

during a State emergency using the EAS, including mandatory messages initiated by a state governor or his/her designee. The State plan must specify how state-level and geographically targeted EAS messages initiated by a state governor or his/her designee will be transmitted to all EAS Participants who provide services in the state, and must include specific and detailed information describing how such messages will be aggregated, designated as mandatory, and delivered to EAS Participants. State EAS plans should include a data table, in computer readable form, clearly showing monitoring assignments and the specific primary and backup path for the emergency action notification ("EAN") from the PEP to each station in the plan.

(b) The Local Area plan contains procedures for local officials or the NWS to transmit emergency information to the public during a local emergency using the EAS. Local plans may be a part of the State plan. A Local Area is a geographical area of contiguous communities or counties that may include more than one state.

(c) The FCC Mapbook is based on the above plans. It organizes all broadcast stations and cable systems according to their State, EAS Local Area, and EAS designation.

■ 6. Section 11.47 is amended by revising paragraph (b) to read as follows:

§ 11.47 Optional use of other communications methods and systems.

* * * * *

(b) Other technologies and public service providers, such as low earth orbiting satellites, that wish to participate in the EAS may contact the FCC's Public Safety and Homeland Security Bureau or their State Emergency Communications Committee for information and guidance.

§ 11.51 EAS code and Attention Signal Transmission requirements.

■ 7. Section 11.51 is amended by revising paragraphs (g) introductory text and (h) introductory text to read as follows:

* * * * *

(g) Analog cable systems and digital cable systems with fewer than 5,000 subscribers per headend and wireline video systems and wireless cable systems with fewer than 5,000 subscribers shall transmit EAS audio messages in the same order specified in paragraph (a) of this section on at least one channel. The Attention signal may be produced from a storage device. Additionally, these analog cable

systems, digital cable systems, and wireless cable systems:

* * * * *

(h) Analog cable systems and digital cable systems with 10,000 or more subscribers; analog cable and digital cable systems serving 5,000 or more, but less than 10,000 subscribers per headend; and wireline video systems and wireless cable systems with 5,000 or more subscribers shall transmit EAS audio messages in the same order specified in paragraph (a) of this section. The Attention signal may be produced from a storage device. Additionally, these analog cable systems, digital cable systems, and wireless cable systems:

* * * * *

■ 8. Section 11.55 is amended by revising paragraph (a) introductory text to read as follows:

§ 11.55 EAS operation during a State or Local Area emergency.

(a) All EAS Participants within a state (excepting SDARs and DBS providers) must receive and transmit state-level and geographically targeted EAS messages, as aggregated and delivered by the state governor or his/her designee, or by FEMA on behalf of such state governor, upon approval by the Commission of an applicable state plan providing for delivery of such alerts no sooner than 180 days after adoption of CAP by FEMA. Examples of natural emergencies which may warrant activation are: Tornadoes, floods, hurricanes, earthquakes, heavy snows, icing conditions, widespread fires, etc.

Man-made emergencies may include: toxic gas leaks or liquid spills, widespread power failures, industrial explosions, and civil disorders.

* * * * *

■ 9. Add § 11.56 to read as follows:

§ 11.56 EAS Participants receive CAP-formatted alerts

Notwithstanding anything herein to the contrary, all EAS Participants must be able to receive CAP-formatted EAS alerts no later than 180 days after FEMA publishes the technical standards and requirements for such FEMA transmissions.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 585

[Docket No. NHTSA 2007-0010]

RIN 2127-AK03

Federal Motor Vehicle Safety Standards; Occupant Crash Protection; Fuel System Integrity

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

ACTION: Final rule; response to petitions.

SUMMARY: In a final rule published in August 2006, NHTSA amended its safety standard on occupant crash protection to establish the same 56 km/h (35 mph) maximum speed for frontal barrier crash tests using belted 5th percentile adult female test dummies as it had previously adopted for tests using belted 50th percentile adult male dummies. The agency adopted the amendment to help improve crash protection for small statured occupants. In this document, in response to petitions for reconsideration of that rule, we are adjusting the phase-in requirements to permit manufacturers to earn advance credits for vehicles that are certified in compliance with the new higher speed requirement one year in advance of the regulatory requirements, *i.e.*, beginning on September 1, 2008.

We are also making technical corrections regarding special phase-in provisions for small volume manufacturers included in the August 2006 rule, as well as in several other regulations.

DATES: *Effective Date:* This final rule is effective January 2, 2008.

Petitions for Reconsideration: If you wish to submit a petition for reconsideration of this rule, your petition must be received by December 17, 2007.

