

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 0.43 mile upstream of Browns Hill Road.	None	*897
Maps available for inspection at the O'Hara Township Hall, 325 Fox Chapel Road, Pittsburgh, Pennsylvania. Send comments to Mr. Douglas C. Arndt, O'Hara Township Manager, 325 Fox Chapel Road, Pittsburgh, Pennsylvania 15238.					
Pennsylvania	Ross (Township) Allegheny County.	Little Pine Creek West	Approximately 0.39 mile downstream of Sutter Road. Approximately 1,050 feet upstream of McIntyre Road.	*977 *1,016	978 *1,015
Maps available for inspection at the Ross Township Hall, 5325 Perrysville Avenue, Pittsburgh, Pennsylvania. Send comments to Mr. Thomas Lavorini, Ross Township Manager, 5325 Perrysville Avenue, Pittsburgh, Pennsylvania 15229.					
Pennsylvania	Shaler (Township) Allegheny County.	Little Pine Creek East	At confluence with Pine Creek	*757	*753
			Approximately 750 feet upstream of Saxonburg Boulevard.	*796	*799
		Little Pine Creek West	Approximately 850 feet upstream of confluence with Pine Creek.	*745	*747
			Approximately 733 feet upstream of Clair Street.	*976	*975
		Pine Creek	Approximately 375 feet upstream of Bridge Street.	*736	*738
			Approximately 1,600 feet upstream of Elfinwild Road.	*839	*846
Maps available for inspection at the Shaler Township Building, 300 Wetzel Road, Glenshaw, Pennsylvania. Send comments to Mr. Timothy Rogers, Shaler Township Manager, 300 Wetzel Road, Glenshaw, Pennsylvania 15116.					
Pennsylvania	Sharpsburg (Borough) Allegheny County.	Pine Creek	Backwater area between Main Street and CONRAIL.	*736	*737
Maps available for inspection at the Sharpsburg Borough Office, 1021 North Canal, Pittsburgh, Pennsylvania. Send comments to The Honorable Marion Gerardi, Mayor of the Borough of Sharpsburg, 121 13th Street, Pittsburgh, Pennsylvania 15215.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")
 Dated: June 19, 1997.
Richard W. Krimm,
Executive Associate Director, Mitigation Directorate.
 [FR Doc. 97-18539 Filed 7-14-97; 8:45 am]
 BILLING CODE 6718-04-P

and National Aeronautics and Space Administration (NASA).
ACTION: Proposed rule—extension of comment period.

SUMMARY: The public comment period on this proposed rule, which was published in the **Federal Register** at 62 FR 25786, May 9, 1997, is extended from July 8, 1997, through August 8, 1997. The rule conforms to a Department of Justice proposal to reform affirmative action in Federal procurement. The comment period is extended in order to accommodate public requests for an extension.

DATES: Comments on the proposed rule should be submitted in writing to the FAR Secretariat at the address shown below on or before August 8, 1997.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW., Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to farcase.97-004@gsa.gov. Please cite FAR case 97-004 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT:
 Ms. Victoria Moss (202) 501-4764.

List of Subjects in 48 CFR Parts 12, 14, 15, 19, 33, 52, and 53

Governemnt procurement.

Dated: July 9, 1997.

Edward C. Loeb,
Director, Federal Acquisition Policy Division.
 [FR Doc. 97-18558 Filed 7-14-97; 8:45 am]
 BILLING CODE 6820-EP-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 14, 15, 19, 33, 52, and 53

[FAR Case 97-004]

RIN 9000-AH59

Federal Acquisition Regulation; Reform of Affirmative Action in Federal Procurement

AGENCY: Department of Defense (DOD), General Services Administration (GSA),

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. 97-046; Notice 1]

RIN 2127-AG73

Schedule of Fees Authorized by 49 U.S.C. 30141; Fee for Review and Processing of Conformity Certificates for Nonconforming Vehicles

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to amend NHTSA's regulations that prescribe a schedule of fees authorized by 49 U.S.C. § 30141 for various functions performed by the agency with respect to the importation of motor vehicles. The amendment would establish a fee for the agency's review and processing of statements that registered importers submit to certify that vehicles that were not originally manufactured to conform to all applicable Federal motor vehicle safety standards have been brought into conformity with those standards. The fee would apply to all vehicles for which conformity certificates are submitted to NHTSA, including vehicles imported from Canada, which currently account for over 98 percent of the nonconforming vehicles that are processed by NHTSA.

