to this paragraph and Part 577 of this chapter shall include the statement that in the absence of the Registered Importer's facility being within 50 miles of the owner's mailing address for performance of repairs, such repairs may be performed at a specific facility designated by the Registered Importer within 50 miles, or, if no such facility is designated, anywhere, and shall also include an explanation how repair is to be accomplished without charge to the vehicle owner.

[(h)] In order to allow the Administrator to determine whether a Registered Importer is meeting its statutory responsibilities, admit representatives of NHTSA during operating hours, upon demand, and upon presentation of credentials, to copy documents, or to inspect, monitor, or photograph any of the following:

(1) Any facility where any vehicle, for which a Registered Importer has the responsibility of providing a certificate of conformity to applicable safety standards, is being modified, tested, or stored;

(2) Any facility where any record or other document relating to modification, testing, or storage of vehicles being conformed, is filed;

(3) Any part or aspect of activities relating to the modification, testing, and/or storage of vehicles by the Registered Importer;

(4) Any motor vehicle for which it has provided a certification of conformity to the Administrator, and which remains in its custody or under its control.

[(i)] Maintain in effect a prepaid mandatory service insurance policy underwritten by an independent insurance company as a guarantor of its performance under paragraph (f) of this section.

[(j)] With respect to any motor vehicle it has imported and for which it has furnished a performance bond, to deliver such vehicle to the Secretary of the Treasury for export, or to abandon it to the United States, upon demand by the Administrator if such vehicle has not been brought into conformity with all applicable Federal motor vehicle safety standards. (54 F.R. 40083—November 9, 1989. Effective: November 9, 1990)

S592.7 Revocation, Suspension and Reinstatement of Registration.

(a) If the Administrator has not received any fee assessed and owing by the end of the 30th calendar day after such fee is due and payable, a registration is automatically suspended at the beginning of the 31st calendar day, and the Registered Importer is immediately notified in writing of the suspension at the address contained in its most recent annual statement or amendment thereof.

(b) If the Administrator has reason to believe that a Registered Importer has knowingly filed a false or misleading certification and that its registration should be automatically suspended or revoked, (s)he notifies the Registered Importer in writing of the

facts giving rise to such reason to believe, affording an opportunity to present data, views, and arguments, either in writing or in person, within 30 calendar days after receipt of the Administrator's letter, as to whether it has submitted false or misleading certification, and as to why the registration ought not to be revoked or suspended. The Administrator then makes a decision after the 30-day period on the basis of all information then available. If, after consideration of all the data available, the Administrator determines that the Registered Importer has knowingly filed a false or misleading certification, the registration is automatically suspended or revoked, and the Registered Importer notified in writing. Any suspension or revocation is effective as of the date of the Administrator's determination. The Administrator shall state the period of any suspension in the notice to the Registered Importer.

(c) The Administrator may suspend a registration if a Registered Importer fails to comply with any requirement set forth in 15 U.S.C. 1397(c)(3)(D), paragraph 592.5(c), or paragraph 592.6, or if s(he) denies an application filed under paragraph 592.5(d). The Administrator may revoke a registration after any failure to comply with any such requirement, or if (s)he denies an application filed under paragraph 592.5(d). If the Administrator has reason to believe that there has been such a failure to comply and that the Registered Importer's registration should be revoked or suspended, (s)he notifies the Registered Importer in writing, affording an opportunity to present data, views, and arguments, either in writing or in person, within 30 calendar days after receipt of the Administrator's letter, as to whether there has been a failure to comply and as to why the registration ought not to be revoked or suspended. The Administrator then makes a decision after the 30-day period on the basis of all information then available. If the Administrator determines that a registration should be revoked or suspended, (s)he notifies the Registered Importer in writing. A revocation is effective immediately. A suspension is effective beginning with a date specified in the written notification.

(d) A Registered Importer whose registration has been revoked or suspended may request reconsideration of the revocation or suspension if the request is supported by factual matter which was not available to the Administrator at the time the registration was suspended or revoked.

(e) If its registration has been revoked, a Registered Importer is ineligible to apply for

re-registration under this part. No refund is provided of any annual or other fees the Registered Importer has paid for the fiscal year in which its registration is revoked. If its registration has been suspended it may file an application for reinstatement of its registration.

(f) The Administrator shall reinstate a suspended registration if the cause that led to the suspension no longer exists, as determined by the Administrator, either upon the Administrator's motion, or upon the submission of further information or fees by the Registered Importer.

S592.8 Inspection; Release of Vehicle and Bond.

(a) With respect to any motor vehicle for which it is obligated to provide a certificate of conformity to the Administrator as required by paragraph 592.6(d), a Registered Importer shall not obtain licensing or registration of the motor vehicle for use on the public roads, or release custody of it for such licensing and registration, except in accordance with the provisions of this section.

(b) When conformance modifications to a motor vehicle have been completed, a Registered Importer shall submit the certification required by paragraph 592.6(d) to the Administrator. In certifying a vehicle that the Administrator has determined to be substantially similar to one that has been certified by its original manufacturer for sale in the United States, the Registered Importer may rely on any certification by the original manufacturer with respect to identical safety features if it also certifies that any modification that it undertook did not affect the compliance of such safety features. Each submission shall be mailed by certified mail, return receipt requested, or by private carriers such as Federal Express, to: Administrator, National Highway Traffic Safety Administration, [Room 6115, 400 7th Street, S.W., Washington, D.C. 20590, Attn: NEF-32, or be submitted electronically by FAX (202) 366-1024, or in person.] Each submission shall identify the location where the vehicle will be stored and is available for inspection, pending NHTSA action upon the submission. (55 F.R. 37329—September 11, 1990. Effective: September 11, 1991.)

(c) Before the end of the 30th calendar day after receipt of certification of a motor vehicle pursuant to paragraph 592.6(d), the Administrator may inform the Registered Importer in writing that an inspection of the vehicle is required to ascertain the veracity of the certification. Written notice includes a proposed inspection date, which is as soon as practicable. If inspection of the vehicle indicates that the vehicle has been properly certified, at the conclusion

of the inspection the Registered Importer is provided an instrument of release. If inspection of the vehicle shows that the vehicle has not been properly certified, the Registered Importer shall either make the modifications necessary to substantiate its certification, and provide a new certification for the standard(s) in the manner provided for in paragraph (b) of this section, or deliver the vehicle to the Secretary of the Treasury for export, or abandon it to the United States. Before the end of the 30th calendar day after receipt of new certification, the Administrator may require a further inspection in accordance with the provisions of this subsection.

(d) The Administrator may by written notice request certification verification by the Registered Importer before the end of the 30th calendar day after the date the certification was received by the Administrator. If the basis for such request is that the certification is false or contains a misrepresentation, the Registered Importer shall be afforded an opportunity to present written data, views, and arguments as to why the certification is not false or misleading or does not contain a misrepresentation. The Administrator may require an inspection pursuant to paragraph (c). The motor vehicle and performance bond involved shall not be released unless the Administrator is satisfied with the certification.

(e) If a Registered Importer has received no written notice from the Administrator by the end of the 30th calendar day after it has furnished a certification to the Administrator, the Registered Importer may release from custody the vehicle that is covered by the certification, or have it licensed or registered for use on the public roads.

(f) If the Administrator accepts a certification without requiring an inspection, (s)he notifies the Registered Importer in writing, and provides a copy to the importer of record. Such notification shall be provided not later than the 25th calendar day after the Administrator has received such certification.

(g) Release of the performance bond shall constitute acceptance of certification or completion of inspection of the vehicle concerned, but shall not preclude a subsequent determination by the Administrator pursuant to Section 152 of the Act (15 U.S.C. 1451) that the vehicle fails to conform to any applicable Federal motor vehicle safety standard.

**54 F.R. 40083
September 29, 1989**



PREAMBLE TO AN AMENDMENT TO PART 593

Determinations That a Vehicle Not Originally Manufactured to Conform to Federal Motor Vehicle Safety Standards is Eligible for Importation) (Docket No. 89-7; Notice 2) RIN: 2127-AC99

ACTION: Final rule

SUMMARY: Effective January 31, 1990, the National Traffic and Motor Vehicle Safety Act, as amended by the Imported Vehicle Safety Compliance Act of 1988, will place new limits on the importation of foreign motor vehicles not originally manufactured to meet Federal motor vehicle safety standards. The 1988 amendments prohibit, with certain exceptions, the importation of such a vehicle unless it is a model that meets specified eligibility criteria. The criteria are that the model is determined by this agency to be substantially similar to one that was originally manufactured for importation and sale into the United States, and that it is capable of being readily modified to conform to the Federal safety standards. Alternatively, for a model for which there is not a substantially similar vehicle, the agency must determine that the safety features of the model comply or are capable of being modified to comply with the safety standards. This rule adopts procedural regulations for petitions and for determinations regarding the meeting of these criteria. Most details of the rule are dictated by the 1988 amendments.

EFFECTIVE DATE: October 30, 1989

SUPPLEMENTARY INFORMATION: On October 31, 1988, the President signed into law the Imported Vehicle Safety Compliance Act of 1988, P.L. 100-562 ("the 1988 Act"). The Act amends those provisions of the National Traffic and Motor Vehicle Safety Act of 1966 ("the Vehicle Safety Act") that relate to the importation of motor vehicles subject to the Federal motor vehicle safety standards (Section 108(b), 15 U.S.C. 1397(b)). The 1988 Act imposes restrictions upon the eligibility of motor vehicles for importation. The principal restriction upon a motor vehicle is that it cannot be imported at all unless NHTSA determines that the motor vehicle model is capable of modification to meet the Federal safety standards. Determinations will be made on NHTSA's own initiative, or upon

petition of any registered importer (see discussion below) or any motor vehicle manufacturer, and will be subject to public comment. A notice of proposed rulemaking on this subject was published on April 25, 1989 (54 FR 17786).

As the agency explained in the notice, and repeats here so that readers may have an overview of the determination process, a nonconforming vehicle may be imported under either of the following two scenarios. The first scenario will involve the making of two determinations by the agency: that the nonconforming model is substantially similar to a model of the same "model year" which was originally manufactured for importation into and sale in the U.S. and was certified as conforming to the Federal safety standards, and that a vehicle belonging to the model is capable of being readily modified to conform fully with the applicable standards.

The second scenario will arise if the agency has not made a substantial similarity determination regarding a model. In that case, it will still be permissible to import a vehicle of that model if the agency determines that its safety features comply with the U.S. standards, or are capable of being modified to comply with those standards, "based on destructive crash data or such other evidence" as NHTSA determines is adequate.

Under either scenario, a positive determination regarding a model will permit *any* registered importer to import vehicles of the same model that are covered by that determination.

If the agency makes a negative determination regarding a model's ability to be modified, the agency will be temporarily prohibited from taking up the issue again. If the decision was made in response to a petition, the 1988 Act prohibits the agency from considering a petition regarding the same model of vehicle until at least 3 months after that decision. If the negative determination was made in a proceeding begun at the agency's own initiative, the agency will not be able to make another determination regarding the same model of motor vehicle until at least 3 months after the negative one.

NHTSA is attempting in this rulemaking action to formulate a program that will ensure that all imported motor vehicles conform to the Federal motor vehicle safety standards without imposing unnecessary burdens on importers. Therefore, NHTSA has tried in this rule to impose only those requirements that are mandated by the 1988 Act, with amplifications only where it appeared necessary to implement the safety intent of the statute.

There were four substantive comments submitted on the proposal, by Mercedes-Benz of North America, Auburn Motors, Europa International, Inc., and George Ziolo.

593.5 Petitions for eligibility determinations.

Paragraph 593.5 establishes the requirements for submissions of petitions for determinations that a motor vehicle not originally manufactured to conform with the Federal motor vehicle safety standards is eligible for importation into the United State. New section 108(c)(3)(C)(i)(I) of the Vehicle Safety Act requires the Administrator to make eligibility determinations “on the petition of any registered importer or any manufacturer”. Under this Act, a “manufacturer” is defined to include any person who imports vehicles for resale. Thus, “manufacturer” excludes the individual who imports a vehicle, through a registered importer, for his or her own use. It also excludes the general public and trade associations.

The basic procedural requirements for a petition are similar to those the agency specifies for other petitions: that they be in the English language, state the full name and address of the petitioner, be submitted in 3 copies to the Administrator, state the basis upon which petition is made, and specify any part of the submission for which confidential treatment is requested. The petition must be accompanied by a certified check for the amount of the vehicle eligibility petition fee established in accordance with Part 594.

Europa International asked that documentation substantiating vehicle alterations be withheld from public dockets for proprietary reasons, as its release would enable others to modify without compensation to the original registered importer. This is a request that must be made by a petitioner when petitioning. In the absence of such a request, confidential treatment will not be afforded by NHTSA. When a request for confidentiality is made, the request is referred to the Office of Chief Counsel for a determination, and the petitioner informed of such a determination. The agency proposed (and is adopting) paragraph 593.10(b) under which information made available for public inspection does not include information for which confidentiality has been requested and granted. With specific reference to Europa’s comment, NHTSA notes that paragraph (b) provides that “to the extent that a petition contains material relating to the methodology by which the petitioner intends to achieve conformance

with a specific standard, the petitioner may request confidential treatment of such material on the grounds that it contains a trade secret or confidential information”.

Those who wish to request confidential treatment should be advised that consideration of the merits of the petition will be in abeyance until resolution of confidentiality requests, and that this delay should be taken into consideration in the petitioner’s plans. Therefore, petitioners are encouraged to make arguments relating to a vehicle’s capability of conformance that minimize discussion of specific design solutions of a possibly proprietary nature (which are entirely appropriate as support for certificates of conformity).

593.6 Basis for petition.

Paragraph 593.6 details the information to be provided in support of the petition. In accordance with the proposal, the agency has not specified the number and types of components that must be identified as capable of modification in order to demonstrate compliance with each applicable standard (the petitioner must, of course, show that a vehicle is readily modifiable, or capable of modification, as the case may be, so that it will comply with *all* applicable safety standards). Since the Federal motor vehicle safety standards are performance standards, NHTSA believes that registered importers, like original manufacturers, should be free to reach individual design solutions. Whether a petitioner’s arguments are persuasive will be reflected in the agency’s eventual determination. NHTSA’s conclusions will be explained in a notice of determination published in the *Federal Register*.

593.6(a) petitions on the basis of substantial similarity.

If the basis of the petition is that the model for which a determination is sought is substantially similar to one that was originally manufactured for importation into and sale in the United States, and which bore a certification of compliance affixed by its original manufacturer, the petitioner must identify the original manufacturer of the certified vehicle, and the model and model year of the vehicle to be compared (paragraph 593.6(a)(1) and (2)), and substantiate that the certified vehicle was in fact certified (paragraph 593.6(a)(3)). It must also submit data, views, and arguments, with respect to each applicable Federal motor vehicle safety standard, that the vehicle is capable of being readily modified to meet that standard (paragraph 593.6(a)(4) and (5)).

The phrases “substantially similar” and “capable of being readily modified” are not defined by the 1988 Act. However, NHTSA begins with the assumption that a vehicle that is “substantially similar” to one that was originally manufactured for importation and sale in the United States which bore its original manufacturer’s certification is one whose visual appearance and structural details are “substantially similar” to the certified model. For example, a Renault

21 manufactured in France could be viewed as "substantially similar" to the Renault/Eagle Medallion, manufactured in France and certified by Renault for sale in the United States because its exterior sheetmetal appears virtually identical. On the other hand, a Renault 25 manufactured in France would not be viewed as substantially similar to the Eagle Premier manufactured in Canada and certified by Chrysler for sale in the United States, even though Chrysler purchases the platform and drive train of the Premier from Renault. Both its exterior and interior appearance and components differ from that of the Premier. There is no common exterior sheetmetal, different dash panels and seats are provided, and there is no interchangeability between doors and glazing. Comments were requested on the degree of interior and exterior similarity of appearance and structural details, and on the extent of parts interchangeability necessary to support a determination of substantial similarity. Comments were also requested as to what parts are most critically related to compliance with the standards, particularly those standards which specify dynamic vehicle crash testing or other types of destructive testing.

Obviously, if a vehicle already conforms to a safety standard, the question of modification capability is not reached. To substantiate that no modifications are required with respect to that standard, a petition may be supported by a letter from the vehicle's original manufacturer confirming that the vehicle model under consideration was manufactured to comply with the standard. This method of substantiation would be appropriate for petitions based on substantial similarity as well as for petitions which are not so based.

Auburn Motors commented that recognition should be given that vehicles certified as meeting Canadian standards are virtually identical to U.S. ones, and that they should be exempted from the final rule. It submitted a letter from American Honda stating that in model years 1988 and 1989, cars manufactured for both markets were identical. The agency notes that, at the present time, there is a notable similarity between the U.S. and Canadian motor vehicle safety standards. However, since they are not in all respects similar, it cannot grant Auburn's request. NHTSA does believe that there is a strong basis on which a petitioner could argue that there is a "substantial similarity" of Canadian vehicles compared with U.S. ones. Further, if the Canadian-manufactured Hondas are not certified as meeting U.S. standards, the manufacturer's letter attesting to identity could serve as the basis for the certificate of conformity that the Registered Importer of such vehicle must provide the Administrator. In summary, the agency recognizes that importers of vehicles certified as meeting the Canadian Standards but not the U.S. ones will have a less difficult time of meeting the criteria of the 1988 Act than importers of

vehicles manufactured to conform to European or Asian standards.

As for whether a vehicle is "capable of being readily modified", NHTSA's proposal suggested, as the first level of decision, that many components that are visible when the vehicle is fully assembled may be considered capable of being readily modified when they may be easily replaced with parts intended as replacement for conforming parts on substantially similar certified vehicles. For passenger cars, these components would include, but are not limited to, tires (Standard No. 109), rims (Standard No. 110), and wheel cover (Standard No. 211), glazing marking (Standard No. 205), reflecting surfaces (Standard No. 107), controls and displays (Standard No. 101), and lighting devices (Standard No. 108). Other components, not readily visible, are also easily replaced with conforming parts. These include brake hoses (Standard No. 106), and brake fluid (Standard No. 116). In this event, the petitioner could provide in its petition the part numbers of the components that would be substituted to achieve conformance. In its comment, Mercedes-Benz observed that these components could be those with the same part numbers utilized by the original manufacturer during the same model year and on the same model.

However, this first level of decision, based upon replacement of parts, could not determine conformance with vehicle rather than equipment standards. Visual inspection would not indicate whether the steering column would need to be replaced so that the vehicle would comply with Standard No. 204, or whether the interior fabrics (other than leather) would meet the flammability resistance required by Standard No. 302, because these tests incorporate destructive demonstration procedures.

The second level of decision then rests upon the question of whether the modifications necessary for conformance are "readily" achievable. In this instance, a petitioner would be expected to submit data showing that conformance can be achieved without extensive modifications, i.e., information demonstrating that compliance can be achieved without major structural modifications or destructive component testing. A major structural modification could mean, for example, strengthening of the rear frame bars in order to achieve conformance with Standard No. 301. An example of a non-major structural modification could be installation of windshield retaining clips for conformance with Standard No. 212. On the assumption that a "substantially similar" vehicle may be more likely to incorporate structural features of vehicles certified by their original manufacturer for sale in the U.S., than vehicles for which there is no U.S. certified model, the Administrator may be more willing to accept data other than crash data to indicate that a vehicle is readily modifiable to achieve conformance. On the other hand, a vehicle would not appear to be

capable of being readily modified of major structural modifications are required for compliance. Although each petition for substantial similarity determinations will be decided on the merits of the arguments presented, it does not appear that a vehicle without the following conforming components can be readily modified to achieve conformance with the applicable standards: automatic restraints (Standard No. 208), seat belt anchorages (Standard No. 210), roof structure (Standard No. 216), windshield intrusion (Standard No. 219), and fuel system components (Standard No. 301).

