reallots Channel 288C2 from Laramie, Wyoming, to Timnath, Colorado, as that community's first local aural transmission service. Prior to submission of its rule making request, petitioner's authorization for Station KIMX(FM) was amended by grant of a one-step application to specify operation on Channel 288C2 at Laramie, Wyoming, instead of Channel 288C3. The FM Table of Allotments has not been amended previously to reflect the higher class substitution at Laramie. Additionally, the authorization for Station KIMX(FM) is modified, as requested. *See* 68 FR 1586 (2003), January 13, 2003. Coordinates used for Channel 288C2 at Timnath, Colorado, are 40–44–31 NL and 105–14–25 WL, representing a transmitter site 31.9 kilometers (19.8 miles) northwest of the community. The specified site location is within the protected areas of the Table Mountain Radio Receiving Zone, Boulder County, Colorado, and requires compliance with section 73.1030(b) of the Commission's rules. With this action, this docketed proceeding is terminated.

DATES: Effective May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–365, adopted April 2, 2003, and released April 4, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Timnath, Channel 288C2.

■ 3. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 288C3 at Laramie.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–9167 Filed 4–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1076; MM Docket No. 01–62, RM–10053, RM–10109, RM–10110, RM–10111, RM–10112, RM–10113, RM–10114, RM–10116]

Radio Broadcasting Services; Ardmore, AL, New Hope, AL, Pulaski, TN and Scottsboro, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: This document denies a Petition for Reconsideration and Joint Request for Approval of Option Agreement filed by STG Media, LLC and Pulaski Broadcasting, Inc. directed to the *Report and Order* in this proceeding which allotted Channel 278A to New Hope, Alabama. In doing so, it denied a proposed substitution of Channel 252C1 for Channel 252A at Pulaski, Tennessee, reallotment of Channel 252C1 to Ardmore, Alabama, and modification the license of Station WKSR to specify operation on Channel 252C1 at Ardmore. *See* 67 FR 59213, September 20, 2002. STG Media was the proponent for the Channel 278A allotment at New Hope, and Pulaski Broadcasting is the licensee of Station WKSR, Pulaski, Tennessee. In the Petition for Reconsideration, STG Media withdraws its interest in the Channel 278A allotment at New Hope, contingent upon approval of the Option Agreement by which STG Media would acquire Station WKSR and that Station WKSR be licensed as a Class C1 facility licensed to Ardmore. In denying the Petition for Reconsideration, the Commission determined that the Option Agreement was inconsistent with Section 1.420(j) of the Rules. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 01–62, adopted April, 2 2003, and released April 4, 2003. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals ll, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202)863–2898, or via e-mail *qualixint@aol.com.*

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–9163 Filed 4–14–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 573, 577, 579

[Docket No. NHTSA 2001–8677; Notice 4]

RIN 2127–AI92

Reporting of Information and Documents About Potential Defects; Defect and Noncompliance Reports

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

ACTION: Final rule; partial response to petitions for reconsideration.

SUMMARY: This document responds to some of the issues raised by petitions for reconsideration of some of the provisions of the final rule published on July 10, 2002, that implemented the early warning reporting provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Under this rule, motor vehicle and motor vehicle equipment manufacturers will be required to report information and to submit documents about customer satisfaction campaigns and other activities and events that may assist NHTSA to promptly identify defects related to motor vehicle safety. The issues responded to in this document primarily relate to field reports, one-time historical reports, and multiple ''substantially similar'' platforms.

This document also clarifies several other provisions of the final rule. The agency's response to petitions for reconsideration of other provisions of the final rule will appear in a future notice.

DATES: Effective Date: The effective date of the amendments made by this final rule is May 15, 2003. Applicability Dates: Various provisions of this final rule are applicable on the dates stated in the regulatory text. *See* 49 CFR 579.28. Petitions for Reconsideration: Petitions for reconsideration of amendments made by this final rule must be received not later than May 30, 2003.