DATES: *Comments.* Comments must be received on or before August 14, 1997.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Clive Van Orden, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-366-2830). For legal issues: Coleman Sachs, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-366-5238).

SUPPLEMENTARY INFORMATION:

A. Background

Laws relating to motor vehicle safety are found in Chapter 301 of Title 49, U.S. Code. NHTSA is authorized under 49 U.S.C. § 30111 to issue Federal motor vehicle safety standards (FMVSS). 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 an applicable FMVSS takes effect unless the vehicle complies with the standard and is so certified pursuant to 49 U.S.C. § 30115. One of the exceptions to this prohibition is found in 49 U.S.C. § 30141. That section permits an importer who is registered with NHTSA (a "registered importer") to import a motor vehicle that was not originally manufactured to conform to all

applicable FMVSS, provided that NHTSA has decided that the vehicle is eligible for importation. Under the criteria that are specified in 49 U.S.C. § 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 and Review of Conformity Packages

Once a motor vehicle has been declared eligible for importation, it is imported under bond by a registered importer or by an individual who has executed a contract or other agreement with a registered importer to bring the vehicle into compliance with applicable FMVSS. The registered importer has the obligation to bring the bonded vehicle into conformity with the FMVSS within 120 days of the vehicle's entry. When the registered importer has done so, it must certify to NHTSA that the vehicle meets the FMVSS. See 49 U.S.C. § 30146(b) and 49 CFR 592.6(e). An agency regulation at 49 CFR 592.6(f) requires registered importers to submit to NHTSA "[i]n substantiation of the initial certification provided for a specific model and model year * * * photographic and documentary evidence of conformance with each applicable Federal motor vehicle safety and bumper standard, and with respect to subsequent certifications of such model and model year, such information, if any, as the Administrator may request."

NHTSA's Office of Vehicle Safety Compliance (OVSC) administers the agency's programs concerning the importation of nonconforming vehicles. OVSC has issued guidance to registered importers, in the form of newsletters and other communications, that specify the contents and form of the packages that must be submitted to the agency to certify that each nonconforming vehicle for which a performance bond has been given has been brought into compliance with all applicable FMVSSs. Upon receipt, the OVSC staff reviews each package to verify the accuracy of the information it contains. If NHTSA questions the registered importer's certification of compliance, the registered importer is notified pursuant to 49 CFR 592.8(c) to hold the vehicle for inspection. Acceptance of the certification ends the agency's involvement with the vehicle.

Thus, NHTSA staff expends much time reviewing and evaluating routine compliance packages, and even more time if a package does not indicate conformance with the FMVSS,

necessitating follow-up action. NHTSA reviewed some 16,000 compliance packages in calendar year 1996.

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 registered importers to pay for the costs of carrying out the registered importer program. The agency is also authorized under this section to establish fees to pay for the costs of processing the conformance bonds that registered importers 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 four 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 registered importers to cover the agency's costs for administering the registered importer program. This fee, which is covered by section 594.6, is currently set at \$501.00 for persons applying for registered importer status and at \$332 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 registered importer status and annual statements seeking the renewal of that status, as well as other actions performed by the agency in administering the registered importer program.

The second fee is collected from each motor vehicle manufacturer or registered importer 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 \$199 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 \$721 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.

The third fee is for importing a vehicle pursuant to an eligibility decision made by the Administrator. This fee, which is covered by 49 CFR 594.8, is currently set at \$134 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 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.” Registered importers 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 \$5.15 and only reimburses the U.S. Customs Service for services performed at the time of entry. It is based on direct and indirect cost information provided to NHTSA by the Customs Service.

D. Additional Fees That NHTSA Believes Are Justified

Although the above-described fees have permitted NHTSA to recover the costs it incurs in administering certain aspects of the registered importer program and making import eligibility decisions, other NHTSA activities that are a service to the importers of noncomplying vehicles have gone unreimbursed. One such activity for which the agency believes it is entitled to reimbursement under 49 U.S.C. § 30141 is the review of conformity packages to decide whether vehicles, as altered by the registered importers, comply with all applicable FMVSS and thus, whether the conformance bonds that cover those vehicles may be released.

