



Figure 8 – Definition of initial angle of compartmentalizing seat back surface

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. NHTSA 2007-0037; Notice 1]

RIN 2127-AK10

Schedule of Fees Authorized by 49 U.S.C. 30141 Offer of Cash Deposits or Obligations of the United States in Lieu of Sureties on DOT Conformance Bonds

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to amend NHTSA's regulations that prescribe fees authorized by 49 U.S.C. Sec. 30141 for various functions performed by the agency with respect to the importation of motor vehicles that do not conform to all applicable Federal motor vehicle safety and bumper standards. An importer must file with U.S. Customs and Border Protection (CBP) a Department of Transportation (DOT) conformance bond at the time that a nonconforming motor vehicle is offered for importation into the United States, or in lieu of such a bond, the importer may post cash deposits or obligations of the United States to ensure that the vehicle will be brought into conformance with all applicable standards within 120 days from the date of importation, or will be exported from, or abandoned to, the United States. To avoid the costs of a DOT conformance bond, some importers have sought to

post cash deposits, which would relieve the importers of the bonding costs but cause the agency to expend considerable resources. To permit the government to recover these expenses, this amendment would establish a fee for the agency's processing of these cash deposits or obligations of the United States that are furnished in lieu of a DOT conformance bond.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than January 7, 2008.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building

Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- *Fax:* 202-493-2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

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 19477-78) or you may visit <http://DocketInfo.dot.gov>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>, or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Coleman Sachs, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (202-366-3151). For legal issues: Michael Goode, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (202-366-5238).

SUPPLEMENTARY INFORMATION:

A. Background

Subject to certain exceptions, 49 U.S.C. 30112(a) prohibits any person from importing into the United States a motor vehicle manufactured on or after the date that an applicable Federal motor vehicle safety standard (FMVSS) takes effect unless the vehicle complies with the standard and is so certified by its manufacturer. One of the exceptions to this prohibition is found in 49 U.S.C. 30141. That section permits an importer that is registered with NHTSA (a "registered importer") to import a motor vehicle that was not originally manufactured to conform to all applicable FMVSS, provided NHTSA has decided that the vehicle is eligible

for importation. Under the criteria that are specified in Section 30141 for these decisions, a motor vehicle is not eligible for importation unless, among other things, it is capable of being altered to comply with all applicable FMVSS. See 49 U.S.C. 30141(a)(1)(A)(iv) and (B).

B. Requirements for Bonding

Once a motor vehicle has been declared eligible for importation, it can be imported by a registered importer (RI) or by an individual who has executed a contract or other agreement with an RI to bring the vehicle into compliance with applicable FMVSS. For vehicles that are imported in this fashion, a DOT conformance bond (Form HS-474), in an amount equivalent to 150 percent of the declared value of the vehicle, must be furnished to CBP at the time of importation to ensure that the necessary modifications are completed within 120 days of entry or, if conformance is not achieved, for the vehicle to be delivered to the Secretary of Homeland Security for export at no cost to the United States, or for the vehicle to be abandoned to the United States. See 49 CFR 591.6(c). The DOT conformance bond must be underwritten by a surety that possesses a certificate of authority to underwrite Federal bonds. See 49 CFR 591.8(c), referencing a list of certificated sureties at 54 FR 27800, June 30, 1989.

In lieu of sureties on a DOT conformance bond, an importer may offer United States money, United States bonds (except for savings bonds), United States certificates of indebtedness, Treasury notes, or Treasury bills (hereinafter referred to as "cash deposits") in an amount equal to the amount of the bond. See 49 CFR 591.10(a).

In recent years, a number of RIs have encountered difficulty in obtaining DOT conformance bonds underwritten by certificated sureties. To achieve the entry of the nonconforming vehicles they have sought to import, these RIs have had to resort to furnishing NHTSA with cash deposits in lieu of sureties on a DOT conformance bond. The receipt, processing, handling, and disbursement of these cash deposits has caused the agency to consume a considerable amount of staff time and material resources.