ADDRESSES: Petitions for reconsideration should refer to the docket number above and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

See the **SUPPLEMENTARY INFORMATION** portion of this document (Section V; Rulemaking Analyses and Notice) for DOT's Privacy Act Statement regarding documents submitted to the agency's dockets.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Ms. Carla Cuentas, Office of Crashworthiness Standards (Telephone: 202-366-1740) (Fax: 202-366-2739).

For legal issues, you may call Mr. Edward Glancy, Office of the Chief Counsel (Telephone: 202-366-2992) (Fax: 202-366-3820).

You may send mail to these officials at National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*, requires passenger cars and other light vehicles to be equipped with seat belts and frontal air bags to prevent or mitigate the effects of occupant interaction with the vehicle's interior in a crash. While air bags have proven to be very effective in increasing the number of lives saved in moderate to high speed frontal crashes, they have on occasion been implicated in fatalities where vehicle occupants were in close proximity to the air bag when it deployed. The majority of these fatalities occurred in vehicles produced in the 1990s.

On May 12, 2000, NHTSA published in the **Federal Register** (65 FR 30690) its advanced air bag final rule. This final rule required that future air bags be designed to create less risk of serious air bag-induced injuries. The original advanced air bag rule established two phase-in implementation schedules for the new requirements.

Under Phase I, which began September 1, 2003 and was completed on September 1, 2006, NHTSA required vehicle manufacturers to install advanced air bag systems that reduce the risk of air bag-induced injuries (particularly to young children and small adult drivers), while improving the frontal crash protection provided by air bag systems to occupants of different sizes. NHTSA specified the use of both 50th percentile adult male and 5th percentile adult female dummies for the standard's crash tests.¹ Phase I required vehicles to be certified as passing the performance requirements for both of these dummies, while unbelted, in a 32 km/h (20 mph) to 40 km/h (25 mph) rigid barrier test (unbelted rigid barrier

test requirements), and performance requirements for the same two dummies, while belted, in a rigid barrier crash test with a maximum test speed of 48 km/h (30 mph) (belted rigid barrier test requirements).

Under Phase II, which begins to be phased-in on September 1, 2007, vehicles must be certified as passing the belted rigid barrier performance requirements at speeds up to and including 56 km/h (35 mph) using just the 50th percentile adult male dummy.

In the original advanced air bag rulemaking, we stated that we did not propose including the 5th percentile adult female dummy in the second phase-in requirement because we "had sparse information on the practicability of such a requirement." We also stated that the agency would undergo testing to examine this issue further and that we anticipated "proposing increasing the test speed for belted tests using the 5th percentile adult female dummy to 35 mph, beginning at the same time that the 50th percentile adult male is required to be used in belted testing at that speed." (60 FR 20680, 30690; and 66 FR 65376).

On August 6, 2003, we published a notice of proposed rulemaking (NPRM) (68 FR 46539) to increase the test speed for the belted rigid barrier test using the 5th percentile adult female dummy to 56 km/h (35 mph). We proposed the same phase-in schedule as the one used in Phase II beginning September 1, 2007. In this NPRM, we tentatively concluded that the results of the tests conducted by NHTSA indicated both a need for and the feasibility of extending the 56 km/h (35 mph) maximum speed for the rigid barrier test to include the 5th percentile adult female dummy.

On August 31, 2006, NHTSA published a final rule (71 FR 57168) increasing the maximum test speed for the belted rigid barrier test using the 5th percentile adult female dummy from 48 km/h (30 mph) to 56 km/h (35 mph), the same speed we had previously adopted for 50th percentile adult male dummies. After considering the public's comments, the agency continued to believe that the test data obtained indicated that FMVSS No. 208 should require the same level of high speed crash protection for small statured occupants as for larger occupants.

We noted that the final rule was essentially the same as the proposal, except for the timing of the phase-in. Under the final rule, the new requirement was phased-in in a manner similar to the phase-in for the 56 km/h (35 mph) maximum speed test requirement using the 50th percentile adult male dummy, but with a

beginning date two years later, *i.e.*, September 1, 2009. We stated that the additional leadtime would provide manufacturers the time needed to meet design challenges associated with some vehicles and incorporate these additional requirements into their product development schedules without undue consequences.

We stated that given that this phase-in was two years later, and that many vehicles already comply with the new requirement, we were not including advance credits as part of this phase-in, although carryover credits earned during the phase-in would be allowed.

The implementation schedule for the new requirement was as follows:

- 35 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2009;
- 65 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2010, with an allowance of carryover credits from vehicles built after September 1, 2009.
- 100 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2011, with an allowance of carryover credits from vehicles built after September 1, 2009.
- All light vehicles manufactured on or after September 1, 2012.