NHTSA requested comments on its assumptions and tentative interpretations of “substantially similar” and “capable of being readily modified”. In addition, NHTSA was concerned about the possibility that vehicles which appear “substantially similar” to the eye are much less so under the exterior sheetmetal. Therefore, NHTSA also requested comments on the similarity of structural components in such vehicles, such as similarity of dimensions behind the dashboard, roof rails, engine compartment, trunk space, and other structural areas for vehicles that are visually similar. Further, it requested comments on the degree of similarity in the dynamic crush and crush pulse signature of the imported vehicles in front and rear end impacts. At the present time, the agency is not fully sure about the degree of the under-skin similarity of vehicles, and these factors may have to be taken into account in petitions and determinations. The agency is particularly concerned with these issues as they relate to passenger cars manufactured by Mercedes-Benz, BMW, and Jaguar during the past 10 years. On the basis of past experience, NHTSA anticipates that well over 90 percent of vehicles to be imported under the new requirements will be products of these manufacturers.

There was little response to this request. The sole substantive commenter on these points was Mercedes-Benz of North America. Mercedes concurred that NHTSA had correctly identified the standards for which a substantial similarity/readily modifiable test cannot be met. It cautioned against making a determination on arguments alone, citing the fact that a Mercedes with a European airbag does not meet the requirements of Standard No. 208. Further, it viewed as totally inappropriate NHTSA’s request for an analysis of parts by an original equipment manufacturer. It commented that this would amount to a checklist for modification, and an admission that all other factors comply. The agency does not agree with the conclusion reached by Mercedes. In the present absence of any experience with making any determinations under the 1988 Act, it does not intend to be restricted as to the sources it may consult in making these determinations. Resort to OEM data in this instance assists only in a determination that a vehicle

is readily capable of being modified to conform, and not an admission by the manufacturer that the vehicle does in fact conform.

593.6(b) Petitions on basis of modification capability.

Similar considerations apply if a vehicle is not substantially similar to any vehicles that have been or are being certified as complying with the U.S. Standards and imported into the United States. For such a vehicle, the basis of a petition would be that its safety features comply with, or are capable of being modified to comply with the safety standards to which it would have been subject at the time of its manufacture had it been originally intended for importation into the United States (paragraph 593.6(b)). Because there is no substantially similar model certified for sale in the United States, the statute does not specify that determinations be made with reference to model years. Cognizant of the fact that foreign vehicles may be produced for a number of years without major changes, the Administrator could make a determination applicable to vehicles produced within a model year, or manufactured during a stated inclusive period. Tentatively choosing a conservative approach, the agency proposed that “capability of modification” determinations also be petitioned for on a model year basis (paragraph 593.6(b)(1)). With vehicles whose features relevant to conformance capability have not changed with a model year, the agency wishes to state that a petition may request a determination for more than one model year if it is accompanied by substantiation.

With respect to the alternative basis of petitions, as with “substantially similar” vehicles, a determination “that the vehicle’s safety features comply” could be made on the basis of a letter of confirmation from the vehicle’s original manufacturer, or through visual inspection where appropriate. However, the 1988 Act assumes that full conformance with the safety standards may be more difficult to achieve for a non-similar vehicle than for a vehicle that is “substantially similar” to a certified one, as it states that NHTSA’s determination shall be “based on destructive test data or such other evidence as the [Administrator] determines to be adequate”. In this instance, it would appear that far more detailed information might be required to demonstrate capability of modification with those standards listed at the end of the prior discussion on substantially similar vehicles. Crash test data may be preferable to demonstrate that vehicles are capable of being modified to conform with those standards that incorporate barrier impact demonstration procedures (Standards Nos. 201, 204, 208, 212, 219 and 301). NHTSA contemplates that a registered importer, or a group of registered importers, planning to import a large number of a particular model might crash test one or more such vehicles in order to generate data to file with a petition. If a petitioner did not wish to conduct a crash test, then the question would arise as

to the “adequacy” of alternate means of demonstration that the vehicle is capable of being modified to achieve conformance. NHTSA therefore requested specific comments as to the adequacy of computer simulations, engineering analyses, and mathematical calculations as alternative bases of demonstrating compliance with the six safety standards listed above, as well as others, such as Standard No. 105 *Hydraulic Brake Systems*. It called attention to the fact that, in the final rule, with respect to these standards, it may be satisfied with nothing less than crash data, or a letter from the vehicle’s original manufacturer confirming compliance.

The agency also requested comments with respect to alternate types of evidence of compliance, and their suitability with respect to each of the other standards with complex laboratory demonstration procedures. For example, it asked whether computer simulations or mathematical calculations are acceptable indicators of the performance of components such as door latches and hinges (Standard No. 206) or seat anchorages (Standard No. 207) to withstand certain specified minimum forces. Neither method would appear to be acceptable as a demonstration of the lack of flammability of interior materials (Standard No. 302). For demonstrations of compliance with Standard No. 302, it might be necessary to submit an analysis of the fabric, or to test fabric actually from the vehicle, for example. The Administrator would determine the adequacy of the alternative types of evidence.

Mercedes-Benz concurred with NHTSA’s statements on decisions based on destructive test data. It advised that computer simulations should be used only in infrequent circumstances, and recommended that a showing be made by the petitioner that the intended simulation is considered reliable by the vehicle testing industry, such as recognition through a standard of the SAE or ASTM. Once that test has been met, Mercedes further recommended that the petitioner should show that the variables it intends to use in the simulation are derived from actual data on the specific vehicle that is the subject of the petition. Otherwise, a petitioner should not be allowed to make assumptions about data in the absence of backup documentation. If there is no such data, NHTSA should require full scale dynamic crash testing. As the submission by each petitioner will differ, NHTSA does not deem it advisable to adopt Mercedes’ comments as a regulation, but it will consider them in evaluations of relevant petitions. The reasons for NHTSA’s decisions, of course, will be published in the *Federal Register*.

George Ziolo commented that NHTSA should allow submission of evidence of compliance with foreign standards such as those of the ECE and ISO, many of which may use U.S.-based standards for their rules. In his view, “the effect” may be the same, even if the wording differs. Submission of foreign standards, he argues, is especially relevant if NHTSA intends to

allow “engineering calculations” in lieu of crash tests. In response, NHTSA wishes to make it clear that there are no restrictions on the type of data that a petitioner may submit. A petitioner may support its arguments by showing similarities between foreign and U.S. standards.

NHTSA noted in the proposal that the proposed petition requirements were drafted in somewhat general terms, so as to afford petitioners flexibility in presenting arguments and solutions of a performance, rather than of a design nature. This was in keeping with the performance orientation of the Federal motor vehicle safety standards. It further noted the possibility that, on the basis of comments, the final rule might be more detailed as to the types of data required to substantiate compliance with each of the safety standards. After considering these comments, NHTSA has adopted a non-detailed requirement in paragraph 593.6(b), which is virtually identical to the one proposed.

As a general comment, Mercedes-Benz objected to the use of the term “views and arguments” as a throwback to the old gray market program, and viewed it as an invitation for disputes. This term appears as “data, views and arguments” in paragraphs 593.6(a)(4) and (b)(2). “Views and arguments” is a necessary complement to “data”, which invariably will need interpretation and explanation. Because the agency is not requiring a demonstration of actual conformance, it has concluded that a petitioner’s “views and arguments” are necessary to support its petition for a determination of conformance capability.

The procedural requirements for both types of petitions require identification of “models” and “model years”. The agency did not find it necessary to propose a definition of “model”. It believes that a petitioner will identify with sufficient clarity the vehicles that it wishes to import, and that comparable U.S. models will have comparable designations. For example, Mercedes and BMW use the same series designations for both U.S. and European models, though secondary nomenclature may differ in minor respects, reflecting variations in the type of engines. No comments were received on this point.

Section 108(c)(3)(A)(i)(I) allows NHTSA to define “model year” by regulation. NHTSA has not heretofore done so with respect to compliance with the Federal motor vehicle safety standards, because the standards have never applied by model year, but are effective on a date certain. In recent years, NHTSA has, with respect to major standards, designated September 1 as the effective date of new requirements, although in earlier years, the effective date was frequently January 1. As an example, the center high-mounted stop lamp provisions of Standard No. 108 were effective for passenger cars manufactured on or after September 1, 1985. While this substantially correlates to the 1986-model year, there was no legal requirement that a 1986 model

manufactured before September 1, 1985, be equipped with this feature. Thus, with respect to certain “model years”, different standards may be in effect. NHTSA does not view this as an especially complicating factor. However, from time to time, it may have to make determinations with respect to different periods within a model year.

NHTSA proposed that “model year” be defined as either the model year designated by the manufacturer irrespective of the calendar year in which the vehicle was actually produced, or, in the absence of the manufacturer’s designation, the calendar year that begins on September 1 and ends on August 31 of the next calendar year. Mercedes-Benz commented that the model year should be that of the original manufacturer which in Europe is often determined by regulations of individual countries. It suggested that the definition state that the designation by the country of origin should control. Otherwise, it said, the agency should use the definition of the California Air Resources Board. After reviewing these comments, the agency has adopted its proposed definition, but added a designation by country of origin as an alternative to the manufacturer’s designation to be considered before consideration of the final alternative of designation by the September 1-August 31 calendar year.

593.7 Processing of petitions.

If a petition is filed on the basis that the vehicle is “substantially similar” to a certified one, and the Administrator cannot make such a determination, that does not mean that the petition is automatically denied. In that event, the Agency will inform the petitioner that it cannot make a determination on the basis petitioned for, but is willing to proceed to a consideration on the alternative basis, and make a determination on conformance, or capability of conformance, of the vehicle’s safety features, on the basis of such further supporting information as the petitioner may care to submit (paragraph 593.7(d)).

The procedural aspects of eligibility determinations are similar to other agency regulations regarding petitions and their dispositions (*see, e.g.*, 49 CFR 555.7 on temporary exemptions from safety standards). Notice of a petition (or agency initiative) will be published in the *Federal Register* and an opportunity afforded for comment (paragraph 593.7(b)). No public hearing, argument, or other formal proceeding will be held directly on the matter before a determination is made (paragraph 593.7(c)). After a decision, the agency will publish a second notice in the *Federal Register* constituting the determination whether the vehicle is eligible or ineligible for importation. If the vehicle is ineligible for importation, the notice will contain the earliest data on which the Administrator is statutorily able to consider the matter anew (paragraph 593.7(e)).

If the vehicle is eligible for importation, the notice contains the reasons for the grant (paragraph 593.7(f)).

Mercedes-Benz recommended that the burden on the petitioner should be to “clearly establish” conformance capability under either basis. That company said that this approach would increase the accuracy of NHTSA’s determinations, and reduce the potential for disagreement over the quality of data needed to establish compliance. This recommendation appears to be based upon the requirement of Section 108(c)(3)(C)(ii) which says that “The Secretary shall establish by regulation (I) the information required to be provided by the petitioner to clearly show that the vehicle is capable of being brought into compliance. . . .” NHTSA agrees with Mercedes that this is a burden to be met by the petitioner. In the final rule, the agency is adding the word “clearly” as a modifier of the word “demonstrate” relevant to the finding that the Administrator must make (paragraphs 596.7(e) and (f)).

Finally, in order to demonstrate that a vehicle is capable of conformance, the agency is willing to permit a registered importer to import a nonconforming vehicle for modification and demonstration purposes under the appropriate provision of Part 591, paragraph 591.5(j).

593.8 Determinations on the agency’s initiative.

Section 108(c)(3)(C)(i)(I) of the Vehicle Safety Act also provides that the agency may make determinations on its own initiative. NHTSA will proceed with such determinations in a manner similar to those made by petition. A notice requesting public comment will appear in the *Federal Register*, specifying the basis upon which the Administrator is considering a determination (paragraph 593.8(a)). No formal proceeding will be held (paragraph 593.8(b)). A second notice containing the decision will be published in the *Federal Register*. There is no administrative reconsideration available for a decision of ineligibility (paragraph 593.8(c)).

Europa International commented that NHTSA should not make determinations on its own initiative, as it would discourage Registered Importers from developing their own compliance method. This comment assumes that NHTSA will prescribe how each safety standard will be met if it makes determinations of eligibility on its own initiative. NHTSA has no intention of dictating conformance methodology. Its determinations, if any, are likely to be general conclusions based upon information available to it (which may include confidential information from the original manufacturer), or technical comments regarding individual components.

593.9 Effect of affirmative determinations; lists.

A notice of grant is sufficient authority for the

importation by persons other than the petitioner of any vehicle of the same model specified in the grant (paragraph 563.9(a)). The reason NHTSA proposed and has adopted this requirement is that its determinations cover "models" and "model years". If a vehicle of a certain model and model year is "capable" of conformance, the determination will cover all vehicles of that model and model year, and not just a single specific motor vehicle. Europa International commented that this would eliminate the incentive a petitioner has to spend money developing conformance information. This argument confuses a petitioner's demonstration of conformance capability with a Registered Importer's demonstration of conformance achieved. There is no requirement that a petitioner submit its conformance methodology in support of a petition for a "capability" determination on either of the two bases. To the extent that a petitioner does, it may request confidentiality, and to the extent that it may be granted, the conformance information is protected.

The agency will publish annually in the *Federal Register* a list of vehicles for which determinations have been made (paragraph 593.9(b)). This will appear as an Appendix to Part 593, so that it may also appear in the *Code of Federal Regulations*. The agency intends to publish the first list before September 30, 1990, because the CFR publishes NHTSA regulations in revised form as of October 1 of each year.

593.10 Availability for public inspection.

The agency will make available for public inspection in the agency docket room all publicly available information relevant to a determination, regardless of whether that determination is made pursuant to a petition or on the Administrator's initiative (paragraph 593.10(a)). However, as discussed previously, the agency realizes that a petition by a registered importer may contain arguments as to capability of modification that reflect the methodology by which that petitioner intends to achieve conformance, and which may qualify as a trade secret or confidential information for which confidential treatment may be requested (paragraph 593.10(b)). In that instance, the agency may conclude that considerations of confidentiality outweigh the interests of full disclosure.

In consideration of the foregoing, a new Part 593, *Determinations That a Vehicle not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards is Eligible for Importation*, is added to Title 49, Chapter V, to read as follows:

PART 593 Determinations That a Vehicle not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards is Eligible for Importation

Sec.

593.1 Scope.

593.2 Purpose.

593.3 Applicability.

593.4 Definitions.

593.5 Petitions for eligibility determinations.

593.6 Basis for petition.

593.7 Processing of petitions.

593.8 Determinations on the agency's initiative.

593.9 Effect of affirmative determinations; lists.

593.10 Availability for public inspection.

Authority: P.L. 100-562, 15 U.S.C. 1401, 1407; delegation of authority at CFR 1.50.

593.1 Scope. This part establishes procedures under section 108(c) of the National Traffic and Motor Vehicle Safety Act, as amended (15 U.S.C. 1397(c)), for making determinations whether a vehicle that was not originally manufactured to conform with all applicable Federal motor vehicle safety standards, and is not otherwise eligible for importation under Part 591 of this chapter, may be imported into the United States because it can be modified to meet the Federal standards.

593.2 Purpose. The purpose of this part is to provide content and format requirements for any Registered Importer and manufacturer who wishes to petition the Administrator for a determination that a vehicle not originally manufactured to conform to all applicable Federal motor vehicle safety standards is eligible to be imported into the United States because it can be modified to meet the standards.

The purpose of this part is also to specify procedures under which the Administrator makes eligibility determinations pursuant to those petitions as well as eligibility determinations on the agency's initiative.

593.3 Applicability. This part applies to a motor vehicle that was not originally manufactured and certified by its original manufacturer to conform with all applicable Federal motor vehicle safety standards and that is offered for importation into the United States.

593.4 Definitions All terms in this part that are defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391) are used as defined therein.

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

"Model year" means the year used by a manufacturer to designate a discrete vehicle model irrespective of the calendar year in which the vehicle was actually produced, or the model year as designated by the vehicle's country of origin, or, if neither the manufacturer nor the country of origin has made such a

designation, the calendar year that begins on September 1 and ends on August 31 of the next calendar year.

“NHTSA” means the National Highway Traffic Safety Administration.

“Registered Importer” means any person who has been granted registered importer status by the Administrator pursuant to paragraph 592.5(b) of this chapter, and whose registration has not been revoked.

593.5 Petitions for eligibility determinations

(a) A manufacturer or Registered Importer may petition the Administrator for a determination that a vehicle that does not comply with all applicable Federal motor vehicle safety standards is eligible for importation, either

(1) On the basis that the vehicle

(A) is substantially similar to a vehicle which was originally manufactured for importation into and sale in the United States and which bore a certification affixed by its manufacturer pursuant to Part 567 of this chapter, and

(B) is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards; or

(2) On the basis that the vehicle has safety features that comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards.

(b) Each petition filed under this part must-

(1) Be written in the English language;

(2) Be headed with the words “Petition for Import Eligibility Determination” and submitted in three copies to: Administrator, National Highway Traffic Safety Administration, Washington, D.C. 20590, Attn: Import Eligibility Determinations;

(3) State the full name and address of the petitioner.

(4) If the petitioner is a Registered Importer, include the Registered Importer Number assigned by NHTSA pursuant to Part 592 of this chapter.

(5) Set forth the basis for the petition and the information required by paragraph 593.6(a) or (b), 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; and

(7) Submit a certified check payable to the Treasurer of the United States, for the amount of the vehicle eligibility petition fee established pursuant to Part 594 of this chapter.

(c) The knowing and willful submission of false, fictitious or fraudulent information may subject the petitioner to the criminal penalties of 18 U.S.C. 1001.

593.6 Basis for petition.

(a) If the basis for the petition is that the vehicle is substantially similar to a vehicle which was originally manufactured for importation into and sale in the United States, and which was certified by its man-

ufacturer pursuant to Part 567 of this chapter, and that it is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards, the petitioner shall provide the following information:

(1) Identification of the original manufacturer, model, and model year of the vehicle for which a determination is sought.

(2) Identification of the original manufacturer, model, and model year of the vehicle which the petitioner believes to be substantially similar to that for which a determination is sought.

(3) Substantiation that the manufacturer of the vehicle identified by the petitioner under paragraph (a)(2) above originally manufactured it for importation into and sale in the United States, and affixed a label to it certifying that it complied with all applicable Federal motor vehicle safety standards.

(4) Data, views and arguments demonstrating that the vehicle identified by the petitioner under paragraph (a)(1) above is substantially similar to the vehicle identified by the petitioner under paragraph (a)(2) above.

(5) With respect to each Federal motor vehicle safety standard that applied to the vehicle identified by the petitioner under paragraph (a)(2) above, data, views, and arguments demonstrating that the vehicle identified by the petitioner under paragraph (a)(1) above either was originally manufactured to conform to such standard, or is capable of being readily modified to conform to such standard.

(b) If the basis of the petition is that the vehicle's safety features comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards, the petitioner shall provide the following information:

(1) Identification of the model and model year of the vehicle for which a determination is sought.

(2) With respect to each Federal motor vehicle safety standard that would have applied to such vehicle had it been originally manufactured for importation into and sale in the United States, data, views, and arguments demonstrating that the vehicle has safety features that comply with or are capable of being modified to conform with such standard. The latter demonstration shall include a showing that after such modifications, the features will conform with such standard.

593.7 Processing of petitions.

(a) NHTSA will review each petition for sufficiency under paragraphs 593.5 and 593.6. If the petition does not contain all the information required by this part, NHTSA notifies the petitioner, pointing out the areas of insufficiency, and stating that the petition will not receive further consideration until the required information is provided. If the additional information is not provided within the time specified by NHTSA in its notification, NHTSA may dismiss the petition as incomplete, and so notify the petitioner. When the petition is complete, its processing continues.

(b) NHTSA publishes in the *Federal Register*, affording opportunity for comment, a notice of each petition containing the information required by this part.

(c) No public hearing, argument, or other formal proceeding is held on a petition filed under this part.