C. Fees Authorized by 49 U.S.C. 30141

NHTSA is authorized under 49 U.S.C. 30141(a)(3) to establish an annual fee requiring RIs to pay for the costs of carrying out the RI program. The agency is also authorized under this section to establish fees to pay for the costs of

processing the conformance bonds that RIs provide, and fees to pay for the costs of making agency decisions relating to the importation of noncomplying motor vehicles and equipment.

The agency has, to date, established five separate fees under the authority of 49 U.S.C. 30141. These are set forth in 49 CFR part 594. The first is the annual fee that is collected from RIs to cover the agency's costs for administering the RI program. This fee, which is covered by section 594.6, is currently set at \$677 for persons applying for RI status and at \$570 for those seeking the renewal of that status. As described in section 594.6, the fee is based on the direct and indirect costs incurred by the agency in processing and acting upon initial applications for RI status and annual statements seeking the renewal of that status, as well as other actions performed by the agency in administering the RI program.

The second fee is collected from each motor vehicle manufacturer or RI who petitions NHTSA to decide that a nonconforming vehicle is eligible for importation. This fee, which is covered by 49 CFR 594.7, is currently set at \$175 for a petition seeking an eligibility decision on the basis that a nonconforming vehicle is substantially similar to a U.S. certified counterpart, and at \$800 for a petition seeking such a decision on the basis that a nonconforming vehicle is capable of being altered to conform to all applicable standards. As detailed in section 594.7, this fee is based on the direct and indirect costs incurred by NHTSA in processing and acting upon import eligibility petitions. In the event that a petitioner requests an inspection of a vehicle, the sum of \$827 is added to the fee for vehicles that are the subject of either type of petition.

The third fee is for importing a vehicle under an eligibility decision made by the Administrator. This fee, which is covered by 49 CFR 594.8, is currently set at \$208 per vehicle. As described in section 594.8, this fee is calculated to cover NHTSA's direct and indirect costs in making import eligibility decisions.

The fourth fee covers the agency's costs for reviewing a certificate of conformity that an RI submits for each vehicle that it imports under conformance bond. This fee, which is covered by 49 CFR 594.10, encompasses review of the RI's certificate of conformity, which establishes that a nonconforming vehicle has been brought into conformity with all applicable standards and permits the agency to release the conformance bond that was furnished for the vehicle at the

time of entry. This fee is currently \$18 per vehicle if the vehicle is entered using paper documents. If the vehicle has been electronically entered through the Automated Broker Interface (ABI) system and the RI has an e-mail address, the fee for reviewing the certificate of conformity is \$6, provided the fee is paid by credit card. If however, there are errors made in the ABI entry information or omissions in the certificate of conformity, \$48 is charged to correct or complete the information.

The fifth fee has been established pursuant to 49 U.S.C. 30141(a)(3)(A) to pay for the costs of processing bonds provided to the Secretary of the Treasury. RIs furnish these bonds for each vehicle covered by a certificate of conformity that is submitted to NHTSA. This fee, which is covered by 49 CFR 594.9, is currently set at \$9.77 and only reimburses CBP for services that agency performs at the time of entry. The fee is based on direct and indirect cost information provided to NHTSA by CBP.

D. Proposed Fee for Processing Cash Deposits

Although the above-described fees have permitted NHTSA to recover the costs it incurs in administering certain aspects of the RI program, such as making import eligibility decisions, other services that NHTSA provides to importers of nonconforming vehicles have gone unreimbursed. One such service for which the agency believes it is entitled to reimbursement under 49 U.S.C. 30141 is the receipt, processing, handling, and disbursement of cash deposits submitted by importers and RIs in lieu of sureties on DOT conformance bonds.