Because NHTSA’s approval of the conformity package is a necessary predicate to the release of these bonds, NHTSA has tentatively concluded that the expense incurred by the agency in reviewing and processing each package 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). Additionally, NHTSA’s decision to approve the release of a bond based on its review of a conformity package would qualify as a “decision” under Subchapter III of Title 49, U.S. Code, for which the agency is authorized to set a fee under 49 U.S.C. § 30141(a)(3)(B).

When it first proposed the fee schedule found in Part 594, NHTSA excluded “activities connected with the processing of certificates and compliance documentation” from the fee for the agency’s administration of the importer registration program. See 54 FR 17792, 17793 (April 25, 1989). Although NHTSA acknowledged that verification of the certification submitted by a registered importer could be relevant to the maintenance of the registered importer’s status, the agency concluded that Congress did not intend for those activities to be included in the registration program. NHTSA

based this conclusion on the language of section 108(c)(3)(B)(i) of the former National Traffic and Motor Vehicle Safety Act, then codified at 15 U.S.C. § 1397(c)(3)(B)(i), which allowed fees collected from registered importers to be used for administrative purposes other than the periodic inspection of a representative number of vehicles for which compliance certifications had been provided. The agency now recognizes that its prior interpretation of this provision was overly restrictive, and that the provision in fact places no impediment on NHTSA’s ability to collect fees for the processing and review of conformity packages.

The Safety Act was repealed and its provisions were codified as part of Title 49, U.S. Code under Public Law 103–272 (July 5, 1994). The relevant provision, now found at 49 U.S.C. § 30141(e), states that the amounts collected as fees from registered importers under section 30141(a)(3) “are only for use by the Secretary of Transportation—(1) in carrying out this section and sections 30146 (a)–(c)(1), (d), and (e) and 30147(b) of this title.

* * * NHTSA’s authority to review conformity packages is principally derived from section 30146(c). As previously noted, that provision authorizes the Secretary of Transportation to require the compliance certification submitted by a registered importer to “be accompanied by evidence of compliance the Secretary considers appropriate. * * *

When it originally issued the regulations in 49 CFR Part 594, NHTSA narrowly construed the language of section 108(c)(3)(A)(iii) of the Safety Act, which authorized the Secretary to establish fees for “making the determinations under this section,” as pertaining only to import eligibility determinations. The agency overlooked the fact that its decisions to release conformance bonds, based on the review of conformity packages, were also “determinations” under section 108 of the Safety Act, and that the use of fees for this purpose was clearly permitted under section 108(c)(3)(B)(i). Likewise, 49 U.S.C. § 30141(e) clearly authorizes the use of fees collected from registered importers under section 30141(a)(3) to pay for the costs of making decisions following agency review of conformity packages. Accordingly, NHTSA has reconsidered the scope of its authority to establish fees for making decisions regarding the importation of noncomplying vehicles, and has tentatively concluded that it was authorized under section 108(c)(3)(A)(iii) of the Safety Act, and is authorized under 49 U.S.C.

§ 30141(a)(3)(B) to charge fees to reimburse the agency’s costs for making decisions to release conformance bonds.

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. § 9701, provides ample authority for NHTSA to impose fees that are sufficient to recover the agency’s full costs for the review and processing of conformity packages. By reviewing the package and authorizing the release of the conformance bond that is posted upon entry of a nonconforming vehicle, 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. § 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 (D.C. 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 (D.C. 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 (D.C. 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.

When the prior fees were established, NHTSA did not recognize a need to impose a fee for the review and processing of conformity packages because those actions accounted for a relatively small share of the work performed by OVSC. In the ensuing years, OVSC has devoted a substantially greater share of its staff time to those efforts, so that a fee now appears necessary to offset the agency’s costs for performing this work.