(d) If the Administrator is unable to determine that the vehicle in a petition submitted under paragraph 593.6(a) is one that is substantially similar, or (if it is substantially similar) is capable of being readily modified to meet the standards, (s)he notifies the petitioner, and offers the petitioner the opportunity to supplement the petition by providing the information required for a petition submitted under paragraph 593.6(b).

(e) If the Administrator determines that the petition does not clearly demonstrate that the vehicle model is eligible for importation, (s)he denies it and notifies the petitioner in writing. (S)he also publishes in the *Federal Register* a notice of denial and the reasons for it. A notice of denial also states that the Administrator will not consider a new petition covering the model that is the subject of the denial until at least 3 months from the date of the notice of denial. There is no administrative reconsideration available for petition denials.

(g) If the Administrator determines that the petition clearly demonstrates that the vehicle model is eligible for importation, (s)he grants it and notifies the petitioner. (S)he also publishes in the *Federal Register* a notice of grant and the reasons for it.

593.8 Determinations on the agency's initiative.

(a) The Administrator may make a determination of eligibility on his or her own initiative. The agency publishes in the *Federal Register* affording opportunity for comment, a notice containing the information available to the agency (other than confidential information) relevant to the basis upon which eligibility may be determined.

(b) No public hearing, argument, or other formal proceeding is held upon a notice published under this section.

(c) The Administrator publishes a second notice in the *Federal Register* in which (s)he announces his or her determination whether the vehicle is eligible or

ineligible for importation, and states the reasons for the determination. A notice of ineligibility also announces that no further determination for the same model of motor vehicle will be made for at least 3 months following the date of publication of the notice. There is no administrative reconsideration available for a decision of ineligibility.

593.9 Effect of affirmative determinations; lists.

(a) A notice of grant is sufficient authority for the importation by persons other than the petitioner of any vehicle of the same model specified in the grant.

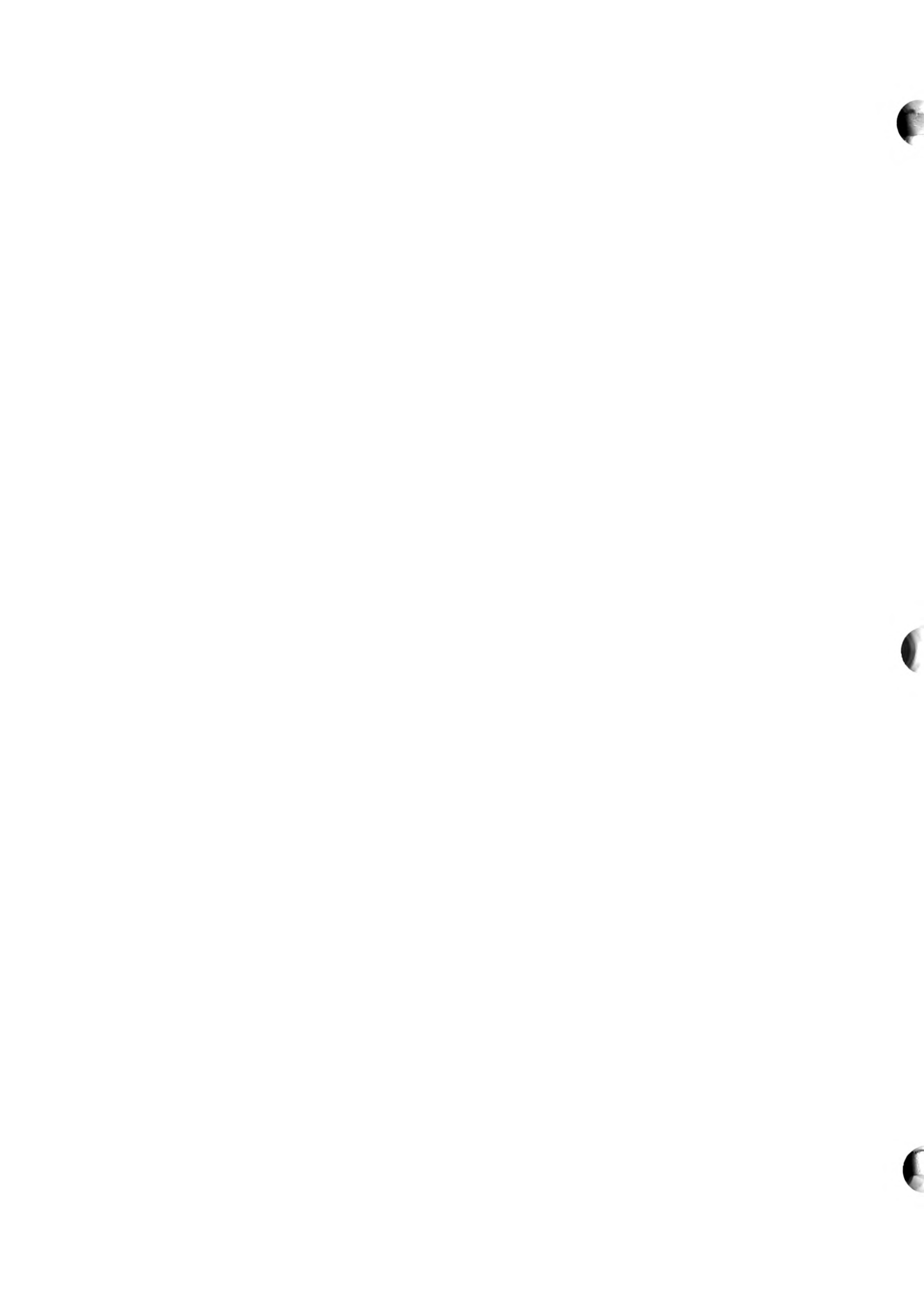
(b) The Administrator publishes annually in the *Federal Register* a list of determinations made under Sec. 593.7, and Sec. 593.8.

593.10 Availability for public inspection.

(a) Except as specified in paragraph (b) of this section, information relevant to a determination under this part, including a petition and supporting data, and the grant or denial of the petition or the making of a determination on the Administrator's initiative, is available for public inspection in the Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., S.W. Washington, D.C. 20590. Copies of available information may be obtained, as provided in Part 7 of this chapter.

(b) Except for release of confidential information authorized under Part 512 of this chapter, information made available for inspection under paragraph (a) does not include information for which confidentiality has been requested and granted in accordance with Part 512, and 5 U.S.C. 552(b). To the extent that a petition contains material relating to the methodology by which the petitioner intends to achieve conformance with a specific standard, the petitioner may request confidential treatment of such material on the grounds that it contains a trade secret or confidential information in accordance with Part 512 of this chapter.
Issued on: September 26, 1989.

Jeffrey R. Miller
Acting Administrator
54 F.R. 40093
September 29, 1989



PREAMBLE TO AN AMENDMENT TO PART 593

Determinations That a Vehicle Not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards is Eligible for Importation

(Docket No. LVM 89-01; Notice 3)
RIN 2127-AC98

ACTION: Technical Amendments, final rule.

EFFECTIVE DATE: The amendments are effective September 11, 1990.

SUMMARY: This notice contains technical amendments of the final rule published on September 29, 1989, which established requirements for determinations that a vehicle not originally manufactured to conform to the Federal motor vehicle safety standards is eligible for importation. The amendments provide a more complete mailing address and correct a section designation.

SUPPLEMENTARY INFORMATION: On September 29, 1989, NHTSA published a notice that established 49 CFR Part 593, *Determinations That a Vehicle Not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards is Eligible for Importation*. (54 FR 40093).

In section 593.5(b)(2), the address to which petitions for eligibility determinations should be sent was stated (after the name of the agency) simply as "Washington,

D.C. 20590, Attn: Import Eligibility Determination." NHTSA wishes to add a more complete address and therefore it is adding a room number and street address and an internal mailing route code (NEF-32) to the address in section 593.5(b)(2).

In addition, in section 593.7, subsection (e) is immediately followed by subsection (g). This is an error, and subsection (g) is redesignated subsection (f).

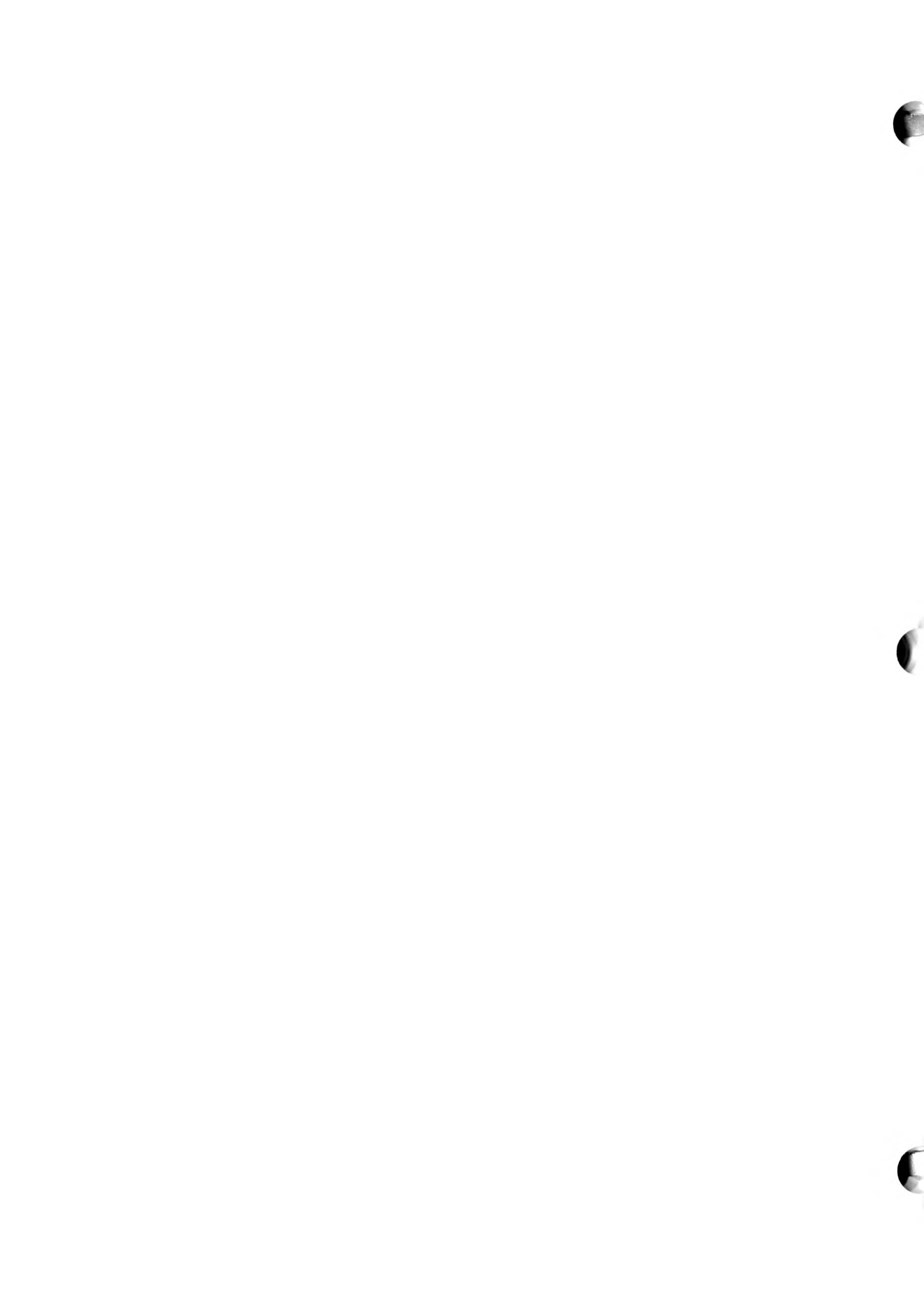
In consideration of the foregoing part 593 of 49 CFR is amended as follows:

In section 593.5(b)(2) the phrase "Washington, D.C. 20590, Attn: Import Eligibility Determinations" is removed, and the phrase "Room 6115, 400 7th Street, S.W., Washington, D.C. 20590. Attn: NEF-32 Import Eligibility Determinations" is inserted in its place.

In section 593.7, subsection (g) is redesignated subsection (f).

Issued on September 5, 1990

55 F.R. 37330
September 11, 1990



PART 593—DETERMINATIONS THAT A VEHICLE NOT ORIGINALLY MANUFACTURED TO CONFORM TO THE FEDERAL MOTOR VEHICLE SAFETY STANDARDS IS ELIGIBLE FOR IMPORTATION

S593.1 Scope.

This part establishes procedures under section 108(c) of the National Traffic and Motor Vehicle Safety Act, as amended (15 U.S.C. 1397(c)), for making determinations whether a vehicle that was not originally manufactured to conform with all applicable Federal motor vehicle safety standards, and is not otherwise eligible for importation under Part 591 of this chapter, may be imported into the United States because it can be modified to meet the Federal standards.

S593.2 Purpose.

The purpose of this part is to provide content and format requirements for any Registered Importer and manufacturer who wishes to petition the Administrator for a determination that a vehicle not originally manufactured to conform to all applicable Federal motor vehicle safety standards is eligible to be imported into the United States because it can be modified to meet the standards.

The purpose of this part is also to specify procedures under which the Administrator makes eligibility determinations pursuant to those petitions as well as eligibility determinations on the agency's initiative.

S593.3 Applicability.

This part applies to a motor vehicle that was not originally manufactured and certified by its original manufacturer to conform with all applicable Federal motor vehicle safety standards and that is offered for importation into the United States.

S593.4 Definitions.

All terms in this part that are defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391) are used as defined therein.

“Administrator” means the Administrator of the National Highway Traffic Safety Administration.

“Model year” means the year used by a manufacturer to designate a discrete vehicle model irrespective of the calendar year in which the vehicle was actually produced, or the model year as designated by the vehicle's country of origin, or, if neither the manufacturer nor the country of origin has made such a designation, the calendar year that begins on September 1 and ends on August 31 of the next calendar year.

“NHTSA” means the National Highway Traffic Safety Administration.

“Registered Importer” means any person who has been granted registered importer status by the Administrator pursuant to paragraph 592.5(b) of this chapter, and whose registration has not been revoked.

S593.5 Petitions for Eligibility Determinations.

(a) A manufacturer or Registered Importer may petition the Administrator for a determination that a vehicle that does not comply with all applicable Federal motor vehicle safety standards is eligible for importation, either

(1) On the basis that the vehicle

(i) is substantially similar to a vehicle which was originally manufactured for importation into and sale in the United States and which bore a certification affixed by its manufacturer pursuant to Part 567 of this chapter, and

(ii) is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards; or

(2) On the basis that the vehicle has safety features that comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards.

(b) Each petition filed under this part must:

(1) Be written in the English language;

(2) be headed with the words "Petition for Import Eligibility Determination" and submitted in three copies to: Administrator, National Highway Traffic Safety Administration, [Room 6115, 400 7th Street, S.W., Washington, D.C. 20590, Attn: NEF-32 Import Eligibility Determinations (55 F.R. 37330—September 11, 1990. Effective: September 11, 1990)];

(3) state the full name and address of the petitioner.

(4) if the petitioner is a Registered Importer, include the Registered Importer Number assigned by NHTSA pursuant to Part 592 of this chapter;

(5) set forth the basis for the petition and the information required by paragraph 593.6(a) or (b), 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; and

(7) submit a certified check payable to the Treasurer of the United States, for the amount of the vehicle eligibility petition fee established pursuant to Part 594 of this chapter.

(c) The knowing and willful submission of false, fictitious or fraudulent information may subject the petitioner to the criminal penalties of 18 U.S.C. 1001.

593.6 Basis for Petition.

(a) If the basis for the petition is that the vehicle is substantially similar to a vehicle which was originally manufactured for importation into and sale in the United States, and which was certified by its manufacturer pursuant to Part 567 of this chapter, and that it is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards, the petitioner shall provide the following information:

(1) Identification of the original manufacturer, model, and model year of the vehicle for which a determination is sought.

(2) Identification of the original manufacturer, model, and model year of the vehicle which the petitioner believes to be substantially similar to that for which a determination is sought.

(3) Substantiation that the manufacturer of the vehicle identified by the petitioner under paragraph (a)(2) above originally manufactured it for importation into and sale in the United States, and affixed a label to it certifying that it complied with all applicable Federal motor vehicle safety standards.

(4) Data, views and arguments demonstrating that the vehicle identified by the petitioner under paragraph (a)(1) above is substantially similar to the vehicle identified by the petitioner under paragraph (a)(2) above.

(5) With respect to each Federal motor vehicle safety standard that applied to the vehicle identified by the petitioner under paragraph (a)(2) above, data, views, and arguments demonstrating that the vehicle identified by the petitioner under paragraph (a)(1) above either was originally manufactured to conform to such standard, or is capable of being readily modified to conform to such standard.

(b) If the basis of the petition is that the vehicle's safety features comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards, the petitioner shall provide the following information:

(1) Identification of the model and model year of the vehicle for which a determination is sought.

(2) With respect to each Federal motor vehicle safety standard that would have applied to such vehicle had it been originally manufactured for importation into and sale in the United States, data, views, and arguments demonstrating that the vehicle has safety features that comply with or are capable of being modified to conform with such standard. The latter demonstration shall include a showing that after such modifications, the features will conform with such standard.

593.7 Processing of Petitions.

(a) NHTSA will review each petition for sufficiency under paragraphs 593.5 and 593.6. If the petition does not contain all the information required by this part, NHTSA notifies the petitioner, pointing out the areas of insufficiency, and stating that the petition will not receive further consideration until the required information is provided. If the additional information is not provided within the time specified by NHTSA in its notification, NHTSA may dismiss the petition as incomplete, and so notify the petitioner. When the petition is complete, its processing continues.

(b) NHTSA publishes in the *Federal Register*, affording opportunity for comment, a notice of each petition containing the information required by this part.

(c) No public hearing, argument, or other formal proceeding is held on a petition filed under this part.

(d) If the Administrator is unable to determine that the vehicle in a petition submitted under paragraph 593.6(a) is one that is substantially similar, or (if it is substantially similar) is capable of being readily modified to meet the standards, (s)he notifies the petitioner, and offers the petitioner the opportunity to supplement the petition by providing the information required for a petition submitted under paragraph 593.6(b).

(e) If the Administrator determines that the petition does not clearly demonstrate that the vehicle model is eligible for importation, (s)he denies it and notifies the petitioner in writing. (S)he also publishes in the *Federal Register* a notice of denial and the reasons for it. A notice of denial also states that the Administrator will not consider a new petition covering the model that is the subject of the denial until at least 3 months from the date of the notice of denial. There is no administrative reconsideration available for petition denials.

[(f)] If the Administrator determines that the petition clearly demonstrates that the vehicle model is eligible for importation, (s)he grants it and notifies the petitioner. (S)he also publishes in the *Federal Register* a notice of grant and the reasons for it.

593.8 Determinations on the Agency's Initiative.

(a) The Administrator may make a determination of eligibility on his or her own initiative. The agency publishes in the *Federal Register*, affording opportunity for comment, a notice containing the information available to the agency (other than confidential information) relevant to the basis upon which eligibility may be determined.

(b) No public hearing, argument, or other formal proceeding is held upon a notice published under this section.

(c) The Administrator publishes a second notice in the *Federal Register* in which (s)he announces his or her determination whether the vehicle is eligible or ineligible for importation, and states the reasons for the determination. A notice of ineligibility also announces that no further determination for the

same model of motor vehicle will be made for at least 3 months following the date of publication of the notice. There is no administrative reconsideration available for a decision of ineligibility.

593.9 Effect of Affirmative Determinations; Lists.

(a) A notice of grant is sufficient authority for the importation by persons other than the petitioner of any vehicle of the same model specified in the grant.

(b) The Administrator publishes annually in the *Federal Register* a list of determinations made under Sec. 593.7, and Sec. 593.8.

593.10 Availability for Public Inspection.

(a) Except as specified in paragraph (b) of this section, information relevant to a determination under this part, including a petition and supporting data, and the grant or denial of the petition or the making of a determination on the Administrator's initiative, is available for public inspection in the Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C. 20590. Copies of available information may be obtained, as provided in Part 7 of this chapter.

