

communications essential to providing such services if (and only for so long as) the NGO applicant/licensee:

\* \* \* \* \*

(c) All NGO authorizations are conditional. NGOs assume all risks associated with operating under conditional authority. Authorizations issued to NGOs to operate systems in the 769–775 MHz and 799–805 MHz frequency bands include the following condition: If at any time the supporting governmental entity (see paragraph (b)(1) of this section) notifies the Commission in writing of such governmental entity’s termination of its authorization of a NGO’s operation of a system in the 769–775 MHz and 799–805 MHz frequency bands, the NGO’s application shall be dismissed automatically or, if authorized by the Commission, the NGO’s authorization shall terminate automatically.

(d) Paragraphs (a) and (b) of this section notwithstanding, no entity is eligible to hold an authorization for a system operating in the 769–775 MHz and 799–805 MHz frequency bands on the basis of services, the sole or principal purpose of which is to protect the safety of life, health or property, that such entity makes commercially available to the public.

\* \* \* \* \*

■ 7. Section 90.535(d) is revised to read as follows:

**§ 90.535 Modulation and spectrum usage efficiency requirements.**

\* \* \* \* \*

(d) Transmitters designed to operate on the channels listed in paragraphs (b)(2), (5), (6), and (7) of § 90.531 must be capable of operating in the voice mode at an efficiency of at least one voice path per 12.5 kHz of spectrum bandwidth.

■ 8. Section 90.548(c) is revised to read as follows:

**§ 90.548 Interoperability Technical Standards.**

\* \* \* \* \*

(c) Transceivers capable of operating on the interoperability channels listed in § 90.531(b)(1) shall not be marketed or sold unless the transceiver has previously been certified for interoperability by the Compliance Assessment Program (CAP) administered by the U.S. Department of Homeland Security; provided, however, that this requirement is suspended if the CAP is discontinued. Submission of a 700 MHz narrowband radio for certification will constitute a representation by the manufacturer that the radio will be shown, by testing, to

be interoperable across vendors before it is marketed or sold. In the alternative, manufacturers may employ their own protocol for verifying compliance with Project 25 standards and determining that their product is interoperable among vendors. In the event that field experience reveals that a transceiver is not interoperable, the Commission may require the manufacturer thereof to provide evidence of compliance with this section.

[FR Doc. 2016–22432 Filed 9–28–16; 8:45 am]

**BILLING CODE 6712–01–P**

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 543**

[Docket No. NHTSA–2014–0007]

**RIN 2127–AL08**

**Exemption From Vehicle Theft Prevention Standard**

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

**ACTION:** Final rule.

**SUMMARY:** In this rulemaking action, NHTSA is finalizing procedures for obtaining an exemption from the vehicle theft prevention standard for vehicles equipped with immobilizers.

An immobilizer is an anti-theft device that combines microchip and transponder technology with engine and fuel immobilizer components that can prevent vehicles from starting unless a verified code is received by the transponder. This final rule streamlines the exemption procedure for immobilizer-equipped vehicles by adding performance criteria for immobilizers. The criteria, which roughly correlate with the types of qualities for which petitioners have been submitting testing and technical design details under existing procedures, closely follow the immobilizer performance requirements in the anti-theft standard of Canada. After this final rule, it would be sufficient for a manufacturer seeking the exemption of some of its vehicles to provide data showing that the device meets the performance criteria, as well as a statement that the device is durable and reliable. Adopting these performance criteria for immobilizers bring the U.S. anti-theft requirements more into line with those of Canada.

**DATES:** *Effective Date:* This rule is effective November 28, 2016.

*Petitions for Reconsideration:* Petitions for reconsideration of this final rule must be received not later than November 14, 2016.

**ADDRESSES:** Petitions for reconsideration of this final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:**  
*For technical issues:* Mr. Hisham Mohamed, Office of Consumer Programs, NHTSA, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590 (Telephone: (202) 366–0307) (Fax: (202) 493–2990).

*For legal issues:* Mr. Ryan Hagen, Office of the Chief Counsel, NHTSA, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590 (Telephone: (202) 366–2992) (Fax: (202) 366–3820).

**SUPPLEMENTARY INFORMATION:**

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**I. Executive Summary**

This rulemaking action amends 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard*, by adding performance criteria for immobilizers. The agency has granted many exemptions from the theft prevention standard to vehicle lines on the basis that they were equipped with immobilizers. In support of petitions for these exemptions, manufacturers have provided a substantial amount of data seeking to demonstrate the effectiveness of immobilizers in reducing motor vehicle theft.

The criteria, which roughly correlate with the types of qualities for which petitioners have been submitting testing and technical design details under existing procedures, use the same four performance requirements from the Transport Canada standard. For those performance requirements, the Canadian standard also sets forth tests that manufacturers of vehicles to be sold in Canada must certify to Canadian authorities that they have conducted.

Adopting these performance criteria would simplify the exemption process for manufacturers who installed immobilizers meeting those criteria. Currently, in their petitions for exemption, vehicle manufacturers describe the testing that they have conducted on the immobilizer device and aspects of design of the immobilizer that address the areas of performance which the agency has determined are important to gauge the effectiveness of the immobilizer in reducing and deterring motor vehicle theft. Adding performance criteria for immobilizers as another means of qualifying for an exemption from the U.S. theft prevention standard will allow manufacturers that are installing immobilizers as standard equipment for a line of motor vehicles in compliance with Canadian theft prevention standards to more easily gain an exemption here. This would reduce the amount of material that manufacturers would need to submit to obtain an exemption because manufacturers would only be required to indicate and demonstrate that the immobilizer met the performance criteria and was durable and reliable to be eligible for an exemption.

This final rule allows manufacturers to obtain an exemption from the theft prevention standards by complying with any of the four performance criteria currently accepted by Transport Canada. The adoption of the performance criteria for immobilizers would bring the U.S. anti-theft requirements more into line with those of Canada. This harmonization of U.S. and Canadian requirements is being undertaken pursuant to ongoing bilateral regulatory cooperation efforts. Additionally, two of the performance criteria added by this rule are United Nations Economic Commission for Europe (UN/ECE) standards, which will allow for greater global harmonization.

We are retaining the current criteria for gaining an exemption from the vehicle theft prevention standard. Therefore, manufacturers would still be able to petition the agency to install other anti-theft devices as standard equipment in a vehicle line to obtain an exemption from the theft prevention standard. While NHTSA has granted many petitions for exemption from the theft prevention standard for vehicle lines equipped with an immobilizer type anti-theft device, we note that a manufacturer is not required to install an immobilizer in order to gain an exemption. We note also that this would not increase the number of exemptions from the theft prevention standard available to a manufacturer.