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, Pub. L. 99-272. See 54 FR 17792, 17793 (April 25, 1989). NHTSA specified in the 1989 proposed rules 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. Subsequently, the Office of Management and Budget (OMB), in Circular A-25 establishing Federal policy for the assessment of user fees under 31 U.S.C. § 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 and processing of conformity packages as follows:

The direct costs that would be used to calculate the proposed fee include the estimated cost of contract and professional staff time, computer costs, and costs for record assembly, marking, shipment and storage.

The estimated cost of contract and professional staff time is calculated on the basis of the full cost for time spent at the following currently prevailing rates: Data entry—\$44,410 per year; computer programmer—\$86,650 per year; compliance analyst—\$60,092 per year. Three quarters of the total hours worked by a single data entry specialist on contract to OVSC are devoted to the processing of compliance packages. A second data entry specialist on contract to OVSC is engaged full time in the processing of compliance packages. Multiplying the annual contract cost for the hours worked by these contract support staff members (\$44,410 each) by 1.75 (representing the one data entry position devoted fully to compliance package processing and the other in which three quarters of the total hours

worked are devoted to that function) yields \$77,715.50 in data entry labor costs that are incurred by NHTSA on an annual basis in the processing of compliance packages. Eighteen and three quarters percent of the total hours worked by a single computer programmer on contract to OVSC is devoted to the processing of compliance packages. Multiplying the annual contract cost for the hours worked by this contract support staff member (\$86,650) by 18.75 percent yields \$16,246.88 in computer programming labor costs that are incurred by NHTSA on an annual basis in the processing of compliance packages. Ninety percent of the total hours worked by a single compliance analyst employed by OVSC is devoted to the review of compliance packages. Multiplying the annual rate of pay for this staff member (\$60,092) by 90 percent yields \$54,082.80 in compliance analyst labor costs that are incurred by NHTSA on an annual basis in the review of compliance packages.

Adding these amounts yields a total of \$148,045.18 in contract and professional staff costs that NHTSA incurs each year for the processing and review of compliance packages. Dividing that amount by 16,000, the number of compliance packages reviewed by OVSC in calendar year 1996, yields a direct cost of \$9.25 for each compliance package reviewed.

Computer costs are calculated on the following basis: NHTSA pays \$13,800 per year to maintain a link with the Customs Service computer. Ninety-five percent of the agency's usage of this computer is associated with the review of compliance packages, resulting in a cost of \$13,110 that can be allocated to that use. Additionally, the agency pays \$30,000 per year for the purpose of running OVSC's computers and performing necessary backups of data entries. Ninety percent of this usage is associated with the review of compliance packages, yielding a cost of \$27,000 that can be allocated to that use. The agency also pays \$4,000 per year for a maintenance contract on OVSC's computers, ninety percent of which can also be allocated to that office's review of compliance packages, yielding an annual cost of \$3,600. Additionally, NHTSA pays a \$9,360 annual licensing fee for the data base management system that is used in the processing of compliance packages. Because that system is not used for any other purpose, the full annual fee can be allocated to that use. Adding these costs produces the sum of \$53,070 that is spent annually on computer usage associated with the review of compliance packages. Dividing this sum

by 16,000, which, as previously indicated, is the number of compliance packages reviewed by OVSC in calendar year 1996, yields a direct cost of \$3.32 for each compliance package reviewed.

The average cost for record assembly, marking, and shipment is calculated at the rate of \$16.56 per box. The average cost for record storage is calculated to be \$7.92 per box for a storage period of three years. Based on an average of 110 records per box, these costs amount to 22 cents for each compliance package received by the agency. Adding the direct costs for contract and professional staff hours (\$9.25), computer usage (\$3.32), and record assembly, marking, shipment, and storage (\$0.22) produces a total of \$12.79 for each compliance package reviewed and processed by NHTSA.

The indirect costs include a pro rata allocation of the average benefits of persons employed in processing and reviewing conformity packages. Benefits provided by NHTSA amount to eighteen percent of the salary earned by its employees. Multiplying the \$54,082.80 in professional staff costs that NHTSA incurs each year for the processing and review of compliance packages by eighteen percent yields a figure of \$9,734.90.