ADDRESSES: Petitions for reconsideration of any amendments made by this final rule should refer to the docket and notice number set forth above and be submitted to Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, with a copy to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. *See* section VI ''Privacy Act Statement'' for electronic access and filing addresses.

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 July 10, 2002, NHTSA published a final rule implementing the early warning reporting (EWR) provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, established by 49 U.S.C. 30166(m) (67 FR 45822). The reader is referred to that document, and the prior Notice of Proposed Rulemaking (NPRM) (66 FR 66190) for further information.

Petitions for reconsideration of the EWR rule were filed on or before August 26, 2002, by the Alliance of Automobile Manufacturers (the Alliance), General Motors Corporation (GM), the National Association of Trailer Manufacturers (NATM), the National Truck Equipment Association (NTEA), the Recreational Vehicle Industry Association (RVIA), and the Juvenile Products Manufacturers Association (JPMA).

GM and NATM filed untimely supplemental comments on October 15, 2002, and a petition for rulemaking was filed by the National Trailer Dealers Association (NTDA) on November 1, 2002, relating to the threshold for full reporting. On November 23, 2002, NATM filed a petition for rulemaking to delay the initial reporting date under the rule, as did NTEA and RVIA jointly, on December 5, 2002. Additional untimely comments were filed by Public Citizen on November 26, 2002, and Stephen E. Selander on November 27, 2002. To the extent appropriate, given their untimeliness, we will address the late-filed comments in a future notice.

On October 10, 2002, the Alliance wrote to NHTSA requesting that certain issues it had raised in its petition be treated on a prioritized basis. It separated its issues into three groups and explained that ''Generally, those issues given a priority '1' rating are those that require resolution to allow Alliance members to effectively plan and efficiently execute actions needed to develop compliant reporting systems.'' These issues concerned field reports, in-plant inspection records and other documents, one-time historical reports, and multiple ''substantially similar'' platforms. After reviewing the Alliance's comments and letter of October 10, the agency has concluded that granting this request may aid in an orderly implementation of the final rule and is issuing this notice addressing the Alliance's priority ''1'' issues.

We will address the Alliance's priority ''2'' and ''3'' issues in the future. We will also address other issues that were timely raised by the other petitioners for reconsideration.

II. Petitions Regarding Field Reports

The final rule defined ''field report'' as a ''communication * * * regarding the failure, malfunction, lack of durability, or other performance problem of a motor vehicle or motor vehicle equipment * * * regardless of whether verified or assessed to be lacking in merit. * * *.'' It excluded ''a document contained in a litigation file that was created after the date of the filing of a civil complaint that relates to the specific vehicle, component, or system at issue in the litigation.'' This reflected an attempt both to recognize the work product exclusion under the rules of evidence and to address it in a simplified manner based on the existence of a litigation file. We thought that this approach would have appeal because overall it would provide approximately the same coverage as a rule strictly based on the work product case law and would not require document by document review. The Alliance, however, asserted that this exclusion is too narrow and should be broadened to state that the definition ''does not include documents that were prepared in anticipation of litigation.'' Similarly, GM commented that ''documents prepared at the request of counsel, whether outside counsel or in-house attorneys, are also privileged if the work was done in anticipation of a lawsuit being filed.'' It asked the agency ''to reconsider its decision to use the filing of a civil complaint as a litmus test for determining whether or not a document is privileged.'' As GM recognized in a comment, the vast majority of field reports do not have any work product or privilege issues associated with them.

There is no need for this notice to provide a detailed discussion of the work product doctrine, given the facts that only a small minority of field reports would be considered work product and that the doctrine is well established under Federal law. We refer the reader generally to Edna Selan Epstein, *The Attorney—Client Privilege and the Work Product Doctrine* (3d Ed. 1997), published by the American Bar Association. In short, the work product exclusion applies to (1) documents in the broad sense of the word, (2) prepared in anticipation of litigation, where there is a reasonable prospect of litigation, and not for some other purpose such as a business practice, and (3) prepared or requested by an attorney or an agent for an attorney.