Manufacturers that sell two or fewer carlines in the United States at the beginning of the first year of the phase-in (September 1, 2009) have the option of omitting the first year of the phase-in, if they fully comply beginning on September 1, 2010.

Manufacturers that produce or assemble fewer than 5,000 vehicles for the U.S. market per year may defer compliance with the new requirement until September 1, 2012.

Consistent with our usual policy concerning multi-stage vehicles, multi-stage manufacturers and alterers may defer compliance with the new requirement until September 1, 2013.

II. Petitions for Reconsideration

The agency received petitions for reconsideration of the August 2006 final rule from the following vehicle manufacturers and manufacturer organization: Porsche Cars North America, Inc. (Porsche), Volkswagen of America, Inc. (VW), Mitsubishi Motors R&D of America (Mitsubishi), and Alliance of Automobile Manufacturers (Alliance).

All four of the petitioners asked that we reconsider our decision not to include advance credits as part of the phase-in.

¹ The advanced air bag rule also specified the use of 1-year-old infant dummies, 3- and 6-year old child dummies, and 5th percentile adult female dummies in its test requirements to minimize the risk to infants, children, and other occupants from injuries and deaths caused by air bags.

Two of the petitioners, Alliance and VW, requested a technical correction in the regulatory text of the standard regarding a special phase-in provision for small volume manufacturers.

The details of the requests of the petitioners, and our response, are provided below.

III. Request for Technical Corrections

The agency received a letter, dated March 29, 2007, from VW, requesting technical corrections in the regulatory text of FMVSS No. 301, *Fuel System Integrity*, and Part 585, *Phase-in Reporting Requirements*. While the letter addresses different regulatory requirements than the petitions for reconsideration discussed above, it requests technical corrections regarding special phase-in provisions for small volume manufacturers that are essentially the same. We are therefore addressing these technical corrections in this document.

IV. Final Rule; Agency Response to Petitions

As discussed below, in response to petitions for reconsideration of the August 2006 final rule increasing the speed of the frontal barrier test requirement using belted 5th percentile adult female dummies, we are adjusting the phase-in requirements to permit manufacturers to earn advance credits for vehicles that are certified in compliance with the new higher speed requirement one year in advance of the regulatory requirements, *i.e.*, beginning on September 1, 2008.

We are also making technical corrections regarding special phase-in provisions for small volume manufacturers included in the August 2006 rule, as well as in several other regulations.

A. Advance Credits

As noted above, the August 2006 final rule did not include advance credits as part of the phase-in of the 56 km/h (35 mph) barrier crash test requirements using belted 5th percentile adult female dummies, although carryover credits earned during the phase-in were permitted.

The lack of advance credits for early compliance prior to the beginning of the phase-in period differed from the allowance for early credits provided in the original advanced air bag rule (See FMVSS No. 208 S14.1.2), which permitted credits for vehicles produced on or after June 12, 2000, for the purposes of complying with the advanced air bag requirements for which the phase-in began September 1, 2003. Also, the original advanced air

bag rule provided for advance carry-forward credits for vehicles produced on or after September 1, 2006, for the purposes of the 35 mph crash test requirements using the 50th percentile male dummy that will begin to be phased in on September 1, 2007 (See FMVSS No. 208 S14.3.2).

The agency stated that it was not including advance credits as part of the phase-in of the 56 km/h (35 mph) requirements using the 5th percentile adult female dummy given that this phase-in was two years later, and that many vehicles already comply with the new requirement.

As indicated earlier, the Alliance, Mitsubishi, Porsche and VW asked that we reconsider our decision not to include advance credits as part of the phase-in.

Petitions

The Alliance asked us to permit manufacturers to earn and apply advance carry-forward credits for vehicles that can be certified in compliance with the new requirements two years in advance of the regulatory requirements. It stated that this is an unusually unstable era in the U.S. automotive industry, and that in the current economy the uncertainties associated with making product plans and compliance projections for a phased-in rule are very high, creating the need for maximum flexibility in designing new regulatory requirements.

That organization stated that it recognizes that providing advance carry-forward credits for early compliance with safety standards is unusual. It noted, however, that advance carry-forward credits for early compliance were included in the original advanced air bag rule, including for early compliance with the 56 km/h (35 mph) crash test requirements using the 50th percentile adult male dummy that will begin to be phased in on September 1, 2007. It also stated that providing advance credits would be consistent with Congressional intent in enacting the advanced air bag requirements, as the Transportation Equity Act for the 21st Century requirements for advanced air bags had provided for such credits.