When the RI program was first established following the enactment of the Imported Vehicle Safety Compliance Act of 1988, Pub. L. 100-52, bonding companies were reluctant to serve as sureties because of their unfamiliarity with DOT conformance bonds, and prospective importers found it difficult to obtain such bonds. To assist importers and to provide relief from an unintended impediment to the importation of nonconforming vehicles, the agency later proposed cash deposits as an alternate to providing a bond, and formalized the process by adding to its regulations a provision permitting such deposits, as found at 49 CFR 591.10. See 58 FR 12905 (March 8, 1993).

When other fees were established under part 594, NHTSA did not recognize a need to impose a fee to recover the costs it incurs in handling cash deposits because few cash deposits had been made and they accounted for

a relatively small share of the work performed by the agency. In the ensuing years, NHTSA has devoted a substantially greater share of its staff time to those efforts. More recently, a Customs broker representing an RI who could obtain a DOT conformance bond from a surety asked the agency whether the importer could provide a cash deposit instead. The broker stated that the importer was reluctant to pay the necessary fee for obtaining a DOT conformance bond and was informed by the RI that he could avoid any fee by sending NHTSA a cash deposit. Had the importer submitted a cash deposit, the agency would have been required to expend considerable resources for his benefit, and for the sole reason that he was unwilling to pay for a DOT conformance bond. This circumstance alerted the agency to the need to charge a fee for processing cash deposits to offset the agency's costs for performing this work.

Because NHTSA's acceptance of the cash deposits is a necessary predicate to the release of the vehicle into the commerce of the United States, NHTSA has tentatively concluded that the expense incurred by the agency to receive, process, handle, and disburse cash deposits may be treated as part of the bond processing cost, for which NHTSA is authorized to set a fee under 49 U.S.C. 30141(a)(3)(A).

Even if such authority did not exist in Chapter 301 of Title 49, U.S. Code, the Independent Offices Appropriation Act of 1952, 31 U.S.C. Sec. 9701, provides ample authority for NHTSA to impose fees that are sufficient to recover the agency's full costs to receive, process, handle, and disburse cash deposits. By performing these tasks related to cash deposits, NHTSA is performing a specific service for an identifiable beneficiary that can form the basis for the imposition of a fee under 31 U.S.C. Sec. 9701. Courts have long recognized that Federal agencies may impose fees under section 9701 for providing comparable services to regulated entities. See, e.g., *Seafarers International Union of North America v. U.S. Coast Guard*, 81 F.3d 179, 183 (DC Cir. 1996) (finding the Coast Guard authorized to charge reasonable fees for processing applications for merchant mariner licenses, certificates, and work documents); *Engine Manufacturers Association v. E.P.A.*, 20 F.3d 1177, 1180 (DC Cir. 1994) (finding the E.P.A. authorized to impose a fee to recover its costs for testing vehicles and engines for compliance with the emission standards of the Clean Air Act); and *National Cable Television Association, Inc. v. F.C.C.*, 554 F.2d 1094, 1101 (DC Cir.

1976) (finding the F.C.C. authorized to impose fees for issuing certificates of compliance to cable television operators).

In view of the language and judicial construction of 31 U.S.C. 9701, NHTSA is relying on this provision as an independent source of authority for the proposed fee. The agency believes that this provision and 49 U.S.C. 30141 each provide sufficient separate authority for the proposed fee and the other fees that the agency has established under 49 CFR part 594.

E. Fee Computation

As previously noted, NHTSA has computed all other fees that it collects under the authority of 49 U.S.C. 30141 on the basis of all direct and indirect costs incurred by the agency in performing the function for which the fee is charged. In the **Federal Register** notice proposing the original schedule of fees that was adopted in part 594, the agency observed that this approach was consistent with the manner in which other agencies have computed user fees under the Independent Offices Appropriation Act, 31 U.S.C. 9701, and the Consolidated Omnibus Budget Reconciliation Act, P.L. 99-272. See 54 FR 17792, 17793 (April 25, 1989). NHTSA specified in its 1989 NPRM proposing rules for the RI program that "the fees imposed by part 594 would 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, costs attributable to travel, salary, and benefits, and maintenance of work space," as appropriate for each fee. See 54 FR 17795 (April 25, 1989). Subsequently, the Office of Management and Budget (OMB), in Circular A-25 that established Federal policy for the assessment of user fees under 31 U.S.C. Sec. 9701, stated that such fees must be "sufficient to recover the full cost to the Federal Government * * * of providing the service, resource, or good when the Government is acting in its capacity as a sovereign." See 58 FR 38142, 38144 (July 15, 1993).

