

contributions from end users. Rather, the Commission has given carriers the flexibility to decide whether and how they should recover their contributions as markets become increasingly competitive. Although the Commission permits carriers to pass through all or part of their universal service contributions to their end users, the requirement to contribute is not dependent upon a carrier's ability to successfully pass through such contributions. We agree with AT&T and BellSouth that annual revenue variations are an inherent part of the competitive environment in the telecommunications industry. Even OCI recognizes that "carriers with declining revenues are not unique and that there may be various circumstances which cause carriers to experience such revenue declines from year to year." Thus, we conclude that a decline in revenues, without more, is an insufficient basis for a waiver of the requirement that universal service contributions be based on prior year revenues. Moreover, now that carriers are familiar with the contribution process, they have the ability to ameliorate the effects of declining revenues and/or subscribers by reserving a portion of their current revenues to meet the contribution obligations that arise from those current revenues in the following year.

16. NTC, OCI, and MobileTel have attempted to explain the circumstances underlying their revenue declines, which include, respectively, regulatory action to correct improper marketing practices, increased competition, and an adverse Commission licensing decision. We are not persuaded that any of these circumstances rise to the level of the special circumstances necessary to warrant a waiver. It is not unusual for a state to take corrective action against a company that improperly markets its services, or competitors to compete for subscribers and marketshare. Furthermore, although the Commission rescinded MobileTel's Louisiana 8 and 9 RSA cellular B block licenses in 1996, the Commission granted MobileTel interim authority to continue operating until qualified applicants were licensed and ready to begin service. The grant of interim authority, while limited, allowed MobileTel to generate significant, additional revenues that it otherwise would have foregone absent such interim authority. By accepting the interim authority, however, MobileTel subjected itself to the obligations and responsibilities associated with being a provider of interstate telecommunications services in the

Louisiana 8 and 9 Rural Service Areas. The fact that those obligations and responsibilities subsequently included a requirement to contribute to universal service using a methodology based on prior year revenues—a requirement applicable to all providers of interstate telecommunications services—does not constitute a special circumstance warranting waiver of our contribution rules. Accordingly, we deny Petitioners' requests for waiver.

### III. Ordering Clauses

17. The authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, § 1.429 of the Commission's rules, the Memorandum Opinion and Order and Seventh Order on Reconsideration is adopted.

18. The authority contained in sections 4(i) and 405 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's rules, the petitions for reconsideration are denied.

19. The authority contained in section 4(i) of the Communications Act of 1934, as amended, and § 1.3 of the Commission's rules, the petitions for waiver are denied.

#### List of Subjects in 47 CFR Part 54

Universal service.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–2040 Filed 1–28–00; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. 2000–6798]

**RIN 2127–AH74**

#### Federal Motor Vehicle Safety Standards; Roof Crush Resistance

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

**ACTION:** Final rule, partial response to petitions for reconsideration; technical amendment.

**SUMMARY:** On April 27, 1999, NHTSA published a final rule which revised the test procedure in Standard No. 216, *Roof Crush Resistance*, to make it more suitable to testing motor vehicles with raised roofs. The final rule provided that

the new test procedure would be used for vehicles manufactured on or after October 25, 1999.

The Recreation Vehicle Industry Association (RVIA) petitioned for reconsideration of the rule, stating that some manufacturers of conversion vans with raised roofs must cease production of their vehicles because they are unable to demonstrate compliance with the new test procedure. Ford Motor Company (Ford) also petitioned for reconsideration of the test procedure used to test vehicles with raised roofs.

We are issuing this final rule in partial response to those petitions. The effect of this document is to stay, until October 25, 2000, the provision specifying the new test procedure as the sole test procedure. This document amends Standard No. 216 so that, for vehicles manufactured during the stay, vehicle manufacturers have an option of using either the new test procedure or the test procedure that was specified in Standard No. 216 immediately prior to October 25, 1999 ("former test procedure"). For vehicles manufactured after the stay, i.e., on or after October 25, 2000, the new test procedure will apply (unless the standard is further amended in a subsequent final rule). This stay will provide us additional time to complete our analysis of the petitions for reconsideration and decide whether the new test procedure should be amended. The agency is also amending the definition of "windshield trim" in the manner announced in the preamble, but not reflected in the regulatory text, of the April 1999 final rule.

**DATES:** This rule is effective January 31, 2000. *Petitions for Reconsideration:* You may submit a petition for reconsideration of this rule. We will consider petitions received no later than March 16, 2000. Petitions received after that date will be treated as petitions for rulemaking.