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 year 1998, these costs are projected to average \$21,131 for each employee and contract support staff member working at NHTSA headquarters. This figure was derived by dividing \$13,566,000 in projected headquarters costs (reached by subtracting \$482,000 in field operating costs from total agency costs of \$14,048,000) by 642 (representing 510 full time equivalent positions that are authorized for NHTSA headquarters plus 132 on-site contract personnel). Multiplying that figure by 2.8375, which represents the number of combined contract and professional staff-years devoted annually to the review and processing of compliance packages, yields a figure of \$59,959.21. Adding this figure to \$9,734.90 produces the sum of \$69,694.11, representing the total indirect costs incurred by NHTSA in the review and processing of compliance packages. Dividing this amount by 16,000, which, as previously indicated, is the number of compliance packages reviewed by NHTSA in calendar year 1996, yields \$4.36 in indirect costs for each compliance package reviewed. Adding these indirect costs to the \$12.79 in direct

costs that NHTSA incurs in the review and processing of each compliance package yields a total of \$17.15 in direct and indirect costs for each compliance package reviewed by the agency.

Based on the above factors, NHTSA proposes to charge \$17.00 as the fee to recover its costs for the review and processing of compliance packages. This fee would have to be tendered with each compliance package submitted to the agency for processing.

E. Applicability of Fee to Canadian Vehicles

If the proposed fee is adopted, registered importers would have to pay the fee for each conformity package they submit to NHTSA. This would include conformity packages submitted for vehicles imported from Canada. In recent years, Canadian imports have accounted for a growing share of NHTSA's oversight program that is directed at the importation of nonconforming vehicles. In NHTSA's Calendar Year 1995 Report to Congress concerning this program, the agency stated that 15,096 of the 15,332 nonconforming vehicles that were permanently imported into the country during that year (or over 98%) were from Canada. The report noted a continuing upward trend in the importation of noncomplying vehicles from Canada since 1993, and attributed that development to the exchange rate favoring the U.S. over the Canadian dollar.

In past years, NHTSA has not collected the per vehicle import eligibility determination fee established under 49 CFR 594.8 from the importers of vehicles that were certified by their original manufacturer as complying with all applicable Canadian motor vehicle safety standards and that were eligible for importation under vehicle eligibility number VSA-1. As NHTSA explained in a final import eligibility decision covering Canadian-certified motor vehicles, published on May 13, 1997 at 62 FR 26348, the per vehicle import eligibility fee was not imposed on the importers of these vehicles because the first importer of a Canadian-certified motor vehicle paid the full \$1,560 fee that was established in 1989 to cover the agency's costs for an eligibility decision made on the Administrator's initiative.

In the May 13, 1997 final decision, NHTSA rescinded VSA-1 as the eligibility number assigned to all eligible Canadian-certified vehicles, and replaced it with four separate eligibility numbers (VSA-80 through 83), based on vehicle classification and weight. If the proposed fee for the review and

processing of conformity certificates is adopted, NHTSA intends to collect that fee from all importers submitting conformity packages to the agency, including the importers of Canadian-certified vehicles eligible for importation under VSA-80 through 83. The agency deems this action to be necessary because the review and processing of conformity packages submitted for Canadian imports have assumed an increasing share of the staff time within OVSC's Equipment and Imports Division and now comprise a major portion of the work performed by that division. The imposition of such a fee would also be consistent with OMB's policy for Federal agencies to obtain full cost reimbursement from the recipients of agency services.

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 Tuesday, September 30, 1997 so that the fee it establishes will be applicable in Fiscal Year 1998, which begins on October 1, 1997. Because of these time constraints, NHTSA has good cause to limit the comment period for this proposed rule to thirty days.

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This proposal was not reviewed under E.O. 12866. NHTSA has analyzed this proposal and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. Although most registered importers would qualify as small businesses within the meaning of the Regulatory Flexibility Act, the agency has no reason to believe that these companies could not pay the fee that would be imposed under this proposed regulation. This fee would in all likelihood be passed along to the purchaser of the vehicle for which a

conformity package is submitted to NHTSA for review. Most nonconforming vehicles that are imported into the United States are of very recent vintage, and many would be considered luxury models. Given the nominal amount of the proposed fee, especially when viewed in relation to the purchase price of the vehicles to which it would pertain, it would not appreciably increase the purchase price of those vehicles and would be unlikely to have any significant impact on their importation and sale. For that reason, registered importers and small businesses, small organizations, and small governmental units that purchase motor vehicles would not be significantly affected by the proposed fee. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws would be affected.