The Alliance questioned the agency's statement that many vehicles already comply with the new rules, arguing that the rulemaking record shows mixed test results. It stated that the record showed that 12 vehicle models "already comply" with the new rules, while 6 did not. The Alliance also stated that none of the 12 models were certified to the advanced air bag requirements, so it is unclear whether any would comply with an adequate margin of compliance

after an advanced air bag is installed, given the design and performance tradeoffs that are required for advanced air bags. The Alliance also noted that the agency had conducted additional testing of five more vehicle models that were certified to the advanced air bag requirements, and all met the 35 mph crash test requirement with the 5th percentile female dummy, although one had no compliance margin. The Alliance argued that the record reflects the difficulties of redesigning air bags to meet the competing demands of protecting large adult males, both belted and unbelted; protecting small females, both belted and unbelted; and protecting children, both restrained and unrestrained. According to the Alliance, adding the 35 mph barrier crash test for the 5th percentile female dummy complicates this design task even further, emphasizing the need for flexibility during the phase-in.

The Alliance argued that advance carry-forward credits are positive for safety, because they recognize and reward manufacturers that are able to certify compliance with the new requirements earlier than they otherwise would have to. It also stated that the availability of advance carry-forward credits acts as an incentive to manufacturers to make the commitment to assuring compliance that is necessary to earn and claim advance carry-forward credits. It also stated that at the end of the phase-in, the same number of vehicles will be certified as compliant whether or not the advance carry-forward credits were made available—but the advance carry-forward credits would incentivize manufacturers to bring more vehicles into compliance earlier.

According to the Alliance, given the dynamic nature of the U.S. auto industry, despite manufacturers' best efforts to project compliant fleets during the phase-in, it may become critically necessary to use advance carry-forward credits to achieve compliance, if sales for certain models fall short of projections and as manufacturers respond to fluctuations in market demand.

For all of these reasons, the Alliance requested that the agency permit manufacturers to earn and apply advance carry-forward credits for vehicles that can be certified in compliance with the new requirements two years in advance of the regulatory requirements.

VW, Mitsubishi and Porsche made requests similar to that of the Alliance. Like the Alliance, VW requested that manufacturers be permitted to earn advance credits for vehicles that are

produced beginning September 1, 2007, i.e., two years in advance of the regulatory requirements.

Mitsubishi requested that manufacturers be permitted to earn advance credits for one production year prior to the phase-in, i.e., beginning September 1, 2008. Porsche requested that the agency either provide manufacturers the opportunity to generate advance credits for vehicles built one year prior to the start of the phase-in schedule, or reduce the compliance requirement for the first year of the phase-in from 35 percent to 20 percent. Mitsubishi and Porsche noted that the final rule was issued three years after the proposal and argued that even with the two-year later phase-in, advance credits are still needed. Mitsubishi and Porsche each provided information subject to claims of confidentiality in support of their petitions.

Agency Response

After carefully considering the requests of the petitioners, we have decided to permit manufacturers to earn advance credits for vehicles that are certified in compliance with the new 56 km/h (35 mph) barrier requirements using the belted 5th percentile adult female dummy one year in advance of the regulatory requirements, i.e., beginning on September 1, 2008.

As the Alliance noted in its petition, providing advance carry-forward credits for early compliance with safety standards is unusual but not without precedent. We note that a provision for advance credits can act as an incentive for early introduction of new safety technologies and provide additional flexibility for manufacturers while resulting in the same number of vehicles certified to meet new requirements prior to full, 100 percent implementation. On the other hand, we also recognize that advance credits can reduce the number of vehicles that need to be upgraded to comply with a new requirement during the actual production years covered by a phase-in, particularly in situations where many vehicles may already comply with the requirement.

In the NPRM to increase the test speed of the barrier requirements using the belted 5th percentile adult female dummy, we proposed to permit manufacturers to earn advance credits for one year prior to the beginning of the phase-in. For the final rule, we did not include this provision. We believed that the provision was unnecessary, given that we adopted a phase-in that began two years later than we had proposed.

On reconsideration, we have decided to include a provision permitting

manufacturers to earn advance credits for one year prior to the beginning of the phase-in. After considering the comments, we are persuaded that this additional flexibility is appropriate. This one-year period for earning advance credits is consistent with the Phase II phase-in, as well as the NPRM for this Phase III requirement. Among other things, this provision will provide flexibility to manufacturers in dealing with uncertainty in projecting sales volumes of different models as they plan to meet the percentage phase-in requirements.

We are not, however, providing the longer, two-year period requested by the Alliance and VW. Neither petitioner provided data or specific arguments demonstrating the need for a period as long as two years or that a one-year period is not sufficient.

