§ 192.487 Remedial measures: Distribution lines other than cast iron or ductile iron lines.

(a) *General corrosion.* Except for cast iron or ductile iron pipe, each segment of generally corroded distribution line pipe with a remaining wall thickness less than that required for the MAOP of the pipeline, or a remaining wall thickness less than 30 percent of the nominal wall thickness, must be replaced. However, corroded pipe may be repaired by a method that reliable engineering tests and analyses show can permanently restore the serviceability of the pipe. Corrosion pitting so closely grouped as to affect the overall strength of the pipe is considered general corrosion for the purpose of this paragraph.

* * * * *

§ 192.711 [Amended]

5. In § 192.711(b), remove ''§ 192.717(a)(3)'' and add ''§ 192.717(b)(3)'' in its place.

6. Section 192.713 is revised to read as follows:

§ 192.713 Transmission lines: Permanent field repair of imperfections and damages.

(a) Each imperfection or damage that impairs the serviceability of pipe in a steel transmission line operating at or above 40 percent of SMYS must be—

(1) Removed by cutting out and replacing a cylindrical piece of pipe; or

(2) Repaired by a method that reliable engineering tests and analyses show can permanently restore the serviceability of the pipe.

(b) Operating pressure must be at a safe level during repair operations.

7. Section 192.717 is revised to read as follows:

§ 192.717 Transmission lines: Permanent field repair of leaks.

Each permanent field repair of a leak on a transmission line must be made by—

(a) Removing the leak by cutting out and replacing a cylindrical piece of pipe; or

(b) Repairing the leak by one of the following methods:

(1) Install a full encirclement welded split sleeve of appropriate design, unless the transmission line is joined by mechanical couplings and operates at less than 40 percent of SMYS.

(2) If the leak is due to a corrosion pit, install a properly designed bolt-on-leak clamp.

(3) If the leak is due to a corrosion pit and on pipe of not more than 40,000 psi (267 Mpa) SMYS, fillet weld over the pitted area a steel plate patch with rounded corners, of the same or greater thickness than the pipe, and not more than one-half of the diameter of the pipe in size.

(4) If the leak is on a submerged offshore pipeline or submerged pipeline in inland navigable waters, mechanically apply a full encirclement split sleeve of appropriate design.

(5) Apply a method that reliable engineering tests and analyses show can permanently restore the serviceability of the pipe.

PART 195—[AMENDED]

8. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

9. Section 195.416(f) is revised to read as follows:

§ 195.416 External corrosion control.

* * * * *

(f) Any pipe that is found to be generally corroded so that the remaining wall thickness is less than the minimum thickness required by the pipe specification tolerances must be replaced with coated pipe that meets the requirements of this part. However, generally corroded pipe need not be replaced if—

(1) The operating pressure is reduced to be commensurate with the limits on operating pressure specified in this subpart, based on the actual remaining wall thickness; or

(2) The pipe is repaired by a method that reliable engineering tests and analyses show can permanently restore the serviceability of the pipe.

* * * * *

Issued in Washington, DC on December 8, 1999.

Kelley S. Coyner,

Administrator.

[FR Doc. 99–32274 Filed 12–13–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–98–3421]

RIN No. 2127–AH60

Federal Motor Vehicle Safety Standards; Head Impact Protection

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

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration of a final rule amending Standard No. 201, Occupant Protection in Interior Impact, to permit, but not require, the installation of dynamically deploying upper interior head protection systems. These systems are currently being used by some vehicle manufacturers to provide added head protection in lateral crashes. Since compliance with the upper interior head protection requirements of the standard as originally adopted would often not be practicable at points located at or near the places where these dynamic systems are stored, the final rule allowed vehicles equipped with the systems to meet slightly reduced requirements at those points. However, these vehicles were also required to meet new requirements in a side crash into a pole to ensure that the systems enhance safety.

This document grants two petitions, and amends Standard No. 201 accordingly. The American Automobile Manufacturers Association (AAMA) requested that NHTSA delete a humidity range specification for calibration of the test device used in the car-to-pole test on the basis that the specification was both unnecessary and difficult to meet. Noting that the final rule specified a broad range of potential impact speeds for the car-to-pole test, the Association of International Automobile Manufacturers, Inc. (AIAM) requested that the agency specify a narrower speed range for this test.

This document also denies two other petitions. Mercedes-Benz of North America (Mercedes) argued that the reduced requirements should apply not only to points near the stored dynamic systems, but also to points covered by those systems when they are deployed. Chrysler Corporation (Chrysler) objected to a requirement that manufacturers choosing one of the compliance test options must select which option it is using at the time of certification and may not, after selecting one test option, rely on a different test option to demonstrate compliance.

DATES: *Effective Date:* The amendments made in this rule are effective February 14, 2000.

Petition Date: Any petitions for reconsideration must be received by NHTSA no later than January 28, 2000.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For legal issues: Mr. Otto Matheke, Office of the Chief Counsel, NHTSA, 400 Seventh

Street, SW, Washington, DC 20590. Mr. Matheke's telephone number is (202) 366–5253. His facsimile number is (202) 366–3820. For non-legal issues: Dr. William Fan, Office of Crashworthiness Standards, NPS–11, Dr. Fan's telephone number is (202) 366–4922. His facsimile number is (202) 366–4329.