## II. Background

The Motor Vehicle Theft Law Enforcement Act (the Theft Act), 49 U.S.C. 33101 *et seq.*, directs NHTSA<sup>1</sup> to establish theft prevention standards for light duty trucks and multipurpose passenger vehicles (MPVs) with a gross vehicle weight rating of 6,000 pounds or less and passenger cars. The Theft Act also allows NHTSA to exempt one vehicle line per model year per manufacturer from the theft prevention standard if the vehicle is equipped with an anti-theft device that the agency “decides is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the [theft prevention] standard.”<sup>2</sup> 49 U.S.C. 33106(b). The statute states that in order to obtain an exemption, manufacturers must file a petition that describes the anti-theft device in detail, states the reason that the manufacturer believes that the device will be effective in reducing or deterring theft, and contains additional information that NHTSA determines is necessary to decide whether the anti-theft device “is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the [theft prevention] standard.”<sup>2</sup>

Pursuant to the Theft Act, NHTSA issued 49 CFR part 541, *Federal Motor Vehicle Theft Prevention Standard*, which requires manufacturers of vehicles identified by the agency as likely high-theft vehicle lines to inscribe or affix vehicle identification numbers or symbols on certain components of new vehicles and replacement parts.<sup>3</sup> The agency refers to this requirement as the parts marking requirement.

NHTSA promulgated part 543 to establish the process for submitting petitions for exemption from the parts marking requirements in the theft prevention standard. A manufacturer may petition the agency for an exemption from the parts marking requirements for one vehicle line per model year if the manufacturer installs an anti-theft device as standard equipment on the entire line. In order to be eligible for an exemption, part 543 requires manufacturers to submit a

<sup>1</sup> The Secretary of Transportation’s responsibilities under the Theft Act have been delegated to NHTSA pursuant to 49 CFR 1.95.

<sup>2</sup> *Id.*

<sup>3</sup> Part 541 requires the following major parts to be marked: The engine, the transmission, the hood, the right and left front fenders, the right and left front doors, the right and left rear door (four-door models), the sliding or cargo doors, the decklid, tailgate or hatchback (whichever is present), the front and rear bumpers, and the right and left quarter panels. The right and left side assemblies must be marked on MPVs and the cargo box must be marked on light duty trucks.

petition explaining how the anti-theft device will promote activation, attract attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key, prevent defeat or circumvention of the device by unauthorized persons, prevent operation of the vehicle by unauthorized entrants, and ensure the reliability and durability of the device. Based on the materials in the petition, NHTSA decides whether to grant the petition in whole or in part or to deny it.

Under the existing part 543, manufacturers choose how they wish to demonstrate to the agency that the anti-theft device they are installing in a vehicle line meets the factors listed in § 543.6. Manufacturers provide differing levels of detail in their exemption petitions. Manufacturers typically provide engineering diagrams of the anti-theft device, a description of how the device functions, and testing to show that the device is durable and reliable in their petitions for exemption. Manufacturers also describe how the design of the anti-theft device satisfies the factors listed in § 543.6.

### A. Effectiveness of Immobilizers in Reducing or Deterring Theft

Nearly 700,000 motor vehicle thefts took place in the U.S. in 2013, causing a loss of mobility and economic hardship to those affected.<sup>4</sup> The estimated value of motor vehicles stolen in 2011 was \$4.1 billion, averaging \$5,972 per stolen vehicle.<sup>5</sup> Of the vehicles stolen in the United States, nearly 45 percent are never recovered.<sup>6</sup> While the number of motor vehicle thefts fell 3.3 percent from 2012 to 2013, vehicle theft remains an ongoing problem in the U.S.<sup>7</sup> According to the FBI, a motor vehicle was stolen every 45 seconds in 2013.<sup>8</sup>

An immobilizer is a type of anti-theft device based on microchip and transponder technology and combined with engine and fuel immobilizer components. When activated, an immobilizer device disables the

<sup>4</sup> [https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s./2013/crime-in-the-u.s.-2013/property-crime/motor-vehicle-theft-topic-page/mvtheftmain\\_final.pdf](https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s./2013/crime-in-the-u.s.-2013/property-crime/motor-vehicle-theft-topic-page/mvtheftmain_final.pdf) (last accessed February 10, 2016).

<sup>5</sup> *Id.*

<sup>6</sup> <http://www.nhtsa.gov/Vehicle+Safety/Vehicle-Related+Theft/Theft+Prevention> (last accessed February 10, 2016).

<sup>7</sup> <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s./2013/crime-in-the-u.s.-2013/property-crime/motor-vehicle-theft-topic-page> (last accessed February 10, 2016).

<sup>8</sup> <http://www.trafficsafetymarketing.gov/newtsm/VehicleTheftPrevention/11539-VehicleTheftPrevention-FactSheet.pdf> (last accessed February 10, 2016).

vehicle's electrical or fuel systems at several points and prevents the vehicle from starting unless the correct code is received by the transponder.

NHTSA is aware of several sources of information demonstrating the effectiveness of immobilizer devices in reducing motor vehicle theft. In the 1980s, General Motors Corporation (GM) used an early generation of microchip devices, which later developed into the rolling code transponder device, which is currently installed in GM as well as many other vehicles. According to the Highway Loss Data Institute (HLDI), immobilizer devices are up to 50 percent effective in reducing vehicle theft.<sup>9</sup> The September 1997 Theft Loss Bulletin from the HLDI reported an overall theft decrease of approximately 50 percent for both the Ford Mustang and Taurus lines upon installation of an immobilizer device. Ford Motor Company claimed that its MY 1997 Mustang vehicle line (with an immobilizer) led to a 70 percent reduction in theft compared to its MY 1995 Mustang (without an immobilizer).<sup>10</sup> Chrysler Corporation informed the agency that the inclusion of an immobilizer device as standard equipment on the MY 1999 Jeep Grand Cherokee resulted in a 52 percent net average reduction in vehicle thefts.<sup>11</sup>

Mitsubishi Motors Corporation informed the agency that the theft rate for its MY 2000 Eclipse vehicle line (with an immobilizer device) was almost 42 percent lower than that of its MY 1999 Eclipse (without an immobilizer device).<sup>12</sup> Mazda Motor Corporation reported that a comparison of theft loss data showed an average theft reduction of approximately 50 percent after an immobilizer device was installed as standard equipment in a vehicle line.<sup>13</sup> In general, the agency has granted many petitions for exemptions for installation of immobilization-type devices. Manufacturers have provided the agency with a substantial amount of information attesting to the reduction of thefts for vehicle lines resulting from the installation of immobilization devices as standard equipment on those lines.