(b) Except for release of confidential information authorized under Part 512 of this chapter, information made available for inspection under paragraph (a) of this section does not include information for which confidentiality has been requested and granted in accordance with Part 512, and 5 U.S.C. 552(b). To the extent that a petition contains material relating to the methodology by which the petitioner intends to achieve conformance with a specific standard, the petitioner may request confidential treatment of such material on the grounds that it contains a trade secret or confidential information in accordance with Part 512 of this chapter.

54 F.R. 40093
September 29, 1989



PREAMBLE TO PART 594

Schedule of Fees Authorized by the National Traffic and Motor Vehicle Safety Act (Docket No. 89-8; Notice 2) RIN: 2127-AC98

ACTION: Final Rule

SUMMARY: The National Traffic and Motor Vehicle Safety Act, as revised by the Imported Vehicle Safety Compliance Act of 1988 (P.L. 100-562), provides that motor vehicles not originally manufactured to conform to Federal motor vehicle safety standards may nevertheless be imported into the United States under certain circumstances. In general, such a vehicle may be imported under bond for certification of its conformance, or exportation in the event it is not conformed, by those who have registered with NHTSA as importers, provided that NHTSA has determined that the nonconforming vehicle is capable of being conformed to meet the safety standards.

The Safety Act authorizes NHTSA to establish fees to cover its cost of administering the registration program, and of making conformance capability determinations, and to reimburse the U.S. Customs Service its costs in processing the importation bond. The purpose of this rule is to adopt the fee schedules that will implement the statutory authorization. The agency has concluded that the initial annual fee for the registration program is \$255. The fee to accompany a petition for a determination that a vehicle is eligible for importation is either \$1560 or \$2150, depending upon the basis of the petition. These fees are identical to those proposed. The fee required to reimburse the U.S. Customs Service for bond processing costs is \$4.35 per bond. This is less than the proposed fee of \$125.

EFFECTIVE DATE: September 30, 1989.

SUPPLEMENTARY INFORMATION: On December 5, 1988, the National Highway Traffic Safety Administration published a notice of the amendment of section 108 of the National Traffic and Motor Vehicle Safety Act by P.L. 100-562, the Imported Vehicle Safety Compliance Act of 1988 (53 FR 49003). The effective date of the amendments is January 31, 1990. On and after that date, with the exceptions specified in the notice, motor vehicles that have not been originally manufactured to conform to the Federal motor vehicle safety standards may be imported only by persons who have registered with NHTSA as undertaking to bring the vehicle into conformance, or by persons who have contracts with registered importers to perform con-

formance work. In addition, such a vehicle may not be imported unless NHTSA has determined that it is capable of being conformed to the standards. The agency may make such a determination in a response to a petition by a registered importer, or on its own initiative. Each vehicle permitted entry must be accompanied by a bond given to secure performance of the conformance work, or, to ensure its exportation or abandonment to the United States in the event that the vehicle is not brought into full conformance.

Rules have been issued to implement the other provisions of the Vehicle Safety Act described above, and are being published simultaneously with this notice. They are 49 CFR Part 591, *Importation of Vehicles and Equipment Subject to Federal Motor Vehicle Safety Standards*; Part 592, *Registered Importers of Vehicles not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards*; and Part 593, *Determinations That a Vehicle not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards is Eligible for Importation*. A proposed schedule of fees (Part 594) was published on April 25, 1989 (54 FR 17792).

The new provisions also specifically authorize NHTSA to impose fees to cover certain administrative costs incurred in implementation of the new importation procedures. There are two or more types of fees to cover three types of costs for which fees may be charged: an annual fee to cover the costs of administration of the importer registration program, an annual fee or fees to cover the costs of processing the bond furnished to the Customs Service, and an annual fee or fees to cover the costs of making import eligibility determinations.

The purpose of this rule is to adopt a fee schedule that appears appropriate for recovery of each cost, and to explain the rationale behind each of these fees. In identifying those agency activities that may form the cost basis of a fee authorized by the new import provisions, the agency has considered the experience of other agencies in establishing users fees under the Independent Offices Authorization Act (31 U.S.C. 9701), and the Consolidated Omnibus Budget Reconciliation Act (P.L. 99-272). Thus, as proposed, and as repeated in this notice, the agency will: identify each service it provides, explain why it is entitled to recover the cost of providing that service, identify each type of

expenditure incurred in providing that service, explain the criteria used to include or exclude a particular expenditure, and calculate the amount of each such expenditure.

There were three substantive responses to the proposal, submitted by Auburn Motors, Inc., The Dealer Action Association, and Mercedes-Benz of North America.

1. Requirements of the Fee Regulation.

594.6 Annual fee for administration of the importer registration program. Section 108(c)(3)(A)(iii) of the Vehicle Safety Act provides that registered importers must pay “such annual fee as the Secretary establishes to cover the cost of administering the registration program. . . .”

The first issue addressed by the agency in its proposal was whether the term “registration program” is inclusive of all activities under section 108(c) (except for the other activities for which a fee may be imposed), or whether it is restricted to activities relating directly to the registration process, such as reviewing registration applications and acting upon them. The agency interpreted “registration program” conservatively, and concluded that it refers only to activities connected with the development and maintenance of the registration process, including monitoring, and enforcement activities resulting in suspension or revocation of a registration. Although it could be argued that NHTSA’s verification of the certification submitted by a registered importer is relevant to the maintenance by that registered importer of its status, this agency believes that Congress did not intend to include such an activity in the registration program. Specifically, section 109(c)(3)(B)(i) prohibits the application of fees collected under the Vehicle Safety Act to NHTSA’s inspection of vehicles for which certifications have been filed. Thus, NHTSA proposed to exclude, from the fee structure of the registration program, activities connected with processing of certificates and compliance documentation of motor vehicles.

Mercedes-Benz and The Dealer Action Association disagreed with NHTSA’s conclusions, and argued that all costs except those specifically exempted in the statute ought to be included. Each believes that the costs associated with processing certificates of conformity and monitoring compliance should also be included. They argued that Congress intended that the costs be borne in full by those who would benefit from the new legislation, and that the presence of specific exclusions in the legislation argues for an inclusive approach. Specifically, the commenters believe that two separate provisions must be read together to understand the scope of the fee structure Congress meant to establish. Section 108(c)(3)(A)(iii) requires collection from each Registered Importer of its pro rata share of administering the registration program. Section 108(c)(3)(B) then defines the scope of agency

activities covered. It states in relevant part “All fees collected shall be available until expended. . . solely for use. . . in the administration of all of the requirements of this subsection. . .”, other than NHTSA’s periodic inspection of motor vehicles for which certificates have been furnished, and regulations governing the Registered Importer’s financial ability to notify and remedy.

The commenters further argue that the legislative history also evidences Congressional intent to establish comprehensive fees. Remarks by Senator Inouye are cited in support:

“This new program will be financed through fees paid by registered importers upon registration, and annually thereafter, as calculated by the Secretary to cover the additional costs of administering the program. We felt it was appropriate in this limited instance to require the payment of such fees because this new program is being established solely for the benefit of registered importers and will continue to permit them to stay in business”.

Cong. Rec. S14734, daily ed. October 5, 1988.

The commenters believe that NHTSA should recalculate the costs it will incur and make appropriate adjustments in the fees it will require Registered Importers to pay annually.

The agency has carefully considered these comments. NHTSA notes the comment by Senator Rudman (S14375) that the fees cover the costs of administering only “certain provisions”, and that “the user fees would not apply to the testing of these vehicles. . . . This is a responsibility normally assumed by the Department.” NHTSA believes that it was not the intent of Congress to assess fees for activities that represent “a responsibility normally assumed by the Department”, *i.e.*, a responsibility that was part of the agency’s enforcement program before enactment of the 1988 Act. The registration requirements (section 108(c)(3)(D)) constitute an entirely new program, but the requirements for submission and evaluation of certification and documentation (section 108(c)(3)(E)) have a direct counterpart in the agency’s present enforcement program under which a statement of conformance supplemented by documentary evidence must be provided before action is taken upon the bond. Therefore the agency has not broadened its interpretation of the elements of the registration program in section 108(c)(3)(D) to cover activities in section 108(c)(3)(E).

The second issue addressed by NHTSA, and relevant to the other authorized fees as well, was whether the agency can recover both direct and indirect costs associated with its activities. It noted that there is no modifier of the word “costs”, and concluded that both direct and indirect costs may be recovered. Such costs include all costs of administering the program, in-

cluding salaries and other personnel costs (retirement, insurance and leave), travel, postage, maintenance and depreciation of equipment, supplies, and a proportionate share of agency management and supervisory costs as well as accrued liabilities, which include severance pay, unemployment compensation, workers compensation, and unused leave costs. The commenters did not address this issue.

The initial annual fee attributable to the registration program contains three components. The first component is one that would cover the cost of processing an application by a person seeking to become a registered importer. It would not be refundable in the event of a denial. The second component represents the costs attributable to such inspection of an applicant's facilities as the agency may deem necessary to conduct prior to a decision on an application. The third component is intended to cover the remaining costs. The first and third component of the initial annual fee will be paid at the time that an applicant seeks to become a registered importer. The second component will be paid only if an inspection is actually conducted, and would be payable by the end of the tenth calendar day after notification by the agency. If the application is denied, the amount of the fee representing the third component will be refunded to the applicant.

Annual fees after the initial annual fee will also have three components. Instead of a component attributable to processing an application, the first component of a regular annual fee will cover the costs of processing the registered importer's annual statement (or mid-year changes) attesting that there is no material change in its condition and that it is maintaining its financial and technical ability to meet its statutory obligations. The second component will cover the cost, if any, of such inspections the agency might have conducted with respect to the registered importer during the year. The third component is again intended to cover remaining costs.

With respect to the first component of the initial annual fee, the relatively simple, discrete activities involved in processing and acting upon registration applications permit a uniform first component sum to be developed, payable by all who seek to become registered importers. Similarly, the agency tasks involved in processing and reviewing annual statements appear to permit a uniform first component sum to be developed. The direct costs that the agency will consider in this regard are the amount of time spent in reviewing applications or annual statements for form and content, analysis, and drafting of documents relating to the analysis and disposition of the application or annual statement, including direct supervisory time. Other direct costs associated, such as postage, computer time, and meetings to discuss the merits of an application or annual statement, will be

included in the fee structure. However, while the application is pending, NHTSA may wish to inspect the premises of the applicant. The costs of this inspection would form the basis of the second component of the fee that must be paid before a determination is made on the merits of the application. Inspections conducted after registration (the second component of the regular annual fee) would be reflected in the next annual fee payable by the registered importer concerned.

The agency will include indirect costs as well. For example, if one-third of a staffer's time at a word processing terminal is spent in drafting documents relative to an application determination, then a third of the cost of maintaining the space and the terminal will be factored into a registration fee. Indirect general and administrative costs can be included in the fee structure as a pro rata share of the costs attributable to running the program.

Once a registration has been granted, section 108(d)(2) imposes an obligation on a registered importer to maintain evidence satisfactory to NHTSA that it continues to be financially able to meet its statutory responsibilities "relating to discovery, notification, and remedy of motor vehicle defects." Further, section 108(c)(3)(D)(ii) directs the agency to set requirements for registered importers, including at a minimum (1) requirements for record-keeping; and (2) requirements for records and facilities inspection for registered importers. Activities of the agency associated with satisfying it of financial ability and meeting other specified responsibilities may be included in the cost basis of the registration program annual fee. The initial annual fee adopted by this notice is based upon NHTSA's estimates of costs for the first fiscal year that the registration program is in effect. If the amount of the annual fee for a succeeding year is adjusted, the adjustment will take into account NHTSA's actual experience in the year preceding.

Under paragraph 592.6(a)(7) of the regulation on Registered Importers, the agency may inspect a facility or the records which the Registered Importer must keep to fulfill its program responsibilities. There are two purposes for which such inspections may be conducted. The first is to verify that the regulatory criteria for obtaining or maintaining the status of registered importer are met. These inspections are directly related to administration of the registration program. The agency will include direct and indirect costs associated with these inspection activities in the fee structure for the program. The agency will include direct and indirect costs associated with these inspection activities in the fee structure for the program. The second purpose for which an inspection may be conducted is to verify that a certification filed by a registered importer is supported by the conformance work performed. This activity is specifically excluded

as a cost towards which fees may not be applied. Consequently, if inspecting a facility for compliance with registration requirements also involves vehicle inspection, agency staff will segregate costs to exclude those attributable to the inspection of vehicles. Only those costs directly attributable to the registration program will be included in the second component of the next regular annual fee.

As with the costs of processing an initial application or annual statement, all direct and indirect costs associated with the suspension and reinstatement of Registered Importer status are recoverable by the agency. These include costs associated with notifying a registrant that the agency is considering suspension, plus the costs of allowing it to present its opposition to suspension under paragraph 592.7(b) of the Registered Importer regulation, and costs associated with processing a registrant's request that NHTSA reconsider a suspension under paragraph 592.7(e). The final associated cost is that of notifying the registrant of the determination regarding its suspension.

Similarly, the costs associated with revoking a registration are recoverable. These include notifying a Registered Importer in writing that NHTSA intends to revoke registration under paragraph 592.7(b), or that the agency has revoked a registration under paragraph 592.7(c) because the registrant knowingly filed a false or misleading certification. Further recoverable costs are those associated with reviewing, analyzing and responding to the registrant's written opposition to a preliminary decision to revoke its registration.

The agency will include whatever activities are associated with making a determination under paragraph 592.7(d) that the basis for a suspension no longer exists. The nature of the reinstatement process will vary depending on the reason for the suspension. For example, the process will be comparatively simple if the suspension was for failure to pay a fee.

594.7 Fee for vehicle importation eligibility petitions.

Section 108(c)(3)(A)(iii)(II) also requires Registered Importers to pay "such other annual fee or fees as the Secretary reasonably establishes to cover the cost of . . . making the determinations under this section." Pursuant to Part 593, these determinations are whether the vehicle sought to be imported is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, and certified as meeting the Federal standards, and whether it is capable of being readily modified to meet those standards, or, alternatively, where there is no substantially similar U.S. motor vehicle, whether the safety features of the vehicles comply with or are capable of being modified to comply with the U.S. standards. These determinations are made pursuant to petitions submitted by Registered Importers or manufacturers, or pursuant to determinations made upon the Administrator's initiative.

In developing this regulation, the agency considered the type and frequency of fees that would best implement the purpose of the 1988 Act. With respect to making eligibility determinations, it considered an "annual fee", in which total costs attributable to eligibility determinations would be divided equally among all Registered Importers. Such a fee would be payable at the time of the next regular annual fee for administration of the registration program. This type of fee appeared equitable in the sense that more than one Registered Importer may benefit from an eligibility determination, and that the costs would not be borne by the petitioner alone. However, NHTSA proposed and adopted a requirement that a fee be charged for individual petitions for determinations of eligibility. The benefit of this approach is that it permits "pay-as-you-go", under which costs are more quickly recovered. This fee would be payable by a petitioner for a determination, or by the importer who first benefits from a determination made on the agency's initiative (see further discussion below).

The agency requested comments on each approach, but it proposed the second approach. Under this, a petition by a manufacturer or Registered Importer for a determination would be accompanied by the fee specified in paragraph 594.7. The payment of this fee by the petitioner is premised upon the likelihood that the petitioner would be the immediate beneficiary of any favorable determination, and therefore ought to pay the costs authorized by statute for consideration of its petition. The immediate beneficiary of a favorable determination made upon the Administrator's initiative would be the first Registered importer, or other person, who imports a vehicle that is covered by the determination. Therefore, NHTSA proposed to establish a fee that would be payable by the Registered Importer who furnishes a certificate of conformity covering the first vehicle imported under a declaration filed after notice of the Administrator's initiative determination has appeared in the *Federal Register*. The notice would include a discussion of the fee to be paid and the basis for it. Subsequently, upon receipt of the first declaration covering the vehicle, NHTSA would notify the Registered Importer concerned that the stated fee is due at the time the certification of conformity covering the vehicle is received. However, NHTSA is aware that such costs would remain unrecoverable until such time as (and unless) a declaration is filed on such a vehicle.

The three commenters on the proposal recommended that it would be more equitable to divide the petition fee among all Registered Importers. NHTSA gave close attention to these comments and examined various ways that this could be accomplished. Because of the requirement of section 108(c)(3)(B) that the fee applicable in any fiscal year be established before the beginning of such year, NHTSA concluded that it could not implement the suggestion it had discussed in

the proposal, to establish a pro rata fee applicable to all Registered Importers at the end of a fiscal year to cover all petition determinations of that year. Collection of such a sum appeared difficult also; the agency did not appear to have leverage over manufacturers who had filed petitions without a fee, and as for Registered Importers, to defer renewal of registration until the annual petition fee was paid seemed irrelevant to maintenance of the qualifications of Registered Importers.

The agency concluded that payment by the petitioner at the time of the petition represented the most effective way to recover the costs of eligibility determinations, but within that framework it explored ways of equalizing the burden by an allocation at the end of the fiscal year. As an alternative to dividing total petition fees by the number of Registered Importers, the fee for a petition for a specific make/model could be divided by the number of only those Registered Importers who had furnished certificates of conformity for that make/model during the year. A variation of this alternative would be a formula with weights given Registered Importers according to the specific number of that specific make/model each had imported. At the end of the fiscal year, there would be a reconciliation of sums, under which certain Registered Importers could be given cash refunds or credits toward future petitions, or, if the reconciliation showed otherwise, an assessment imposed on a Registered Importer. No approach appeared to be without problems, and each, other than payment at the time of the petition, would add costs to the general fee structure. Nevertheless, NHTSA remains interested in the concept of equalizing the burden, and on the basis of its experience in the first year of the petition program, will consider additional ways that this might be accomplished. It would be interested in having constructive comments during this period.

As NHTSA observed in the notice, the activities that may form the cost basis for petitions appear to include logging-in, notifying the petitioner of receipt, and evaluating the petition. If the agency grants a written request by the petitioner to appear to discuss a petition under paragraph 593.7(c), it will recover the cost of processing the written request and discussing the petition. Although the 1988 Act does not require an actual demonstration of conformance, only that a vehicle is capable of conformance, a petitioner may wish to substantiate its arguments with presentation of a modified vehicle. In that event, it may be necessary for NHTSA to inspect the modified vehicle as part of its role in determining whether the vehicle is eligible for importation. The cost of that inspection would be properly recoverable. The new import provisions require publication of a notice in the *Federal Register*; thus the agency will also recover costs associated with preparing and processing *Federal Register* documents

generated in connection with the petition, processing and analyzing comments submitted in connection with a *Federal Register* document; and notifying a petitioner of the agency's decision.

When NHTSA makes a determination on its own initiative, it will also publish a notice in the *Federal Register* and receive and evaluate comments on it.

The new import provisions do not require the agency to publish a second *Federal Register* notice immediately after a decision is made. Section 108(c)(3)(C)(iv), however, does require NHTSA to publish annually in the *Federal Register* a list of all vehicles determined to be eligible for import under the Act. Compiling and publishing this list is connected with making and announcing eligibility determinations, and the costs will be included in the fee structure.

594.8 Fee payable for Administrator's determination.

Costs to be recovered through payment of a fee also cover those attributable to determinations of import eligibility made on NHTSA's initiative. The principal issue here is how such costs are to be recovered in the absence of a petitioner. The method proposed was that it be paid by the first Registered Importer who furnishes a certificate of conformity covering such vehicle after NHTSA's determination on its own initiative. There were no specific comments on this method, though it was clearly implied by the three commenters that such costs should be shared equally by all Registered Importers. For the reasons set forth above in the discussion on allocation of fees among Registered Importers, it is impracticable to do so, and NHTSA has adopted the method proposed.