**ADDRESSES:** In preparing a petition for reconsideration, you should refer to the docket and notice number of this final rule. You should submit the petition to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For *technical issues*, you may contact Maurice Hicks, Office of Crashworthiness Standards, at telephone (202) 366–6345.

For *legal issues*, you may contact Deirdre Fujita, Attorney, Office of the Chief Counsel, at telephone (202) 366–2992.

You may send mail to both of these officials at National Highway Traffic

Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

On April 27, 1999, NHTSA published a final rule relating to the test procedure in Standard No. 216, *Roof Crush Resistance* (64 FR 22567). The procedure tests the strength of the roof over the front seat occupants by placing a large flat steel test plate on the roof, simulating contact with the ground in rollover crashes, and pressing downward. Prior to the amendments made by the final rule, following the procedure in testing certain vehicles with rounded roofs (e.g., the Ford Taurus) resulted in positioning the test plate too far back. In this position, the plate did not test the roof over the front occupants. In addition, this position created the potential for contact between the front edge of the test plate and the roof, allowing the plate to penetrate the roof along the leading edge of the plate. Similarly, in following this procedure for vehicles with raised, irregularly-shaped roofs (such as some vans with roof conversions), the initial contact point on the roof may not be above the front occupants, but on the raised rear portion of the roof, behind those occupants. In both of these cases, the positioning of the plate relative to the initial contact point on the roof, instead of relative to a fixed location on the roof, resulted in too much variability in the plate positioning and reduced test repeatability.

The final rule addressed the problem of rounded roofs by specifying a new test procedure for all vehicles except those with certain modified roof configurations. Under the new procedure, the test plate is to be positioned so that the front edge of the plate is 254 mm (10 inches) in front of the forwardmost point of the roof. Positioned in this way, the front edge of the plate will always project slightly forward of the roof instead of contacting it. The rule addressed the problem for vehicles with raised or modified roofs by specifying that if following the new test procedure results in an initial point of contact that is rearward of the front seats, the plate is repositioned so that its rear edge is within 10 mm of the rear of those seats.

The agency received two petitions for reconsideration: one from the Recreation Vehicle Industry Association (RVIA) and another from Ford Motor Company (Ford). Both petitions suggested that the new test procedure creates problems for manufacturers of conversion vans with raised or altered roofs.

RVIA stated that following the new test procedure causes the rear edge of

the test plate to significantly load the roof over the front seat areas. RVIA believed that as a consequence, this testing "will not realistically load the roof over the front seat area as intended." RVIA suggested several approaches that petitioner believed would avoid edge loading, including two ways of repositioning the test plate. The first was by moving the plate 700 mm (about 27 inches) more rearward than that specified in the April 1999 final rule. The second was by increasing the longitudinal angle of the test device from 5 degrees up to 30 degrees following repositioning of the test device. RVIA also requested that one additional year of leadtime be provided, regardless of whether we grant or deny its petition.

By letter dated November 12, 1999, RVIA informed NHTSA that some of its members have been forced to cease production of conversion vans with raised roofs because they are unable to demonstrate compliance with Standard No. 216 using the new test procedure. Petitioner reiterated its view that the new test procedure can result in the rear edge of the test plate slicing through a raised roof. The petitioner stated that the former procedure did not normally result in such cutting by edge contact. Petitioner asked that until we answer its petition for reconsideration, we should extend the effective date of the April 1999 final rule and should allow manufacturers of conversion vehicles with raised roofs to use the former test procedure.

Ford also indicated that it believes the new test procedure can result in rear edge loading, particularly for raised or altered roof vehicles. Ford stated that "the influence of rear edge loading will have an increasingly dramatic affect on the test results as the steepness of the sloped transition between the raised roof and the lower roof is increased." Ford also believes that the procedure is not objective. This is because the procedure uses the position of the test plate's initial contact point to the roof to determine whether to reposition the plate. Ford believes that a procedure that depends on a determination of the initial contact point is subject to variability and reproducibility problems.

The petition from Ford also asked that the definition of "windshield trim" be consistent with that used in Standard No. 201.

#### Agency Response

We are reviewing and analyzing the petitions for reconsideration from RVIA and Ford. We expect to complete our analysis of the issues in the near future.

