

- (1) A valid load line certificate, if required, is on board;
- (2) The barge is not loaded deeper than permitted;
- (3) The deck and side shell plating are free of visible holes, fractures, or serious indentations, as well as damage that would be considered in excess of normal wear;
- (4) The cargo box side and end coamings are watertight;
- (5) All manholes are covered and secured watertight;
- (6) All voids are free of excess water; and
- (7) Precautions have been taken to prevent shifting of cargo.

(c) *Verifications.* On voyages north of St. Joseph, the towing vessel master must contact a mooring/docking facility in St. Joseph, Holland, Grand Haven, and Muskegon to verify that sufficient space is available to accommodate the tow. The tow cannot venture onto Lake Michigan without confirmed space available.

(d) *Log entries.* Before getting underway, the towing vessel master must note in the logbook that the pre-departure barge inspections, verification of mooring/docking space availability, and weather forecast checks were performed, and record the freeboards of each barge.

§ 45.193 Towboat power requirements.

The towing vessel must meet the following requirements:

(a) *General.* The towing vessel must have adequate horsepower to handle the tow, but not less than the amount specified for the routes below.

(b) *Milwaukee and St. Joseph routes:* a minimum of 1,000 HP.

(c) *Muskegon route:* a minimum of 1,500 HP.

§ 45.195 Additional equipment requirements for the Muskegon route.

Towboats on the Muskegon route must meet these additional equipment requirements:

(a) *Communication equipment.* Two independent voice communication systems in operable condition, such as Very High Frequency (VHF) radio, radiotelephone, or cellular phone. At least two persons aboard the vessel must be capable of using the communication systems.

(b) *Cutting gear.* Equipment that can quickly cut the towline at the towing vessel. The cutting gear must be in operable condition and appropriate for the type of towline being used, such as wire, polypropylene, or nylon. At least two persons aboard the vessel must be capable of using the cutting gear.

§ 45.197 Operational plan requirements for the Muskegon route.

Towing vessels on the Muskegon route must have aboard an operational plan that is available for ready reference by the master. The plan must include the following:

(a) The cargo limitations, the general operational requirements, and the special operational requirements of this subpart.

(b) A list of mooring and docking facilities (with phone numbers) in St. Joseph, Holland, Grand Haven, and Muskegon, that can accommodate the tow.

(c) A list of towing firms (with phone numbers) that have the capability to render assistance to the tow, if required.

(d) Guidelines for possible emergency situations, such as barge handling under adverse weather conditions, and other emergency procedures.

Dated: April 12, 2002.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 02-9834 Filed 4-22-02; 8:45 am]

BILLING CODE 4910-15-U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02-893, MM Docket No. 00-138, RM-9896]

Digital Television Broadcast Service; Boca Raton, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of The School Board of Broward County, Florida, substitutes DTV channel *40 for DTV channel *44 at Boca Raton, Florida. See 65 FR 50951, August 22, 2000. DTV channel *40 can be allotted to Boca Raton in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (25°59'34" N. and 80°10'27" W.) with a power of 1000, HAAT of 310 meters and with a DTV service population of 3989 thousand.

With this action, this proceeding is terminated.

DATES: Effective June 3, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report

and Order, MM Docket No. 00-138, adopted April 17, 2002, and released April 22, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Florida, is amended by removing DTV channel *44 and adding DTV channel *40 at Boca Raton.

Federal Communications Commission.

Barbara A. Kreisman,
Chief, Video Division, Media Bureau.

[FR Doc. 02-9952 Filed 4-22-02; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 573

[Docket No. NHTSA-2002-12111]

RIN 2127-AI30

Motor Vehicle Safety; Prohibitions on Sale or Lease of Defective and Noncompliant Motor Vehicles and Items of Motor Vehicle Equipment

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

ACTION: Final rule.

SUMMARY: This document implements section 8 of the Transportation Recall Enhancement, Accountability, and Documentation Act (TREAD Act) and section 2504 of the Intermodal Surface Transportation Efficiency Act (ISTEA)

by adding regulations that limit the sale or lease of noncompliant and defective motor vehicles and items of motor vehicle equipment. These sections contain complementary provisions that amend federal motor vehicle safety laws by limiting the sale or lease of defective and noncompliant motor vehicles and equipment.