The issues raised by the Alliance about the need for flexibility were of a general nature, and we believe that those concerns are addressed by the one-year period we are adopting.

VW cited the fact that the period for advance credits was longer for Phase I, and a statement by the agency in the original advanced air bag rulemaking that we were only allowing credits to be earned for vehicles manufactured one year prior to the initiation of the Phase II requirements because we believed manufacturers should first direct their efforts toward full implementation of Phase I, particularly the risk reduction requirements.

While we agree that the Phase I implementation is not affected by Phase III, we decline to adopt a period longer than one year. As indicated above, a provision for advance credits can act as an incentive for early introduction of new safety technologies and provide additional flexibility for manufacturers, but can also reduce the number of vehicles that need to be upgraded to comply with a new requirement during the actual production years covered by a phase-in, particularly in situations where many vehicles may already comply with the requirement. In balancing these considerations, we conclude that a one-year period for earning advance credits for Phase III is appropriate.

We note that we do not know how many vehicles already comply with the requirements. However, as discussed in the preamble to the final rule, and noted by the Alliance, the agency conducted testing of five vehicle models that were certified to the advanced air bag requirements, and all met the 56 km/h (35 mph) crash test requirement with the 5th percentile female dummy, although one had no compliance

margin. This suggests that a significant number of vehicles already comply.

We also note that the primary purpose of a provision for advance credits is to provide an incentive to encourage manufacturers to develop and introduce new technologies earlier than they would otherwise be required. While manufacturers needed to develop and introduce new technologies to meet the risk reduction requirements of the Phase I advance air bag requirements, we believe that was generally not the case for either Phase II or Phase III. This is another reason not to provide a longer period for advance credits.

We note that we are making conforming changes to part 585, *Phase-in Reporting Requirements*, to reflect the provision for advance credits.

B. Phase-In Exclusion for Small Volume Manufacturers

In the preamble of the August 2006 final rule, NHTSA stated that manufacturers that produce or assemble fewer than 5,000 vehicles for the U.S. market per year may defer compliance until September 1, 2012. 71 FR 51770. This is consistent with similar provisions in FMVSS No. 208 S14.1(d) (related to Phase I) and S14.3(d) (related to Phase II) in which the limit of 5,000 vehicles applies toward production for the U.S. market and not worldwide production. However, in the regulatory text of the August 2006 final rule, S14.6(d) read: "Vehicles that are manufactured by a manufacturer that produces fewer than 5,000 vehicles world-wide annually are not subject to the requirements of S14.6."

In their petitions for reconsideration, the Alliance and VW pointed out this discrepancy and their belief that the agency intended to implement this provision as described in the preamble.

We confirm that the regulatory text in S14.6(d) was incorrect and are revising it to be consistent with the preamble, and with the regulatory text at S14.1(d) and S14.3(d). It will now read: "Vehicles that are manufactured by an original vehicle manufacturer that produces or assembles fewer than 5,000 vehicles annually for sale in the United States are not subject to the requirements of S14.6."

As indicated above, we received a letter, dated March 29, 2007, from VW, requesting technical corrections in the regulatory text of FMVSS No. 301, *Fuel System Integrity*, and part 585, *Phase-in Reporting Requirements*. While the request addresses different regulatory requirements than the petitions for reconsideration discussed above, it requests technical corrections regarding special phase-in provisions for small

volume manufacturers that are essentially the same. We are therefore addressing these issues in this final rule.²

Specifically, with respect to the phase-in of inboard rear seat lap/shoulder requirements of FMVSS No. 208, VW noted a similar discrepancy between the preamble/regulatory text of FMVSS No. 208 (which are consistent) and the relevant regulatory text of Part 585. Also, with respect to the phase-in of upgraded rear crash test requirements in FMVSS No. 301, VW noted a similar discrepancy between the preamble and the regulatory text in FMVSS No. 301, and the lack of a corresponding provision in Part 585.

In each of these instances, the agency intended, as indicated in the preamble, to apply the different compliance date to manufacturers that produce or assemble fewer than 5,000 vehicles for the U.S. market each year. We are therefore making technical corrections along the lines requested by VW.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866.

This rule amends the agency's August 2006 final rule that upgraded FMVSS No. 208 to increase the maximum belted frontal barrier crash test speed from 48 km/h (30 mph) to 56 km/h (35 mph) for the 5th percentile adult female dummy. This is the same test speed as is specified for the 50th percentile adult male dummy. The August 2006 final rule was considered significant because of public interest. However, as explained below, today's amendments are not significant.