Applying an approach consistent with the OMB Circular and the one followed in its 1989 rulemaking, the agency has considered its direct and indirect costs in calculating the proposed fee for the review, processing, handling, and disbursement of cash deposits submitted by importers and RIs in lieu of sureties on a DOT conformance bond as follows:

The direct costs that would be used to calculate the proposed fee include the estimated cost of contractor and

professional staff time for administering cash deposits submitted by importers and RIs in lieu of sureties on a DOT conformance bond. Additional direct costs include computer equipment and maintenance costs, telephone toll charges, and postage.

The indirect costs include a pro rata allocation of the average benefits of agency staff while administering cash deposits. Benefits provided by NHTSA amount to 21.5 percent of the salary earned by its professional staff. The indirect costs also include a *pro rata* allocation of the costs attributable to the rental and maintenance of office space and equipment, the use of office supplies, and other overhead items. For fiscal years (FY) 2007 and 2008, these costs are projected to average \$17.07/hour for each employee and contract support staff member working at NHTSA headquarters.

The estimated cost of contract and professional staff time is calculated on the basis of the full cost for time spent during FY 2007 and the estimated FY 2008 rates, including benefits (for professional staff only) and overhead. This is summarized in Table 1 below:

TABLE 1.—STAFF COSTS

| NHTSA staff | FY 2007 | FY 2008 est. |
|----------------------------|---------|--------------|
| Contractor | \$33.43 | \$34.70 |
| NHTSA Manager | 59.93 | 62.20 |
| NHTSA Senior Manager | 67.04 | 69.58 |

Administering the process begins when the cash deposits are received by mail. We estimate that a contractor spends 10 minutes logging receipt of, and hand delivering the cash deposits to, a manager within NHTSA's Office of Vehicle Safety Compliance (OVSC). The OVSC manager spends an estimated 20 minutes discussing by telephone with the importer, the necessary formal agreement and its obligations, preparing the formal agreement between the agency and the importer, and faxing the agreement to the importer for signature. After the importer signs and returns the agreement, a contractor spends an estimated 5 minutes logging receipt of the agreement and returning it to the OVSC manager. We estimate that the OVSC manager spends 20 minutes to prepare a transmittal memo that describes the formal agreement and requests the approval and signature of a senior NHTSA manager, who by regulation is authorized to obligate the agency. Another 30 minutes of time is

needed for agency chain-of-command review and approval of the agreement.

Once the agreement is executed, the OVSC manager expends 10 minutes preparing and faxing a letter that notifies CBP that NHTSA has approved the vehicle's formal entry into the United States. The OVSC manager prepares an additional letter notifying the importer that the agreement has been signed, that CBP has been notified, and that the vehicle can now be formally entered into the United States. We estimate that preparing and transmitting this letter takes 10 minutes. The OVSC manager also notifies a contractor to record a notation in the agency's Motor Vehicle Importation Information (MVII) database.

The OVSC manager consumes 10 minutes of work time preparing a cover memorandum and delivering the cash deposits to the agency's finance manager. The finance manager delivers the cash deposits to a Washington, DC bank for deposit in a non-interest bearing account. We estimate that it takes one hour to accomplish this task, which concludes the first stage of administering the cash deposit.

Based on the time required to accomplish these tasks, we calculate that for FY 2007, 20 minutes of contractor time costs \$16.83 and two hours and 40 minutes of professional staff time costs \$241.01. Therefore, the total FY 2007 cost for staff time is \$260.84. Using projected hourly rate increases of 3.79% for both contract and professional staff, we estimate a staff time cost of \$268.80 for FY 2008.