594.9 Fee to recover the costs of processing the bond.

Section 108 (c)(3)(A)(iii)(II) also requires a registered importer to pay "such annual fee or fees as the Secretary reasonably establishes to cover the cost of processing the bond furnished to the Secretary of the Treasury" upon the importation of a nonconforming vehicle to ensure that the vehicle will be brought into compliance within a reasonable time, or if the vehicle is not brought into compliance within such time, that it is exported without cost to the United States, or abandoned to the United States.

The statute contemplates that NHTSA make a reasonable determination of the cost to the United States Custom Service of processing the bond. The agency has met representatives of the Customs Service to obtain such information as would allow it to include the cost basis of processing the bond in the fee structure. The analysis that Customs has provided NHTSA indicates that it has followed the same guidelines as the agency does to determine whether each activity associated with processing the bond gives rise to a recoverable cost. The 1988 Act requires the bond to be furnished the Secretary of the Treasury acting on behalf of NHTSA. However, NHTSA has decided, and Customs concurs, that the bond in question is not the

general importation bond which covers duties and other obligations relevant to merchandise. It is a bond given to secure performance of obligations under the Vehicle Safety Act, and will therefore be a bond of the Department of Transportation and not of the Treasury. The two Federal agencies have determined that this bond will accompany the declaration at the time of entry, and be submitted with it to NHTSA. Thus the role of Customs in "processing" the bond will be limited to two activities. At the time of importation, it will ensure that the bond is attached to the entry form (or reject the entry for lack of the bond). After bond verification, it will forward the bond and entry form to NHTSA. A third activity will be required in the event that a vehicle must be exported for failing to meet NHTSA's requirements: the supervision of export.

The first two activities will form the basis for the processing cost payable by the registered importer. The cost of the third activity will be part of the bond, so that if the vehicle must be redelivered for export, a sum covering the third activity would be payable to NHTSA on behalf of Customs. Although NHTSA will advance Customs its costs in accordance with statutory requirements, it will recover these costs on an *ad hoc* basis, requiring a registered importer to submit a bond processing fee at the time it submits conformance verification on each vehicle.

2. Calculations of the Agency's Costs in Setting Fees

To the extent possible, the agency's costs in setting fees are based upon an accounting of each discrete activity involved in the process. Thus, the fees imposed by Part 594 include the agency's best direct and indirect cost estimates of the man-hours involved in each activity, on both the staff and supervisory levels, the costs of computer and word processor usage, postage costs, costs attributable to travel, salary and benefits, and maintenance of work space, to name the ones set forth in the proposed regulation.

Specifically, each fee is calculated on the basis of the direct and indirect costs associated with the activity for which the fee is paid. The direct costs include the average cost per professional staff-hour, computer and word processor time, stationery and postage, and transportation.

The average cost per professional staff-hour is calculated based upon the full costs for time spent (to the nearest quarter-hour) using the following applicable professional staff rates:

- (A) Office of Vehicle Safety Compliance —
 - Clerical Staff — \$13 per hour
 - Computer contract staff — \$25 per hour.
 - Review staff — \$26 per hour.
 - Supervisors — \$41 per hour.
- (B) Office of Chief Counsel — \$41 per hour.

The average cost per computer-hour is calculated at the rate of \$100 per hour.

The average cost for postage is calculated to be \$3.00.

The indirect costs include a pro rata allocation of the average salary and benefits of persons employed in processing the applications and recommending decisions on them, and a pro rata allocation of the costs attributable to maintaining the office space, and the computer or word processor. The staff rates above include benefits; the costs associated with office space, equipment maintenance, communications and other overhead amount to an additional \$6.71 per hour.

The cost for determining the salary and benefits of persons employed is calculated based upon the time spent multiplied by the employee's hourly wage.

The cost of maintaining the computer or word processor is calculated based upon maintenance, time sharing, and staff operations.

The cost of maintaining the office space is calculated based upon standard government regulations based upon grade levels.

The cost of travel is based upon an estimated round trip air fare of \$250, and a 3-day per diem of \$100 a day, for a total trip cost of \$550.

A. Registration Program Fee

The Registration Program Annual Fee has two and in some instances three components: a portion attributable to the registration process, a portion attributable to any inspection of an applicant that the agency deems needed to verify information submitted in an application for registration, and a portion attributable to other activities occurring in the registration program. Exclusive of the inspection portion, the agency has decided that the initial Annual Registration Program fee shall be \$255.

The initial component of the Registration Program Fee is the portion of the fee attributable to processing and acting upon registration applications. The agency estimates this portion of the fee as \$85.99.

In calculating the direct costs of processing registration applications, NHTSA estimates that one staff member and one supervisor will spend a total of one man-hour in processing, reviewing, and acting upon applications, that a quarter hour of computer, and computer-operator time will be required to verify that the applicant has not had a registration revoked, that a half hour of clerical time will be required, and that a postal charge will be incurred. These costs are estimated at \$74.25.

In calculating the indirect costs of processing registration applications, NHTSA has estimated that these will average \$6.71 per hour spent. Processing will require a total of 1.75 hours per application, thus NHTSA estimates that indirect costs will total \$11.74. Thus the total direct and indirect costs of this component are \$85.99.

With respect to other costs attributable to maintenance of the registration program, these consist

principally of reviewing a registrant's annual statement verifying the continuing validity of information already submitted, and processing annual fees. These costs also include costs attributable to revocation or suspension of a registration.

In calculating the direct costs of administering the registration program other than costs connected with the initial application, NHTSA estimates that one staff member and one supervisor will spend a total of 1.5 man-hours in administration activities, that one half-hour of computer time, and computer operator time will be required, that 1.5 hours of clerical and record-keeping time will be needed, and a postal charge will be incurred. The total direct charges for administering the registration program are estimated at \$131.50. The total overhead costs of the 3.5 hours involved are \$23.49, or a total of \$154.99. These costs, of course, are exclusive of costs associated with revocation or suspension.

At this point, it appears fairest that a suspended registrant bear the costs associated with suspension and reinstatement, to be included in its next annual fee. However, it will not be feasible to recover costs from an importer whose registration has been revoked. Those costs appear best borne by each registered importer paying a pro rata share in its annual fee. Obviously, before the effective date of the 1988 Act, NHTSA has no knowledge of how many registered importers there will be or how many suspensions or revocations may occur in the first year of the program. However, for purposes of determining this portion of the registration fee, NHTSA estimates that there will be 20 registered importers during the fiscal year beginning October 1, 1989, and ending September 30, 1990, and that there will be one revocation. Under Part 592, the procedures that the agency will follow in determining whether a registration should be revoked or suspended are identical. This means that the direct and indirect costs should also be identical, up to the point of an agency determination. Because a suspended registration may be reinstated, either upon expiration of the term stated in the agency's letter of suspension, or upon cure of the cause giving rise to the suspension, there will be a slight additional cost commensurate with the clerical aspects of ending the suspension.

NHTSA contemplates that its Enforcement Office will recommend suspensions or revocations to the Office of Chief Counsel, and that 1 hour of staff time, and .25 hour computer operator time will be involved in recommendations. In addition, .25 hour of computer time will be used. The Office of Chief Counsel will require 1.75 hours to review the recommendation and draft a letter to the registrant, and an additional 1.75 hours to review the registrant's reply and to draft a letter of suspension, or revocation, or declining to take further action. Postal charges will total \$6.00. The total direct costs associated with this procedure are

\$206.75, and the overhead costs for 4.75 hours of agency time, \$34.87. The sum of \$238.62 divided by the 20 estimated Registered Importers gives a figure of \$11.93 to be added to the portion of the annual fee representing maintenance of the registration program (For reinstatement, to be borne by the registrant, NHTSA estimates that the total direct and indirect costs will be \$40.36, representing .25 hour of clerical time, .25 hour of computer time, and .25 hour of computer operator time).

Thus, the total portion attributable to maintenance of the registration program, as estimated by NHTSA, is approximately \$166.92. When added to the \$85.99 representing the registration application component, the cost per applicant equals \$252.91. Therefore, NHTSA has determined that the initial annual registration fee, for the period October 1, 1989 through September 30, 1990, is \$255. In the event that an application is denied or withdrawn, NHTSA will refund all but \$86 of this amount, or \$169.

B. Fee for Vehicle Eligibility Petitions.

In calculating the direct costs of processing and acting upon a petition for a determination of eligibility, NHTSA estimates that the costs involved for determinations involving substantially similar vehicles will require substantially less agency time than those for non-similar vehicles. For purposes of this determination, NHTSA has chosen passenger cars and multi-purpose passenger vehicles, the most frequently imported types of motor vehicles. The agency estimates the total direct and indirect costs for a determination involving a substantially similar vehicle at \$1558.68 and for a non-similar vehicle at \$2151.61. In this light, a fee of \$1560 for substantially similar vehicle determinations, and one of \$2150 for those that are not substantially similar, appear to fulfill the statutory directive.

More specifically, the following cost breakdown has been estimated for substantially similar (and non-similar) vehicles. The process will result in personnel costs related to 2 (5) supervisory hours, 24 (35) staff hours, .25 (.25) hour computer time, .25 (2) hour(s) data entry time, .50 (2) hour(s) clerical time, and .25 (.50) hour recordkeeping time. In addition, .25 hour of computer time would be used for each. However, costs associated with preparing and publishing the two *Federal Register* notices, and evaluating comments to the first notice, should be identical. Each notice may require two columns of space (\$125 per column), for a cost of \$250 per notice, and total publication costs of \$500. Following agency practice with other petitions, the notices will be prepared by the Office of Chief Counsel. It is estimated that each notice will require 1 hour of preparation time, and .50 hour of clerical time, or a total of 3 hours for both notices. The estimated total direct charges for determinations of eligibility will be \$1342 (\$1817.50). In calculating the indirect

costs of processing and acting upon eligibility petitions, NHTSA estimates that the process, including the *Federal Register* preparation time, will take 30 (47.50) man hours, for a cost of \$201.30 (\$318.73), or a total cost of \$1543.30 (\$2136.23). These totals include .25 hour of computer time. To this must be added the pro rata cost of the yearly *Federal Register* notice. It is estimated that this will require 1 hour of Office of Chief Counsel time, .50 hour clerical time, and two columns in the *Federal Register*. The total direct costs to fulfill this statutory requirement would be \$297.50. The overhead costs, \$10.07. The total of \$307.57 divided among the estimated 20 registered importers adds \$15.38 to each petition cost, or a total of \$1558.68 (\$2151.61). Therefore, a petition fee of \$1560 (\$2150) is being adopted. At this point, costs appear similar for those determinations made upon the agency's own initiative, and the same fee will be used in recovery of costs.

C. Bond Processing Costs.

With respect to the costs attributable to processing the bond furnished the Secretary of the Treasury, the agency estimated and proposed \$125 per bond. However, after the proposal, NHTSA determined that the role of Customs in "processing" the bond under the 1988 Act would be limited to ensuring that the bond was completed and attached to the entry form, and that both would be forwarded to NHTSA. Customs then provided NHTSA with a detailed estimate of the costs involved in its processing of the bond. These tasks would be performed by a GS 9 Step 5 employee (hourly rate \$12.94). Eighteen minutes would be required to verify the content of the bond information, amount, and completeness, and to enter the information into Customs' data processing system. These tasks would cover all nonconforming vehicles imported. It is Customs practice to conduct verification inspections on approximately 15% of vehicles, verifying VINs to bonds, and this inspection would occupy 13 minutes. Finally, Customs estimates that 1% of the vehicles entered would not be brought into satisfactory conformity, requiring fulfillment of the bond condition of export. The associated tasks of supervising lading, reviewing documents, and verifying vehicle identification would require 20 minutes. Using the estimate of 2100 vehicles entered per year (the importation rate for 1989 to date), Customs' total bond processing costs are \$9,140.04, or \$4.352 per vehicle. NHTSA has adopted \$4.35 as the bond processing fee per vehicle.

Effective Date

Section 108(c)(3)(B) requires that the fee applicable in any fiscal year shall be established by NHTSA before the beginning of each such year. Therefore, pursuant to 5 U.S.C. 553(d)(3), it is found that good cause is shown for an effective date that is earlier than 30 days after publication of the final rule. Therefore, this final rule is effective September 30, 1989, so that

the fees it establishes will be applicable in Fiscal Year 1990, which begins October 1, 1989.

In consideration of the foregoing, a new Part 594, *Schedule of Fees Authorized by the Imported Vehicle Safety Compliance Act*, is added to Title 49, Chapter V, to read as follows:

Part 594 *Schedule of Fees Authorized by the National Traffic and Motor Vehicle Safety Act.*

Sec.

594.1 Scope.

594.2 Purpose.

594.3 Applicability.

594.4 Definitions.

594.5 Establishment and payment of fees.

594.6 Annual fee for administration of registration program.

594.7 Fee for filing petition for a determination whether a vehicle is eligible for importation.

594.8 Fee for importing a vehicle pursuant to a determination made on the Administrator's initiative.

594.9 Fee for reimbursement of bond processing costs.

Authority: Pub. L. 100-562, 15 U.S.C. 1401, 1407; delegation of authority at 49 CFR 1.50.

594.1 Scope.

This part establishes the fees authorized by the National Traffic and Motor Vehicle Safety Act.

594.2 Purpose.

The purposes of this part is to ensure that NHTSA is reimbursed for costs incurred in administering the importer registration program, in making determinations whether a nonconforming vehicle is eligible for importation into the United States, and in processing the bond furnished to the Secretary of the Treasury given to ensure that an imported vehicle not originally manufactured to conform to all applicable Federal motor vehicle safety standards is brought into compliance with the safety standards, or will be exported, or abandoned to the United States.

594.3 Applicability.

This part applies to any person who applies to NHTSA to be granted the status of a Registered Importer, to any person who has been granted such status, and to manufacturers who are not Registered Importers who petition the Administrator for a determination pursuant to Part 593 of this chapter.

594.4 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.

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

"NHTSA" means the National Highway Traffic Safety Administration.

“Registered Importer” means any person who has been granted the status of registered importer under Part 592 of this Chapter, and whose registration has not been revoked.

594.5 Establishment and payment of fees

(a) The fees established by this part continue in effect until adjusted by the Administrator. The Administrator reviews the amount or rate of fees established under this part and, if appropriate, adjusts them by rule at least every 2 years.

(b) The fees applicable in any fiscal year are established before the beginning of such year. Each fee is calculated in accordance with this part, and is published in the *Federal Register* not later than September 30 of each year.

(c) An applicant for status as Registered Importer shall submit an initial annual fee with the application. A fee for a determination that a vehicle is eligible for importation shall be submitted with the petition for a determination. No application or petition will be accepted for filing or processed before payment of the full amount specified. Except as provided in paragraph 594.6(d), a fee shall be paid irrespective of NHTSA's disposition of the application or petition, or of a withdrawal of an application or petition.

(d) A Registered Importer annual fee, other than the initial annual fee, is payable not later than October 31 of each year.

(e) A fee attributable to a determination of eligibility made on the Administrator's initiative shall be paid by a Registered Importer in accordance with paragraph 594.8(b).

(f) A fee for reimbursement for bond processing costs shall be filed with each certificate of conformity furnished the Administrator.

(g) Any other annual fee is payable not later than October 31 of each year. Any other fee is payable not later than 30 calendar days after the date of written notification by the Administrator.

(h) Fee payments shall be by check, draft, money order, or Electronic Funds Transfer System made payable to the Treasurer of the United States.

594.6 Annual fee for administration of the registration program.

(a) Each person filing an application to be granted the status of a Registered Importer pursuant to part 592 of this chapter during the period October 1, 1989 through September 30, 1990, shall pay an initial annual fee of \$255, as calculated below, based upon the direct and indirect costs attributable to:

- (1) processing and acting upon such application;
- (2) any inspection deemed required for a determination upon such application;
- (3) the estimated remaining activities of administering the registration program in the fiscal year in which such application is intended to become effective.

(b) That portion of the initial annual fee attributable to the processing of the application for applications

filed from October 1, 1989, through September 30, 1990, is \$86. The sum of \$86, representing this portion, shall not be refundable if the application is denied or withdrawn.

(c) If, in order to make a determination upon an application, NHTSA must make an inspection of the applicant's facilities, NHTSA notifies the applicant in writing after the conclusion of any such inspection, that a supplement to the initial annual fee in a stated amount is due upon receipt of such notice to recover the direct and indirect costs associated with such inspection and notification, and that no determination will be made upon the application until such sum is received. Such sum is not refundable if the application is denied or withdrawn.

(d) That portion of the initial annual fee attributable to the remaining activities of administering the registration program from October 1, 1989, through September 30, 1990, is set forth in subsection (i) of this section. This portion shall be refundable if the application is denied, or withdrawn before final action upon it.

(e) Each Registered Importer who wishes to maintain the status of Registered Importer shall pay a regular annual fee based upon the direct and indirect costs of administering the registration program, including the suspension and reinstatement, and revocation of such registration.

(f) The elements of administering the registration program that are included in the regular annual fee are:

(1) Calculating, revising, and publishing the fees to apply in the next fiscal year, including such coordination as may be required with the U.S. Customs Service.

(2) Processing and reviewing the annual statement attesting to the fact that no material change has occurred in the Registered Importer's status since filing its original application.

(3) Processing the annual fee.

(4) Processing and reviewing any amendments to an annual statement received in the course of a fiscal year.

(5) Verifying through inspection or otherwise that a Registered Importer is complying with the requirements of Sec. 592.6(b)(3) of this chapter for record-keeping.

(6) Verifying through inspection or otherwise that a Registered Importer is able technically and financially to carry out its responsibilities pursuant to 15 U.S.C. 1411 *et seq.*

(7) Invoking procedures for suspension of registration and its reinstatement, and for revocation of registration pursuant to Sec. 592.7 of this chapter.

(g) The direct costs included in establishing the annual fee for maintaining registered importer status are the estimated costs of professional and clerical staff time, computer and computer operator time, and

postage, per Registered Importer. The direct costs included in establishing the annual fee for a specific Registered Importer are costs of transportation and *per diem* attributable to inspections conducted with respect to that Registered Importer in administering the registration program, which have not been included in a previous annual fee.

(h) The indirect costs included in establishing the annual fee for maintaining Registered Importer status are a pro rata allocation of the average salary and benefits of persons employed in processing annual statements, or changes thereto, in recommending continuation of Registered Importer status, and a pro rata allocation of the costs attributable to maintaining the office space, and the computer or word processor. This cost is \$6.71 per man-hour for the period October 1, 1989, through September 30, 1990.

(i) Based upon the elements, and indirect costs of paragraphs (f), (g), and (h) of this section, the components of the initial annual fee attributable to administration of the registration program covering the period from October 1, 1989, through September 30, 1990, is \$166.92. When added to the component representing the costs of registration of \$85.99, as set forth in paragraph (b) of this section, the costs per applicant to be recovered through the annual fee is \$252.91. The annual registration fee for the period October 1, 1989, through September 30, 1990, is \$255.

Sec. 594.7 Fee for filing petition for a determination whether a vehicle is eligible for importation.

(a) Each manufacturer or registered importer who petitions NHTSA for a determination that—

(1) a nonconforming vehicle is substantially similar to a vehicle originally manufactured for importation into and sale in the United States and of the same model year as the model for which petition is made, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards, or

(2) a nonconforming vehicle has safety features that comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards, shall pay a fee based upon the direct and indirect costs of processing and acting upon such petition.

(b) The direct costs attributable to processing a petition filed pursuant to paragraph (a) of this section include the average cost per professional staff-hour, computer and computer operator time, and postage. The direct costs also include those attributable to any inspection of a vehicle requested by a petitioner in substantiation of its petition.

(c) The indirect costs attributable to processing and acting upon a petition filed pursuant to paragraph (a) of this section include a pro rata allocation of the average salary and benefits of persons employed in

processing the petitions and recommending decisions on them, and a pro rata allocation of the costs attributable to maintaining the office space, and the computer or word processor.