As discussed in the preamble to the August 2006 final rule, the agency estimated that the rule will prevent 2–4 fatalities and reduce 2 MAIS 2–5 non-fatal injuries. The total net cost could range from \$0.0 to \$9.0 million (2004 economics). The agency estimated the total cost of that rule will most likely be \$4.5 million.

This rule amends the phase-in requirements of the August 2006 final rule to permit manufacturers to earn advance credits for vehicles that are

certified in compliance with the new higher speed requirement one year in advance of the regulatory requirements, i.e., beginning on September 1, 2008. It does not change the number of vehicles that must be certified to the new requirements, nor does it change the dates or percentage requirements of the phase-in. Accordingly, while the rule provides some additional flexibility for manufacturers, it does not affect costs and benefits in a manner that is quantifiable. Moreover, for the same reason, it is not necessary for the agency to do a separate regulatory evaluation.

B. Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). NHTSA has determined that this action will not have a significant economic impact on a substantial number of small entities.

In the preamble to the August 2006 final rule, NHTSA made a determination that that rule will not have a significant economic impact on a substantial number of small entities. Today's amendments make a small adjustment in the phase-in requirements of that rule in a manner that provides greater flexibility. Since these amendments will not significantly affect small entities, this rule will not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

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

D. Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have federalism implications because the rule does not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Further, no consultation is needed to discuss the preemptive effect of today's rule. NHTSA rules can have preemptive effect in at least two ways. First, the National Traffic and Motor Vehicle

Safety Act contains an express preemptive provision: "When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter." 49 U.S.C. 30103(b)(1). It is this statutory command that preempts State law, not today's rulemaking, so consultation would be inappropriate.

In addition to the express preemption noted above, the Supreme Court has also recognized that State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes the State requirements unenforceable. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year (\$120,700,000 as adjusted for inflation with base year of 1995).

Because this final rule will not have a \$100 million effect, no Unfunded Mandates assessment has been prepared.

F. Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney

² We note that Lance Tunick separately identified to the agency the discrepancies related to the FMVSS No. 208 requirement increasing the test speed using belted 5th percentile adult female dummies and also the requirement related to FMVSS No. 301.

General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

G. Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule contains a "collection of information" as that term is defined by OMB at 5 CFR 1320. As a result of this final rule, NHTSA proposes to amend an existing collection of information as follows:

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: Part 585—Advanced Air Bag Phase-In Reporting Requirements.

Type of Request:—Revision of a Currently Approved Collection of Information.

OMB Clearance No.—2127–0599.

Form Number:—This collection of information will not use any standard forms.

Total Annual Responses:—21.

Total Annual Burden Hours:—1,260.

Total Annual Burden Dollars:—\$0.

Requested Expiration Date of Clearance:—At present, Clearance No. 2127–0599 is scheduled to expire on April 30, 2010. NHTSA will ask for one more extension of this collection of information—through October 31, 2012.

Summary of the Collection of Information

In the "Rulemaking Analyses and Notices" section of the August 31, 2006 final rule, NHTSA discussed the Paperwork Reduction Act consequences of the collection of information (*See* 71 FR at 51776–51777). As a result of today's final rule, NHTSA proposes to amend its description of the collection of information as follows. As earlier described, in today's final rule, we are providing a year in which manufacturers can earn advance credits for compliance with the 56 km/h (35 mph) requirements using the 5th percentile adult female dummy.

Phase-in Reporting

The phase-in of the 56 km/h (35 mph) maximum test speed for the belted rigid barrier test using the 5th percentile adult female dummy is similar to the one for the test using the 50th percentile

adult male dummy, except that it is two years later. Under today's rule, manufacturers will be able to earn advance credits for vehicles that are certified in compliance with the new higher speed requirement one year in advance of the regulatory requirements, i.e., beginning on September 1, 2008.

The implementation schedule for the phase-in of the higher speed requirement using the 5th percentile adult female dummy, as revised by today's rule, is as follows:

- Advance credits for each manufacturer's light vehicles certified in compliance with the new higher speed requirement that were manufactured during the production year beginning on September 1, 2008 (with the phase-in report to NHTSA due on October 31, 2009).
- 35 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2009, with an allowance of carryover credits (with the phase-in report to NHTSA due on October 31, 2010).
- 65 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2010, with an allowance of carryover credits (with the phase-in report to NHTSA due on October 31, 2011).
- 100 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2011, with an allowance of carryover credits (with the phase-in report to NHTSA due on October 31, 2012).
- All light vehicles manufactured on or after September 1, 2012.

Manufacturers that sell two or fewer carlines in the United States at the beginning of the first year of the phase-in (September 1, 2009), have the option of omitting the first year of the phase-in, if they fully comply beginning on September 1, 2010.