SUPPLEMENTARY INFORMATION:

Background

Standard No. 201 requires passenger cars, trucks, buses, and multipurpose passenger vehicles (MPVs) with a gross vehicle weight rating (GVWR) of 4,536 kilograms (10,000 pounds) or less to provide head protection during a vehicle crash when the occupant's head strikes either the dashboard area or the upper vehicle interior, i.e., pillars, side rails, headers, or the roof of the vehicle. The upper interior impact protection requirements were added by a final rule issued by NHTSA in August 1995. Compliance with the upper interior impact protection requirements was required to be achieved in a 24 kilometers per hour (km/h) (15 miles per hour (mph)) in-vehicle component impact tests in which a free-motion headform (FMH) is propelled into specified target points. In response to that final rule, the agency received a number of petitions for reconsideration. NHTSA announced that it was treating those petitions relating to dynamically deployed head impact protection systems as petitions for rulemaking.

On March 7, 1996, the agency published an advance notice of proposed rulemaking (ANPRM) to assist the agency in evaluating the issues raised by dynamically deployed upper interior head protection systems (61 FR 9136). In the ANPRM, the agency noted that the areas in which dynamically deployed head impact protection systems may be stored may coincide with Standard No. 201 target points. Use of dynamic systems might be precluded by the upper interior impact protection requirements of Standard No. 201 since the padding or other countermeasures needed to meet those requirements could interfere with the design and operation of dynamic systems. To address inflatable dynamic systems, the agency discussed the possibility that if it could develop a clear, precise definition for determining which points are protected by inflatable devices, it might propose subjecting vehicles equipped with these systems to a less severe test with 19 km/h (12 mph) headform impacts at all points that would be covered by the devices when inflated. These tests would be conducted with the devices in their undeployed state. The performance of the devices while deployed would be tested in a side impact test into a fixed rigid pole at 30 km/h (18.6 miles per hour) or a side impact with a moving deformable barrier representing a motor vehicle at 50 km/h (31 miles per hour).

Following consideration of the comments submitted in response to the ANPRM, the agency issued a Notice of Proposed Rulemaking (NPRM) on August 26, 1997. (62 FR 45202). The NPRM proposed adding alternative performance requirements and test procedures to Standard No. 201 to accommodate development of various types of dynamically deployed upper interior head protection systems, including inflatable ones. Under the agency's proposal, manufacturers would have the option of demonstrating compliance with Standard No. 201 by choosing one of three options. Option 1 specified performing free motion headform (FMH) impacts at 24 km/h (15 mph) at all test points specified in the August 1995 final rule. Options 2 and 3 specified FMH testing at reduced impact speeds at those areas located directly over a stowed dynamic system. To ensure that these systems offered safety benefits when deployed, options 2 and 3 specified testing of the deployed system at impact speeds above 24 km/h (15 mph). Option 2 would have required FMH impact testing against target points at 29 km/h (18 mph) with the system deployed. Option 3 employed a full scale side impact at 29 km/h (18 mph) into a fixed pole. The NPRM further stated that manufacturers electing one of these options would have to do so not later than the time when the vehicle is certified.

On August 4, 1998, NHTSA published a final rule (63 FR 41451—Docket Number NHTSA–98–3847) amending Standard No. 201 to provide new compliance options allowing vehicles to be equipped with inflatable dynamically deployed head impact protection systems. These systems are similar in operation to frontal air bags, i.e., in the event of a crash, a sensor triggers an inflator which rapidly fills a stowed air bag with gas. As the gas expands, the air bag deploys from its stowed position and interposes itself between the occupant and other areas of the vehicle. However, unlike frontal air bags, the systems addressed in the amendments to Standard No. 201 are deployed in side impacts. When deployed, they provide protection to the head and upper torso of occupants by inflating between the occupant and the vehicle's side window opening or A- and B-Pillars.

After careful consideration of the comments received in response to the NPRM, the agency decided to drop one of the test options discussed in the NPRM, Option 2, and adopted a refined version of Option 3, a vehicle-to-pole test. The modification to the vehicle-to-pole test included an expansion of the area over a stowed dynamic system subject to testing at the reduced 19 km/h (12 mph) FMH impact speed, changed specifications for the rigid pole, minor changes to the specifications for vehicle test attitude to accommodate different vehicle propulsion systems, and a modification to the proposed seating procedure for the SID/HIII dummy used in the test. The final rule also stated that a manufacturer choosing a particular test option must select the option by the time it certifies the vehicle and may not thereafter select a different test option for compliance purposes.

Petitions for Reconsideration of August 1998 Final Rule

The Mercedes Petition for Reconsideration

Mercedes submitted a petition for reconsideration of the August 1998 final rule, arguing that the reduced requirements should apply not only to the target points near the stored dynamic systems, but also to points covered by those systems when they are deployed. As set forth in S6.2:

> * * * targets that are over any point inside the area measured along the vehicle interior within 50 mm (2.0 inch) of the periphery of the stowed system * * * shall be impacted by the free motion headform specified in S8.9 at any speed up to and including 19 km/h (12 mph).

Mercedes argued that this definition should be expanded by replacing the existing language in S6.2 with the following:

> Take a silhouette of a fully inflated dynamic system in side view. Reduce this silhouette to areas consisting of inflated chambers. Reduce these areas further by a 25 mm (1.0") border. Perpendicularly project the remaining area of the silhouette onto the vehicle's inner surface. Target points within this projection shall be considered to be protected by the dynamic system. Quilted seams between two inflated chambers would not be considered to interrupt the protected area.