The second phase of the process begins when the importer notifies NHTSA that vehicle conformance obligations have been met. We estimate that this notification takes 10 minutes of professional staff time. The OVSC manager takes 10 minutes of time preparing a cover memorandum to the finance manager that requests that a check be drawn on the agency's account in the importer's name. We estimate that it takes one hour of the finance manager's time to order and retrieve from the bank a check drawn on the agency's non-interest bearing account. The finance manager consumes 10 minutes of time delivering the check to the OVSC manager and notifying the agency's Director of Finance of the transaction. The OVSC manager then composes a letter to the importer and mails the letter with the enclosed check, consuming another 10 minutes of time. On a monthly basis, the finance manager expends 5 minutes reviewing

for accuracy the agency's bank statement transactions.

This phase of the process consumes one hour and 45 minutes of professional staff time and costs the agency for FY 2007 a total of \$157.30. We estimate for FY 2008 that this cost will increase to \$162.13, based on a projected 3.79% hourly rate increase for both contractor and professional staff.

As previously stated, additional direct costs include computer equipment and maintenance costs, which we have calculated at \$1.86/hour. We have determined that one hour and 25 minutes of computer time is needed to accomplish the tasks associated with processing each cash deposit, yielding a total of \$158.10. We also estimate that the agency will spend \$5.75 for the toll costs incurred for three telephone transmissions (*i.e.*, faxing the formal agreement to the importer for signature; faxing a letter informing CBP that the vehicle's entry is approved; and faxing a letter notifying the importer to proceed with the vehicle's entry) and \$3.00 postage for mailing the check to the importer.

Based on the above factors, NHTSA proposes to charge \$598.00 as the fee to recover the costs it incurs for each vehicle imported during FY 2008, for which the importer submits a cash deposit in lieu of a DOT conformance bond. This fee would have to be tendered with each cash deposit submitted to the agency in lieu of a bond. The time expended, hourly rates, direct and indirect costs, and proposed fees to reimburse NHTSA are summarized in Appendix A of this notice.

F. Effective Date

Section 30141(e) of Title 49, U.S. Code requires the amount of fees imposed under section 30141(a) to be reviewed, and, if appropriate, adjusted by NHTSA at least every two years. It also requires that the fee for each fiscal year be established before the beginning of that year. Any final rule on this proposal must therefore be issued not later than September 30, 2008 so that the fee it establishes will be applicable in Fiscal Year 2009, which begins on October 1, 2008.

G. Appendix A

The following tables provide an itemization of the time expended, hourly rates, direct and indirect costs, and proposed fees to reimburse NHTSA for the costs of receiving, processing, handling, and disbursing cash deposits:

| Step of process | Staff* | Time mins. | FY 07 Rate | FY 07 Cost | FY 08 Rate | FY 08 Cost |
|--|---------|------------|------------|-------------------|------------|-------------|
| Receipt, Processing, and Handling of Cash Deposits (Cash) | | | | | | |
| Cash received and delivered | C | 10 | \$50.50 | \$8.42 | \$51.77 | \$8.63 |
| Agreement obligations discussed with importer | E | 10 | \$89.88 | \$14.98 | \$92.64 | \$15.44 |
| Prepare formal agreement | E | 10 | \$89.88 | \$14.98 | \$92.64 | \$15.44 |
| Agreement faxed for importer's signature | | | | Toll charge | | Toll charge |
| Signed agreement received and delivered | C | 5 | \$50.50 | \$4.21 | \$51.77 | \$4.31 |
| Prepare agreement approval memo | E | 20 | \$89.88 | \$29.96 | \$92.64 | \$30.88 |
| Agreement review and signature | E | 10 | \$98.52 | \$16.42 | \$101.61 | \$16.94 |
| | E | 10 | \$98.52 | \$16.42 | \$101.61 | \$16.94 |
| | E | 10 | \$98.52 | \$16.42 | \$101.61 | \$16.94 |
| Prepare CBP letter approving vehicle entry | E | 10 | \$89.88 | \$14.98 | \$92.64 | \$15.44 |
| Fax CBP letter | | | | Toll charge | | Toll charge |
| Prepare importer letter approving vehicle entry | E | 10 | \$89.88 | \$14.98 | \$92.64 | \$15.44 |
| Transmit letter to importer by fax | | | | Toll charge | | Toll charge |
| Create database record | C | 5 | \$50.50 | \$4.21 | \$51.77 | \$4.31 |
| Prepare and deliver memo/cash to finance | E | 10 | \$89.88 | \$14.98 | \$92.64 | \$15.44 |
| Deposit cash in bank | E | 60 | \$89.88 | \$89.88 | \$92.64 | \$92.64 |
| Subtotal | | | | \$260.84 | | \$268.80 |