However, the new test procedure has become effective and has reportedly caused some manufacturers of altered or raised roof vehicles to cease producing vehicles, pending our resolution of the issues raised in the RVIA petition. Many of these manufacturers are small businesses. We agree with RVIA that we should allow optional use of the former test procedure for an interim period, pending our decision on the petitions. Accordingly, we are republishing (with new section numbers and a redesignated figure number) the original language of the former test procedure. We are permitting the use of the former test procedure or the new test procedure for multipurpose passenger vehicles, trucks and buses with raised or altered roofs manufactured on or after October 25, 1999 and before October 25, 2000. This will permit us to complete our analysis of and take action on the petitions prior to a date on which the former test procedure ceases to be available.<sup>1</sup>

With regard to the requested change to the definition of "windshield trim," we acknowledge that the April 1999 final rule did not change the regulatory text to reflect the decision announced in the final rule preamble that the same definition used in Standard No. 201 would be incorporated into Standard No. 216.<sup>2</sup> NHTSA is amending that definition to implement that decision.

NHTSA finds for good cause that it is in the public interest for this rule to become effective upon publication. RVIA states that some manufacturers, primarily small businesses, of vehicles with raised or altered roofs are unable to certify the compliance of their vehicles to Standard No. 216 using the test procedure adopted in the April 1999 final rule. That procedure was adopted because the agency believed to be more suitable for testing vehicles with raised or altered roofs. The agency did not intend to cause vehicles that formerly met Standard No. 216 when tested using the former test procedures to no longer meet the standard when

<sup>1</sup> We note RVIA stated in its November 1999 letter that, "by accepting the June 11, 1999 RVIA Petition for Reconsideration, NHTSA acknowledged that the petition has some merit." Our acceptance of a petition indicates simply that the petition meets the applicable requirements regarding timeliness and contents. In no way does our acceptance, by itself, imply that the agency has made any judgment whether a petition has merit.

<sup>2</sup> In the April 1999 final rule, the agency stated: NHTSA agrees with Ford that the term "trim" in S7.2(e) describing the proposed orientation of the test device, should be revised to say "windshield trim" because it is more specific. NHTSA also agrees that the term "windshield trim" should be defined consistently with the definition in Standard No. 201. Therefore, the same definition used in Standard No. 201 has been incorporated in this final rule.

tested using the new procedures. The effective date of this rule will ensure that the manufacturers of these vehicles can immediately commence producing their vehicles while NHTSA considers the petitions.

#### Rulemaking Analyses and Notices

##### *a. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This document was not reviewed under Executive Order 12866, *Regulatory Planning and Review*. NHTSA has analyzed the impact of this rulemaking action and has determined that it is not "significant" under DOT's regulatory policies and procedures. The effect of this rule is to stay a mandatory effective date until October 25, 2000 and to provide a choice between two alternative test procedures during that time. This rule will not require any design changes and will not cause any increase in compliance costs. The impacts of the rule are so minor that a full regulatory evaluation is not required.

##### *b. Regulatory Flexibility Act*

NHTSA has also considered the impacts of this document under the Regulatory Flexibility Act (beginning at 5 U.S.C. § 601). I certify that this rule will not have a significant economic impact on a substantial number of small entities. The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. § 605(b)). This final rule primarily affects manufacturers of truck, buses and multipurpose passenger vehicles with raised or altered roofs. It applies to a substantial number of van conversion shops, which we presume are small businesses. This rule will not have a significant economic impact. Conversion shops are already responsible for certifying compliance with Standard No. 216 if they make conversions affecting the roof structure. The rule does not impose any new requirements, but instead permits manufacturers to continue to test their vehicles as they had been testing prior to the effective date of the April 1999 rule. This rule will not have any effect on the price of new vehicles purchased by small entities.

##### *c. Paperwork Reduction Act*

NHTSA has analyzed this rule in accordance with the Paperwork Reduction Act of 1980 (P.L. 96-511). There are no requirements for information collection associated with this rule.

##### *d. Executive Order 13132 (Federalism)*

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 13132, and has determined that this rule will not establish policies with federalism implications.

##### *e. Civil Justice Reform*

This rule will not have any retroactive effect. Under 49 U.S.C. 30103, 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. 30161 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. Executive Order 13045*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and does not have a disproportionate effect on children.

##### *g. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. This final rule does not meet the definition of Federal mandate because this rule simply adds a compliance alternative for one year. In no case will annual expenditures exceed the \$100 million threshold.

#### List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

#### PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

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

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

2. Section 571.216 is amended as follows:

a. by revising the definition of "windshield trim" in S4 and revising S5; and,

b. by adding S5.1, S8 through S8.4, and Figure 2 at the end of the section.