In support of this definition, Mercedes argued that its language more properly reflected the function of a dynamic system by ensuring that those target points that are shielded by the system, as well as those that are merely over the stowed system, are allowed to comply with the reduced impact speeds in in-vehicle testing.

To further support its position, Mercedes stated that in its cars, the belt anchorage D-ring on the B-pillar (target point BP2) is usually covered by the B-pillar trim. The company believes that this design is safer than adjustable belt anchorages with the belt anchorage D-ring outside the B-pillar trim. However, Mercedes claims that the adjustable D-ring inside the trim needs free moving space, making installation of the padding required to comply with the 24 km/h (15 mph) impact requirement extremely difficult. The company submitted that use of a less restrictive definition of target points subject to the lower in-vehicle impact speeds would recognize the actual function of inflatable systems and prevent Mercedes from having to install a more aggressive adjustable belt anchorage with the D-ring outside the B-pillar trim to meet the existing requirements of Standard No. 201.

Following the publication of the August 1997 NPRM, Mercedes, Volvo, Volkswagen of America (VW), BMW of North America (BMW), Toyota , Autoliv, and the American Automobile Manufacturers' Association (AAMA) commented that those target points protected by the deployed system should also be tested at the 19 km/h (12 mph) impact speed. While encouraging the agency to adopt this definition, those commenters did not, in NHTSA's view, provide any additional insights or assistance in formulating a definition for target areas that are, in fact, ''protected'' by a dynamic system. The agency declined to adopt any definition of ''protected'' target points when it issued the August 1998 final rule. As we explained at the time, we found a practicable and comprehensive definition of target points ''covered'' or ''protected'' by a dynamic system to be elusive. We also noted that excluding ''protected'' target points may result in a target area being protected for one class or size of occupant and not for another. Another matter of concern for the agency was the fact that dynamic systems may provide vastly different degrees of impact protection depending on the system configuration and design. Based on these difficulties, as well as our interest in expediting issuance of the final rule, we decided not to alter the definition of target points subject to lower impact speeds that was proposed in the NPRM.

Mercedes suggests a definition of ''protected'' target points based on making a lateral projection of a reduced silhouette of an inflated system. All target points within the projection would be presumed to be shielded by an inflated system, and therefore pose a reduced threat to occupants. The scheme is suitable for dynamic system designs similar to the one Mercedes now employs—an inflatable curtain that issues from the roof rails and expands downward over the window openings. As this design covers a relatively large area, the definition urged by Mercedes could arguably be appropriate for that design.

Nevertheless, we are denying the Mercedes petition. The agency believes that inflatable curtain systems and similar devices, including the BMW Inflatable Tubular Structure (ITS), may offer significant safety benefits in side impacts. The actual benefits and performance of such systems, particularly in protecting the head in impacts other than side impacts, have not yet been ascertained or evaluated by NHTSA. The agency is concerned that inflatable curtains and similar systems may not perform well in impacts other than side impacts—which accounted for over 90 percent of fatal and 75 percent of injury-producing crashes in 1997. In order to ensure that countermeasures perform adequately in a range of impacts, Standard No. 201 provides that the FMH may be fired at target areas within a range of vertical and horizontal approach angles. In the case of B-pillar targets, range of permissible horizontal approach angles spans 150 degrees. We are concerned that Standard No. 201 does not now incorporate requirements sufficient to ensure the performance of dynamic systems in impacts other than direct side impacts. Depending on the system design and the sensors employed, a dynamic system may not even deploy in an oblique crash. Furthermore, if the system were to deploy, it may not ''protect'' a target point (and vehicle occupants) when struck at a 15 degree angle as it would when struck at a 90 degree angle. In promulgating the final rule allowing dynamic head protection systems, the agency's intent was to modify the existing provisions of Standard No. 201 to allow the installation and use of those systems. In regards to benefits, costs, and performance, the agency focused on what modifications needed to be made to Standard No. 201 to accommodate dynamically deployed systems and what benefits, if any, could be shown if such systems were allowed.

This led to an examination of the principal obstacle posed by Standard No. 201 to the use of dynamic systems—the potential for interference between padding and other countermeasures with a deploying dynamic system—and dynamic system performance in side impacts, particularly in side impacts against a rigid pole. Using the data available at the time, we were able to determine, based on the assumption that a dynamic system would be stored in an area alongside or in the roof rails, or in the A-pillars and B-pillars, that the safety benefits offered by dynamic systems in side impacts into poles outweighed the possible safety consequences of reducing padding or other countermeasures in those areas. An analysis of the costs and benefits of allowing lower impact speeds in all areas that may be ''protected'' by a dynamic system was not performed. Most significantly, the agency does not possess, nor did Mercedes submit, any data establishing the benefits, if any, from the ''protection'' provided by a dynamic system in crash modes other than a side rigid pole impact.

This is not to say that dynamically deployed head protection devices like the Mercedes inflatable curtain will not have the potential to offer significant safety benefits. Nonetheless, NHTSA believes that significant issues must be resolved before the agency could adopt modifications to Standard No. 201 similar to those suggested by the Mercedes petition. One obstacle which must be resolved is the method of determining which points are ''protected'' by an inflatable device.