EFFECTIVE DATE: This final rule will take effect on May 23, 2002.

Petitions for reconsideration: Any petition for reconsideration of this rule must be received by NHTSA no later than June 7, 2002.

ADDRESSES: Petitions for reconsideration may be submitted in writing to: Docket Management, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. Petitions for reconsideration may also be submitted electronically by logging onto the Docket Management System website at <http://dms.dot.gov>. Click on "Help & Information" or "Help/info" to obtain instructions for filing your petition electronically.

Regardless of how a petition is submitted, the docket number of this document should be referenced in that petition.

You may call Docket Management at 202-366-9324. You may visit the Docket from 9 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Enid Rubenstein, Office of Chief Counsel, NCC-10, NHTSA. Telephone 202-366-5263.

SUPPLEMENTARY INFORMATION:

Background

Since the enactment of the National Traffic and Motor Vehicle Safety Act in 1966, now codified, as amended, as 49 U.S.C. Chapter 301 (Safety Act), Federal law has prohibited the sale of new motor vehicles and motor vehicle equipment that fail to comply with an applicable Federal motor vehicle safety standard (FMVSS). See section 108(a) of

Public Law 89-563, 80 Stat. 722, codified as 49 U.S.C. 30112(a). However, until 1991, the Safety Act did not contain specific provisions limiting the sale or lease of defective vehicles and equipment. To correct this deficiency, section 2504 of the Intermodal Surface Transportation Efficiency Act ("ISTEA"), Public Law 102-240, 105 Stat. 2081 *et seq.*, amended the Safety Act by adding a new provision, which is codified at 49 U.S.C. 30120(i).

Section 30120(i) states that a dealer who has been provided notification from the manufacturer about a safety-related defect or noncompliance with a Federal motor vehicle safety standard in

a new motor vehicle or a new item of motor vehicle equipment in the dealer's possession at the time of the notification may not sell or lease the vehicle or item of equipment unless the defect or noncompliance is remedied as required by section 30120 before delivery under the sale or lease, or notification is required by an order under section 30118(b) but enforcement of the order is restrained or the order is set aside in a civil action to which section 30121(d) applies. Thus, if a court sets the order aside, the prohibition will not apply and the sale is permissible.¹

Section 30120(i) does not prohibit a dealer from offering the vehicle or equipment for sale or lease. Thus, the dealer can offer the vehicle in the showroom but cannot sell or lease it. In the 1990s, NHTSA did not engage in rulemaking with regard to this statutory prohibition.

On November 1, 2000, the TREAD Act, Public Law 106-414, 114 Stat. 1800, was enacted. The statute was, in part, a response to congressional concerns regarding the manner in which various entities dealt with defective motor vehicles and motor vehicle equipment, including tires. During congressional consideration of the bill that eventually was adopted as the TREAD Act, there had been media reports that some persons were selling defective Firestone ATX or Wilderness AT tires that had been returned to dealers for replacement under an ongoing safety recall. The Safety Act did not expressly prohibit such actions, since section 30120(i) does not apply to the sale or lease of used vehicles or equipment.

¹ Section 30118(c) requires manufacturers of motor vehicles or equipment to provide notification of safety-related defects or noncompliances with motor vehicle safety standards to NHTSA, as well as to the owners, purchasers and dealers of the vehicle or equipment.

Section 30118(b) authorizes the Secretary to make a final decision that motor vehicles or equipment contain a safety-related defect and/or do not comply with an applicable motor vehicle safety standard and, in that event, order the manufacturer to give notification of the defect or noncompliance to owners, purchasers, and dealers of the vehicles or equipment, and order the manufacturer to remedy the defect or noncompliance without charge.

Section 30121 authorizes the Secretary to require a manufacturer to issue a provisional notification about an order issued under section 30118(b) if the manufacturer contests that order. Section 30121 also authorizes a court to enjoin enforcement of the Secretary's order under section 30118(b) if the court decides that failure to notify is reasonable and that the manufacturer has demonstrated the likelihood of prevailing on the merits. (A manufacturer that fails to issue a provisional notification is subject to civil penalties unless a court enjoins enforcement of the order under section 30118(b)). *See generally Ford Motor Co. v. Coleman*, (402 F. Supp. 475 (D.C. 1975) (3-judge court), *aff'd mem.* 425 U.S. 927 (1976).