The Alliance's proposed modification to the definition of field report presents several problems. First, it does not expressly recognize that two mutually exclusive options have been considered: (1) A simplified approach based on the existence of a litigation file, as published on July 10, 2002, and (2) an approach based on the work product case law, which was advanced by the petitions for reconsideration. We will, as suggested by the petitions, adopt the latter approach in lieu of the simplified approach. Second, the Alliance's recommended exclusion is too broad, since it does not include some required elements of the work product doctrine. For example, more is required to meet the criteria for the exclusion than that a document has been created in anticipation of litigation.

Finally, we wish to underscore that the document truly must have been prepared ''in anticipation of litigation.'' The Alliance's comment indicates that, in its opinion, counsel may anticipate litigation ''after a claim is made, but prior to the filing of a lawsuit, or after the filing of a ''notice'' that a ''claim'' might be asserted.'' GM suggested that the work product exclusion cover reports prepared in anticipation of litigation after a claim has been filed and, although it would be less frequent, before a claim has been filed. In practice, reports prepared after a claim has been filed ordinarily would be more likely to be covered by the work product exclusion than reports prepared after a ''notice'' was received by a manufacturer. Under the early warning rule, § 579.4(c), ''claim'' includes a

demand in the absence of a lawsuit and a complaint initiating a lawsuit. The definition of ''notice'' refers to ''a document * * * that does not include a demand for relief.'' We expect that many notices would not satisfy the requirements for the work product exclusion.

Accordingly, we have granted the petitions for reconsideration on this issue, and are amending the definition of ''field report'' to delete the final phrase ''but does not include a document contained in a litigation file that was created after the date of the filing of a civil complaint that relates to the specific vehicle component, or system at issue in the litigation.'' In its place we are adding the phrase ''but does not include a document covered by the attorney-client privilege or the work product exclusion.'' We are adding a separate definition of ''work product'' as meaning ''a document in the broad sense of the word, prepared in anticipation of litigation where there is a reasonable prospect of litigation and not for some other purpose such as a business practice, and prepared or requested by an attorney or an agent for an attorney.''

GM commented that, were we to exclude field reports prepared in anticipation of litigation, its burden of preparing the one-time historical report would be substantially lessened. The agency's amendment, therefore, will lessen the burden on all manufacturers who must prepare the historical report (see discussion in Section IV below on historical reports).

Further exclusions were also requested. GM and the Alliance asked the agency to clarify that field reports do not include ''data concerning vehicles that are still within a manufacturer's direct control'' and, consistent with defect notification requirements (§ 573.3(a)), only include reports on ''vehicles and equipment that have been transported beyond the direct control of the manufacturer.'' The commenters feared that ''field report'' could be interpreted to include ''quality data from assembly plants.''

We have considered these comments. We agree that the use of an existing regulatory phrase, ''beyond the direct control of the manufacturer,'' would be consistent with what we intended in requiring reports on field reports. By adding the words ''with respect to a vehicle or equipment that has been transported beyond the direct control of the manufacturer,'' we clarify that quality data from assembly plants or port inspections would not be considered field reports.

Under the EWR rule, manufacturers of more than 500 motor vehicles per year must provide NHTSA with numbers of all field reports and copies of some field reports. The term ''field report'' is defined to include ''a communication * * * by an entity that owns or operates a fleet.'' ''Fleet,'' in turn, is defined as ''more than ten motor vehicles of the same make, model, and model year.'' The Alliance asserted that ''it is usually not obvious on the face of a written complaint from a customer or other person making the complaint whether that customer owns ten or more vehicles of the same make, model, and model year,'' because manufacturers do not know on any systematic basis how many vehicles a customer owns, with the possible exception of large fleets, such as rental car firms. In its view, it would be burdensome ''to require each manufacturer to check the ownership status of each customer who makes a written complaint * * * to determine whether that customer owns ten or more motor vehicles of the same make/model/year.''

We understand the Alliance's point, and want to clarify that manufacturers are obliged to provide fleet report information only for those fleets known to it. This is consistent with the TREAD Act's provision (49 U.S.C. 30166(m)(4)(B)) that a manufacturer does not have to maintain or submit records regarding information not in its possession. Accordingly we are amending the definition of ''field report'' to include written reports from ''an entity known to the manufacturer as owning or operating a fleet.''