(d) The direct costs attributable to acting upon a petition filed pursuant to paragraph (a) of this section, also include the cost of publishing a notice in the *Federal Register* seeking public comment, the cost of publishing a second notice with the agency's determination, and a pro rata share of the cost of publishing an annual list of nonconforming vehicles determined to be eligible for importation.

(e) The fee payable for a petition for a determination that a nonconforming vehicle is eligible for importation into the United States for petitions filed from October 1, 1989, through September 30, 1990, is \$1560 if a petition is filed under paragraph (a)(1) above, and \$2150 if filed under paragraph (a)(2) above, when the petitioner does not request inspection of a vehicle. When the petitioner requests an inspection of a vehicle, the sum of \$550 shall be added to such fee. No portion of this fee is refundable if the petition is withdrawn or denied.

Sec. 594.8 Fee for importing a vehicle pursuant to a determination made on the Administrator's initiative.

(a) A fee shall be paid to cover the direct and indirect costs incurred by NHTSA in determinations made under paragraph 593.8(a) of this chapter, pursuant to its own initiative, that a vehicle is eligible for importation into the United States. The basis of such fee is that set forth in paragraphs 594.7(b), (c), and (d). If this basis of the determination is that a vehicle meets the criteria of paragraph 594.7(a)(1), the fee is \$1560. If the basis of the determination is that a vehicle meets the criteria of paragraph 594.7(a)(2), the fee is \$2150. These fees are applicable to each determination made from October 1, 1989, through September 30, 1990.

(b) After NHTSA has made a determination on its own initiative, the notice published in the *Federal Register* announcing the determination includes a fee attributable to NHTSA's direct and indirect costs incurred pursuant to such determination, and an advisory that such fee shall be payable by the Registered Importer who furnishes a certificate of conformity pursuant to paragraph 592.6(a)(3)(vi) of this chapter, on behalf of the first person who files a declaration pursuant to paragraph 591.5(f) of this chapter that the vehicle is eligible for importation.

(c) After receipt of the first declaration covering a vehicle eligible for importation because of a determination made pursuant to the Administrator's initiative, NHTSA informs the appropriate Registered Importer that a fee in the stated amount shall accompany the certificate of conformity that the registered importer must furnish for the vehicle. No certificate shall be accepted for filing or processing

unless and until such fee has been paid. A certificate for which no remittance is received may be returned to the registered importer.

Sec. 594.9 Fee for reimbursement of bond processing costs.

(a) Each registered importer shall pay a fee based upon the direct and indirect costs of processing each bond furnished to the Secretary of the Treasury with respect to each vehicle for which it furnishes a certificate of conformity to the Administrator pursuant to paragraph 591.7(e) of this chapter.

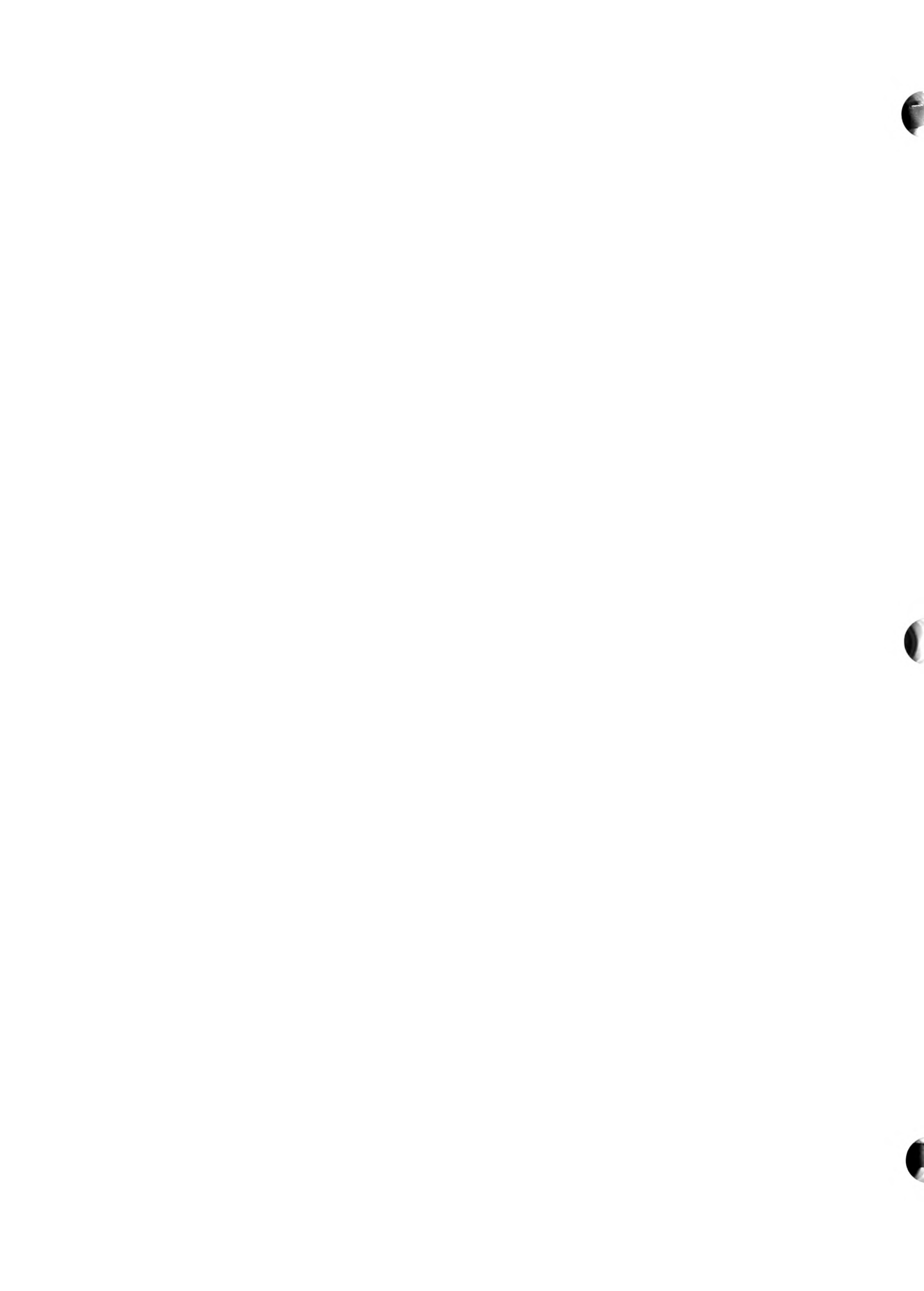
(b) The direct and indirect costs attributable to processing a bond are provided to NHTSA by the U.S. Customs Service.

(c) Based upon information from the U.S. Customs Service, the bond processing fee for each vehicle for which a certificate of conformity is furnished from October 1, 1989, through September 30, 1990, is \$4.35.

Issued on September 26, 1989.

Jeffrey R. Miller
Acting Administrator

54 F.R. 40100
September 29, 1989



PREAMBLE TO AN AMENDMENT TO PART 594

Schedule of Fees Authorized by the National Traffic and Motor Vehicle Safety Act

(Docket 89-8; Notice 4)
RIN 2127-AC98

ACTION: Final rule.

SUMMARY: In September 1989 NHTSA published its first schedule of fees authorized by the Imported Vehicle Safety Compliance Act of 1988, which amended the National Traffic and Motor Vehicle Safety Act of 1966. The 1988 Act provides that the fees shall be reviewed, and, if appropriate adjusted at least every two years. This final rule adopts certain adjustments which will apply as of October 1, 1990, the beginning of Fiscal Year 1991.

The agency has determined that the fee for the registration will remain unchanged at \$255 for applications for registered importer status, and that the annual fee for renewal of such status will also be \$255. The fee required to reimburse the U.S Customs Service for bond processing costs will increase by twenty cents to \$4.55 per bond

Presently, the fee for a determination of vehicle eligibility for importation is payable by the registered importer who petitions the agency, or by the first person importing a vehicle under a determination made by the agency on its own initiative. These fees are \$1,560 if the vehicle is substantially similar to a model certified by its original manufacturer as complying, and \$2,150 if it is not. Under the new fee structure adopted, fees will be payable in part by any petitioner for a determination, and in part by the importer of each vehicle covered by a determination, with the agency reconciling costs and fees received in establishing appropriate fees for the next fiscal year. If the determination is made on NHTSA's initiative, the fee will be payable by the importer alone. The cost basis for the fees will remain the same but they will, in theory, be payable by all who benefit from such determinations. The agency has adopted a petition fee of \$100 for substantially similar determinations, and \$500 for others. Each vehicle imported under either determination will be subject to a fee of \$83. Each vehicle imported under a determination made by NHTSA on its own initiative will be subject to a fee of \$156.

DATE: The effective date of the final rule is September 30, 1990.

SUPPLEMENTARY INFORMATION

Introduction

On September 29, 1989, NHTSA adopted 49 CFR Part 594, establishing the initial fees authorized by

section 108 of the National Traffic and Motor Vehicle Safety Act, as amended by the Imported Vehicle Safety Compliance Act of 1988, P.L. 100-562 (54 FR 40100; See this notice for a full description of the agency's methodology and rationale in its determination of costs). Section 108(c)(3)(B) (15 U.S.C. 108(c)(3)(B) of the Act provides that the amount or rate of fees shall be reviewed, and, if appropriate, adjusted at least every two years. Further, the fees applicable in any fiscal year shall be established before the beginning of such year. The statute authorizes an annual fee to cover the costs of administration of the importer registration program, an annual fee or fees to cover the costs of making import eligibility determinations, and an annual fee or fees to cover the costs of processing the bond furnished to the Customs Service. The purpose of this notice is to adopt appropriate fees for FY 1991, which begins October 1, 1990. A notice of proposed rulemaking on this subject was published on August 31, 1990 (55 FR 35694).

One comment was received on the proposal, from Liphardt & Associates, Inc; a registered importer. The comment was in general opposition to the Imported Vehicle Safety Compliance Act of 1988, and did not address the specific fees proposed in the August notice. Therefore, the agency is adopting all fees as proposed.

Requirements of the fee regulation.

594.6 Annual Fee for administration of the importer registration program.

Section 108(c)(3)(A)(iii) of the Vehicle Safety Act provides that registered importers must pay "such annual fee as the Secretary establishes to cover the cost of administering the registration program..." The annual fee attributable to the registration program is payable both by new applicants and by registered importers seeking to renew their registrations. The reader is referred to the notices of August 31, 1990, and September 29, 1989, for a fuller discussion of the fee and its components.

The initial component of the Registration Program Fee is the portion of the fee attributable to processing and acting upon registration applications. The agency estimates that this portion of the fee will be \$86, and identical for both new applications and renewals.

Other costs attributable to maintenance of the registration program arise from reviewing a registrant's annual statement, and verifying the continuing validity of information already submitted. These costs also

include costs attributable to revocation or suspension of a registration.

The total portion attributable to maintenance of the registration program, as estimated by NHTSA, is approximately \$169. When added to the \$86 representing the registration application (or annual renewal) component, the cost per applicant or renewal equals \$255. Therefore, NHTSA has determined that the annual registration fee, for the period October 1, 1990 through September 30, 1991, will be \$255. In the event that an application is denied or withdrawn, NHTSA will refund all but \$86 of this amount, or \$169.

594.7, 594.8, Fees to cover agency costs in making importation eligibility determinations.

Section 108(c)(3)(A)(iii)(11) also requires Registered Importers to pay "such other annual fee or fees as the Secretary reasonably establishes to cover the cost of...making the determinations under this section." Pursuant to Part 593, these determinations are whether the vehicle sought to be imported is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, and certified as meeting the Federal standards, and whether it is capable of being readily modified to meet those standards, or, alternatively, where there is no substantially similar U.S. motor vehicle, whether the safety features of the vehicle comply with or are capable of being modified to comply with the U.S. standards. These determinations are made pursuant to petitions submitted by Registered Importers or manufacturers, or pursuant to determinations made upon the Administrator's initiative. The reader is also referred to the August 31, 1990, and September 29, 1989, notices for a fuller discussion of the cost factors of such determinations.

The agency estimated the total direct and indirect costs for a determination involving a substantially similar vehicle at \$1558.68, and for a non-similar vehicle at \$2151.61. In this light, a fee of \$1560 for substantially similar vehicle determinations, and one of \$2150 for those that are not substantially similar, appeared to fulfill the statutory directive, and was adopted for FY 1990.

Costs appeared similar for those determinations made upon the agency's own initiative, and the same fee was adopted for recovery of costs. The principal issue here was how such costs were to be recovered in the absence of a petitioner. The method adopted was that it be paid by the first Registered Importer who furnished a certificate of conformity covering such vehicle after NHTSA's determination on its own initiative.

In actuality, the determination process during FY 1990 worked in a different manner than NHTSA

contemplated. Applications for registration as importers were not submitted as quickly as expected, with the result that no importer had been registered by the effective date of the 1988 amendments, January 31, 1990, and no petitions filed. Once the initial Registered Importers had been appointed, NHTSA became aware of their reluctance to file determination petitions because of the petition fee. Sensing that an unintended burden on international commerce might result as a consequence, the agency proceeded to propose determinations on its own initiative with respect to vehicles that it believed were properly categorized as "substantially similar." However, the requirement that the entire fee be payable by the first person importing a vehicle under such a determination also was viewed by registered importers as inequitable, and a requirement that would cause hardship. In the comments on the agency's tentative determination, recommendations were made that the fee be split equally among all registered importers, or among the first five or ten vehicles imported under that determination. NHTSA met with registered importers and other interested persons on June 28, 1990, and the matter was discussed in further detail. The registered importers asked NHTSA if it could not impose a flat fee upon each vehicle imported which, like the bond processing fee, would be payable at the time the registered importer submitted certification for the vehicle.

As NHTSA commented in the proposal of August 31, 1990, it is interested in accommodating this view. The imposition of a flat fee per vehicle has the regulatory virtue of simplicity; it is easily understood by the regulated parties and it is easily administered by the agency. The difficult part comes in reconciling the sums realized with actual agency expenses. If the agency estimates that registered importers will conform 200 vehicles in 1991 that are covered by eligibility determinations made in FY91, and that a fee of \$100 is appropriate for each, the agency may receive \$20,000 in fees. That sum equals the cost of 13 determinations of substantial similarity at the FY90 fee level. Alternatively, this approach would represent two determinations of eligibility for non-similar vehicles. The problem is that, although the agency can estimate its costs per determination, it cannot estimate in advance with any degree of accuracy how many determinations it will have to make in the coming fiscal year, nor the basis on which the determinations would be made.

The agency reviewed the fee provisions of the 1988 Act, and found no requirement that it recover its costs in the fiscal year in which they are incurred, or that it be payable by any specific person in any specific manner. NHTSA believed that this flexibility and the provision of the Act which allows it to adjust fees on a yearly basis afforded it a mechanism by which fees can

be adjusted to compensate for NHTSA's actual expenses. For example, if the fees received in one fiscal year exceed NHTSA's costs, the overage can in effect be applied to the following year and be considered in determining the fee to be paid for the next fiscal year. Similarly, if NHTSA underestimated its costs, the fee may be adjusted upward in the ensuing fiscal year. NHTSA's limited experience to date indicates that petitions, or determinations on the Administrator's initiative, may vary in issues and complexity, and are likely to consume more time than the agency initially estimated. In addition, the fairest way to recover costs of determinations made on the agency's initiative appears to be to place the burden directly upon the importers of all such vehicles.

Therefore, with respect to FY 1991, NHTSA proposed a restructuring of its fee schedule. The cost basis previously adopted remained at \$1,560 for substantially similar determinations, and at \$2,150 for others. However, under the restructuring, the fee for a vehicle imported under a determination made on the agency's initiative would not be payable by a Registered Importer, but be payable by the importer of any vehicle covered by any determination made on the agency's initiative. The fee for a vehicle imported under a determination pursuant to a petition would be payable in part by the petitioner (who would still bear some of the cost burden, and not be excused totally from this requirement), and in part by importers. However, the fee to be charged for a vehicle would not be a pro rata share of the costs of the agency in making the eligibility determination for that type of vehicle, but a pro rata share of the costs in making all the eligibility determinations in the fiscal year, adjusted for previous shortfalls and overages.

NHTSA estimated that 610 vehicles may be imported in FY 1991 by registered importers, or persons having contracts with them. It further estimated that 400 of these vehicles may be imported pursuant to determinations of substantial similarity that would be made before October 1, 1990, and which would be subject to the fee structure in effect for FY 1990. The remaining 210 vehicles would be covered by determinations made in FY 1991. Of the 210 vehicles, the agency estimated that 30 would be covered by determinations made on its own initiative, and 180 pursuant to determinations made pursuant to petitions.

Of the determinations made pursuant to petitions, NHTSA estimated that 10 petitions would be filed, eight of which would cover substantially similar vehicles and two of them that would not. The estimated total cost of these determinations is \$16,780 representing the sum of \$12,480 ($8 \times \$1,560$) for determinations of substantial similarity, and \$4,300 ($2 \times \$2,150$) for the remainder. The agency proposed a filing fee of \$100

for substantial similarity petitions, and of \$500 for those that are not. On this basis, the petitioners would bear \$1,800 of the total costs ($8 \times \$100 + 2 \times \500). Subtracting \$1,800 from the total costs leaves \$14,980 to be borne by the importers of the 180 vehicles. Thus, NHTSA proposed that importers of vehicles covered by petition determinations pay a fee of \$83.

The agency estimated that it may make three determinations of substantial similarity on its own initiative in the next fiscal year, and no determinations on the alternative basis. Thus the total costs to be recovered would be \$4,680. As there would be no petitioner in such instances from whom a fee may be obtained, the agency proposed that importers bear the full burden of these costs. Assuming that 30 vehicles are imported that are covered by initiative determinations, the agency proposed that each vehicle be subject to a fee of \$156. The \$83 or \$156 would be forwarded to NHTSA by the Registered Importer along with the bond processing fee and the certificate of compliance.

These fees have been adopted as proposed.

NHTSA will use a year of July 1—June 30 as the basis of its calculations for the next fiscal year. This is because of the necessity and time required to prepare and publish proposed fees, to allow a sufficient amount of time to comment upon them, and to prepare and issue a final rule not later than September 30.

594.9 Fee to recover the costs of processing the bond

Section 10B (c)(3)(A)(iii)(II) also requires a registered importer to pay "such annual fee or fees as the Secretary reasonably establishes to cover the cost of processing the bond furnished to the Secretary of the Treasury" upon the importation of a nonconforming vehicle to ensure that the vehicle will be brought into compliance within a reasonable time, or if the vehicle is not brought into compliance within such time, that it is exported without cost to the United States, or abandoned to the United States.

The statute contemplates that NHTSA make a reasonable determination of the cost to the United States Custom Service of processing the bond. For a fuller discussion of these costs, the reader is again referred to the notices of August 31, 1990, and September 29, 1989.

As of August 31, 1990, there had been no entries pursuant to this provision. Accordingly, NHTSA based its calculations on those previously submitted by Customs, adjusted to reflect salary increases. This would result in a slight increase in the present bond processing fee of \$4.35. Therefore, NHTSA proposed and is adopting \$4.55 as the bond processing fee for FY 1991. The rule also clarifies that the fee applicable to a particular vehicle is based upon the date of importation, not the date the certificate of conformity is furnished.

Effective Date

Pursuant to 5 USC 553(d)(3), a rule may be published less than 30 days before its effective date, for good cause found. Section 108(c)(3)(B) requires that the fee applicable in any fiscal year shall be established by NHTSA before the beginning of each such year. Therefore, NHTSA finds good cause for an effective date of September 30, 1990, which is earlier than 30 days after publication of the rule, so that the fees established by the rule will be applicable in Fiscal Year 1991, which begins October 1, 1990.

In consideration of the foregoing, 49 CFR Part 594 is amended as follows:

Section 594.3 is revised to read:

Section 594.3 Applicability.