Section 8 of the TREAD Act added a new subsection (j), "Prohibition on sales of replaced equipment," to 49 U.S.C. 30120, effective November 1, 2000. This subsection provides that no person may sell or lease any motor vehicle equipment (including a tire) that is the subject of a decision under 49 U.S.C. 30118(b) or a notice required under 49 U.S.C. 30118(c), for installation on a motor vehicle, in a condition that it may be reasonably used for its original purpose. Under section 30120(j)(1) and (2), the foregoing prohibition does not apply if the defect or noncompliance is remedied as required by 49 U.S.C. 30120, including implementing regulations, before delivery under the sale or lease; or if notification of the defect or noncompliance is required under section 30118(b) but enforcement of the order is set aside in a civil action to which 49 U.S.C. 30121(d) applies.

Sections 30120(i) and (j) are complementary provisions. Section 30120(i), the ISTEA provision, applies only to dealers in new motor vehicles and new items of motor vehicle equipment. Section 30120(j), the TREAD Act provision, applies to all persons who sell or lease motor vehicle equipment for installation on a motor vehicle, in a condition that the equipment may reasonably be used for its intended purpose, and to both new and used equipment. To implement both statutory subsections, we proposed to revise 49 CFR part 573 by adding two separate regulatory sections, one (§ 573.11) applicable to the sale or lease of defective or noncompliant new motor vehicles and new items of motor vehicle equipment by dealers (including retailers of new motor vehicle equipment) and the other (§ 573.12) applicable to the sale or lease of defective or noncompliant new and used motor vehicle equipment by any person. While sections 30120(i) and (j) do not require rulemaking for their effectuation, NHTSA believes that there will be two benefits to rulemaking. First, rules will largely reduce, if not eliminate, questions relating to the meaning of the prohibitions. Second, there are benefits to codifying the prohibitions, which complement other rules, in the Code of Federal Regulations.

The New Regulatory Provisions

In view of the ISTEA and the TREAD Act, we are revising 49 CFR 573.3(a) by specifying those to whom new §§ 573.11 and 573.12 apply and we are amending 49 CFR part 573 to include, at §§ 573.11 and 573.12, the prohibitions established by 49 U.S.C. 30120(i) and (j), respectively. These amendments are

identical to those proposed in the NPRM (66 FR 38247 *et seq.* (July 23, 2001), except that we have added a clarification to proposed § 573.3(h) to reflect the provision in 49 U.S.C. 30121 that the term “dealer” includes a retailer of motor vehicle equipment and clarified the scope of proposed § 573.11.

Section 573.11 Prohibition on Sale or Lease of New Defective or Noncompliant Motor Vehicles and Motor Vehicle Equipment²

Section 573.11, which implements 49 U.S.C. 30120(i), applies to dealers, including retailers of motor vehicle equipment, and covers the sale and lease of new motor vehicles and motor vehicle equipment. It provides that a dealer may not sell or lease defective or noncompliant new motor vehicles or items of motor vehicle equipment. By its terms, 49 U.S.C. 30120(i) applies to new motor vehicles and new items of motor vehicle equipment.³ Thus, the requirements of 49 CFR 573.11 do not apply to used motor vehicles and used equipment.

Several prerequisites must occur in order for the prohibition on the sale or lease of new motor vehicles or equipment under section 30120(i) to apply. First, notification of a defect or noncompliance must have been required by an order under section 30118(b) or under section 30118(c). Second, a dealer must have been notified of the defect or noncompliance. Finally, the dealer must be in possession of the vehicle or equipment.

The regulatory text at § 573.11 reflects two statutory exceptions that permit the dealer to sell or lease new motor vehicles or equipment items that have been determined to be defective or noncompliant. See 49 U.S.C. 30120(i). First, the dealer may sell or lease the motor vehicle or item of equipment if the defect or noncompliance is remedied as required by section 30120 before delivery under the sale or lease. Second, the sale or lease is permissible when notification is required by an

order under section 30118(b) but enforcement of the order is restrained or the order is set aside in a civil action to which section 30121(d) applies. Thus, if a court sets the order aside, as stated above, the prohibition will not apply and the sale is permissible. Finally, section 30120(i) states that it does not prohibit a dealer from simply offering the vehicle or equipment for sale or lease, without actually selling it.