The Alliance asked for confirmation that NHTSA will not consider any internal company correspondence about the subject of a field report, subsequent to the filing of the report, to be itself a reportable field report. The ''field'' is any location where a vehicle or equipment beyond the direct control of a manufacturer is located. Thus, we do not view the field as encompassing the company itself or its internal correspondence about a field report after it has been filed. However, our definition of ''field report'' would cover any further communication from the field in response to inquiries from the company for clarifications, further data, and the like on a field report that has been filed.

In light of the discussion above, we are redefining field report as follows:

Field report means a communication in writing, including communications in electronic form, from an employee or representative of a manufacturer of motor vehicles or motor vehicle equipment, with respect to a vehicle or equipment that has been transferred beyond the direct control of the manufacturer, a dealer, an authorized service facility of such manufacturer, or an entity known to the manufacturer as owning or operating a fleet, to a manufacturer, regarding the failure, malfunction, lack of durability, or other performance problem of a motor vehicle or motor vehicle equipment, or any part thereof, produced for sale by that manufacturer, regardless of whether verified or assessed to be lacking in merit, but does not include a document covered by the attorney-client privilege or the work product exclusion.

III. Petitions Regarding One-Time Historical Reporting

Section 579.28(c) requires that certain manufacturers file separate reports providing information on the numbers of warranty claims or warranty adjustments and the number of field reports that they received in each calendar quarter from April 1, 2000, to March 31, 2003, for vehicles manufactured in model years 1994 through 2003, and for child restraint systems and tires manufactured after April 1, 1998, classified by the affected system or component, *e.g.*, electrical system, seat belts. The final rule defines ''warranty claim'' to include a claim paid by a manufacturer pursuant to good will. ''Good will,'' in turn, is defined as ''the repair or replacement of a motor vehicle or item of motor vehicle equipment, including labor paid for by the manufacturer, at least in part, when the repair or replacement is not covered under warranty, or under a safety recall reported to NHTSA under part 573 of this chapter.''

The Alliance sought reconsideration of ''the requirement to count and categorize historic field reports into the reporting categories established in the final rule,'' as well as ''goodwill'' claims outside the warranty system. Even though the final rule does not require submission of hard copies of field reports for the one-time historical reporting, the Alliance asserted that the burden to review and categorize historic field reports nevertheless remains substantial, ''and falls disproportionately on those Alliance members whose field reports are not already coded or retained in a text-searchable format.'' The Alliance also asserted that requiring manufacturers to search through historic files ''to locate any 'goodwill' claims that were paid outside the warranty system or settlements of 'breach of warranty' claims/lawsuits'' would provide only a minimal benefit to the agency. The Alliance did not question the inclusion of these claims once reporting has begun. According to its comment, ''goodwill'' claims handled outside the

warranty system are, by definition, not in the already-coded warranty base, nor are settled claims for breach of warranty.

Based on the cost estimates submitted by the Alliance in response to the NPRM, the agency estimated the burden upon industry that one-time historical reporting of field reports might create. That burden was not very significant, compared to the burden that would have existed under the NPRM proposal regarding historical reporting. After the issuance of the final rule, the Alliance and GM now claim that the burden estimate that they previously submitted is substantially less than their real costs. Each argued that the effort required to extract the information is too high for the value of the reports rendered because the information will be obsolete in a short while. We disagree with that argument. We explained in the preamble to the July 10, 2002, final rule why we need to receive historic information. *See* 67 FR 45863. In short, we need historic information to be able to recognize changes in trends of experience with potential problems. We note that no commenter provided any specific information on the data, data systems, or categorization issues it may have or the numbers of these that would create the allegedly undue burden.