*Staff Notes: (C) is contractor and (E) is employee.

| Handling and Disbursement of Cash Deposits (Cash) | | | | | | |
|---|---------|----|---------|---------------|---------|----------|
| Importer notifies NHTSA that vehicle conformance obligations are met. | E | 10 | \$89.88 | \$14.98 | \$92.64 | \$15.44 |
| Prepare memo requesting check to importer | E | 10 | \$89.88 | \$14.98 | \$92.64 | \$15.44 |
| Withdraw funds from bank by check | E | 60 | \$89.88 | \$89.88 | \$92.64 | \$92.64 |
| Deliver check | E | 5 | \$89.88 | \$7.49 | \$92.64 | \$7.72 |
| Notify NHTSA Finance Director | E | 5 | \$89.88 | \$7.49 | \$92.64 | \$7.72 |
| Prepare letter with check enclosure | E | 10 | \$89.88 | \$14.98 | \$92.64 | \$15.44 |
| Mail letter and check to importer | | | | postage | | postage |
| Review monthly bank statements | E | 5 | \$89.88 | \$7.49 | \$92.64 | \$7.72 |
| Subtotal | | | | \$157.30 | | \$162.13 |

*Staff Notes: (C) is contractor and (E) is employee.

| Other Direct Costs | | | | | | |
|---|--|------------|------------|------------|------------|------------|
| Direct costs | | Time Mins. | FY 07 Rate | FY 07 Cost | FY 08 Rate | FY 08 Cost |
| Computer and Computer Maintenance | | 85 | \$1.86/hr | \$158.10 | \$1.86/hr | \$158.10 |
| Postage | | | \$3.00 | \$3.00 | \$3.00 | \$3.00 |
| Toll Calls (3) | | | \$1.92 | \$5.75 | \$1.92 | \$5.75 |
| Subtotal | | | | \$166.85 | | \$166.85 |
| Subtotals: | | | | | | |
| Subtotal | | | | \$260.84 | | \$268.80 |
| Subtotal | | | | \$157.30 | | \$162.13 |
| Subtotal | | | | \$166.85 | | \$166.85 |
| Total | | | | \$584.99 | | \$597.78 |

Rulemaking Analyses

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations as to whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and subject to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.
- NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking is not significant. Accordingly, the Office of Management and Budget has not reviewed this rulemaking document under Executive Order 12886. Further, NHTSA has determined that the rulemaking is not significant under