Section 573.12 Prohibition on Sale or Lease of New or Used Defective and Noncompliant Motor Vehicle Equipment

Section 573.12 of the rule implements 49 U.S.C. 30120(j), which provides that “*no person* may sell or lease any motor vehicle equipment (including a tire), for installation on a motor vehicle, that is the subject of a decision under section 30118(b) or a notice required under section 30118(c) in a condition that it may be reasonably used for its original purpose” (emphasis added). In this statutory section, Congress chose to use the general term “*no person*” as opposed to the more restricted categories of “*manufacturer*” and “*dealer*” used in section 30120(i) and elsewhere in Chapter 301. In view of the breadth of the term “*no person*,” § 573.12 is not limited to persons in particular classes or categories. Rather, the rule’s prohibition applies to the actions of all persons, including individuals and business entities such as corporations. The rule clearly applies to retailers of equipment, including tires.

The activities that are covered by 49 CFR 573.12, based on 49 U.S.C. 30120(j), are selling or leasing, “for installation on a motor vehicle,” any motor vehicle equipment (including a tire), that is the subject of a decision under section 30118(b) or a notice required under section 30118(c). Accordingly, the rule will apply to businesses and individuals that sell new or used automobile parts, including tires. While § 573.12 prohibits the sale or lease of equipment including tires for installation on a motor vehicle, it does not prohibit a person from selling or leasing a new or used vehicle that is equipped with defective or noncompliant equipment or tires.⁴ For example, a motor vehicle dealer is not subject to the prohibition of this rule except with respect to equipment and tires that the dealer sells or leases separately from a vehicle. Similarly,

motor vehicle lessors and motor vehicle rental companies are not subject to this rule because these groups are selling and leasing vehicles, not equipment or tires for use on motor vehicles.

49 CFR 573.12 prohibits the selling or leasing of any motor vehicle equipment (including a tire), for installation on a motor vehicle, that is the subject of a decision under 49 U.S.C. 30118(b) or a notice required under 49 U.S.C.

30118(c). In section 30120(j), Congress chose to restrict the sale or lease of motor vehicle equipment, without limitation. Thus, the prohibition includes all equipment, including used equipment as well as new equipment.⁵

49 U.S.C. 30120(j) prohibits the sale of equipment in a condition that it may be reasonably used for its original purpose. Accordingly, § 573.12 prohibits only the sale of equipment and tires that are still in a condition in which they can be used for the purpose for which they were originally intended. Thus, the rule does not apply to equipment and tires that have been permanently altered in a way that they can no longer be reasonably used for their original purpose. For example, a tire that has been drilled with holes for eyebolts may be sold for use as part of a playground swing.

Section 30120(j)(1) provides that the prohibition on the sale of equipment applies unless “the defect or noncompliance is remedied as required by this section before delivery under the sale or lease.” Therefore, the equipment may be sold if it has been repaired so that it is no longer defective or noncompliant.

The sale of the equipment will also be allowed if “notification of the defect or noncompliance is required under section 30118(b) but enforcement of the order is set aside in a civil action to which section 30121(d) applies.” Under section 30118(b), if it is determined that a motor vehicle or replacement equipment contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard, the manufacturer is ordered to give notification of the defect or noncompliance under section 30119 to owners, purchasers and dealers of the

² The title of section 30120(i) refers to a “limitation” on the sale or lease of vehicles or equipment, whereas the title of section 30120(j) refers to a “prohibition” on the sale of replaced equipment. In the NPRM, we proposed to use the term “limitations” to cover both statutory sections. However, throughout the preamble to the NPRM, we discussed various “prohibitions,” as we have done again in the preamble to this rule. Also, in the revised title to 49 CFR part 573 that we proposed in the NPRM, we used the term “prohibitions.” Therefore, for consistency, we have decided to use the term “prohibitions” rather than “limitations” in both sections of the final rule, as well as in the revised title to 49 CFR part 573.

³ As discussed above, the sale or lease of a new vehicle with defective or noncompliant equipment or tires is already prohibited by 49 U.S.C. 30120(i) and will be prohibited by 49 CFR 573.11.