On the other hand, we agree to the Alliance's request that we exclude from historic reporting warranty claims that were not memorialized in a manufacturer's warranty system. Accordingly we are amending § 579.28(c) to require only reporting of warranty claims that are recorded in a manufacturer's warranty system. This will apply not only to warranty claims of motor vehicle manufacturers but also to warranty claims of child restraint systems, and warranty adjustments of tire manufacturers.

JPMA expressed a concern about the potential burden that the one-time historical reporting requirement of § 579.28(c) might cause its six members. In the context of this concern, we want to correct an inadvertent mistake in the final rule with respect to the historical reporting requirements applicable to child restraint system manufacturers. Based on JPMA's statement in its response to the NPRM that child restraint system manufacturers combine their warranty claim data and consumer complaint data in a single database that would be difficult to segregate, in the final rule we granted JPMA's request that manufacturers of child restraint systems be allowed to report these two categories of data together. *See* § 579.25(c) and 67 FR at 45850–51. As we made clear in the preamble to the final rule, the purpose of requiring one-time reporting of historical data was to allow the agency to compare current data with past data to identify any unusual or unexpected data points that might indicate the existence of a safety problem. Unfortunately, the language of § 579.28(c) did not reflect the fact that child restraint system manufacturers would prospectively be combining consumer complaint data with warranty data. (Similarly, as pointed out by RMA in its petition, that section did not reflect the fact that tire manufacturers will not be submitting field report data in their forthcoming quarterly reports, so there is no need to require them to submit historical data on field reports.) Therefore, we are revising § 579.28(c) to apply appropriate historical data reporting requirements for vehicle, child restraint system, and tire manufacturers, respectively.

JPMA asserted that NHTSA had greatly underestimated the total industry time (2,540 hours) and expense ($117,531) to comply with § 579.28(c) as originally adopted. It estimated that its members alone would spend over 38,500 hours and $2 million to comply. The reason for this, according to JPMA, is that the industry's records are not automated to the degree that would permit easy preparation of this one-time report. In part, this is due to the fact that, as discussed above, customer complaints and warranty claims are ordinarily not differentiated and are maintained in the same database.

We believe that it is important to have historical information with respect to child restraint systems to permit us to identify potential safety problems. Historical field report data would not, in itself, allow a sufficient comparison. Therefore, to allow us to compare similar data over time, and to relieve the burden asserted by JPMA, we are amending sec. 579.28(c) to require child restraint system manufacturers to provide historical reports on the numbers of warranty claims ''and consumer complaints (added together).''

IV. Petitions Regarding Multiple ''Substantially Similar'' Platforms

The Alliance sought clarification on how it should handle the reporting of a foreign fatality in a vehicle that has more than one ''substantially similar'' platform in the United States. The Alliance asserted, ''It would seem redundant and confusing to report the single fatality on each of the quarterly reports of all of the ''substantially similar'' U.S. platforms.'' It suggested that a manufacturer ''should be permitted to choose one of the ''substantially similar'' platforms and report the foreign fatality on that platform's quarterly report.''

We are rejecting this request. In their review of information to decide whether to open a defect investigation about a particular problem in a specific make/model of vehicles in the United States, the agency's screeners need to be aware of relevant information about the make/model. If a manufacturer could choose to report a relevant foreign fatality in its submission for only one U.S. model, the screeners would not be aware of that fatality when considering a different model. Moreover, the Alliance has not shown that this is a real problem and that if it does arise, that it is likely to occur with any significant frequency. We believe that a foreign fatality involving a foreign vehicle that has more than one substantially-similar U.S. platform will occur only infrequently, as there has been no showing that the number of multiple substantially similar platforms is other than small.

V. Miscellaneous Amendments; Clarifications

Following publication of the rule, we received a number of telephone calls asking questions about the meaning of various provisions. In some cases, this has prompted our consideration of whether some clarifications are needed.