This part applies to any person who applies to NHTSA to be granted the status of Registered Importer under part 592 of this chapter, to any person who has been granted such status, to any manufacturer not a Registered Importer who petitions the Administrator for a determination pursuant to part 593 of this chapter, and to any person who imports a motor vehicle into the United States pursuant to such determination.

3. Sections 594.5(c), (d), (e), and (g) are revised to read:

Section 594.5 Establishment and payment of fees.

* * * * *

(c) An applicant for status as Registered Importer shall submit an initial annual fee with the application. A Registered Importer shall pay an annual fee not later than October 31 of each year. The fee is that specified in section 594.6(i).

(d) A person who petitions the Administrator for a determination that a vehicle is eligible for importation shall file with the petition the fee specified in section 594.7(e).

(e) A person who imports a vehicle covered by a determination of the Administrator shall pay the fee specified in either section 594.B(b) or (c), as appropriate. Such fee shall be transmitted to the Administrator by the Registered Importer responsible for such vehicle at the time it furnishes a certificate of conformity pursuant to section 591.7(e) of this chapter.

* * * * *

(g) No application or petition will be accepted for filing or processed before payment of the full amount specified. Except as provided in section 594.6(d), a fee shall be paid irrespective of NHTSA's disposition of the application, or of a withdrawal of an application.

Section 594.6 [Amended]

* * * * *

4. In Section 594.6, paragraphs (a), (b), (d), (h) and (i), the dates "October 1, 1989" and "September 30, 1990" are revised respectively to read "October 1, 1990" and "September 30, 1991."

5. Section 594.7(e) is amended by revising paragraph (e) and adding paragraph (f) to read:

Section 594.7 Fee for filing petition for a determination whether a vehicle is eligible for importation.

* * * * *

(e) For petitions filed from October 1, 1990 through September 30, 1991, the fee payable for a petition seeking a determination under paragraph (a)(1) above is \$100. The fee payable for a petition seeking a determination under paragraph (a)(2) above is \$500. If the petitioner requests an inspection of a vehicle, the sum of \$550 shall be added to such fee. No portion of this fee is refundable if the petition is withdrawn or denied.

(f) In adopting a fee for the next fiscal year, the Administrator employs data based upon the cost of determinations and the amount of fees received for the 12-month period ending June 30 of the fiscal year preceding that fiscal year.

6. Section 594.8 is revised to read:

Section 594.8 Fee for importing a vehicle pursuant to a determination by the Administrator.

(a) A fee as specified in paragraphs (b) and (c) of this section shall be paid by each importer of a vehicle covered by a determination made under part 593 of this chapter to cover the direct and indirect costs incurred by NHTSA in making such determinations.

(b) If a determination has been made pursuant to a petition, the fee for each vehicle is \$83. The direct and indirect costs that determine the fee are those set forth in sections 594.7(b), (c), and (d).

(c) If a determination has been made pursuant to the Administrator's initiative the fee is \$156. The direct and indirect costs that determine the fee are those set forth in sections 594.7(b), (c) and (d), and references to "petition" shall be understood as relating to NHTSA's documents that serve as a basis for initiating determinations on its own initiative.

7. Section 594.9(c) is revised to read:

Section 594.9 Fee for reimbursement of bond processing costs.

(c) The bond processing fee for each vehicle imported from October 1, 1990, through September 30, 1991, for which a certificate of conformity is furnished, is \$4.55.

Issued on September 28, 1990.

55 F.R. 40664
October 4, 1990

PART 594—SCHEDULE OF FEES AUTHORIZED BY THE NATIONAL TRAFFIC AND MOTOR VEHICLE SAFETY ACT

S594.1 Scope.

This part establishes the fees authorized by the National Traffic and Motor Vehicle Safety Act.

S594.2 Purpose.

The purpose of this part is to ensure that NHTSA is reimbursed for costs incurred in administering the importer registration program, in making determinations whether a nonconforming vehicle is eligible for importation into the United States, and in processing the bond furnished to the Secretary of the Treasury given to ensure that an imported vehicle not originally manufactured to conform to all applicable Federal motor vehicle safety standards is brought into compliance with the safety standards, or will be exported, or abandoned to the United States.

S594.3 Applicability.

[This part applies to any person who applies to NHTSA to be granted the status of a Registered Importer under Part 593 of this chapter, to any person who has been granted such status, to any manufacturers not Registered Importers who petition the Administrator for a determination pursuant to Part 593 of this chapter, and to any person who imports a motor vehicle into the United States pursuant to such determination. (55 F.R. 40664—October 4, 1990. Effective: September 30, 1990)]

S594.4 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.

“Administrator” means the Administrator of the National Highway Traffic Safety Administration.

“NHTSA” means the National Highway Traffic Safety Administration.

“Registered Importer” means any person who has been granted the status of registered importer under Part 592 of this chapter, and whose registration has not been revoked.

S594.5 Establishment and Payment of Fees.

(a) The fees established by this part continue in effect until adjusted by the Administrator. The Administrator reviews the amount or rate of fees established under this part and, if appropriate, adjusts them by rule at least every 2 years.

(b) The fees applicable in any fiscal year are established before the beginning of such year. Each fee is calculated in accordance with this part, and is published in the *Federal Register* not later than September 30 of each year.

(c) [An applicant for status as Registered Importer shall submit an initial annual fee with the application. A Registered Importer shall pay an annual fee not later than October 31 of each year. The fee is that specified in section 594.6(i).

(d) A person who petitions the Administrator for a determination that a vehicle is eligible for importation shall file with the petition the fee specified in section 594.7(e).

(e) A person who imports a vehicle covered by a determination of the Administrator shall pay the fee specified in either section 594.8(b) or (c), as appropriate. Such fee shall be transmitted to the Administrator by the Registered Importer responsible for such vehicle at the time it furnishes a certificate of conformity pursuant to section 591.7(e) of this chapter. (55 F.R. 40664—October 4, 1990. Effective: September 30, 1990)]

(f) A fee for reimbursement for bond processing costs shall be filed with each certificate of conformity furnished the Administrator.

(g) [No application or petition will be accepted for filing or processed before payment of the full amount specified. Except as provided in section 594.6(d), a fee shall be paid irrespective of NHTSA’s disposition of the application, or of a withdrawal of an application. (55 F.R. 40664—October 4, 1990. Effective: September 30, 1990)]

(h) Fee payments shall be by check, draft, money order, or Electronic Funds Transfer System made payable to the Treasurer of the United States.

S594.6 Annual Fee for Administration of the Registration Program.

(a) Each person filing an application to be granted the status of a Registered Importer pursuant to part 592 of this chapter during the period October 1, 1990, through September 30, 1991, shall pay an initial annual fee of \$255, as calculated below, based upon the direct and indirect costs attributable to:

(1) processing and acting upon such application;

(2) any inspection deemed required for a determination upon such application;

(3) the estimated remaining activities of administering the registration program in the fiscal year in which such application is intended to become effective.

(b) That portion of the initial annual fee attributable to the processing of the application for applications filed from October 1, 1990, through September 30, 1991, is \$86. The sum of \$86, representing this portion, shall not be refundable if the application is denied or withdrawn.

(c) If, in order to make a determination upon an application, NHTSA must make an inspection of the applicant's facilities, NHTSA notifies the applicant in writing after the conclusion of any such inspection that a supplement to the initial annual fee in a stated amount is due upon receipt of such notice to recover the direct and indirect costs associated with such inspection and notification, and that no determination will be made upon the application until such sum is received. Such sum is not refundable if the application is denied or withdrawn.

(d) That portion of the initial annual fee attributable to the remaining activities of administering the registration program from October 1, 1990, through September 30, 1991, is set forth in subsection (i) of this section. This portion shall be refundable if the application is denied, or withdrawn before final action upon it.

(e) Each Registered Importer who wishes to maintain the status of Registered Importer shall pay a regular annual fee based upon the direct and indirect costs of administering the registration program, including the suspension and reinstatement, and revocation of such registration.

(f) The elements of administering the registration program that are included in the regular annual fee are:

(1) Calculating, revising, and publishing the fees to apply in the next fiscal year, including such coordination as may be required with the U.S. Customs Service.

(2) Processing and reviewing the annual statement attesting to the fact that no material change has occurred in the Registered Importer's status since filing its original application.

(3) Processing the annual fee.

(4) Processing and reviewing any amendments to an annual statement received in the course of a fiscal year.

(5) Verifying through inspection or otherwise that a Registered Importer is complying with the requirements of Sec. 592.6(b)(3) of this chapter for recordkeeping.

(6) Verifying through inspection or otherwise that a Registered Importer is able technically and financially to carry out its responsibilities pursuant to 15 U.S.C. 1411 *et seq.*

(7) Invoking procedures for suspension of registration and its reinstatement, and for revocation of registration pursuant to Sec. 592.7 of this chapter.

(g) The direct costs included in establishing the annual fee for maintaining Registered Importer status are the estimated costs of professional and clerical staff time, computer and computer operator time, and postage, per Registered Importer. The direct costs included in establishing the annual fee for a specific Registered Importer are costs of transportation and *per diem* attributable to inspections conducted with respect to that Registered Importer in administering the registration program, which have not been included in a previous annual fee.

(h) The indirect costs included in establishing the annual fee for maintaining Registered Importer status are a pro rata allocation of the average salary and benefits of persons employed in processing annual statements, or changes thereto, in recommending continuation of Registered Importer status, and a pro rata allocation of the costs attributable to maintaining the office space, and the computer or word processor. This cost is \$6.71 per man-hour for the period October 1, 1990, through September 30, 1991.

(i) Based upon the elements, and indirect costs of paragraphs (f), (g), and (h) of this section, the component of the initial annual fee attributable to administration of the registration program, covering the period from October 1, 1989, through

September 30, 1990, is \$166.92. When added to the component representing the costs of registration of \$85.99, as set forth in paragraph (b) of this section, the costs per applicant to be recovered through the annual fee are \$252.91. The annual registration fee for the period October 1, 1989, through September 30, 1990, is \$255.

S594.7 Fee for Filing Petition for a Determination Whether a Vehicle is Eligible for Importation.

(a) Each manufacturer or registered importer who petitions NHTSA for a determination that—

(1) A nonconforming vehicle is substantially similar to a vehicle originally manufactured for importation into and sale in the United States and of the same model year as the model for which petition is made and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards, or

(2) a nonconforming vehicle which has safety features that comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards, shall pay a fee based upon the direct and indirect costs of processing and acting upon such petition.

(b) The direct costs attributable to processing a petition filed pursuant to paragraph (a) of this section include the average cost per professional staff-hour, computer and computer operator time, and postage. The direct costs also include those attributable to any inspection of a vehicle requested by a petitioner in substantiation of its petition.

(c) The indirect costs attributable to processing and acting upon a petition filed pursuant to paragraph (a) of this section include a pro rata allocation of the average salary and benefits of persons employed in processing the petitions and recommending decisions on them, and a pro rata allocation of the costs attributable to maintaining the office space, and the computer or word processor.

(d) The direct costs attributable to acting upon a petition filed pursuant to paragraph (a) of this section, also include the cost of publishing a notice in the *Federal Register* seeking public comment, the cost of publishing a second notice with the agency's determination, and a pro rata share of the cost of publishing an annual list of

nonconforming vehicles determined to be eligible for importation.

(e) [For petitions filed from October 1, 1990, through September 30, 1991, the fee payable for a petition seeking a determination under paragraph (a)(1) above is \$100. The fee payable for a petition seeking a determination under paragraph (a)(2) above is \$500. If the petitioner requests an inspection of a vehicle, the sum of \$550 shall be added to such fee. No portion of this fee is refundable if the petition is withdrawn or denied. (55 F.R. 40664—October 4, 1990. Effective: September 30, 1990)]

(f) In adopting a fee for the next fiscal year, the Administrator employs data based upon the cost of determinations and the amount of fees received for the 12-month period ending June 30 of the fiscal year preceding that fiscal year. (55 F.R. 40664—October 4, 1990. Effective: September 30, 1990)]

S594.8 Fee for Importing a Vehicle Pursuant to a Determination Made on the Administrator's Initiative.

(a) [A fee as specified in paragraphs (b) and (c) of this section shall be paid by each importer of a vehicle covered by a determination made under Part 593 of this chapter to cover the direct and indirect costs incurred by NHTSA in making such determinations.

(b) If a determination has been made pursuant to a petition, the fee for each vehicle is \$83. The direct and indirect costs that determine the fee are those set forth in sections 594.7(b), (c), and (d).

(c) If a determination has been made pursuant to the Administrator's initiative the fee is \$156. The direct and indirect costs that determine the fee are those set forth in sections 594.7(b), (c), and (d), and references to "petition" shall be understood as relating to NHTSA's documents that serve as a basis for initiating determinations on its own initiative. (55 F.R. 40664—October 4, 1990. Effective: September 30, 1990)]

S594.9 Fee for Reimbursement of Bond Processing Costs.

(a) Each registered importer shall pay a fee based upon the direct and indirect costs of processing each bond furnished to the Secretary of the Treasury with respect to each vehicle for which it furnishes a certificate of conformity to

the Administrator pursuant to paragraph 591.7(e) of this chapter.

(b) The direct and indirect costs attributable to processing a bond are provided to NHTSA by the U.S. Customs Service.

(c) [The bond processing fee for each vehicle imported from October 1, 1990, through Septem-

ber 30, 1991, for which a certificate of conformity is furnished, is \$4.55. (55 F.R. 40664—October 4, 1990. Effective: September 30, 1990)]

54 F.R. 40100

September 29, 1989

PREAMBLE TO DEPARTMENT OF THE TREASURY REGULATION RELATING TO IMPORTATION OF MOTOR VEHICLES AND ITEMS OF MOTOR VEHICLE EQUIPMENT

On April 10, 1968, Public Law 90-283 was enacted to amend the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391-1409) by adding a new section 123. This section provides a procedure whereby the Secretary of Transportation is authorized, upon petition by a manufacturer of 500 or less vehicles annually, to temporarily exempt such vehicles from certain Federal motor vehicle safety standards. The procedures for temporary exemption of such vehicles adopted by the Department, as published in the *Federal Register* on September 26, 1968 (33 F.R. 14457), require each exempted vehicle to bear a label or tag permanently affixed containing certain information including a statement listing the safety standards for which an exemption has been obtained. Since vehicles so exempted will no longer bear the "valid certification as required by section 114 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1403)" which is required by 19 CFR 12.80(b)(1) if a motor vehicle offered for importation is not to be refused entry, it is deemed desirable to amend 19 CFR 12.80(b) to allow entry of exempted vehicles bearing the exemption labels or tags required under the regulations of the Department of Transportation (23 CFR 217.13).

In addition, the Automobile Manufacturer's Association, Inc., on behalf of itself and its member companies, has made a showing of the necessity of importing and using for purposes of test or experiment for a limited time on the public roads, of a limited number of nonconforming motor vehicles manufactured outside the United States. The Association has requested an amendment of 19 CFR 12.80(b)(2)(vii) which currently, among other things, allows the importation of such vehicles for such purposes only upon a declaration by the importer that these vehicles will not be licensed for use on the public roads.

In consideration of the foregoing, § 12.80(b) is amended as follows:

Subparagraph (b)(1) is amended by changing the period following the words "so labelled or tagged", to a comma and (b)(2)(vii) is amended to read as follows:

§ 12.80 Federal Motor vehicle safety standards.

* * * * *

(b) * * *

(1) * * * or (iii) (for vehicles only which have been exempted by the Secretary of Transportation from meeting certain safety standards) it bears a label or tag permanently affixed to such vehicle which meets the requirements set forth in the regulations of the Department of Transportation, 23 CFR 217.13.

(2) * * *

(vii) The importer or consignee is importing such vehicle or equipment item solely for the purposes of show, test, experiment, competition, repairs or alterations and that such vehicle or equipment item will not be sold or licensed for use on the public roads: Provided, That vehicles imported solely for purposes of test or experiment may be licensed for use on the public roads for a period not to exceed one year, where such use is an integral part of tests or experiments for which such vehicle is being imported, upon condition that the importer attach to the declaration description of the tests or experiments for which the vehicle is being imported, the period of time during which it is estimated that it will be necessary to test the vehicle on the public roads, and the disposition to be made of the vehicle after completion of the tests or experiments.

* * * * *

(Sec. 108, 80 Stat. 722, 15 U.S.C. 1397)

Since the first amendment is necessitated to conform to regulations of the Department of

Effective: December 14, 1968

Transportation presently in effect and the second will affect a very limited number of persons with a legitimate interest in road testing non-conforming vehicles, notice and public procedure thereon is not considered necessary and good cause is found for dispensing with the delayed effective date provision of 5 U.S.C. 553(d). Therefore, the amendments shall be effective upon publication in the *Federal Register*.

[SEAL]

Lester D. Johnson
Commissioner of Customs

Approved: November 29, 1968.

Joseph M. Bowman,
Assistant Secretary
of the Treasury.

Approved: December 9, 1968.

Lowell K. Bridwell,
Federal Highway Administrator.

33 F.R. 18577
December 14, 1968

**PREAMBLE TO AMENDMENT TO DEPARTMENT OF THE TREASURY REGULATION RELATING
TO IMPORTATION OF MOTOR VEHICLES AND ITEMS OF MOTOR VEHICLE EQUIPMENT**

(T.D. 71-122)

A notice was published in the *Federal Register* on February 18, 1971 (36 F.R. 3121), that it was proposed to amend § 12.80 of the Customs Regulations (19 CFR 12.80) to make the following substantive changes:

1. To provide that motor vehicles and motor vehicle equipment brought into conformity under bond, shall not be sold or offered for sale until the bond is released;

2. To make clear that the term motor vehicle as used in § 12.80 refers to a motor vehicle as defined in the National Traffic and Motor Vehicle Safety Act of 1966;

3. To require a declaration of conformance accompanied by a statement of the vehicle's original manufacturer as evidence of original compliance;

4. To require that declarations filed under paragraph (c) of § 12.80 be signed by the importer or consignee; and

5. To add a bond requirement for the production of a declaration of original compliance and a declaration of conformity after manufacture.

Interested persons were given an opportunity to submit relevant data, views, or arguments. No comments were received. The amendments as proposed, with minor editorial changes, are hereby adopted as set forth below to become effective 30 days after the date of publication in the *Federal Register*.

Robert V. McIntyre,
Acting Commissioner of Customs.