⁴ As discussed above, the sale or lease of a new vehicle with defective or noncompliant equipment or tires is already prohibited by 49 U.S.C. 30120(i) and will be prohibited by 49 CFR 573.11.

⁵ We recognize that the title of section 30120(j) refers to “replaced equipment.” The U.S. Supreme Court has long held that the title of a statutory provision cannot overcome the plain and unambiguous meaning of the words used in the text of the statute. *See Knowlton v. Moore*, 178 U.S. 41 (1900). Thus, since the language of section 30120(j) is not limited, its reach extends to all motor vehicle equipment that has been found to be defective or noncompliant, regardless of whether it is original equipment or replacement equipment, despite the fact that the title of the subsection refers only to “replaced equipment.”

vehicle or equipment.⁶ However, if enforcement of the order is restrained or the order is set aside by a court, the prohibition in section 30120(j) does not apply, and, therefore, the sale of the equipment in its unremedied condition is permissible during the period when the order is not effective.

Response to Comments

We received three comments on the NPRM, including one from a trade association (the National Automobile Dealers Association ("NADA")) and two from consumer groups (Advocates for Highway and Auto Safety ("Advocates") and Public Citizen). We did not receive any comments from manufacturers.

The comments were generally supportive of the proposed regulations. They are summarized below.

(1) Advocates fully supported the NPRM and urged its adoption, without any suggested revisions.

(2) NADA supported the issuance of the rule but suggested a number of substantive and editorial changes. The principal substantive change suggested was, in essence, to make both new § 573.11 and § 573.12 duplicate each other, by providing in both that there is no limitation on the sale or lease of defective or noncompliant motor vehicles or motor vehicle equipment unless the dealer has received actual notice of the defect or noncompliance from the manufacturer. Although NADA acknowledged that statutory subsections (i) and (j) differ from each other in that subsection (i) requires such notice whereas (j) does not, the association nevertheless requested that NHTSA use its discretion to extend subsection (i)'s notice condition to subsection (j), on grounds that this would create "fairness" to dealers.

We have decided against making NADA's proposed change. Under the ordinary rules of statutory construction, Congress is presumed to have intended the effects of linguistic differences between statutory provisions. See 2A Sutherland, *Statutory Construction* (6th Ed. Singer, 2000) at § 46.06: "In like manner, where the legislature has carefully employed a term in one place and excluded it in another, it should not be implied where excluded." This is particularly true where, as here, the statutory provision that contains the notice requirement (in this case, subsection (i)), was enacted several years before the statutory provision that does not contain the notice requirement (in this case, subsection (j)). Congress clearly knew how to draft a notice

requirement when it wanted to include one: it did so in 1991 in enacting subsection (i), but it did not do so nine years later when it enacted subsection (j).

In addition, under the ordinary rules of statutory construction, statutes are to be read to effectuate all of their provisions: "It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute." 2A Sutherland, *supra*, at § 46.06, citing *United States v. Menasche*, 348 U.S. 528 (1955); *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995). If we followed NADA's suggestion and ignored the differences between subsections (i) and (j) with respect to notice, the regulation would not be consistent with this rule of construction and would fail to effectuate subsection (j), which by its terms does not require notice from the manufacturer.

NADA also disputed "any suggestion" (in the preamble to the NPRM) that the section 30120(i) restriction applies to new motor vehicles or equipment not in the dealer's possession at the time of notification. NADA claimed that (1) vehicles that have already been delivered and are no longer in a dealer's possession; (2) vehicles that have been sold but not yet left the dealer's possession prior to the dealer's receipt of notification; and (3) vehicles that the dealer has not yet received when it receives notification from the manufacturer are not subject to section 30120(i).

We agree with some of NADA's comments, but not others. With respect to the first, the vehicles or equipment that have already been delivered to purchasers are beyond the coverage of this statutory section, which applies only to items "in the dealer's possession," and in any event will be covered by a notification from the manufacturer to the owner. In the second situation posited by NADA, the delivery to the purchaser has not occurred. The dealer, who has possession of the vehicle or equipment, must bring it into compliance or remedy the defect before it is delivered to the purchaser. Requiring the dealer to carry out the remedy before delivering the vehicle to the purchaser will both implement the statutory text and effectuate the underlying statutory purpose. In these circumstances, there is no valid reason to excuse the dealer from remedying the defect or noncompliance in such vehicles and thereby permit the dealer to deliver unsafe vehicles to purchasers.