#### *B. U.S. Canada Regulatory Cooperation Council*

On February 4, 2011, the U.S. and the Canadian governments created a United

States-Canada Regulatory Cooperation Council (RCC), composed of senior regulatory, trade and foreign affairs officials from both governments. In recognition of the two countries' \$1 trillion annual trade and investment relationship, the RCC is working together to promote economic growth, job creation and benefits to consumers and businesses through increased regulatory transparency and coordination.<sup>14</sup>

On December 7, 2011, the RCC established an initial Joint Action Plan that identified 29 initiatives where the U.S. and Canada will seek greater alignment in their regulatory approaches. The Joint Action Plan highlights the areas and initiatives which were identified for initial focus. These areas include agriculture and food, transportation, health and personal care products and workplace chemicals, environment and cross-sectoral issues. One of the topics for regulatory cooperation identified in the transportation area is to pursue greater harmonization of existing motor vehicle standards. Theft prevention is one of the harmonization opportunities identified by the Motor Vehicles Working Group.

#### *C. Canadian Motor Vehicle Safety Standard No. 114*

In addition to the theft and rollaway prevention requirements included in the U.S. version of the standard, CMVSS No. 114 requires the installation of an immobilization system for all new passenger vehicles, MPVs and trucks certified to the standard with a gross vehicle weight rating (GVWR) of 4,536 kg or less, with some exceptions. CMVSS No. 114 contains four different sets of requirements for immobilizers. The four sets of requirements are National Standard of Canada CAN/ULC-S338-98, Automobile Theft Deterrent Equipment and Systems: Electronic Immobilization (May 1998); United Nations Economic Commission for Europe (UN/ECE) Regulation No. 97 (ECE R97) in effect August 8, 2007, Uniform Provisions Concerning Approval of Vehicle Alarm System (VAS) and Motor Vehicles with Regard to Their Alarm System (AS); UN/ECE Regulation No. 116 (ECE R116), Uniform Technical Prescriptions Concerning the Protection of Motor Vehicles Against Unauthorized Use in effect on February 10, 2009; and a set of requirements derived from the CAN/ULC 338-98 standard and ECE R97 developed by Transport Canada to increase

manufacturer design flexibility (in effect March 30, 2011). Vehicles certified to CMVSS No. 114 must be equipped with an immobilizer meeting one of these four sets of requirements. Used motor vehicles imported into Canada must also be equipped with immobilizers meeting CMVSS No. 114. This requirement makes it more difficult to import into Canada motor vehicles manufactured in the U.S. that are not equipped with an immobilizer meeting CMVSS No. 114. In such cases, an immobilizer that complies with CMVSS No. 114, usually an aftermarket device, must be added to the vehicle before it can be imported into Canada.

CAN/ULC-S338-98 contains design specifications, activation and deactivation requirements, durability tests, and tests to assess the resistance to physical attack for immobilizers. ECE R97 and ECE R116 contain design specifications, activation and deactivation requirements, durability tests, and tests to assess the resistance to physical attack for immobilizers similar to those contained in CAN/ULC-S338-98. The fourth set of requirements for immobilizers in CMVSS No. 114 contains design specifications, activation and deactivation requirements, and requirements testing the ability of the immobilizer to resist deactivation by physical attack derived from the other standards. The fourth set of requirements, however, does not include the environmental tests and durability requirements that are included in CAN/ULC-S338-98, ECE R97 and ECE R116.

In adopting the fourth set of performance requirements for immobilizers contained in CMVSS No. 114, Transport Canada stated that some of the environmental and durability requirements for immobilizers contained in CAN/ULC-S338-98, ECE R97, and ECE R116 were developed for aftermarket immobilizers and should not be applied to immobilizers that are installed as original equipment on a vehicle.<sup>15</sup> Transport Canada also stated that those three standards contained requirements specific to particular immobilizer designs, had the potential to restrict the design of immobilizers, and had the potential to prevent the introduction of new and emerging technologies such as keyless vehicle technologies, key-replacement technologies and remote starting systems. Transport Canada stated that for these reasons it established a set of

<sup>9</sup> See <http://www.iihs.org/iihs/news/desktopnews/theft-losses-decline-by-half-when-cars-are-equipped-with-immobilizing-antitheft-devices> (last accessed February 10, 2016).

<sup>10</sup> 77 FR 1974 (January 12, 2012).

<sup>11</sup> 76 FR 68262 (November 3, 2011).

<sup>12</sup> 77 FR 20486 (April 4, 2012).

<sup>13</sup> 76 FR 41558 (July 14, 2011).

<sup>14</sup> <https://www.whitehouse.gov/sites/default/files/omb/oira/irc/us-canada-rcc-joint-forward-plan.pdf> (last accessed February 10, 2016).

<sup>15</sup> See SOR/2007-246 November, 2007 "Regulations Amending the Motor Vehicle Safety Regulations (Theft Protection and Rollaway Prevention—Standard 114)" 2007-11-14 Canada Gazette Part II, Vol. 141, No. 23.

performance requirements without the environmental and durability requirements contained in CAN/ULC–S338–98, ECE R97, and ECE R116.

### III. Proposed Rule

The agency proposed to include performance criteria for immobilizers in part 543 so that manufacturers may more easily apply for exemptions from the parts marking requirements for vehicles lines with immobilizers conforming to CMVSS No. 114. NHTSA proposed to add performance criteria to part 543 to make our theft prevention standards more in line with those of Canada. In order to be eligible for an exemption under the proposal, manufacturers would be required to state and demonstrate that the immobilizer device they are installing in the vehicle line meets the proposed performance criteria and is durable and reliable.

The agency believes that adding performance criteria from CMVSS No. 114 to part 543 is the simplest way to make our anti-theft regulations more in line with that standard and to reduce the burden to manufacturers, who are already installing immobilizers in compliance with that standard, of applying for an exemption from the parts marking requirements. The agency could not add performance requirements for immobilizers as part of Federal Motor Vehicle Safety Standard (FMVSS) No. 114, Theft Protection and Rollaway Prevention, since doing so would require a determination that the additional requirements would be consistent with the National Traffic and Motor Vehicle Safety Act (Motor Vehicle Safety Act).<sup>16</sup> Further, the agency is unable to issue a theft prevention standard under the Theft Act to require the installation of immobilizers because that Act limits the agency's standard setting authority to issuing standards that require parts marking.<sup>17</sup> Manufacturers are allowed to install immobilizers in lieu of parts marking, but under an exemption from the theft standard, not as a compliance alternative included in the theft standard.

Prior to this final rule, NHTSA had not formally or informally adopted any technical performance criteria for anti-theft devices. While NHTSA has granted many petitions for exemption from the parts marking requirements for vehicle lines equipped with an immobilizer anti-theft device, a manufacturer is not

required to install an immobilizer in order to gain an exemption. The agency proposed to retain the current exemption process so that manufacturers would still be able to gain an exemption for installing anti-theft devices that do not conform to the proposed performance criteria for immobilizers. The number of exemptions available to manufacturers would not increase as a result of the proposal. Thus, manufacturers will continue to be eligible for an exemption from the parts marking requirements for only one vehicle line per model year.