Manufacturers that produce or assemble fewer than 5,000 vehicles for the U.S. market per year may defer compliance with the new requirement until September 1, 2012.

Description of the Need for the Use of the Information

NHTSA needs this information to ensure that vehicle manufacturers are certifying their applicable vehicles as meeting the new belted barrier test using the 5th percentile female. NHTSA will use this information to determine whether a manufacturer has complied with the amended requirements of FMVSS No. 208 during the phase-in period.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)

NHTSA estimates that 21 vehicle manufacturers will submit the required information.

For each report, the manufacturer will provide, in addition to its identity, several numerical items of information. The information includes:

- (a) Total number of vehicles manufactured for sale during the preceding production year,
- (b) Total number of vehicles manufactured during the production year that meet the regulatory requirements, and
- (c) Information identifying the vehicles (by make, model, and vehicle identification number (VIN)) that have been certified as complying with the belted barrier test upgrade.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting From the Collection of Information

At present, OMB Clearance No. 2127–0599 gives NHTSA approval to collect 1,281 burden hours a year from industry, or 61 hours from each of 21 manufacturers. This figure of 61 hours represents the burden hours that would result if reports for two separate but related phase-ins were due the same year, e.g., both the higher speed test requirement using 50th percentile adult male test dummies and the higher speed test requirement using the 5th percentile adult female dummies. In the event that manufacturers must provide only one phase-in report in a given year, the collection of information burden would be 60 hours per manufacturer, or a total collection of information burden on industry of 1,260 hours.

Approved Clearance Through April 30, 2010

For the report due on October 31, 2008 (covering vehicles manufactured during the production year beginning on September 1, 2007), since only the phase-in report for the 50th percentile adult male test dummies must be provided, NHTSA estimates that each manufacturer will incur 60 burden hours per year, or a total collection of information burden on industry of 1,260 hours.

Approved Clearance Through April 30, 2010

For the report due on October 31, 2009 (covering vehicles manufactured during the production year beginning on September 1, 2008), this will be the first year for which manufacturers may need to report on vehicles certified in compliance with the higher speed 5th percentile adult female dummy

For the report due on October 31, 2009 (covering vehicles manufactured during the production year beginning on September 1, 2008), this will be the first year for which manufacturers may need to report on vehicles certified in compliance with the higher speed 5th percentile adult female dummy

requirements, if they choose to earn advance credits. In addition, for all vehicle manufacturers, the phase-in reports for the 50th percentile adult male dummies must continue to be provided.

Thus, assuming all manufacturers provide both reports, NHTSA estimates that each manufacturer will incur 61 burden hours a year, for a total of 1,281 hours a year. This estimate is based on the fact that the reporting format for the test requirements using both the 50th percentile adult male test dummies and the 5th percentile adult female test dummies is identical. The data collection will involve only computer tabulation (using the same reporting format) and manufacturers will provide the information to NHTSA in an electronic (as opposed to paper) format. The data will cover the same types of vehicles for both upgrades of the belted barrier test.

Anticipated Request for Clearance for October 31, 2010 Through October 31, 2012

The first year of the phase-in for the higher speed test requirement using 5th percentile adult female dummies covers the production period from September 1, 2009, through August 31, 2010. The report will be due by October 31, 2010, a time after OMB Clearance No. 2127-0599 expires on April 10, 2010.

According to the phase-in schedule specified in the final rule of August 31, 2006, the three year period from October 31, 2009, through October 31, 2012, will include one year (covering the production period from September 1, 2009, through August 31, 2010) when manufacturers will report on both the last year of the phase-in for the higher speed test requirement using 50th percentile adult male test dummies and the first year of the higher speed test requirement using 5th percentile adult female dummies. For this one year, there will be an increase of one burden hour, resulting in a total of 61 burden hours per manufacturer, or a total burden of 1,281 hours on industry. This estimate is based on the fact that the reporting format for the test requirements using both the 50th percentile adult male test dummies and the 5th percentile adult female test dummies is identical. The data collection will involve only computer tabulation (using the same reporting format) and manufacturers will provide the information to NHTSA in an electronic (as opposed to paper) format. The data will cover the same types of vehicles for both upgrades of the belted barrier test.

There are 0 hours of recordkeeping burdens resulting from the collection of information.

There are no capital or start-up costs as a result of this collection. Manufacturers could collect and tabulate the information by using existing equipment. Thus, there would be no additional costs to respondents or recordkeepers.

Because the scope of this collection of information differs from that described in the August 31, 2006 final rule, NHTSA invites comment on its estimates of the total annual hour and cost burdens resulting from this collection of information. Please submit any comments to the NHTSA Docket Number referenced in the heading of this notice or to: Ms. Lori Summers, Office of Rulemaking, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Summers' telephone number is: (202) 366-1740. Comments are due within 60 days of the date of publication of this document in the **Federal Register**.