The issue raised by the Mercedes petition has been repeatedly examined by the agency. In its August 1997 NPRM, the agency expressed its view of the proper methodology for selecting target points that would be impacted at lower speeds in vehicles with dynamic systems. In addition to proposing that target points located over undeployed systems be subject to lower impacts in the in-vehicle test portion of Option 3, the agency also discussed the agency's efforts to derive a methodology for determining target points ''protected'' by a deployed dynamic system. Since a deployed system could conceivably shield occupants from those ''protected'' target points, the agency said that it might be appropriate to allow these points, regardless of their proximity to a stowed dynamic system, to be subject to lower impact speeds in the in-vehicle test. To that end, NHTSA discussed alternative means for attempting to define which target points are ''protected.'' While the methodology suggested by Mercedes—using a perpendicular projection within the perimeter of the outline of the inflated device—may be suitable for vehicles using inflatable curtain systems, it has limitations when applied to vehicles with other types of dynamically deployed systems. For example, the BMW ITS covers a narrower portion of the window opening and B-pillar when

it inflates. If the definition of ''protected'' target points urged by Mercedes were applied to this system, ''protected'' target areas could be approached and struck from directions other than those perpendicular to the outline of the inflated system, particularly in the case of smaller or out of position occupants. While this limitation is particularly telling in the example of the BMW ITS, it illustrates that the Mercedes methodology assumes that occupants and their heads will be moving along a plane perpendicular to the inflated system. While the agency could adopt a particular methodology for determining which points are protected and to limit its application to those types of systems for which it is suitable, e.g., to inflatable curtain systems, the agency is mindful that manufacturers may choose any number of types and configurations of dynamically deployed head protection systems. We are concerned that were we to adopt a methodology suitable for one system, but not suitable for others, we would potentially place ourselves in the position of having to modify Standard No. 201 on a case-by-case basis. This would add to the complexity of Standard No. 201 and would further strain agency resources.

We are also concerned that if we were to grant the Mercedes petition, we would not be in a position to assess the performance of an inflated dynamic system in protecting occupants in any impact other than a side impact into a rigid pole. As noted above, the August 1998 final rule was intended to allow the installation of dynamically deployed head protection systems based on our conclusion that the safety benefits offered by those systems in a single crash mode were sufficient to outweigh any safety losses associated with reducing the impact speed requirements for target points directly over an undeployed system. The Mercedes petition requests NHTSA to assume that all target points ''protected'' by a deployed dynamic system will, when impacted, present a lesser threat of injury than the same points would under the existing standard. The agency does not believe that this assumption is justifiable, particularly since a test for gauging the performance of dynamic systems in protecting the head against impacts with specific targets in the vehicle interior has not yet been developed. While the agency proposed a test in the August 27, 1997 NPRM which could be adapted for this purpose, that test, described in the agency proposal as Option 2, presented many technical challenges. The Option 2 proposal, which called for firing the FMH into an inflated dynamic system, could be used as performance test for dynamic systems in protecting ''covered'' target points. However, as reflected by the comments received in response to the NPRM, a large number of complex issues that would have had to be resolved if Option 2 or a variant of Option 2 were to be employed. These issues cannot be resolved quickly.

Mercedes also urged the agency to adopt its suggested definition of ''protected'' target areas based on an example of the difficulties in attempting to meet certain requirements of Standard No. 201. According to Mercedes, it currently places the D-Ring of the B-Pillar belt anchorage underneath the B-Pillar trim. In order to meet the seat belt anchorage adjustment requirements found in S7.1.2 of Standard No. 208, ''Occupant Crash Protection,'' the D-Ring and anchorage move inside an open space underneath the surface trim. According to Mercedes, adding padding or other countermeasures to meet the 24 km/h (15 mph) impact requirement now applicable to this target area, BP2, would make this design impracticable and require the company to install ''a more aggressive adjustable belt anchorage,'' i.e., one whose D-Ring is not covered by the B-Pillar trim.

We are not convinced that this example supports the relief Mercedes seeks. As noted above, the August 1998 Final Rule modified Standard No. 201 to the extent needed to allow the introduction of dynamic systems. The B-Pillar belt anchorage design employed by Mercedes may have particular characteristics having safety significance, but it is not a component that serves any function in either the storage, deployment or inflation of dynamic systems. Unlike those target locations now subject to reduced in-vehicle-test impact speeds, the use of thicker padding or other countermeasures at this anchorage location would not prevent the installation of a dynamic head protection system.

We also observe that the Mercedes request that the B-Pillar belt anchorage target, BP2, be tested at 19 km/h (12 mph) in the undeployed test, is identical to its prior request in its comments on the NPRM. We note that, in repeating this request, Mercedes has not submitted any new data or arguments to support the relief it seeks. As we indicated when we adopted the August 1998 final rule, NHTSA is concerned that an adequate definition of points ''protected'' by a dynamic system would be difficult to develop. Moreover, the agency is concerned that Standard No. 201 cannot now adequately test the ability of dynamic systems to ''protect'' certain target points. It should also be noted that Mercedes has not contended that it cannot install other countermeasures on its adjustable belt anchorage that would allow its vehicles to comply.

The Chrysler Petition for Reconsideration

Chrysler submitted a petition for reconsideration objecting to provisions in S6.1 and S6.2, which state that a manufacturer choosing one of the compliance test options must select, not later than the time of certification, which option it is using and may not, after selecting one test option, rely on a different test option to demonstrate compliance. The company argues that the regulatory text in the final rule contains new requirements concerning the selection of options and that the omission of these new requirements from the NPRM deprived Chrysler of an opportunity to comment. Chrysler further alleges that NHTSA, in specifying that a manufacturer must irrevocably select one test option, has not considered the case in which a manufacturer has elected to certify a vehicle to both test options. Chrysler contends that if it chose to present evidence of compliance with both test options to the agency, NHTSA could not refuse to conduct an alternative test. In the company's view, a failure to comply under one test option cannot constitute a noncompliance if the vehicle complies with another optional test.