NHTSA proposed only the fourth set of performance criteria for immobilizers contained in CMVSS No. 114 for inclusion in part 543. The agency proposed to adopt only this one set of performance criteria because of the factors articulated by Transport Canada discussed in Section C above. Furthermore, the agency proposed adopting only this one set of performance criteria as the simplest way to harmonize anti-theft regulations between the U.S. and Canada. In the proposed rule, NHTSA anticipated the possibility that vehicles equipped with immobilizers meeting the performance criteria in CAN/ULC–S338–98, ECE R97, or ECE R116 would still be able to obtain an exemption from the theft prevention standard via a petition filed under the current exemption procedures. The agency sought comment on whether it should consider including all four performance criteria.

In its proposal, NHTSA tentatively concluded that immobilizers meeting the proposed performance criteria are likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts marking requirements in part 541. The agency has granted numerous exemptions from the theft prevention standard for vehicle lines equipped with immobilizers based on data submitted by manufacturers indicating that immobilizers were as effective in reducing and deterring motor vehicle theft as compliance with that standard. Several studies have also indicated that immobilizers designed to meet technical performance criteria are effective in reducing and deterring motor vehicle theft. Studies in Australia and Canada on the effectiveness of immobilization systems (which meet CAN/ULC–S338–98 or ECE R97 and ECE R116) have shown reduced incidence of theft compared to vehicles that were not equipped with immobilizers.<sup>18</sup>

For these reasons, the agency concluded that establishing performance criteria for immobilizers as a means of getting an exemption from the theft prevention standard is consistent with 49 U.S.C. 33106 of the Theft Act. That section requires the agency to determine that an anti-theft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts marking requirements in part 541 in order to grant an exemption from those requirements.

The proposed performance criteria for immobilizers included specifications for when the immobilizer should arm after the disarming device is removed from the vehicle. The performance criteria state that, when armed, the immobilizer should prevent the vehicle from moving more than three meters under its own power by inhibiting the operation of at least one of the vehicle's electronic control units (ECU). Further, the performance criteria state that, when armed, the immobilizer should not disable the vehicle's brake system. During the disarming process, the immobilizer should send a code to the inhibited ECU to allow the vehicle to move under its own power. The immobilizer should be configured so that disrupting the device's normal operating voltage cannot disarm the immobilizer. Additionally, the immobilizer must have a minimum capacity for 50,000 code variants and shall not be capable of processing more than 5,000 codes within 24 hours unless the immobilizer uses rolling or encrypted codes. The performance criteria state that it shall not be possible to replace the immobilizer without the use of software. In order to satisfy the performance criteria, the immobilizer in a vehicle must be designed so that it is not possible to disarm it using common tools within five minutes.

In order to promote understanding of the new terms used in the regulatory text, the agency also proposed definitions for "immobilizer" and "accessory mode."

The agency plans on ensuring that immobilizer devices that manufacturers are installing to obtain an exemption conform with the proposed performance criteria by requiring manufacturers to state that they have certified the immobilizer installed on the vehicle to the performance criteria of CMVSS No. 114. Manufacturers must be ready to

<sup>16</sup> 49 U.S.C. 30101 *et seq.*

<sup>17</sup> See 49 U.S.C. 33101(11) (defining "vehicle theft prevention standard" as a performance standard for identifying major vehicle parts by affixing numbers or symbols to those parts).

<sup>18</sup> See *Principles for Compulsory Immobilizer Schemes*, prepared for the National Motor Vehicle Theft Reduction Council by MM Stars Pty Ltd.,

ISBN 1 876704 17 9, Melbourne, Australia, October 2002; Matthew J Miceli "A Report on Fatalities and Injuries as a Result of Stolen Motor Vehicles (1999–2001)," prepared for The National Committee to Reduce Auto Theft Project #6116 and Transport Canada, December 10, 2002.

provide Transport Canada with evidence that the immobilizer complies with CMVSS No. 114, along with all other applicable Canadian Standards, prior to certifying the vehicle under the Canadian Motor Vehicle Safety Act.<sup>19</sup> NHTSA believes that it can rely on the information that manufacturers have kept to provide to Transport Canada regarding their certification to CMVSS No. 114 to ensure that immobilizer manufacturers install in order to obtain an exemption conform to the proposed performance criteria. The NPRM proposed that manufacturers submit the documentation provided to Transport Canada regarding their certification to CMVSS No. 114 to NHTSA as part of a manufacturer's petition for exemption. We do not believe that requiring this information as part of the petition would place a burden on manufacturers because they are already compiling this information to provide to Transport Canada, if requested, when certifying their vehicles under the Canadian Motor Vehicle Safety Act.

The proposed regulatory text did not include a requirement that manufacturers provide a detailed description of the immobilizer device as part of the petition because we believe that the documentation that manufacturers are keeping to provide to Transport Canada, and that they would be required to provide to NHTSA, describes the immobilizer device in sufficient detail for the agency to be able to determine whether the device satisfies the performance criteria.

The proposed performance criteria did not include specifications that address the durability and reliability of immobilizers because the agency was concerned about the limitations such specifications could pose to immobilizer designs. Part 543 currently requires manufacturers to explain how the design of their immobilizer device ensures that it is durable and reliable in order to be eligible for an exemption.<sup>20</sup> Because the agency believes that it is possible for the durability and reliability of an immobilizer to impact its effectiveness, we tentatively decided to retain this criterion of eligibility as part of the proposed performance criteria. We tentatively concluded that requiring manufacturers to submit a statement regarding the durability and reliability of the immobilizer is the best way to ensure that immobilizers are durable

and reliable without impacting the ability of manufacturers to create new immobilizer systems. We believe manufacturers will submit statements similar to the ones they are currently submitting as part of their exemption applications to demonstrate that their immobilizers are durable and reliable.

The agency stated it believes the proposed performance criteria are consistent with the following anti-theft device attributes that are currently contained in part 543:

- The specification in the proposed performance criteria that the immobilizer arm after the disarming device is removed from the vehicle will facilitate activation of the immobilizer by the driver and prevent unauthorized persons who have entered the vehicle by means other than a key from operating the vehicle.<sup>21</sup>
- The specification in the proposed performance criteria that the immobilizer have certain code processing capabilities and be resistant to physical attack will ensure that the immobilizer is designed to prevent defeat or circumvention by persons entering the vehicle by means other than a key.<sup>22</sup>

The proposed performance criteria correspond to the aspects of performance of immobilizer devices that manufacturers now qualitatively describe in their exemption petitions. Manufacturers are currently demonstrating the effectiveness of immobilizers by describing the testing the immobilizer has been subjected to, how the immobilizer is activated, how the immobilizer interacts with the key to allow the vehicle to start and the encryption of electronic communications between the key and the immobilizer. These characteristics correspond to performance criteria in the proposal for how the immobilizer must arm, preventing the vehicle from moving under its own power, how the immobilizer must disarm to allow the driver to start the vehicle, the minimum number of code variants that the immobilizer is able to process, and the immobilizer's resistance to manipulation and physical attack. The

<sup>21</sup> See 49 CFR 543.6(a)(3)(i), (iv) (stating that the application for exemption must include an explanation of how the anti-theft device facilitates activation by the driver and prevents unauthorized persons who have entered the vehicle by means other than a key from operating the vehicle).