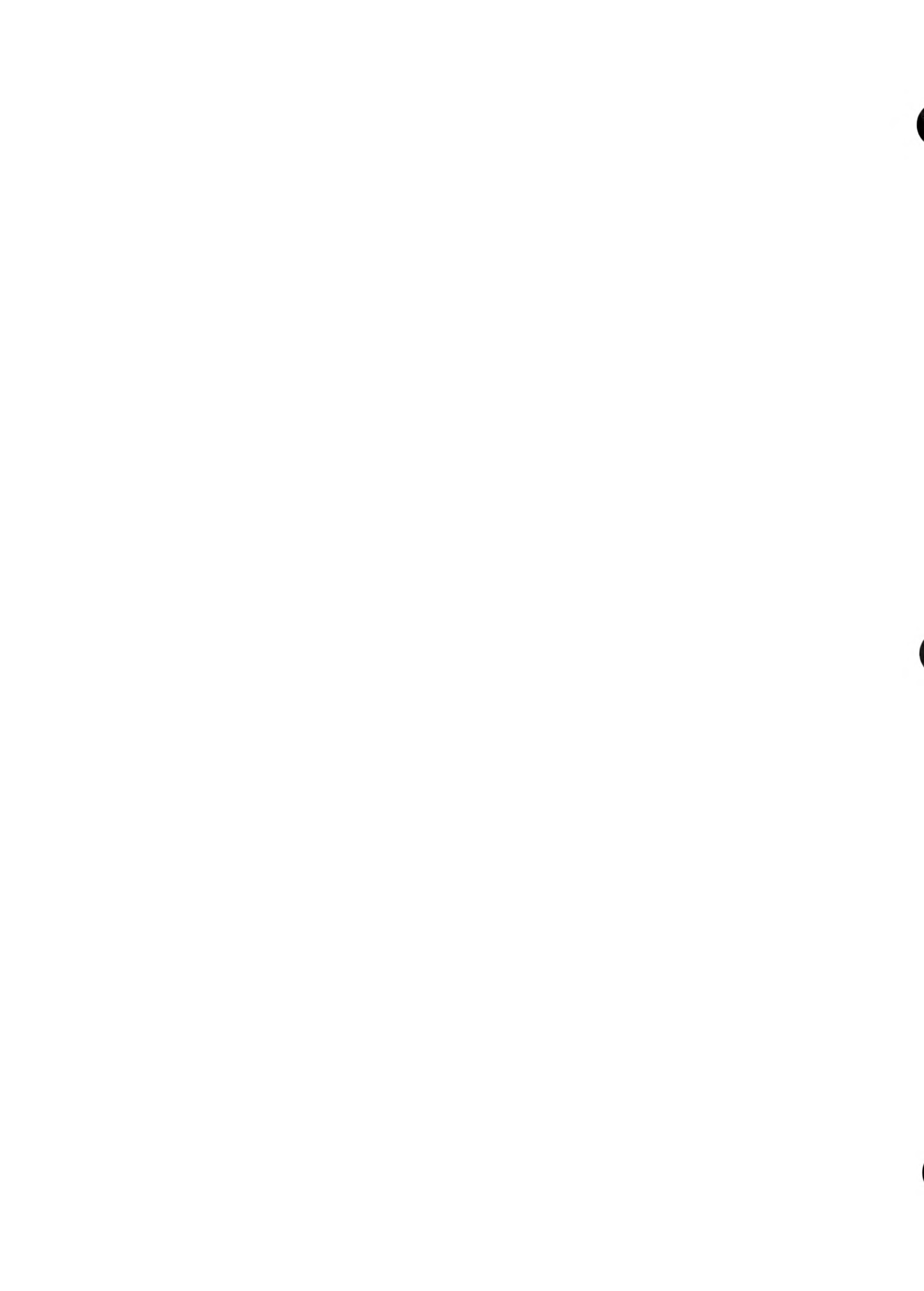
APPROVED: April 22, 1971.

Eugene T. Rossides,
Assistant Secretary of the Treasury.

APPROVED: May 3, 1971.

Douglas W. Toms,
Acting Administrator, National
Highway Traffic Safety Administration.

36 F.R. 8667
May 11, 1971



DEPARTMENT OF THE TREASURY REGULATION RELATING TO IMPORTATION OF MOTOR VEHICLES AND ITEMS OF MOTOR VEHICLE EQUIPMENT

Notice of a proposal to add § 12.80 to Part 12 of the Customs Regulations to prescribe regulations providing for the admission or refusal of motor vehicles or items of motor vehicle equipment which are offered for importation into the United States and which are subject to Federal motor vehicle safety standards promulgated by the Department of Transportation in 49 CFR Part 571, pursuant to the provisions of the National Traffic and Motor Vehicle Safety Act of 1966, was published in the *Federal Register* for November 30, 1967 (32 F.R. 16432). Interested persons were given an opportunity to submit relevant data, views, or arguments in writing regarding the proposed regulations. All comments received have been carefully considered.

In response to those comments, in addition to several minor changes, the first paragraph of § 12.80(b) has been amended to provide for the entry, without written declaration, of motor vehicles and items of motor vehicle equipment intended for export and so labeled. A new provision is also added (§ 12.80(b) (2) (iv)) to provide for the entry, upon written declaration, of new vehicles intended for resale which do not fully conform to the safety standards because of the absence of readily attachable equipment items:

Provided, That the importer or consignee undertakes to attach the missing items before such vehicles are offered to the general public for sale. Finally, the importation of nonconforming vehicles for competition purposes will be permitted under § 12.80(b) (2) (vii) if the vehicle will not be licensed for use on the public roads.

Part 12 is accordingly amended to add a new centerhead and section as follows:

Motor Vehicles and Motor Vehicle Equipment
Manufactured on or after January 1, 1968

§ 12.80 Federal motor vehicle safety standards.

(1) *Standards prescribed by the Department of Transportation.* Motor vehicles and motor vehicle equipment manufactured on or after January 1, 1968, offered for sale, or introduction or delivery for introduction in interstate commerce, or importation into the United States are subject to Federal Motor Vehicle Safety Standards (hereafter referred to in this section as "safety standards") prescribed by the Secretary of Transportation under sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act of 1966. (15 U.S.C. 1392, 1407) as set forth in regulations in 49 CFR Part 571. A motor vehicle hereafter referred to in this section as "vehicle" or item of motor vehicle equipment (hereafter referred to in this section as "equipment item"), manufactured on or after January 1, 1968, is not permitted entry into the United States unless (with certain exceptions set forth in paragraph (b) of this section) it is in conformity with applicable safety standards in effect at the time the vehicle or equipment item was manufactured.

(b) *Requirements for entry and release.*

(1) Any vehicle or equipment item offered for importation into the customs territory of the United States shall not be refused entry under this section if (i) it bears a certification label affixed by its original manufacturer in accordance with section 114 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1403) and regulations issued thereunder by the Secretary of Transportation (49 CFR Part 567) (in the case of a vehicle, in the form of a label or tag permanently affixed to such vehicle or in the case of an equipment item, in the form of a label or tag on such item or on the outside of a container in which such item is delivered), or (ii) it is intended solely for export, such vehicle or equipment

item and the outside of its container, if any, to be so labeled and tagged, or (iii) (for vehicles only which have been exempted by the Secretary of Transportation from meeting certain safety standards) it bears a label or tag permanently affixed to such vehicle which meets the requirements set forth in the regulations of the Department of Transportation, 49 CFR 555.13.

(2) Any such vehicle or equipment item not bearing such certification or export label shall be refused entry unless there is filed with the entry, in duplicate, a declaration signed by the importer or consignee which states that:

(i) Such vehicle or equipment item was manufactured on a date when there were no applicable safety standards in force, a verbal declaration being acceptable at the option of the district director of customs for vehicles entering at the Canadian and Mexican borders; or

(ii) Such vehicle or equipment item was not manufactured in conformity with applicable safety standards but has since been brought into conformity, such declaration to be accompanied by the statement of the manufacturer, contractor, or other person who has brought such vehicle or equipment item into conformity which describes the nature and extent of the work performed; or

(iii) Such vehicle or equipment item does not conform with applicable safety standards, but that the importer or consignee will bring such vehicle or equipment item into conformity with such safety standards, and that such vehicle or equipment item will not be sold or offered for sale until the bond (required by paragraph (c) of this section) shall have been released; or

(iv) Such vehicle is a new vehicle being imported for purposes of resale which does not presently conform to all applicable safety standards because readily attachable equipment items are not attached, but that there is affixed to its windshield a label stating the safety standard with which and the manner in which such vehicle does not conform and

that the vehicle will be brought into conformity by attachment of such equipment items before it will be offered for sale to the first purchaser for purposes other than resale; or

(v) The importer or consignee is a non-resident of the United States, importing such vehicle or equipment item primarily for personal use or for the purpose of making repairs or alterations to the vehicle or equipment item, for a period not exceeding 1 year from the date of entry, and that he will not resell it in the United States during that time: PROVIDED, That persons regularly entering the United States by a motor vehicle at the Canadian and Mexican borders may apply to the district director of customs for an appropriate means of identification to be affixed to such vehicle which will serve in place of the declaration required by this paragraph; or

(vi) The importer or consignee is a member of the armed forces of a foreign country on assignment in the United States, or is a member of the Secretariat of a public international organization so designated pursuant to 59 Stat. 669 on assignment in the United States, or is a member of the personnel of a foreign government on assignment in the United States who comes within the class of persons for whom free entry of motor vehicles has been authorized by the Department of State and that he is importing such vehicle or equipment item for purposes other than resale; or

(vii) The importer or consignee is importing such vehicle or equipment item solely for the purpose of show, test, experiment, competition, repairs or alterations and that such vehicle or equipment item will not be sold or licensed for use on the public roads: PROVIDED: That vehicles imported solely for purposes of test or experiment may be licensed for use on the public roads for a period not to exceed one year, where such use is an integral part of tests or experiments for which such vehicle is being imported, upon condition that the importer attach to the declaration a description of the tests or experiments for which the ve-

hicle is being imported, the period of time during which it is estimated that it will be necessary to test the vehicle on the public roads, and the disposition to be made of the vehicle after completion of the tests or experiments.

(viii) Such vehicle which is not manufactured primarily for use on the public roads is not a "motor vehicle" as defined in section 102 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391); or

(ix) Such vehicle was manufactured in conformity with applicable safety standards, such declaration to be accompanied by a statement of the vehicle's original manufacturer as evidence of original compliance.

(3) Any declaration given under this section (except an oral declaration accepted at the option of the district director of customs under subparagraph (2)(i) of this paragraph) shall state the name and United States address of the importer or consignee, the date and the entry number, a description of any equipment item, the make and model, engine serial, and body serial numbers of any vehicle or other identification numbers, and the city and State in which it is to be registered and principally located if known, and shall be signed by the importer or consignee. The district director of customs shall immediately forward the original of such declaration to the National Highway Traffic Safety Administration of the Department of Transportation.

(c) *Release under bond.* If a declaration filed in accordance with paragraph (b) of this section states that the entry is being made under circumstances described in paragraph (b)(2)(iii), or under circumstances described in paragraph (b)(2)(ii) or (ix) of this section where the importer at time of entry does not submit a statement in support of his declaration of conformity the entry shall be accepted only if the importer gives a bond on Customs Forms 7551, 7553, or 7595 for the production of either a statement by the importer or consignee that the vehicle or equipment item described in the declaration filed by the importer has been brought into conformity with applicable safety stand-

ards and identifying the manufacturer, contractor, or other person who has brought such vehicle or equipment item into conformity with such standards and describing the nature and extent of the work performed or a statement of the vehicle manufacturer certifying original conformity. The bond shall be in the amount required under § 25.4(a) of this chapter. Within 90 days after such entry, or such additional period as the district director of customs may allow for good cause shown, the importer or consignee shall deliver to both the district director of customs, and the National Highway Traffic Safety Administration a copy of the statement described in this paragraph. If such statement is not delivered to the district director of customs for the port of entry of such vehicle or equipment item within 90 days of the date of entry or such additional period as may have been allowed by the district director of customs for good cause shown, the importer or consignee shall deliver or cause to be delivered to the district director of customs those vehicles or equipment items, which were released in accordance with this paragraph. In the event that any such vehicle or equipment item is not redelivered within 5 days following the date specified in the preceding sentence, liquidated damages shall be assessed in the full amount of a bond given on Form 7551. When the transaction has been charged against a bond given on Form 7553, or 7595, liquidated damages shall be assessed in the amount that would have been demanded under the preceding sentence if the merchandise had been released under a bond given on Form 7551.

(d) *Merchandise refused entry.* If a vehicle or equipment item is denied entry under the provisions of paragraph (b) of this section, the district director of customs shall refuse to release the merchandise for entry into the United States and shall issue a notice of such refusal to the importer or consignee.

(e) *Disposition of merchandise refused entry into the United States; redelivered merchandise.* Vehicles or equipment items which are denied entry under paragraph (b) of this section or which are redelivered in accordance with paragraph (c) of this section and which are not ex-

ported under customs supervision within 90 days from the date of notice of refusal of admission or date of redelivery shall be disposed of under customs laws and regulations; *Provided, however*, That any such disposition shall not result in an introduction into the United States of a vehicle or equipment item in violation of the National Traffic and Motor Vehicle Safety Act of 1966.

(Sec. 623, 46 Stat. 759, as amended, sec. 108, 80 Stat. 722; 19 U.S.C. 1623; 15 U.S.C. 1397)

Since motor vehicles and items of motor vehicle equipment subject to the standards prescribed in 49 CFR Part 571, may shortly be in transit to United States ports of entry, it is important that these regulations be put into effect at the earliest possible date. It is therefore found that the ad-

vance publication requirement under 5 U.S.C. 553 is impracticable and good cause is found for adopting these regulations effective upon publication in the *Federal Register*.

(SEAL)

Lester D. Johnson
Commissioner of Customs

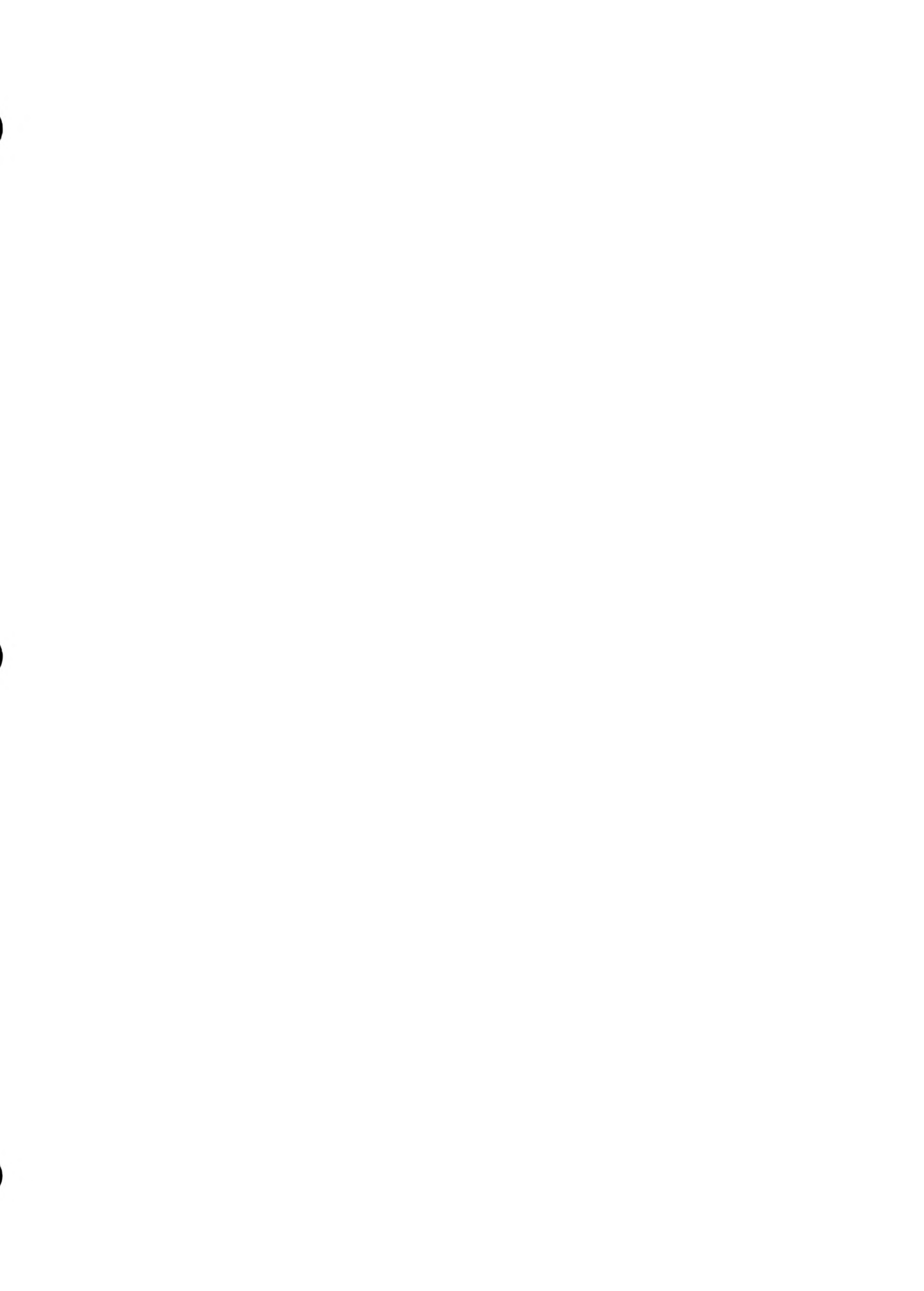
APPROVED: January 2, 1968.

Matthew J. Marks,
Acting Assistant Secretary
of the Treasury

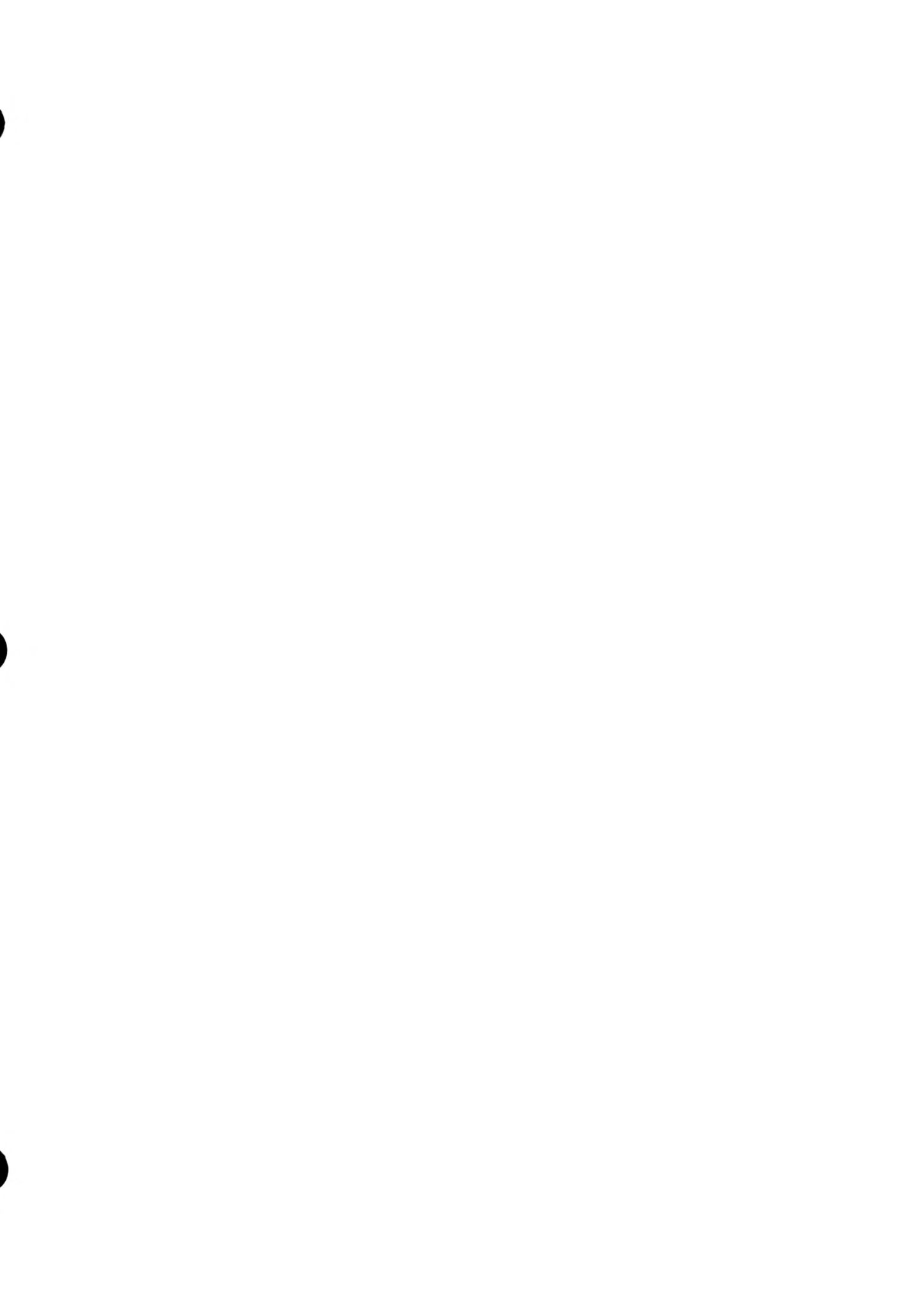
APPROVED: January 5, 1968.

Alan S. Boyd
Secretary of Transportation

33 F.R. 360
January 10, 1968







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