In our August 1997 NPRM, we proposed that manufacturers of vehicles equipped with dynamically deployed head impact protection systems would be able to demonstrate compliance with Standard No. 201 through the use of one of three optional tests. In that proposal, the test options were set forth in S6.1 and S6.2. These two sections differ only to the extent that S6.1 is applicable to vehicles manufactured after September 1, 1998 and before September 1, 2002, and S6.2 applies to vehicles manufactured after September 1, 2002. Both sections proposed that vehicles ''shall conform, [to one of the proposed optional performance tests] at the manufacturer's option with said option selected prior to, or at the time of, certification of the vehicle.''

We did not receive any comments objecting to the proposal that manufacturers would have to select one of the test options before or at the time that it certifies the vehicle. As we noted in our discussion in the final rule of situations involving multiple options,

the agency needs to know which option has been selected by a manufacturer so it can perform the appropriate compliance test. We also noted that the regulatory text in the final rule differed from that contained in the NPRM, as the final rule clarified the requirement that manufacturers selecting a specific test option at the time of certification could not later select a different test option to establish compliance. Accordingly, S6.1 and S6.2 of the regulatory text in the final rule both provide that ''The manufacturer shall select the option by the time it certifies the vehicle and may not thereafter select a different option for the vehicle.''

Chrysler contends that the addition of language to the proposed rule indicating that manufacturers may not later rely on a different test option constitutes a significant departure from the regulatory text in the proposed rule. We believe that examination of the language in both the proposed rule and the final rule demonstrates that the proposal and the final rule are, for all practical purposes, identical. As proposed in the NPRM, S6.1 and S6.2 indicated that vehicles must conform to *one* of the proposed test options (emphasis added) and that the selection of the test option must be made prior to or at the time of certification. The final rule substituted the phrase ''the option'' for the proposal's directive that manufacturers must use ''one of the following'' test options. In regard to time at which the single option must be selected, the proposed versions of S6.1 and S6.2 indicated that the selection must be made ''prior to, or at the time of,'' certification while the final rule directed that the option must be selected ''by the time it [the manufacturer] certifies the vehicle.'' To further clarify the agency's position regarding the use of a single test option for certification, S6.1 and S6.2 of the final rule provided that manufacturers ''may not thereafter select a different option for the vehicle.''

The language of the proposed rule specified two conditions: manufacturers could choose only one test option when certifying a vehicle and manufacturers must make this choice before or at the time they certify their vehicle. Implicit in the proposal was the irrevocability of that choice. The two proposed conditions did not allow for the reliance on a second test option at any time. In both instances, only one test option could be relied upon for certification, and no allowance was made for manufacturers to rely upon another test option after the vehicle was certified.

Chrysler also argues that we have failed to consider the case in which a manufacturer elects to certify a vehicle to both of the options contained in S6.1 and S6.2 of the final rule. In that event, the company contends that if the manufacturer presents evidence of compliance with both test options to the agency, we could not refuse to conduct both tests to determine compliance. The company reasons that failure to comply with one test option would be immaterial if the vehicle complied with another option.

We disagree with Chrysler's view. We note that both the proposed rule and the final rule explicitly state that a manufacturer may only choose one option in certifying a vehicle. While nothing in the final rule prevents a manufacturer from attempting to build vehicles that satisfy both options, we note that the primary reason for allowing the pole test option was the assertion by several manufacturers that it would be impossible for vehicles with dynamically deployed head protection systems to meet the FMH test requirements set out in the 1995 amendments to the standard. Conversely, vehicles without dynamically deployed head protection systems cannot meet the requirements of the vehicle-to-pole test. For certification purposes, the agency needs to know which single option the manufacturer has chosen.

In providing optional test procedures in this rule, the agency intended to facilitate the efforts of some manufacturers to use new safety technologies to protect the public. In offering these test options, we did not intend to increase the agency's test burden or, for that matter, those of the manufacturers. Nor did we intend to allow manufacturers to escape the consequences of their failure to comply with an intended compliance option by getting a ''second bite at the apple.'' We fail to see how expanding the test burdens of the agency would represent a sensible allocation of public resources.

Chrysler's position also assumes that NHTSA has the authority to create test options, but does not have the authority to establish reasonable limitations on their use. The agency believes it to be eminently reasonable to expect that certification be done responsibly and accurately. Indeed, the Vehicle Safety Act provides that a person may not issue a certificate if, exercising reasonable care, the person has reason to know the certificate is false or misleading in a material respect. 15 U.S.C. 30115. Moreover, certification of a vehicle to a particular test option creates certain expectations of performance in both the agency and among consumers. In any event, Chrysler's argument presents a hypothetical question, as vehicles designed to meet one option do not meet the other and, accordingly, a manufacturer would not be able to switch options.

Thus, for the reasons stated above, NHTSA adheres to its view that when a vehicle has been certified to one option, a failure to comply with the requirements of that option establishes not only that the vehicle has been falsely or improperly certified, but that it also fails to comply with the standard. Of course, the manufacturer of such a noncompliant vehicle may file a petition for an exemption from the recall requirements of the statute (49 U.S.C. 30118–30120) on the basis that the noncompliance is inconsequential to motor vehicle safety (see 49 U.S.C. 30118(d) and 30120(h) and 49 CFR Part 556). However, we note that compliance test procedure options are offered for a variety of reasons, and that vehicles or equipment meeting one test option may not provide the same safety benefits as those meeting another test option. See the discussions of safety concerns (II. H) and other issues (II. I) in the August 1998 final rule.