NADA's third category is more problematic. Section 30120((i)) states

that it applies when the manufacturer "has provided * * * notification about a new * * * vehicle or * * * item of * * * equipment in the dealer's possession at the time of notification * * *." NADA pointed out that the preamble and proposed regulatory text in the NPRM raised issues about the meaning of this phrase. The statutory text requires possession, which in our view includes both actual and constructive possession. Although we would expect that dealers would remedy vehicles and equipment that are the subject of notice but not yet in the dealer's actual or constructive possession at the time of notification, the statutory language of section 30120(i) does not impose such a requirement. Accordingly, we have modified the proposed text of § 573.11(a) to state explicitly that the prohibition applies to vehicles or equipment in the dealer's actual or constructive possession at the time of the manufacturer's notification. However, we note that manufacturers normally include "stop sale" or "stop delivery" instructions in their notifications to dealers of defects and noncompliances, and, as noted earlier, 49 U.S.C. 30112(a) contains an independent prohibition against the sale of noncompliant vehicles or equipment. Moreover, state consumer protection and tort laws may impose additional duties on dealers.

NADA also requested that proposed § 573.12 be modified to add a new subsection specifying that the prohibition does not apply if "(a) person * * * did not possess the motor vehicle equipment at the time of such notice." We have not made NADA's suggested modification because, as explained earlier in this preamble, we have concluded that the requirement for manufacturer notification does not apply to § 573.12.

In addition, NADA proposed to add a new section to § 573.12, stating that the prohibition does not apply to any item of equipment that has been installed in a new or used motor vehicle. As indicated above, we do not believe that this subsection is necessary. As we stated in the preamble to the NPRM, it is clear from the text of § 573.12(a) of the proposed rule, which specifically prohibits selling or leasing "any new or used item of motor vehicle equipment * * * for installation on a motor vehicle," that the section does not apply to equipment that already has been installed. NADA made a similar suggestion with regard to our rule regarding reporting the sale or lease of defective or noncompliant tires, 49 CFR 573.10. As in that rule (see 66 FR 38161,

⁶ Section 30119 sets out the notification procedures the manufacturer must follow.

July 23, 2001), we do not believe that such a clarification is necessary.

(3) Public Citizen did not oppose the proposed regulation, but argued that its text revealed “gaps” in the scope of the underlying statute and urged the agency to seek further legislative amendments during the forthcoming reauthorization process. Public Citizen’s suggested amendments would (1) extend 49 U.S.C. 30120(i) to used motor vehicles and motor vehicle equipment and (2) extend 49 U.S.C. 30120(j) to those who lease or rent motor vehicles. Public Citizen did not argue that we should extend the regulation in the face of admittedly absent statutory authority. Because a comment on an NPRM is not an appropriate mechanism for submitting a legislative proposal, we are not responding here to the substance of Public Citizen’s suggestion.

Regulatory Analyses and Notices

1. E.O. 12866 and DOT Regulatory Policies and Procedures

This final rule has not been reviewed under E.O. 12866, “Regulatory Planning and Review.” After considering the impacts of this rulemaking action, we have determined that the action is not “significant” within the meaning of the Department of Transportation regulatory policies and procedures. There are statutory prohibitions in place and these rules, which essentially incorporate the statutory prohibitions, will not increase the burdens on those covered by those prohibitions. The impact of this rule will be so minimal as not to warrant preparation of a full regulatory evaluation because these provisions only involve prohibitions on sales of defective and noncompliant vehicles and equipment, which are rare even absent the rule. In light of the statutory provisions, this action does not involve a substantial public interest or controversy. The rulemaking action will not have a substantial impact on any transportation safety program or on state and local governments.