H. Executive Order 13045

Executive Order 13045³ applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us. This rule is not economically significant, and it will not have a disproportionate effect on children.

I. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104-113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments." Today's amendments do not use technical standards but merely adjust the phase-in requirements adopted in the August 2006 final rule.

J. Privacy Act

Anyone is able to search the electronic form of all comments

received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477 at 19478).

List of Subjects in 49 CFR Parts 571 and 585

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

In consideration of the foregoing, NHTSA is amending 49 CFR parts 571 and 585 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of Title 49 continues to read as follows:

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

■ 2. Section 571.208 is amended by revising S14.6(d) and S14.6.2 to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *
S14.6 * * *
* * * * *

(d) Vehicles that are manufactured by an original vehicle manufacturer that produces or assembles fewer than 5,000 vehicles annually for sale in the United States are not subject to the requirements of S14.6.

* * * * *

S14.6.2 Calculation of complying vehicles.

(a) For the purposes of complying with S14.6.1.1, a manufacturer may count a vehicle if it is manufactured on or after September 1, 2008, but before September 1, 2010.

(b) For purposes of complying with S14.6.1.2, a manufacturer may count a vehicle if it:

(1) Is manufactured on or after September 1, 2008, but before September 1, 2011, and

(2) Is not counted toward compliance with S14.6.1.1.

(c) For purposes of complying with S14.6.1.3, a manufacturer may count a vehicle if it:

(1) Is manufactured on or after September 1, 2008, but before September 1, 2012, and

(2) Is not counted toward compliance with S14.6.1.1 or S14.6.1.2.

* * * * *

■ 3. Section 571.301 is amended by revising S6.2(c) to read as follows:

³ 62 FR 19885, April 23, 1997.

§ 571.301 Standard No. 301; Fuel system integrity.

* * * * *

S6.2 * * *

(c) *Small volume manufacturers.*

Notwithstanding S6.2(b) of this standard, vehicles manufactured on or after September 1, 2004 and before September 1, 2008 by a manufacturer that produces fewer than 5,000 vehicles annually for sale in the United States may meet the requirements of S6.2(a). Vehicles manufactured on or after September 1, 2008 by small volume manufacturers must meet the requirements of S6.2(b).

* * * * *

PART 585—PHASE-IN REPORTING REQUIREMENTS

■ 4. The authority citation for part 585 of Title 49 continues to read as follows:

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

■ 5. Section 585.15 is amended by adding (a)(3) and (c)(3) to read as follows:

§ 585.15 Reporting requirements.

(a) * * *

(3) Within 60 days after the end of the production year ending August 31, 2009, each manufacturer choosing to certify vehicles manufactured during

that production year as complying with phase three of the advanced air bag requirements of Standard No. 208 shall submit a report to the National Highway Traffic Safety Administration providing the information specified in paragraph (c) of this section and in § 585.2 of this part.

* * * * *

(c) * * *

(3) With respect to the report identified in section 585.15(a)(3), each manufacturer shall report the number of vehicles, by make and model year, that meet the applicable advanced air bag requirements of Standard No. 208, and to which the advanced air bag requirements the vehicles are certified.

* * * * *

■ 6. Section 585.16 is revised to read as follows:

§ 585.16 Records.

Each manufacturer shall maintain records of the Vehicle Identification Number of each vehicle for which information is reported under § 585.15(c) until December 31, 2011. Each manufacturer shall maintain records of the Vehicle Identification Number of each vehicle for which information is reported under § 585.15(d)(2) until December 31, 2013.

■ 7. Section 585.23 is revised to read as follows:

§ 585.23 Applicability.

This subpart applies to manufacturers of passenger cars and trucks, buses, and multipurpose passenger vehicles with a GVWR of 4,536 kg or less. However, this subpart does not apply to any manufacturers whose production consists exclusively of walk-in vans, vehicles designed to be sold exclusively to the U.S. Postal Service, 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. In addition, this subpart does not apply to manufacturers that produce fewer than 5,000 vehicles annually for sale in the United States.

■ 8. Section 585.43 is revised to read as follows:

§ 585.43 Applicability.

This subpart applies to manufacturers of passenger cars, multipurpose passenger vehicles, trucks and buses with a GVWR of 4,536 or less. However, this subpart does not apply to manufacturers that produce fewer than 5,000 vehicles annually for sale in the United States.

Issued: October 29, 2007.

Nicole R. Nason,
Administrator.

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