The AAMA Petition for Reconsideration

Section S8.27.4 of the August 1998 final rule provides both temperature and humidity specifications for the test dummy used in the side-to-pole test. AAMA submitted a petition for reconsideration requesting that NHTSA consider eliminating the humidity specification for the vehicle-to-pole crash test option found in Standard No. 201. The organization argued that this provision, which specifies a humidity range at which the test dummy must be maintained during the crash test, should be eliminated due to the difficulty of controlling humidity in the environment in which a full scale test must take place. AAMA explained that it had overlooked this provision in its review of the NPRM and thus failed to indicate in its comments that this particular provision is impracticable. The organization asked that we reconsider our decision to include the humidity range provision in the option. The organization submitted that it would be difficult or impossible for manufacturers to maintain a specific humidity range for the test dummy in the large open spaces where full scale crash testing is performed. AAMA noted that there is no humidity range requirement for similar crash tests in Standard No. 208 and Standard No. 214.

We believe that AAMA's objection is well founded. The temperature and the humidity ranges proposed in the NPRM

and incorporated into the final rule were derived from the Hybrid III dummy head/neck certification test procedure. This humidity range specification is not incorporated into other agency full scale crash tests using the Hybrid III dummy head and neck because maintaining a specific humidity range in such testing is not practicable and was inadvertently inserted in the August 1998 final rule. Accordingly, we are removing the humidity range requirement in S8.27.4. Of course, consistent with the agency's longstanding interpretation that when a standard is silent with respect to a particular test condition, vehicles must be able to comply under all conditions (except where the language or the context of the standard indicates otherwise), vehicles must be able to comply with the requirements of the Standard at any humidity level. Therefore, while NHTSA does not expect humidity to have a significant impact on test results, the fact that a manufacturer has conducted a test at one humidity level in which the performance requirements are met will not necessarily be determinative if an agency-conducted test at another humidity level indicates that a vehicle does not comply.

The AIAM Petition for Reconsideration

AIAM submitted a petition for reconsideration requesting that the agency consider modifying the impact speed specified in the final rule for the vehicle-to-pole test. This impact speed, which is set forth in S6.1(b)(3) and S6.2(b)(3), indicates that the vehicle impact with the rigid pole shall take place ''at any velocity up to and including 29 kilometers per hour (18 mph).'' AIAM argues that this requirement is unduly burdensome in that it requires testing at all potential vehicle impact speeds of 29 km/h (18 mph) and below, including speeds below those where dynamic head protection systems are intended to deploy and that this burden is so great as to dissuade manufacturers from introducing dynamic head protection systems. AIAM suggested two alternative vehicle test speeds: 27 ± 1.6 km/h (17 ± 1 mph), or any velocity between 26 and 29 km/h (16–18 mph).

We agree that sections S6.1(b)(3) and S6.2(b)(3) of the August 1998 final rule require vehicles that are certified to the vehicle-to-pole test to satisfy the performance requirements at any vehicle velocity up to and including 29 km/h (18 mph). Upon further review, NHTSA believes it is appropriate for the agency to modify this impact speed requirement to reduce test burdens and to reflect the fact that dynamic systems would not deploy at lower speeds where they would be of doubtful utility.

The agency's goal in selecting a maximum impact speed for the vehicle-to-pole test was to assure that dynamic head protection systems would provide an appropriate level of benefits in side crashes. As packaging of these systems limited the countermeasures that could be installed in areas directly over an undeployed system, accommodating dynamic systems required that the FMH impact speed for target points located in those areas be reduced. In order to ensure that dynamic head protection systems offered safety benefits that exceeded the reduction in safety represented by these reduced FMH impact speeds, NHTSA specified that they would have to satisfy the applicable injury criteria in a 29 km/h (18 mph) lateral crash of a vehicle into a fixed, narrow object.

The impact speed requirement for the vehicle-to-pole test must be high enough to ensure that a dynamic system offers demonstrable safety benefits. At the same time, testing at impact speeds below which a dynamic head protection system would deploy or offer any meaningful safety benefits would serve no purpose.

We have concluded that instead of requiring compliance at all vehicle speeds up to 29 km/h (18 mph) in the vehicle-to-pole test, the agency should specify a range for this impact speed. Accordingly, we are responding to the AIAM petition for reconsideration by amending the impact speed requirement currently found in S6.1(b)(3) and S6.2(b)(3) to specify that the vehicle must satisfy the injury criteria of 1000 HIC in vehicle impacts with the rigid pole at any velocity between 24 km/h (15 mph) and 29 km/h (18 mph). In specifying this range, the agency is continuing to ensure that dynamic head protection systems offer meaningful safety benefits in relatively severe crashes while simultaneously placing a lower limit on the test impact speed that reduces test burdens and is consistent with facilitating the introduction and use of dynamic systems. The 24 km/h (15 mph) lower limit is, in NHTSA's view, appropriate for ensuring that dynamic systems will deploy and provide safety benefits when they are needed. Use of the 24 km/h (15 mph) speed as a lower bound provides greater assurance that dynamic systems will provide adequate protection in lower speed crashes.