<sup>22</sup> See 49 CFR 543.6(a)(3)(iii)(iv) (stating that the application for exemption must include an explanation of how the anti-theft device prevents defeat or circumvention of the device by an someone without the vehicle's key and prevents unauthorized persons who have entered the vehicle by means other than a key from operating the vehicle).

proposed performance criteria simplify the process for applying for an exemption because manufacturers would no longer need to describe how the immobilizer achieves these aspects of performance. Instead, manufacturers would only need to state and demonstrate that their immobilizer device conforms to the performance criteria, and is durable and reliable.

In order to allow manufacturers to more easily apply for an exemption from the theft prevention standard and to reduce the burden to the agency in processing exemption petitions we tentatively decided that we will notify manufacturers of decisions to grant or deny exemption petitions by notifying them of the agency's decision in writing. As proposed, we would not publish notices of our decisions to grant or deny exemption petitions from the theft prevention standard based on the manufacturer having satisfied the performance criteria in the **Federal Register**. NHTSA would continue to inform the public and law enforcement that a particular vehicle line has an exemption based on satisfaction of the performance criteria by updating the list of exempt vehicle lines in appendix A–I to part 541.

#### IV. Overview of Comments

NHTSA received two comments on the proposed rule. Commenters were generally supportive of the proposal because it allows for improved harmonization with Canada, but expressed concerns about the documentation required to obtain an exemption and allowing for more compliance options similar to Transport Canada's CMVSS No. 114.

The Alliance of Automobile Manufacturers (Alliance) expressed a procedural concern with the information manufacturers must provide to NHTSA in order to obtain an exemption under the proposed regulation. Specifically, the Alliance noted that in order to comply with Canadian law, manufacturers must certify as complying with all applicable CMVSSs—but manufacturers do not routinely provide compliance data to Transport Canada to prove compliance. Because of this, the Alliance suggested that manufacturers only be required to submit a statement that the immobilizer meets the performance requirements noted in the proposal. The Alliance suggested that this statement would eliminate the proposal's requirement to submit the same documentation that demonstrates compliance with CMVSS No. 114.

Toyota Motor North America, Inc. (Toyota) submitted a comment stating

<sup>19</sup> Motor Vehicle Safety Act, R.S.C., ch. 16 section 5(1)(e) (1993) (Can.). The Canadian Motor Vehicle Safety Act requires a manufacturer to certify that its vehicles comply with all applicable Canadian Motor Vehicle Safety Standards before the vehicles can be sold in Canada.

<sup>20</sup> 49 CFR 543.6(a)(3)(v).

that it agrees with the comments submitted by the Alliance and that it believes immobilizers conforming to any of the four enumerated standards in CMVSS No. 114 should be acceptable to obtain an exemption under part 543. Toyota suggests that allowing manufacturers to obtain an exemption by complying with any of the four accepted standards would allow for greater harmonization between the United States and Canada, as well as increase manufacturer flexibility.

## V. Response to Comments and Differences Between the Final Rule and NPRM

### A. Manufacturers Seeking an Exemption Via Compliance With Performance Criteria Will Be Required To Submit Data Demonstrating Compliance With Standards

Transport Canada has a certification process that is similar to NHTSA's "self-certification process." Under Canada's Motor Vehicle Safety Act, the responsibility rests with the vehicle manufacturer or importer to certify that all new vehicles offered for sale in Canada comply with all applicable safety standards in effect on the date of manufacture. Manufacturers or importers certify this by displaying the national safety mark. As a prerequisite to obtaining permission to use the national safety mark, a manufacturer must maintain records demonstrating completion of certification testing. While certification test documentation may not be requested by Transport Canada for every new or imported vehicle in Canada, the Canadian Motor Vehicle Safety Act requires such records be available should Transport Canada request them.

NHTSA believes that providing only a statement of compliance with CMVSS No. 114 is insufficient to justify an exemption from the theft prevention standard. Moreover, the data NHTSA will require is data manufacturers should be keeping in order to facilitate any compliance verification requests from Transport Canada.

The agency currently receives petitions for exemptions from manufacturers that present justification for receiving an exemption. This application includes an explanation of how the anti-theft device will promote activation, attract attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key, prevent defeat or circumvention of the device by unauthorized persons, prevent operation of the vehicle by unauthorized persons to enter or operate a vehicle by unauthorized entrants, and

ensure the reliability and durability of the device. On those grounds, the agency can evaluate the justification and grant or deny the exemption. This rule seeks to streamline the exemption process by using compliance with certain standards in lieu of submitting separate justifications for exemptions under Part 543. Requiring manufacturers to provide the recordkeeping information required by the Transport Canada to demonstrate CMVSS No. 114 compliance, should Transport Canada ask for the data, allows NHTSA to ensure anti-theft devices installed on vehicles meet the same level of performance as would be expected of an anti-theft device requested through the prior exemption process. Therefore, the agency is finalizing the proposed requirement that manufacturers submit compliance data kept for Transport Canada compliance in order to prove compliance with CMVSS No. 114 standards.

### B. Manufacturers Seeking an Exemption Via Compliance With Performance Criteria May Comply With Any of the Four Criteria in CMVSS No. 114

We sought comments on whether adding the standards in CAN/ULC-S338-98,<sup>23</sup> ECE R97, and ECE R116 to the agency's accepted performance criteria would better accomplish the agency's goal of harmonizing the process for obtaining an exemption with the Canadian theft prevention standard. After reconsideration of the proposal and reviewing public comments, NHTSA has decided to accept anti-theft devices compliant with any of the four performance criteria allowed under CMVSS No. 114 for exemptions under part 543. Manufacturers will be required to submit statements similar to the ones they are currently submitting as part of their exemption applications to demonstrate that immobilizers certified to any of the four standards are durable and reliable. The agency proposed what it believed to be the simplest method of harmonization with Canada; however, after evaluating stakeholder response to this issue, we believe that finalizing all four performance criteria will simplify compliance and promote harmonization between the United States and Canada.