We had a telephone call from a manufacturer of ambulances and buses asking for a clarification of its reporting duties. The manufacturer's annual ambulance production consisted of fewer than 500 units that are defined as light vehicles and more than 500 that are defined as medium-heavy vehicles (its bus production also exceeded 500 units). Section 579.27(a), providing limited reporting if annual vehicle production is fewer than 500 vehicles, ''applies to all manufacturers of motor vehicles that are not required to file a report pursuant to §§ 579.21 through 579.24 of this part.'' Because the manufacturer is required to file reports on its medium-heavy ambulances and buses pursuant to § 579.22, it questioned whether it was eligible to report on its light duty ambulances under § 579.27(a), or whether reporting for these vehicles should be included with reporting for the medium-heavy ambulances under § 579.22. We intend that § 579.27 apply to any vehicle category for which production is fewer than 500 units and we informed the manufacturer that it will file reports under § 579.27 for its light vehicle ambulances (however, its information on medium-heavy ambulances would be reported cumulatively with its information on buses). In view of the manufacturer's uncertainty, we are

amending § 579.27(a) to state that it ''applies to all manufacturers of vehicles with respect to vehicles that are not covered by reports on light vehicles, medium-heavy vehicles and buses, motorcycles, or trailers submitted pursuant to §§ 579.21 through 579.24 of this part.''

Another manufacturer, also in a telephone call, raised the question of whether the reporting obligations encompassed vehicles that it leased or only those vehicles that it ''manufactured for sale, offered for sale, imported, or sold in the United States.'' We intended to cover all vehicles that the manufacturer produced which are operated on the public roads in the United States; *i.e.*, which have been introduced into interstate commerce, even if these are for lease or the manufacturer's own use. Accordingly, we are amending the introductory sentence of each of §§ 579.21–579.26 to remove the phrase quoted above and to replace it with the phrase that appears in 49 U.S.C. 30112(a): ''manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States.''

The definition of ''seats'' includes a reference to ''S9 of 209.'' There is no paragraph S9 in Federal Motor Vehicle Safety Standard No. 209, and we are removing the erroneous reference to S9 from the definition of ''seats.''

We note that the TREAD Act reimbursement final rule adopted a definition of ''rear-facing infant seat'' that differs from the one we adopted in the early warning final rule. See our full discussion of this issue at 67 FR 64056, October 17, 2002. In that discussion, we announced that we would adopt the reimbursement rule definition when we responded to petitions for reconsideration of the EWR rule, and we are amending the definition of ''rear-facing infant seat'' accordingly. We also note that the definition of ''minimal specificity'' refers to ''a child seat,'' rather than to the defined term ''child restraint system'' used elsewhere in the regulation. We are amending the definition of ''minimal specificity'' to replace ''child seat'' with ''child restraint system.''

Washington attorney Jim Pitts called our attention to the fact that there is no definition of ''model year'' for tires, yet § 579.26 requires tire manufacturers to provide information on tire model years. He found confusing the requirement that information be provided for ''the four calendar years prior to the earliest model year in the reporting period * * *.'' The definition of ''model year'' provides that ''For equipment, it means the year that the item was produced.'' However, as Mr. Pitts pointed out, the definition of ''equipment'' in the EWR final rule does not include tires. Accordingly, we are amending the definition of ''model year'' to clarify that ''For equipment and tires, [model year] means the year that the item was produced.'' As for the phrase that Mr. Pitts found confusing, we are amending § 579.26 to require information to be provided for ''the four calendar years prior to the reporting period.''

Section 579.5(d) requires each monthly submission of documents pertaining to notices, bulletins, customer satisfaction campaigns, consumer advisories, and other communications to be accompanied by a document identifying each communication in the submission by name or subject matter and date. The Alliance objected to this requirement as unduly burdensome. It commented that NHTSA has not required such a cover letter for these documents in the past and that the agency has not demonstrated a need to impose this new obligation. We have reviewed the past submissions of these and similar documents, and have concluded that we do not need the cover document to achieve our goals under the EWR rule. Accordingly, we are amending § 579.5(c) to remove the second sentence, which contains this requirement.