Research conducted prior to the issuance of the August 1995 final rule establishing Standard No. 201's head impact requirements revealed that when a vehicle experiences an abrupt change in velocity, the head of an occupant of that vehicle experiences, during an interior impact, a smaller change in velocity. For example, when a vehicle experiences a 20.1 km/h (13 mph) change in velocity, an occupant's head experiences a 16.1 km/h (10 mph) change in velocity. In the August 1995 final rule, the agency established a FMH impact speed—a head speed—of 24 km/h (15 mph) as an appropriate impact speed because that speed represented the point at which occupants experience moderate to serious (AIS 2 and AIS 3) injuries. If a vehicle experiences a 24 km/h (15 mph) change in velocity when striking a rigid pole, an occupant will experience a smaller change in head velocity of approximately 19.3 km/h (12 mph) in an interior impact. At this speed, impact with an upper interior component would be likely to result in moderate or no injury, i.e., AIS 2 or less. We have therefore concluded that setting a lower limit of 24 km/h (15 mph) in the rigid pole test is sufficient to ensure that dynamic head protection systems offer safety benefits in relatively severe crashes, while not inappropriately detracting from safety in less severe impacts (i.e., those below 24 km/h (15 mph)).

Conclusion

For the reasons stated above, the petitions for reconsideration submitted by Mercedes and Chrysler are denied. The petitions submitted by AAMA and AIAM are granted and Standard No. 201 is amended accordingly.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this final rule under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rule was not reviewed under E.O. 12866, ''Regulatory Planning and Review'' and is not considered significant under the Department of Transportation's regulatory policies and procedures.

The agency has not prepared a Final Regulatory Evaluation describing the economic and other effects of this rulemaking action as it believes that the amendments in this final rule will reduce costs and that this cost reduction will be minimal. One effect of this action is to eliminate a requirement that a test dummy be maintained at a specified humidity during a full scale crash test. The agency has doubts that any vehicle manufacturer or test facility would, had this requirement remained

in effect, actually have had the capability to meet the humidity requirements. We believe that elimination of the requirement will not have a significant impact on costs as NHTSA believes that few, if any, manufacturers or test facilities actually attempted to meet the humidity requirement. Similarly, the agency also believes that the reductions in cost associated with the remaining change to the standard, are also minimal. This action changes the required impact speed for a full scale crash test from a wide range—0 to 29 km/h—to a narrower range. While this change clearly reduces the range of speeds at which the test could be run, it is not likely to change how this test would be run. Manufacturers, and the agency itself, are most likely to run compliance tests at the speed or speeds which will most severely test a vehicle's compliance with the standard. In fact, it is most likely that manufacturers will choose to test at or near the test speed used by the agency in its own laboratory test procedure. The narrowing of the test speed set forth in the regulation itself, is not likely to change this practice.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of this final rule under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. The amendments contained in this final rule will simplify test procedures and reduce test burdens and costs. Further, the amendments primarily affect passenger car and light truck manufacturers which are not small entities under 5 U.S.C. 605(b). 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)). The agency estimates that there are at most five small final stage manufacturers of passenger cars in the U.S. and no small manufacturers of light trucks, producing a combined total of at most 500 cars each year.

The primary effect of the final rule will be on manufacturers of passenger cars and LTVs. If LTVs are produced with these systems some time in the future and provided as incomplete vehicles to final stage manufacturers, which are generally small businesses, these final stage manufacturers may have to certify compliance. However, as noted above, the amendments in this final rule are limited to changes in test procedures which should reduce test burdens and costs.

Other entities which qualify as small businesses, small organizations and governmental units will be affected by this rule to the extent that they purchase passenger cars and LTVs. They will not be significantly affected, as the slight potential cost reductions associated with this action should not affect the purchase price of new motor vehicles.

C. National Environmental Policy Act

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

D. Executive Order 13132 (Federalism) and Unfunded Mandates Act

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132. NHTSA has determined that the amendment does not have sufficient federalism implications to warrant application of the requirements of section 6 of the Executive Order to this rule.

In issuing this final rule to simplify test procedures and requirements for the optional test procedures for dynamic head protections systems, the agency notes, for the purposes of the Unfunded Mandates Act, that it is reducing or eliminating costs. As this rulemaking does not require manufacturers to meet new minimum performance requirements, but modifies aspects of existing optional test procedures, it does not impose new costs.

E. Civil Justice Reform

This amendment does not have any retroactive effect. Under 49 U.S.C. 21403, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 21461 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' This action modifies requirements for a test procedure that does not currently have any counterpart, in a final form, promulgated or accepted by any voluntary consensus bodies.

H. Paperwork Reduction Act

This rule does not contain any collection of information requirements requiring review under the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 is amended to read as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

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

2. Section 571.201 is amended by revising S6.1(b)(3), S6.2(b)(3), and S8.27.4 as follows:

* * * * *

S6.1 *Vehicles manufactured on or after September 1, 1998 and before September 1, 2002.*

* * * * *

(a) * * *

(b) * * *

(3) Each vehicle shall, when equipped with a dummy test device specified in Part 572, Subpart M, and tested as specified in S8.16 through S8.28, comply with the requirements specified in S7 when crashed into a fixed, rigid pole of 254 mm in diameter, at any velocity between 24 kilometers per hour (15 mph) and 29 kilometers per hour (18 mph).