We proposed Transport Canada's fourth performance criteria because Transport Canada determined that the

three other standards were developed for aftermarket immobilizers and had the potential to restrict the design of immobilizers. Finalizing all four performance criteria will provide additional flexibility by allowing OEMs and aftermarket manufacturers to elect the performance criteria most appropriate for their device. It will also improve harmonization with the United Nations Economic Commission for Europe (ECE) immobilizer performance criteria by allowing manufacturers the option of complying with one of two ECE standards and receiving an exemption from the theft prevention standard.

Further, NHTSA believes allowing all four performance standards will be as effective in reducing and deterring motor vehicle theft as compliance with the parts marking requirements in part 541. Since 2007, when Transport Canada began requiring OEMs to install immobilizers meeting one of the four performance criteria for most vehicles, theft in Canada has decreased more than 50 percent.<sup>24</sup> As discussed in the proposal, the agency believes that based on the effectiveness of immobilizers certified to any of the performance criteria in Canada, the regulations finalized today are consistent with the Theft Act.

The agency has modified the regulatory text to reflect the inclusion of all four performance criteria. As a result of doing so, NHTSA has moved the originally proposed criteria from C.R.C. c. 1038.114, *Theft Protection and Rollaway Prevention* (in effect March 30, 2011) to appendix A of part 543.

## VI. Costs, Benefits, and Compliance Date

This rule amends part 543 to add performance criteria for immobilizers that are contained in CMVSS No. 114. Because the agency is retaining the current exemption process as a means of gaining an exemption from the theft prevention standard, the addition of performance criteria to part 543 would result in no costs to manufacturers. Manufacturers would not be required to make any changes to products in order to retain eligibility for an exemption.

The agency cannot quantify the benefits of this rulemaking. The agency does, however, expect some benefits to accrue from making the exemption process in part 543 more closely harmonized with CMVSS No. 114. Additionally, since two of the accepted performance criteria added by this rule

<sup>23</sup> NHTSA was notified that ULC posted a withdrawal for CAN/ULC-S338-98 on December 22, 2015. The comment period for this withdrawal closed on January 20, 2016. See: <https://www.scc.ca/en/standards/work-programs/ulc/standard-for-automobile-theft-deterrent-equipment-and-systems-electronic-immobilization> (last accessed February 10, 2016).

<sup>24</sup> See "actual incidents" of "total theft of motor vehicle" at <http://www5.statcan.gc.ca/cansim/a01?lang=eng> (last accessed February 10, 2016).

are ECE standards, manufacturers could potentially pay less for immobilizer devices if they are able to order higher volumes of parts due to harmonization with Canadian and ECE standards.

Adding the performance criteria would allow manufacturers that are installing immobilizers as standard equipment for a line of motor vehicles in compliance with CMVSS No. 114 to more easily gain an exemption from the parts marking requirements. The agency believes this would reduce the cost to manufacturers of applying for an exemption from the parts marking requirements. Adding performance criteria to part 543 would also result in a reduction in vehicle theft in cases for which the rule improves the effectiveness of the anti-theft devices chosen by manufacturers.

If the rule encourages more manufacturers to install immobilizers meeting CMVSS No. 114 on vehicles sold in the United States, it could result in cost savings to consumers seeking to import used vehicles into Canada. Importing used vehicles that already comply with CMVSS No. 114 into Canada saves consumers from having to pay to have an aftermarket immobilizer installed in the vehicle.

The compliance date will be 60 days after the date of issuance of the publication of this final rule.

### VIII. Regulatory Notices and Analyses

#### *Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures*

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." It is not considered to be significant under E.O. 12866 or the Department's regulatory policies and procedures.

This rule would amend part 543 to add performance criteria for immobilizers that are contained in CMVSS No. 114 to allow manufacturers who are installing immobilizers in compliance with that standard to more easily obtain an exemption from the theft prevention standard.

The agency concludes that the impacts of the changes would be so minimal that preparation of a full regulatory evaluation is not required. This rule would not result in any costs to manufacturers because the current exemption process would be left in place. Manufacturers would not be

required to make any changes to current vehicles to retain eligibility for an exemption. It is also possible that this rule would result in a reduction in motor vehicle thefts if immobilizers meeting the performance criteria are more effective than current designs.

#### *Executive Order 13609: Promoting International Regulatory Cooperation*

The policy statement in section 1 of Executive Order 13609 provides, in part:

The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

NHTSA is issuing this rule pursuant to a regulatory cooperation agreement between the United States and Canada. This rule would more closely harmonize vehicle theft regulations in the United States with those in Canada.

#### *National Environmental Policy Act*

We have reviewed this rule for the purposes of the National Environmental Policy Act and determined that it would not have a significant impact on the quality of the human environment.

#### *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 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." 13 CFR 121.105(a). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of the rule under the Regulatory Flexibility Act and certifies that this rule would not have a significant economic impact on a substantial number of small entities. This rule amends part 543 to add performance criteria for immobilizers that are contained in CMVSS No. 114 to allow manufacturers who are installing immobilizers in compliance with that standard to more easily obtain an exemption from the theft prevention standard. This rule would not significantly affect any entities because it would leave in place the current exemption process so that manufacturers would not need to make any changes to products to retain eligibility for an exemption. Accordingly, we do not anticipate that this rule would have a significant economic impact on a substantial number of small entities.

#### *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; Feb. 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) specifies whether administrative proceedings are to be required before parties file suit in court; (6) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. There is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court. NHTSA has considered whether this rulemaking would have any retroactive effect. This rule does not have any retroactive effect.

#### *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 a proposed or final rule that includes 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 (adjusted for inflation with base year of 1995).

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and 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.

This rule is not anticipated to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector in excess of \$100 million annually. The cost impact of this rule is expected to be \$0. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandate Reform Act.

#### *Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. This rule would decrease the materials that a manufacturer would need to submit to the agency to obtain an exemption from the vehicle theft prevention standard in certain instances.

*Agency:* National Highway Traffic Safety Administration (NHTSA).

*Title:* 49 CFR part 543, Petitions for Exemption from the Vehicle Theft Prevention Standard.

*Type of Request:* Revision of a currently approved collection.

*OMB Control Number:* 2127-0542.

*Form Number:* The collection of this information uses no standard form.

*Requested Expiration Date of Approval:* Three years from the date of approval.

*Summary of the Collection of Information:* This collection consists of information that motor vehicle manufacturers must submit in support of an application for an exemption from the vehicle theft prevention standard. Manufacturers wishing to apply for an exemption from the parts marking requirement because they have installed immobilizers meeting the performance criteria would be required to submit a statement that the entire line of vehicles

is equipped with an immobilizer, as standard equipment, that meets the performance criteria contained in that section, a statement that the immobilizer has been certified to the Canadian theft prevention standard, documentation provided to Transport Canada to demonstrate that the immobilizer was certified to the Canadian theft prevention standard, and a statement that the immobilizer device is durable and reliable. This rule would not change the information that manufacturers would need to submit if seeking an exemption in accordance with the current process used for petitions seeking an exemption based on the installation of immobilizers.