Department of Transportation's regulatory policies and procedures. Based on the level of the fees and the volume of affected vehicles, NHTSA currently anticipates that the costs of the final rule would be so minimal as not to warrant preparation of a full regulatory evaluation. The action does not involve any substantial public interest or controversy. There would be no substantial effect upon State and local governments. There would be no substantial impact upon a major transportation safety program. A regulatory evaluation analyzing the economic impact of the final rule establishing the RI program, adopted on September 29, 1989, was prepared, and is available for review in the docket.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." See 13 CFR 121.105(a). No regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The agency has considered the effects of this proposed rulemaking under the Regulatory Flexibility Act, and certifies that if the proposed amendments are adopted they would not have a significant economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The proposed amendment would primarily affect entities that currently modify nonconforming vehicles and which are small businesses within the meaning of the Regulatory Flexibility Act. Of the 73 such entities that are currently licensed with NHTSA, only several have furnished the agency with cash deposits

in lieu of sureties on DOT conformance bonds. Despite the fact that they qualify as small businesses, the agency has no reason to believe that these companies would be unable to pay the fee proposed by this action. Moreover, consistent with prevailing industry practices, the fee should be passed through to the ultimate purchasers of any vehicle for which a cash deposit in lieu of sureties is given to the agency. The cost to owners or purchasers of these vehicles may be expected to increase to the extent necessary to reimburse the RI for the fee payable to the agency for the cost of processing a cash deposit.

Governmental jurisdictions would not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

C. Executive Order 13132 (Federalism)

Executive Order 13132 on "Federalism" requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." Executive Order 13132 defines the term "policies that have federalism implications" to include regulations that 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." Under Executive Order 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

The proposed rule would 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 as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rulemaking action.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action would not have a significant effect upon the environment because it is anticipated that the annual volume of motor

vehicles imported through RIs would not vary significantly from that existing before promulgation of the rule.

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988 "Civil Justice Reform," this agency has considered whether this proposed rule would have any retroactive effect. NHTSA concludes that this proposed rule would not have any retroactive effect. Judicial review of a rule based on this proposal may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

F. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with the base year of 1995). Before promulgating a rule for which a written assessment is needed, Section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. Because a final rule based on this proposal would not require the expenditure of resources beyond \$100 million annually, this action is not subject to the requirements of Sections 202 and 205 of the UMRA.

G. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the proposed rule clearly stated?

- Does the proposed rule contain technical language or jargon that is unclear?
- Would a different format (grouping and order of sections, use of heading, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this document.

H. Paperwork Reduction Act

Under 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 proposal would require no information collections.

I. Executive Order 13045

Executive Order 13045 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 rule is preferable to other potentially effective and reasonably feasible alternatives considered by us. This rulemaking is not economically significant.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs the agency to provide Congress, through the OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

After conducting a search of available sources, we have concluded that there

are no voluntary consensus standards applicable to this proposed rule.

K. Public Participation

How Do I Prepare and Submit Comments?

Your comments must be written in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management identified at the beginning of this document, under **ADDRESSES**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given at the beginning of this document under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation, 49 CFR, part 512.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date identified at the beginning of this notice under **DATES**. To the extent possible, we will also consider

comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule, we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address and times given at the beginning of this document under **ADDRESSES**.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Federal Docket Management System (FDMS) Web page <http://www.regulations.gov>.

(2) On that page, click on “search for dockets.”

(3) On the next page (<http://www.regulations.gov/fdmspublic/component/main>), select NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION from the drop-down menu in the Agency field, enter the Docket ID number and title shown at the heading of this document, and select “RULEMAKING” from the drop-down menu in the Type field.

(4) After entering that information, click on “submit.”

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see. You may download the comments. Although the comments are imaged documents, instead of the word processing documents, the “pdf” versions of the documents are word searchable. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

L. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN that appears in the heading on the first page of this document to find this action in the Unified Agenda.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 594 as follows:

List of Subjects in 49 CFR Part 594

Administrative practice and procedure, Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, the agency proposes to amend part 594 in Title 49 of the Code of Federal Regulations as follows:

PART 594—SCHEDULE OF FEES AUTHORIZED BY 49 U.S.C. 30141

1. The authority citation for part 594 continues to read as follows:

Authority: 49 U.S.C. 30141, 31 U.S.C. 9701; delegation of authority at 49 CFR 1.50.