* * * * *

S6.2 *Vehicles manufactured on or after September 1, 2002.*

* * * * *

(a) * * *

(b) * * *

(3) Each vehicle shall, when equipped with a dummy test device specified in Part 572, Subpart M, and tested as specified in S8.16 through S8.28, comply with the requirements specified in S7 when crashed into a fixed, rigid pole of 254 mm in diameter, at any

velocity between 24 kilometers per hour (15 mph) and 29 kilometers per hour (18 mph).

* * * * *

S8.27 *Anthropomorphic test dummy—vehicle to pole test.*

* * * * *

S8.27.4 The stabilized temperature of the test dummy at the time of the side impact test shall be at any temperature between 20.6 degrees C. and 22.2 degrees C.

* * * * *

Issued on December 6, 1999.

Rosalyn G. Millman,

Acting Administrator.

[FR Doc. 99–32132 Filed 12–13–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

RIN 0648–AN04

[Docket No. 991207319–9319–01; I.D. 111099B]

International Fisheries; Pacific Tuna Fisheries; Harvest Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: 1999 quotas for yellowfin and bigeye tuna.

SUMMARY: NMFS announces the 1999 quotas and associated purse seine and baitboat fishery conservation measures for the eastern Pacific Ocean, consistent with recommendations by the Inter-American Tropical Tuna Commission (IATTC) and approved by the Department of State under the terms of the Tuna Conventions Act. If these quotas are reached, subsequent documents will be published announcing the dates on which the fisheries will close and any associated conservation measures to implement the quotas.

DATES: Effective December 14, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Svein Fougner, Assistant Regional Administrator, Sustainable Fisheries Division, Southwest Region, NMFS, 562–980–4040.

SUPPLEMENTARY INFORMATION: The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949, and implemented through the Tuna Conventions Act (16 U.S.C. 955). The IATTC was established to provide an international arrangement to ensure the effective international conservation and management of tunas and tuna-like fishes in the Eastern Pacific Ocean (EPO). The IATTC has maintained a scientific research and fishery monitoring program for many years, and it annually assesses the status of stocks of tuna and the fisheries to determine appropriate harvest limits or other measures to prevent overexploitation of the stocks and promote viable fisheries. The Convention Area includes all waters in the EPO within the area bounded by the mainland of the Americas, lines extending westward from the mainland of the Americas along the 40° N. lat. and 40° S. lat. parallels, and 150° W. long. The IATTC has designated a Commission Yellowfin Regulatory Area (CYRA) in which the total catch of yellowfin tuna may be limited. This consists of the waters in the Convention Area bounded by a line extending westward from the mainland of North America along the 40° N. lat. parallel, and connecting the following coordinates: 40° N. lat., 125° W. long.; 20° N. lat., 125° W. long.; 20° N. lat., 120° W. long.; 5° N. lat., 120° W. long.; 5° N. lat., 110° W. long.; 10° S. lat., 110° W. long.; 10° S. lat., 90° W. long.; 30° S. lat., 90° W. long; and then eastward along the 30° S. lat. parallel to the coast of South America.

At its annual meeting June 5–11, 1999, the IATTC adopted a resolution dealing with yellowfin tuna conservation. This resolution set an initial quota of 225,000 metric tons (mt) for yellowfin tuna taken by purse seine vessels in the CYRA. This quota could be raised by up to three successive increments of 15,000 mt each if the Director of IATTC concludes from examination of available data that such increases will pose no substantial danger to the stocks. This is consistent with the practice of the IATTC over many years, and has historically been supported by the United States.

At a subsequent meeting in October 1999, the IATTC adopted a new resolution for implementing the 1999 yellowfin tuna quota. Under this resolution, the quota is 265,000 mt. The directed baitboat and purse seine fisheries for yellowfin tuna would be closed when the quota is reached, except that the fisheries would be closed on December 2, 1999, even if the quota were not reached. This document confirms that this resolution has been approved by the Department of State as it is consistent with the resolution adopted in June 1999.

In another resolution in July 1999, the IATTC recommended that action be taken to limit the catch of bigeye tuna in the purse seine fisheries to 40,000 mt in 1999, with the limit to be implemented by prohibiting purse seine sets on all types of floating objects in the Convention Area when this harvest level is reached. The Department of State has also approved this recommendation.

The yellowfin quota is based on a 1999 assessment of the condition of the stock of yellowfin harvested in the CYRA. The assessment indicates that the yellowfin stock is healthy and is estimated to be able to sustain a fishery of 270,000 to 290,000 mt per year throughout EPO. The quota for the CYRA is conservative relative to estimated maximum sustainable yields. The IATTC noted that the yield per recruit (and ultimate sustainable harvests) depends on the fishing strategy employed, with larger fish (and higher yield per recruit) for fishing associated with dolphin and smaller fish (and lower yield per recruit) for fishing associated with floating objects.

Classification

This action is authorized by 50 CFR part 300 subpart C.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant Administrator for Fisheries, NOAA finds for good cause under 5 U.S.C. 553(b)(B) that providing prior notice and an opportunity for public coment on this action is unnecessary. The rule authorizing this action provides for quotas agreed to by the IATTC and approved by the Department of State to be effective upon direct notification of the U.S. tuna fishing industry. Providing prior notice and an opportunity for public comment would serve no useful purpose. The Assistant Administrator for Fisheries, NOAA, finds, for good cause under 5 U.S.C. 553(d)(3), that a 30-day delay in effectiveness for these 1999 quotas would be contrary to the public interest. Such a delay would prevent the quotas from being in place before they are exceeded and the fisheries closed.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Authority: 16 U.S.C. 951-961 and 971 *et seq.*