*Description of the Need for the Information and Use of the Information:* The information is needed to determine whether a vehicle line is eligible for an exemption from the vehicle theft prevention standard.

*Description of the Likely Respondents (Including Estimated Number, and Frequency of Response to the Collection of Information):* Currently, nineteen manufacturers have one or more car lines exempted. We expect that within the three year period covered by this clearance, twelve manufacturers would apply for an exemption per year: Nine under the current process and three under the performance criteria. Based on another analysis of the exemption information NHTSA has received, as well as the comments the agency received, NHTSA has made a minor adjustment to the estimates provided in the NPRM. In comparison to the estimates provided in the NPRM, the agency believes that one more manufacturer will use the new process within the next three years. The agency thinks it is likely that more manufacturers will migrate to the new process over time, however, because many manufacturers have product plans covering the next three years that might not happen until the agency renews its collection in three years. NHTSA anticipates reevaluating this assessment during its next renewal of this collection.

*Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information:* We estimate that the burden for applying for an exemption under this rule would be 2300 hours. The burden for applying for an exemption under the current process is estimated to be 226 hours  $\times$  9 respondents = 2034 hours. The burden for apply for an exemption under the performance criteria is estimated to be 20 hours  $\times$  3 respondents = 60 hours.

#### *National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical.

Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as "performance-based or design-specific technical specification and related management systems practices." They pertain to "products and processes, such as size, strength, or technical performance of a product, process or material."

Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

We are not aware of any technical performance criteria for immobilizers issued by voluntary consensus standards bodies in the United States. For the reasons discussed in this notice, the agency has determined that the simplest way to harmonize part 543 with Canadian theft prevention regulations was to adopt all four performance criteria discussed above.

#### *Executive Order 13211*

Executive Order 13211<sup>25</sup> applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. If the regulatory action meets either criterion, we must evaluate the adverse energy effects of the rule and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives considered by NHTSA.

<sup>25</sup> 66 FR 28355 (May 18, 2001).

This rule amends part 543 to add performance criteria for immobilizers that are contained in CMVSS No. 114 to allow manufacturers who are installing immobilizers in compliance with that standard to more easily obtain an exemption from the theft prevention standard. Therefore, this rule would not have any significant adverse energy effects. Accordingly, this rulemaking action is not designated as a significant energy action.

*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 contained in the heading at the beginning of this document to find this action in the Unified Agenda.

**List of Subjects in 49 CFR Part 543**

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

In consideration of the foregoing, NHTSA amends 49 CFR chapter V as follows.

**PART 543—EXEMPTION FROM VEHICLE THEFT PREVENTION STANDARD**

■ 1. The authority citation for part 543 of title 49 is revised to read as follows:

**Authority:** 49 U.S.C. 322, 33101, 33102, 33103, 33104 and 33105; delegation of authority at 49 CFR 1.95.

■ 2. Amend § 543.4 by adding, in alphabetical order, definitions for “Accessory mode” and “Immobilizer” in paragraph (b) to read as follows:

**§ 543.4 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*Accessory mode* means the ignition switch setting in which certain electrical systems (such as the radio and power windows) can be operated without the operation of the vehicle’s propulsion engine.

*Immobilizer* means a device that, when activated, is intended to prevent a motor vehicle from being powered by its own propulsion system.

\* \* \* \* \*

■ 3. In § 543.5, revise paragraphs (b)(2), (6), and (7) and add paragraphs (b)(8) and (9) to read as follows:

**§ 543.5 Petition: General requirements.**

\* \* \* \* \*

(b) \* \* \*

(2) Be submitted in three copies to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

\* \* \* \* \*

(6) Identify whether the exemption is sought under § 543.6 or § 543.7.

(7) If the exemption is sought under § 543.6, set forth in full the data, views, and arguments of the petitioner supporting the exemption, including the information specified in that section.

(8) If the exemption is sought under § 543.7, submission of the information required in that section.

(9) Specify and segregate any part of the information or data submitted that the petitioner requests be withheld from public disclosure in accordance with part 512, *Confidential Business Information*, of this chapter.

**§§ 543.7 through 543.9 [Redesignated as §§ 543.8 through 543.10]**

■ 4. Redesignate §§ 543.7 through 543.9 as §§ 543.8 through 543.10.

■ 5. Add a new § 543.7 to read as follows:

**§ 543.7 Petitions based on performance criteria.**

A petition submitted under this section must include:

(a) A statement that the entire line of vehicles is equipped with an immobilizer, as standard equipment, that meets one of the following:

(1) The performance criteria (subsections 8 through 21) of C.R.C. c. 1038.114, *Theft Protection and Rollaway Prevention (in effect March 30, 2011)*, as excerpted in appendix A of this part;

(2) National Standard of Canada CAN/ULC-S338-98, *Automobile Theft Deterrent Equipment and Systems: Electronic Immobilization* (May 1998);

(3) United Nations Economic Commission for Europe (UN/ECE) Regulation No. 97 (ECE R97), *Uniform Provisions Concerning Approval of Vehicle Alarm System (VAS) and Motor Vehicles with Regard to Their Alarm System (AS)* in effect August 8, 2007; or

(4) UN/ECE Regulation No. 116 (ECE R116), *Uniform Technical Prescriptions Concerning the Protection of Motor Vehicles Against Unauthorized Use* in effect on February 10, 2009.

(b) Compliance documentation kept to demonstrate the basis for certification with the performance criteria specified in paragraph (a) of this section.

(c) A statement that the immobilizer device is durable and reliable.

■ 6. Amend newly redesignated § 543.8 by revising paragraph (f) and adding paragraph (g) to read as follows:

**§ 543.8 Processing an exemption petition.**

\* \* \* \* \*

(f) If the petition is sought under § 543.6, NHTSA publishes a notice of its decision to grant or deny an exemption petition in the **Federal Register** and notifies the petitioner in writing of the agency’s decision.

(g) If the petition is sought under § 543.7, NHTSA notifies the petitioner in writing of the agency’s decision to grant or deny an exemption petition.

■ 7. Newly redesignated § 543.9 is revised to read as follows

**§ 543.9 Duration of exemption.**

Each exemption under this part continues in effect unless it is modified or terminated under § 543.10, or the manufacturer ceases production of the exempted line.

■ 8. Add appendix A to part 543 to read as follows:

**Appendix A to Part 543—Performance Criteria (Subsections 8 Through 21) of C.R.C. c. 1038.114 (in Effect March 30, 2011)**

In order to be eligible for an exemption under § 543.7(a)(1), the entire vehicle line must be equipped with an immobilizer meeting the following criteria:

(1) Subject to paragraph (2) of this appendix, an immobilization system shall arm automatically within a period of not more than 1 minute after the disarming device is removed from the vehicle, if the vehicle remains in a mode of operation other than accessory mode or on throughout that period.