4. National Environmental Policy Act

The agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

5. Civil Justice Reform

This proposed rule would not have any retroactive effect. It would not repeal or modify any existing Federal regulations. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this proposed rule. This proposed rule does not preempt the states from adopting laws or regulations on the same subject, except that if adopted, the resulting Federal regulation would preempt a state regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21.) Necessary attachments may be

appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

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

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

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 594

Administrative practice and procedure, Imports, Motor vehicle safety.

In consideration of the foregoing, the agency proposes to amend part 594, *Schedule of Fees Authorized by 49 U.S.C. 30141*, in Title 49 of the Code of Federal Regulations as follows:

PART 594—[AMENDED]

1. The authority citation for part 594 would be amended 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 594.5 would be amended by redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively, and by adding a new paragraph (g), to read as follows:

§ 594.5 Establishment and payment of fees.

* * * * *

(g) A fee for the review and processing of a conformity certificate shall be submitted with each certificate of conformity furnished to the Administrator.

* * * * *

3. A new section 594.10 would be added to part 594, to read as follows:

§ 594.10 Fee for review and processing of conformity certificate.

(a) Each registered importer shall pay a fee based on the agency's direct and indirect costs for the review and processing of each certificate of conformity furnished to the Administrator pursuant to § 591.7(e) of this chapter.

(b) The direct costs attributable to the review and processing of a certificate of conformity include the estimated cost of contract and professional staff time, computer usage, and record assembly, marking, shipment and storage costs.

(c) The indirect costs attributable to the review and processing of a certificate of conformity include a pro rata allocation of the average benefits of persons employed in reviewing and processing the certificates, and 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.

(d) For certificates of conformity submitted on and after October 1, 1997, the fee is \$17.00.

Issued on: July 10, 1997.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 97-18529 Filed 7-14-97; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AC10

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule To List the Flat-Tailed Horned Lizard as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The U.S. Fish and Wildlife Service (Service) withdraws the proposed rule to list the flat-tailed horned lizard (*Phrynosoma mcallii*) as

threatened, pursuant to the Endangered Species Act of 1973, as amended (Act). The Service is taking this action because some of the threats are less serious than at the time the proposed rule was published, a conservation agreement will ensure further reductions in threats, and data indicating a population decline are inconclusive. The Service will continue to monitor the status of this species and work with involved interests for conservation of the species.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Carlsbad Ecological Services Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California, 92008.

FOR FURTHER INFORMATION CONTACT: Sandy Vissman, at the above address or by telephone at (760) 431-9440.

SUPPLEMENTARY INFORMATION:

Background

The flat-tailed horned lizard (*Phrynosoma mcallii*) is a small, cryptically colored, phrynosomatid lizard that reaches a maximum adult body length (excluding the tail) of approximately 81 millimeters (3.2 inches). The lizard has a flattened body, short tail, and dagger-like head spines like other horned lizards. It is distinguished from other horned lizards in its range by a dark vertebral stripe, two slender elongated occipital spines, and the absence of external ear openings. The dorsal surface of the flat-tailed horned lizard is pale gray to light rusty brown. The ventral surface is white and unmarked, with the exception of a prominent umbilical scar.

The lizard was first collected by Colonel G.A. M'Call, between Camp Yuma and Vallecito in the 1850s. Through the mid-1900s, most locality information came from California, where it became apparent that the flat-tailed horned lizard occupied the lower elevations of the Salton Trough in Riverside, Imperial, and San Diego Counties. Because of distinctive morphological characteristics, Hallowell (1852) first described the species as *Anota M'callii*, placing the flat-tailed horned lizard in a monotypic genus. The flat-tailed horned lizard remained a subject of taxonomic controversy for many years, occupying subsequently the genus *Doliosaurus* (Girard 1858), *Phrynosoma* (Cope 1866), and *Anota* (Cope 1900). Taxonomic questions were finally resolved by Norris and Lowe (1951), who determined that the similarities of this species to other horned lizards were more significant than its differences and placed the