2. Regulatory Flexibility Act

We have also considered the effects of this action in relation to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this rule will have no significant economic impact on a substantial number of small entities. The impact of this rule is expected to be so minimal as not to warrant preparation of a full regulatory flexibility analysis because this provision only involves prohibitions on sales or leases of vehicles or equipment that have been determined to be defective or noncompliant. The

incidence of covered sales and leases would be small even absent this rule. Moreover, although many dealers are small entities, another provision of the Safety Act requires manufacturers (or distributors) to reimburse dealers both for the value of the dealer’s labor in installing replacement parts and for a prorated portion of the manufacturer’s or distributor’s selling price, for remedying defective or noncompliant vehicles or equipment prior to sale. See 49 U.S.C. 30116.

Governmental jurisdictions will not be affected by this rule.

3. E.O. 13132 (Federalism)

E.O. 13132 requires NHTSA to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. E.O. 13132 defines the term “policies that have federalism implications” to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under E.O. 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the regulation.

The rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. Thus, the requirements of section 6 of the E.O. do not apply to this rule.

4. National Environmental Policy Act

We have analyzed this action for purposes of the National Environmental Policy Act, 42 U.S.C. 4321. The action will not have a significant effect upon the environment.

5. Civil Justice Reform

This rule does not have a retroactive or preemptive effect. Judicial review of a rule based on this proposal may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

6. Paperwork Reduction Act

NHTSA has determined that this notice will not impose a new collection of information burden within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3502.

7. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 109 Stat. 48) 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. Because a final rule based on this proposal will not have an effect of \$100 million, no Unfunded Mandates assessment has been prepared.

List of Subjects in 49 CFR Part 573

Defects, Motor vehicle safety, Noncompliance, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA is amending 49 CFR part 573 as set forth below.

PART 573—REQUIREMENTS AND PROHIBITIONS APPLICABLE TO SAFETY DEFECT AND NONCOMPLIANCE RECALLS

1. The authority citation for part 573 continues to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50

2. Revise the heading of part 573 to read as set forth above.

3. In § 573.3, revise paragraph (a) and add paragraphs (h) and (i) to read as follows:

§ 573.3 Application.

(a) Except as provided in paragraphs (g), (h), and (i) of this section, this part applies to manufacturers of complete motor vehicles, incomplete motor vehicles, and motor vehicle original and replacement equipment, with respect to all vehicles and equipment that have been transported beyond the direct control of the manufacturer.

* * * * *

(h) The provisions of § 573.11 apply to dealers, including retailers of motor vehicle equipment.

(i) The provisions of § 573.12 apply to all persons.

4. Add § 573.11 to read as follows:

§ 573.11 Prohibition on sale or lease of new defective and noncompliant motor vehicles and items of replacement equipment.

(a) If notification is required by an order under 49 U.S.C. 30118(b) or is required under 49 U.S.C. 30118(c) and the manufacturer has provided to a dealer (including retailers of motor vehicle equipment) notification about a new motor vehicle or new item of replacement equipment in the dealer's possession, including actual and constructive possession, at the time of notification that contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard issued under 49 CFR part 571, the dealer may sell or lease the motor vehicle or item of replacement equipment only if:

(1) The defect or noncompliance is remedied as required by 49 U.S.C.

30120 before delivery under the sale or lease; or

(2) When the notification is required by an order under 49 U.S.C. 30118(b), enforcement of the order is restrained or the order is set aside in a civil action to which 49 U.S.C. 30121(d) applies.

(b) Paragraph (a) of this section does not prohibit a dealer from offering the vehicle or equipment for sale or lease, provided that the dealer does not sell or lease it.

5. Add § 573.12 to read as follows:

§ 573.12 Prohibition on sale or lease of new and used defective and noncompliant motor vehicle equipment.

(a) Subject to § 573.12(b), no person may sell or lease any new or used item of motor vehicle equipment (including a tire) as defined by 49 U.S.C. 30102(a)(7), for installation on a motor vehicle, that is the subject of a decision under 49

U.S.C. 30118(b) or a notice required under 49 U.S.C. 30118(c), in a condition that it may be reasonably used for its original purpose.

(b) Paragraph (a) of this section is not applicable where:

(1) The defect or noncompliance is remedied as required under 49 U.S.C. 30120 before delivery under the sale or lease;

(2) Notification of the defect or noncompliance is required by an order under 49 U.S.C. 30118(b), but enforcement of the order is restrained or the order is set aside in a civil action to which 49 U.S.C. 30121(d) applies.

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Jeffrey W. Runge,
Administrator.

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