

Vehicles that are manufactured in two or more stages or that are altered (within the meaning of 49 CFR § 567.7) after having previously been certified in accordance with Part 567 of this chapter are not subject to the requirements of S7.1 through S7.5.

* * * * *

PART 590—TIRE PRESSURE MONITORING SYSTEM PHASE-IN REPORTING REQUIREMENTS

3. The authority citation for Part 590 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.

4. Section 590.3 is revised to read as follows:

§ 590.3 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less, except those vehicles with dual wheels on an axle.

(b) The reporting requirements of this part do not apply to small volume manufacturers, which are excluded from the compliance during the phase-in period under S7.6 of Standard No. 138 (49 CFR 571.138), or to final-stage manufacturers and alterers, which are excluded from compliance during the phase-in period under S7.7 of Standard No. 138 (49 CFR 571.138).

Issued: January 3, 2003.

Noble Bowie,

Director, Office of Planning and Consumer Standards.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 579

[Docket No. NHTSA 2001-10773; Notice 4]

RIN 2127-AJ04

Reporting of Information and Documents About Foreign Safety Recalls and Campaigns Related to Potential Defects

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

ACTION: Final rule.

SUMMARY: This document responds to a petition for reconsideration of the final

rule published on October 11, 2002, that implemented the foreign safety recall and safety campaign reporting provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. In response to the petition, we are correcting two provisions to correspond with statements made in the preamble to the final rule. We are also amending the date on which the first annual list of substantially similar vehicles must be submitted, and specifying how reports may be submitted electronically.

DATES: Effective Date: The effective date of this final rule is February 27, 2003.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Jonathan White, Office of Defects Investigation, NHTSA (phone: 202-366-5226). For legal issues, contact Taylor Vinson, Office of Chief Counsel, NHTSA (phone: 202-366-5263).

SUPPLEMENTARY INFORMATION:

I. Background

On October 11, 2002, NHTSA published a final rule implementing the foreign safety recall and safety campaign reporting provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, established by 49 U.S.C. 30166(l) (67 FR 63295). See 49 CFR part 579, particularly subpart B. The reader is referred to that document, and the prior Notice of Proposed Rulemaking (NPRM) (66 FR 51907, October 11, 2001) for further information.

A timely petition for reconsideration of the rule was filed by the Alliance of Automobile Manufacturers (the "Alliance").

To address foreign defect reporting and other issues, the TREAD Act (Pub. L. 106-414) was enacted on November 1, 2000. Section 3(a) of the TREAD Act amended 49 U.S.C. 30166 to add a new subsection (l), which reads as follows:

(l) Reporting of Defects in Motor Vehicles and Products in Foreign Countries—

(1) Reporting of Defects, Manufacturer Determination.—Not later than 5 working days after determining to conduct a safety recall or *other safety campaign* in a foreign country on a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States, the manufacturer shall report the determination to the Secretary.

(2) Reporting of Defects, Foreign Government Determination.—Not later than 5 working days after receiving notification that the government of a foreign country has determined that a safety recall or *other safety campaign* must be conducted in the foreign country on a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle

equipment offered for sale in the United States, the manufacturer shall report the determination to the Secretary.

(3) Reporting Requirements.—The Secretary shall prescribe the contents of the notification required by this subsection. (emphasis supplied)

The final rule adopted the following definition of "other safety campaign:"

Other safety campaign means an action in which a manufacturer communicates with owners and/or dealers in a foreign country with respect to conditions under which motor vehicles or equipment should be operated, repaired, or replaced that relate to safety (excluding promotional and marketing materials, customer satisfaction surveys, and operating instructions or owner's manuals that accompany the vehicle or child restraint system at the time of first sale); or advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment.

II. The Petition for Reconsideration

The Alliance petitioned for reconsideration of the inclusion of "advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment" in the definition of "other safety campaign." It cited our comments in the preamble to the final rule (67 FR at 63299) regarding our definition of "customer satisfaction campaign * * *" in the early warning reporting final rule (67 FR 45822), in which we discussed our specific exclusion from that definition of "advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment." At the end of this discussion, we stated "We are adding the same exclusions to the definition of "other safety campaign." We inadvertently omitted to do so by placing the closing parenthesis after "sale" rather than "equipment." We are revising the definition of "other safety campaign" to expand the exclusion as we had originally intended. Thus, we grant the petition by the Alliance on this issue.

The Alliance also pointed out another instance in which the regulatory text did not reflect a statement made in the preamble of the final rule. There, we stated our intention to exempt from reporting "any safety campaign involving substantially similar motor vehicle equipment that does not perform the same function in vehicles or equipment sold or offered for sale in the United States." 67 FR 63306. However, the regulatory text, at 49 CFR 579.11(d)(2), provides an exemption only if "the component or system that gave rise to the foreign recall or other campaign does not perform the same function in any vehicles or equipment sold or offered for sale in the United

States.” The Alliance asks that the phrase “substantially similar” be added before “vehicles” to reflect the preamble statement, and we are so doing.