The revisions and additions read as follows:

#### § 571.216 Standard No. 216; roof crush resistance

\* \* \* \* \*

##### S4. Definitions.

\* \* \* \* \*

*Windshield trim* means molding of any material between the windshield glazing and the exterior roof surface, including material that covers a part of either the windshield glazing or exterior roof surface.

\* \* \* \* \*

S5. *Requirements.* Subject to S5.1, when the test device described in S6 is used to apply a force to either side of the forward edge of a vehicle's roof in accordance with the procedures of S7, the lower surface of the test device must not move more than 127 millimeters. The applied force in Newtons is equal to 1.5 times the unloaded vehicle weight of the vehicle, measured in kilograms and multiplied by 9.8, but does not exceed 22,240 Newtons for passenger cars. Both the left and right front portions of the vehicle's roof structure must be capable of meeting the requirements. A particular vehicle need not meet further requirements after being tested at one location.

S5.1 For multipurpose passenger vehicles, trucks and buses that have a raised roof or altered roof, manufacturers have the option of using the test procedures of S8 instead of the procedures of S7 until October 25, 2000. The option of using the test procedures of S8 ceases to be available on that date.

\* \* \* \* \*

S8 *Alternate test procedure for multipurpose passenger vehicles, trucks and buses that have a raised roof or altered roof manufactured until October 25, 2000 (see S5.1).* Each vehicle shall

be capable of meeting the requirements of S5 when tested in accordance with the following procedure.

S8.1 Place the sills or the chassis frame of the vehicle on a rigid horizontal surface, fix the vehicle rigidly in position, close all windows, close and lock all doors, and secure any convertible top or removable roof structure in place over the passenger compartment.

S8.2 Orient the test device as shown in Figure 2, so that—

(a) Its longitudinal axis is at a forward angle (side view) of 5° below the horizontal, and is parallel to the vertical plane through the vehicle's longitudinal centerline;

(b) Its lateral axis is at a lateral outboard angle, in the front view projection, of 25° below the horizontal;

(c) Its lower surface is tangent to the surface of the vehicle; and

(d) The initial contact point, or center of the initial contact area, is on the longitudinal centerline of the lower surface of the test device and 254 millimeters from the forwardmost point of that centerline.

S8.3 Apply force in a downward direction perpendicular to the lower surface of the test device at a rate of not more than 13 millimeters per second until reaching a force in Newtons of 1 1/2 times the unloaded vehicle weight of the tested vehicle, measured in

kilograms and multiplied by 9.8. Complete the test within 120 seconds. Guide the test device so that throughout the test it moves, without rotation, in a straight line with its lower surface oriented as specified in S8.2(a) through S8.2(d).

S8.4 Measure the distance that the test device moves, *i.e.*, the distance between the original location of the lower surface of the test device and its location as the force level specified in S8.3 is reached.

\* \* \* \* \*

Figure 2 to § 571.216

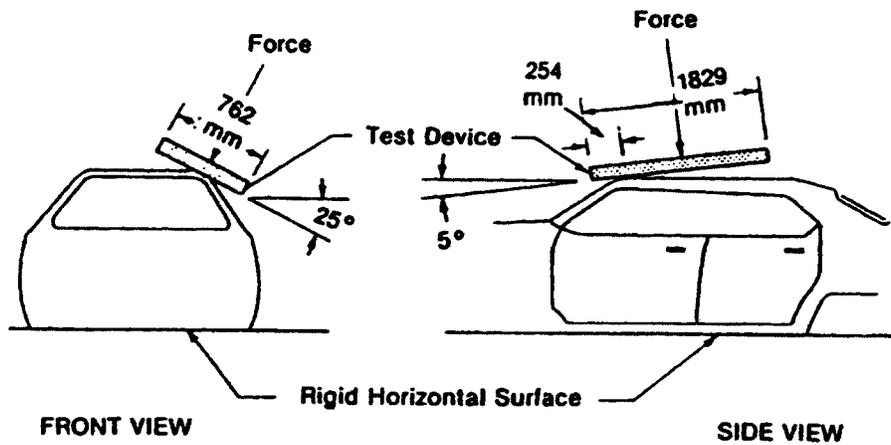


Figure 2.- Test Device Location And Application To The Roof

BILLING CODE 4910-59-C

Issued on: January 21, 2000.

Rosalyn G. Millman,  
Acting Administrator.

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