2. Section 594.9 is amended by:
a. Revising the section heading;
b. Adding paragraph (d); and
c. Adding paragraph (e); to read as follows:

§ 594.9 Fee for reimbursement of bond processing costs and costs for processing offers of cash deposits or obligations of the United States in lieu of sureties on bonds.

* * * * *

(d) Each importer must pay a fee based upon the direct and indirect costs the agency incurs for receipt, processing, handling, and disbursement of cash deposits or obligations of the United States in lieu of sureties on bonds that the importer submits as authorized by 591.10 of this chapter in lieu of a conformance bond required under 591.6(c).

(e) The fee for each vehicle imported on and after October 1, 2008, for which cash deposits or obligations of the United States is furnished in lieu of a conformance bond, is \$598.00.

* * * * *

Issued on: November 13, 2007.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. E7-22532 Filed 11-20-07; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 070711313-7637-03]

RIN 0648-AV62

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish, Crab, Salmon, and Scallop Fisheries of the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would implement Amendment 88 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. This amendment, if approved, would revise the Aleutian Islands Habitat Conservation Area (AIHCA) boundary to allow nonpelagic trawling in an area historically fished and to prohibit nonpelagic trawling in an area of known coral and sponge occurrence. This action is necessary to ensure the AIHCA protects areas of coral and sponge habitat from the potential effects of nonpelagic trawling and allow nonpelagic trawling in areas historically fished and without evidence of coral and sponge occurrence.

DATES: Written comments must be received by January 7, 2008.

ADDRESSES: You may submit comments, identified by 0648-AV62, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>;

- Mail: Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802; Attn: Ellen Sebastian, Records Officer;

- Hand delivery: 709 West 9th Street, Room 420A, Juneau, AK; or

- Fax: 907-586-7557, Attention: Sue Salvesson.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the map of the AIHCA and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for this action may be obtained from the addresses stated above or from the Alaska Region NMFS website at <http://www.fakr.noaa.gov>.

FOR FURTHER INFORMATION CONTACT:

Melanie Brown, 907-586-7228 or email at melanie.brown@noaa.gov.

SUPPLEMENTARY INFORMATION: The groundfish, crab, scallop, and salmon fisheries in the exclusive economic zone (EEZ) off Alaska are managed under their respective fishery management plans (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR parts 679 and 680. General regulations governing U.S. fisheries also appear at 50 CFR part 600. The groundfish fishery restrictions for the AIHCA described in the groundfish FMP are implemented by regulations at 50 CFR part 679. Revisions to the AIHCA also are described in the proposed Amendment 23 to the FMP for BSAI King and Tanner Crabs, Amendment 12 to the FMP for Scallop Fisheries off Alaska, and Amendment 9 to the FMP for Salmon Fisheries in the Exclusive Economic Zone off the Coast of Alaska. No regulatory amendments are needed for implementing these FMP amendments due to a prohibition on using nonpelagic trawl gear in the crab, scallop, and salmon fisheries.

The Council has submitted the amendments for the AIHCA revision for review by the Secretary of Commerce, and a Notice of Availability of the amendments was published in the **Federal Register** on November 13, 2007 (72 FR 63871), with comments on the amendments invited through January 14, 2008. Comments may address the FMP amendments, the proposed rule, or both, but must be received by January 7, 2008, to be considered in the approval/disapproval decision on the FMP amendments. All comments received by that time, whether specifically directed to the FMP amendments or to the proposed rule, will be considered in the approval/disapproval decision on the FMP amendments.

Background

In 2006, NMFS implemented essential fish habitat (EFH) protection measures for the Aleutian Islands subarea and adjacent State of Alaska (State) waters (71 FR 36694, June 28, 2006, and corrected at 72 FR 63500, November 9, 2007). The background on the development of the EFH protection measures is available in the proposed rule for that action (71 FR 14470, March 22, 2006). The EFH protection measures prohibited nonpelagic trawling within the AIHCA. The AIHCA is the Aleutian