III. The Initial List of Substantially Similar Vehicles and Equipment for 2003 Must Be Submitted No Later Than 30 Days After Publication of This Rule

Section 579.11(e) requires a manufacturer of motor vehicles to provide an annual list of vehicles that it sells or plans to sell in a foreign country that it believes are identical or substantially similar to motor vehicles it sells or offers for sale, or plans to sell, in the United States in the following year, which identifies each such identical or substantially similar vehicle sold or offered for sale in the United States. The list must be submitted to NHTSA not later than November 1 of each year, as we proposed in the NPRM. 66 FR at 51918.

However, we were unable to complete and publish the foreign defect reporting final rule until October 11, 2002, and it was not effective until 30 days after publication, November 12, 2002. Thus, the first November 1 following publication of the rule was 2002, but the first November 1 following its effective date is 2003. Some vehicle manufacturers phoned during October 2002, after publication of the final rule, to confirm that they would not have a legal reporting obligation as of November 1, 2002, and we confirmed that interpretation. However, the purposes of 49 U.S.C. 30166(l) cannot be fully realized if we defer submission of the initial list of substantially similar vehicles until November 1, 2003. A representative of the Alliance has informed us that most if not all of its member companies have been putting together such a list and could provide it within 30 days of publication of a notice requiring it. Thus, we are revising Section 579.11(e) to add a new sentence at the end, to read as follows:

Not later than 30 days after January 28, 2003, each manufacturer to which this paragraph applies shall submit an initial annual list of vehicles for calendar year 2003 that meets the requirements of this paragraph.

IV. Reports May Be Submitted Electronically

In a telephone call, Michael Grossman asked on behalf of Automobili Lamborghini whether reports required by Section 579.11, Reporting responsibilities, could be submitted electronically. Section 579.6, Address for submitting reports and other information, contains both a general requirement that reports required by

part 579 must be addressed to the Associate Administrator for Enforcement, and a specific requirement with respect to the information, documents, and reports that are to be submitted to NHTSA’s early warning data depository under subpart C of part 579. However, it is silent on the manner in which reports are to be filed for purposes of foreign defect reporting.

With one exception, reports of foreign recalls and safety campaigns do not include copies of materials related to the manufacturer’s foreign campaign, and are a manufacturer’s compilation of the information required by the regulation. There is no reason why such a report may not be filed by ordinary mail, or by facsimile transmission, or e-mail (“electronically”). However, when a foreign government has ordered a manufacturer to conduct a campaign, the manufacturer must file a copy of that order with its report, and a translation as well if the foreign government’s order is in a language other than English. We would accept a scanned copy of the order and translation attached to an e-mail report (as well as a hard copy by mail or fax). Accordingly, we are amending Section 579.6 to provide guidance for the electronic submission of foreign defect reports, with appropriate fax and e-mail addresses. These are respectively (202) 366-7882, and *foreign_recalls@nhtsa.dot.gov*. e-mail submissions under Section 579.5 should be sent to *tsb@nhtsa.dot.gov*.

V. Interpretation of “Safety Guideline”

Section 579.4(c) defines “safety recall,” in part, as involving a “failure to comply with an applicable safety standard or guideline.” The Truck Manufacturers Association (TMA) asked for confirmation of its understanding that “the agency incorporated the term guideline into this definition in order to accommodate any foreign country that may have applicable safety compliance rules that are not specifically identified as standards.”

As we noted in the preamble to the final rule, “We proposed to characterize a ‘safety recall’ abroad as involving a determination * * * that there is a problem * * * that relates to motor vehicle safety (e.g., a defect or noncompliance with a local safety standard or governmental guideline) * * * (p. 63298). There were no comments about the term “guideline” in the comments submitted on the NPRM for foreign defect campaign reporting. “Standard” is a broad term and is used in various ways in the United States. Manufacturers are required to comply with Federal motor vehicle safety

standards, but are not required to comply with a Society of Automotive Engineers (SAE) standard (assuming that standard has not been incorporated by reference into the FMVSS). In that sense, the SAE standard is a “guideline.” We view TMA as essentially correct in interpreting the term as “applicable safety compliance rules that are not specifically identified as standards.” However, we do not find it necessary to define “guideline” because the important issue in this context is whether a campaign is being conducted because there has been a determination by the manufacturer or a foreign government that a safety guideline has not been met. The touchstone is the safety-relatedness of the problem to the standard or the guideline.

VI. Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures. This document was not reviewed under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. See 67 FR 63309 for discussion of final rule.

Regulatory Flexibility Act. We have also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this rulemaking action does not have a significant economic impact upon a substantial number of small entities. See 67 FR 63309 for discussion of final rule.

Executive Order 13132 (Federalism). This final rule regulates the manufacturers of motor vehicles and motor vehicle equipment, will not have substantial direct effect 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.

Civil Justice Reform. This final rule will not have a retroactive or preemptive effect, and judicial review of it 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.