(2) If the disarming device is a keypad or biometric identifier, the immobilization system shall arm automatically within a period of not more than 1 minute after the motors used for the vehicle’s propulsion are turned off, if the vehicle remains in a mode of operation other than accessory mode or on throughout that period.

(3) The immobilization system shall arm automatically not later than 2 minutes after the immobilization system is disarmed, unless:

(i) Action is taken for starting one or more motors used for the vehicle’s propulsion;

(ii) Disarming requires an action to be taken on the engine start control or electric motor start control, the engine stop control or electric motor stop control, or the ignition switch; or

(iii) Disarming occurs automatically by the presence of a disarming device and the device is inside the vehicle.

(4) If armed, the immobilization system shall prevent the vehicle from moving more than 3 meters (9.8 feet) under its own power by inhibiting the operation of at least one electronic control unit and shall not have any impact on the vehicle’s brake system except that it may prevent regenerative braking and the release of the parking brake.

(5) During the disarming process, a code shall be sent to the inhibited electronic control unit in order to allow the vehicle to move under its own power.

(6) It shall not be possible to disarm the immobilization system by interrupting its normal operating voltage.

(7) When the normal starting procedure requires that the disarming device mechanically latch into a receptacle and the device is physically separate from the ignition switch key, one or more motors used for the vehicle's propulsion shall start only after the device is removed from that receptacle.

(8)(i) The immobilization system shall have a minimum capacity of 50,000 code variants, shall not be disarmed by a code that can disarm all other immobilization systems of the same make and model; and

(ii) subject to paragraph (9) of this appendix, it shall not have the capacity to process more than 5,000 codes within 24 hours.

(9) If an immobilization system uses rolling or encrypted codes, it may conform to the following criteria instead of the criteria set out in paragraph (8)(ii) of this appendix:

(i) The probability of obtaining the correct code within 24 hours shall not exceed 4 per cent; and

(ii) It shall not be possible to disarm the system by re-transmitting in any sequence the previous 5 codes generated by the system.

(10) The immobilization system shall be designed so that, when tested as installed in the vehicle neither the replacement of an original immobilization system component with a manufacturer's replacement component nor the addition of a manufacturer's component can be completed without the use of software; and it is not possible for the vehicle to move under its own power for at least 5 minutes after the beginning of the replacement or addition of a component referred to in this paragraph (1).

(11) The immobilization system's conformity to paragraph (10) of this appendix shall be demonstrated by testing that is carried out without damaging the vehicle.

(12) Paragraph (10)(i) of this appendix does not apply to the addition of a disarming device that requires the use of another disarming device that is validated by the immobilization system.

(13) The immobilization system shall be designed so that it can neither be bypassed nor rendered ineffective in a manner that would allow a vehicle to move under its own power, or be disarmed, using one or more of the tools and equipment listed in paragraph (14) of this appendix;

(i) Within a period of less than 5 minutes, when tested as installed in the vehicle; or

(ii) Within a period of less than 2.5 minutes, when bench-tested outside the vehicle.

(14) During a test referred to in paragraph (13) of this appendix, only the following tools or equipment may be used: Scissors, wire strippers, wire cutters and electrical wires, a hammer, a slide hammer, a chisel, a punch, a wrench, a screwdriver, pliers, steel rods and spikes, a hacksaw, a battery operated drill, a battery operated angle grinder; and a battery operated jigsaw.

**Note:** C.R.C., c. 1038.114, Theft Protection and Rollaway Prevention (in effect March 30, 2011). See: SOR/2011-69 March, 2011 "Regulations Amending the Motor Vehicle

Safety Regulations (Theft Prevention and Rollaway Prevention—Standard 114)" 2011-03-30 Canada Gazette Part II, Vol 145, No. 7.

Issued in Washington, DC, on September 8, 2016, under authority delegated in 49 CFR part 1.95.

**Mark R. Rosekind,**  
Administrator.

[FR Doc. 2016-22061 Filed 9-28-16; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R4-ES-2015-0137; 4500030113]

RIN 1018-AZ95

#### Endangered and Threatened Wildlife and Plants; Endangered Species Status for *Chamaecrista lineata* var. *keyensis* (Big Pine Partridge Pea), *Chamaesyce deltoidea* ssp. *serpyllum* (Wedge Spurge), and *Linum arenicola* (Sand Flax), and Threatened Species Status for *Argythamnia blodgettii* (Blodgett's Silverbush)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), determine endangered species status under the Endangered Species Act of 1973 (Act), as amended, for *Chamaecrista lineata* var. *keyensis* (Big Pine partridge pea), *Chamaesyce deltoidea* ssp. *serpyllum* (wedge spurge), and *Linum arenicola* (sand flax), and threatened species status for *Argythamnia blodgettii* (Blodgett's silverbush), all plant species from south Florida. The rule adds these species to the Federal List of Endangered and Threatened Plants.

**DATES:** This rule is effective October 31, 2016.

**ADDRESSES:** This final rule is available on the Internet at <http://www.regulations.gov>. Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at <http://www.regulations.gov>. Comments, materials, and documentation that we considered in this rulemaking will be available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, South Florida Ecological Services Field Office, 1339 20th Street, Vero Beach, FL 32960; telephone 772-562-3909; facsimile 772-562-4288.

#### FOR FURTHER INFORMATION CONTACT:

Roxanna Hinzman, U.S. Fish and Wildlife Service, South Florida Ecological Services Field Office, 1339 20th Street, Vero Beach, FL 32960; telephone 772-562-3909; facsimile 772-562-4288. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Executive Summary

*Why we need to publish a rule.* Under the Endangered Species Act, a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Listing a species as an endangered or threatened species can only be completed by issuing a rule.

*The basis for our action.* Under the Endangered Species Act, we may determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the threats to *Chamaecrista lineata* var. *keyensis*, *Chamaesyce deltoidea* ssp. *serpyllum*, *Linum arenicola*, and *Argythamnia blodgettii* consist primarily of:

- Habitat loss and modification through urban and agricultural development, and lack of adequate fire management (Factor A); and
- The proliferation of nonnative, invasive plants; stochastic events (hurricanes and storm surge); maintenance practices used on roadsides and disturbed sites; and sea level rise (Factor E).

Existing regulatory mechanisms have not been adequate to reduce or remove these threats (Factor D).

*Peer review and public comment.* We sought comments from independent specialists to ensure that our determination is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on our listing proposal. We also considered all other comments and information we received during the comment period.

##### Previous Federal Actions

Please refer to the proposed listing rule for *Chamaecrista lineata* var. *keyensis*, *Chamaesyce deltoidea* ssp. *serpyllum*, *Linum arenicola*, and