List of Subjects in 49 CFR Part 579

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

For the reasons set out in the preamble, 49 CFR part 579 is amended as follows:

PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

1. The authority citation for part 579 continues to read as follows:

Authority: Sec. 3, Pub. L. 106-414, 114 Stat. 1800 (49 U.S.C. 30102-103, 30112, 30117-121, 30166-167); delegation of authority at 49 CFR 1.50

2. Section 579.4 is revised by amending the term "other safety campaign" to read as follows:

§ 579.4 Terminology.

(c) Other terms. * * *

Other safety campaign means an action in which a manufacturer communicates with owners and/or dealers in a foreign country with respect to conditions under which motor vehicles or equipment should be operated, repaired, or replaced that relate to safety (excluding promotional and marketing materials, customer satisfaction surveys, and operating instructions or owner's manuals that accompany the vehicle or child restraint system at the time of first sale; or advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment).

3. Section 579.6 is revised to read as follows:

§ 579.6 Address for submitting reports and other information.

(a) Except as provided by paragraph (b) of this section, information, reports, and documents required to be submitted to NHTSA pursuant to this part may be submitted by mail, by facsimile, or by e-mail. If submitted by mail, they must be addressed to the Associate Administrator for Enforcement, National Highway Traffic Safety Administration (NHTSA), 400 7th Street, SW., Washington, DC 20590. If submitted by facsimile, they must be addressed to the Associate Administrator for Enforcement and transmitted to (202) 366-7882. If submitted by e-mail, submissions under subpart B of this part must be submitted to *foreign_recalls@nhtsa.dot.gov* and submissions under § 579.5 must be submitted to *tsb@nhtsa.dot.gov*.

(b) Information, documents and reports that are submitted to NHTSA's early warning data repository must be submitted in accordance with § 579.29 of this part. Submissions must be made by a means that permits the sender to verify that the report was in fact

received by NHTSA and the day it was received by NHTSA.

4. Section 579.11(d)(2) is revised and paragraph (e) is amended by adding a sentence at the end thereof. The revision and amendment read as follows:

§ 579.11 Reporting responsibilities.

(d) Exemptions from reporting. * * *

(2) The component or system that gave rise to the foreign recall or other campaign does not perform the same function in any substantially similar vehicles or equipment sold or offered for sale in the United States; or

(e) Annual list of substantially similar vehicles. * * * Not later than 30 days after January 28, 2003, each manufacturer to which this paragraph applies shall submit an initial annual list of vehicles for calendar year 2003 that meets the requirements of this paragraph.

Issued on: January 16, 2003.

Jeffrey W. Runge,
Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020409080-3013-07 ; I.D. 101802B]

RIN 0648-AP78

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Regulations Governing Northeast Multispecies and Monkfish Days-at-Sea

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule implementing a regulatory amendment to correct minor oversights in the August 1, 2002, interim final rule that implemented additional restrictions to reduce overfishing on species managed under the Northeast (NE) Multispecies Fishery Management Plan (FMP). The intent of this regulatory amendment is to revise monkfish days-at-sea (DAS)

regulations in order to provide vessels possessing limited access Category C or D monkfish permits the opportunity to fish their full allocation of up to 40 monkfish DAS, regardless of the amount of NE multispecies DAS available to an individual vessel as of August 1, 2002. This regulatory amendment also revises ambiguous language to clarify that a vessel fishing under a Southern New England (SNE) and Mid-Atlantic (MA) Yellowtail Flounder Possession/Landing Letter of Authorization (LOA) may fish in the Gulf of Maine (GOM) or Georges Bank (GB) Regulated Mesh Areas (RMAs), provided the vessel abides by the more restrictive yellowtail flounder possession limits of the SNE and MA RMAs north of 40°00' N. lat.

DATES: Effective January 28, 2003.

ADDRESSES: Copies of the Regulatory Impact Review (RIR) prepared for this action are available from the Regional Administrator at the following address: National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930. This document is also accessible via the Internet at <http://www.nero.nmfs.gov>.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Policy Analyst, phone: 978-281-9103, fax: 978-281-9135, e-mail: Allison.Ferreira@noaa.gov

SUPPLEMENTARY INFORMATION:

Background

NMFS published an interim final rule on August 1, 2002 (67 FR 50292), implementing the Settlement Agreement Among Certain Parties (Settlement Agreement), which was ordered by the U.S. District Court for the District of Columbia (Court) as a result of *Conservation Law Foundation et al. v. Evans et al.* The objective of the interim final rule was to reduce overfishing consistent with and pursuant to section 305(c)(3) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), while Amendment 13 to the FMP is being developed. However, following the publication of the interim final rule, some minor oversights in the rule became apparent. As a result, NMFS published a proposed rule (67 FR 70570) on November 25, 2002, for a regulatory amendment to correct these minor oversights.

The measures contained in this final rule are unchanged from those published in the proposed rule and are summarized in the following paragraphs. A complete discussion of the revisions being made to the August 1, 2002, interim final rule through this regulatory amendment, and the rationale for these revisions were