The amendments published on July 10, 2002, were effective on August 9, 2002, with early warning reporting to begin in 2003. Section 579.5(b) requires manufacturers to furnish NHTSA with a copy of certain documents relevant to early warning reporting, *e.g.*, communications relating to customer satisfaction campaigns, consumer advisories, recalls, or other safety activity involving the repair or replacement of motor vehicle or motor vehicle equipment. Section 579.5(d) requires information furnished under § 579.5(a) (former § 573.8) and § 579.5(b) to be submitted within five working days after the end of the month in which it was issued. Washington attorney, Carey Fleming, noted in a phone call that this requirement is inconsistent with NHTSA's preamble statement that documents furnished under § 579.5(b) ''will be due within 5 working days after the end of each month beginning with April 2003'' (p. 45864). Mr. Fleming is correct, and we are amending § 579.5(d) in accordance with our preamble statement to clarify that a document covered under § 579.5(b) and issued before April 1, 2003, need not be submitted. The first submittals under subsection (b) will be documents issued during April 2003 which will be due not later than May 7, 2003 (*i.e.*, the fifth working day after April 30).

Finally, Mark Schildkraut of New York City reminded us in a phone call that, in amending part 573 to redesignate § 573.5 through 573.7 as §§ 573.6 through 573.8, we forgot to make corresponding amendments to references to these sections in § 573.3(b), (c), (d), (e), and (f). We are correcting this oversight in this notice, as well as making conforming amendments to 49 CFR 577.5(a) and 577.10(a).

VI. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

VII. Rulemaking Analyses

Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993) provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines as ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking has been determined to be

significant by the Office of Management and Budget under E.O. 12866 because of Congressional interest. For the same reason, this action has also been determined to be significant under DOT's regulatory policies and procedures. A detailed discussion of impacts can be found in the Final Regulatory Evaluation (FRE) that the agency has prepared for the rulemaking completed in July 2002 and filed in the docket. The changes made by this final rule on reconsideration are relatively minor and will reduce the burdens on manufacturers. This action does not impose requirements on the design or production of motor vehicles or motor vehicle equipment; it only requires reporting of information in the possession of the manufacturer.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. Business entities are defined as small by standard industry classification for the purposes of receiving Small Business Administration (SBA) assistance. One of the criteria for determining size, as stated in 13 CFR 121.201, is the number of employees in the firm; another criteria is annual receipts. For establishments primarily engaged in manufacturing or assembling automobiles, light and heavy duty trucks, buses, motor homes, new tires, or motor vehicle body manufacturing, the firm must have less than 1,000 employees to be classified as a small business. For establishments manufacturing many of the safety systems for which reporting will be required, steering, suspension, brakes, engines and power trains, or electrical system, or other motor vehicle parts not mentioned specifically in this paragraph, the firm must have less than 750 employees to be classified as a small business. For establishments manufacturing truck trailers, motorcycles, child restraints, lighting, motor vehicle seating and interior trim packages, alterers and second-stage manufacturers, or re-tread tires the firm must have less than 500 employees to be classified as a small business. The changes made in this final rule on reconsideration are relatively minor and will reduce burdens on at least some small manufacturers.

Based on the best information available to us at this time, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires us 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.'' The Executive Order defines this phrase 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.'' The agency has analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. This final rule regulates the manufacturers of motor vehicles and motor vehicle equipment and 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 Executive Order 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.

Paperwork Reduction Act

The final rule requires manufacturers of motor vehicles and motor vehicle equipment to report information and data to NHTSA periodically. While we have not adopted a standardized form for reporting information, we will be requiring manufacturers to submit information utilizing specified templates. The provisions of this rule, including document retention provisions, are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. To obtain a three-year clearance for information collection, we published a Paperwork Reduction Act notice on June 25, 2002 (67 FR 42843), pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). We received clearance from OMB on December 20, 2002, which will expire on December 31, 2005. The clearance number is 2127–0616. The amendments made by this final rule on reconsideration are relatively minor, and should not affect paperwork burdens in a quantifiable way.

Data Quality Act

Section 515 of the FY 2001 Treasury and General Government Appropriations Act (Pub. L. 106–554, section 515, codified at 44 U.S.C. 3516 historical and statutory note), commonly referred to as the Data Quality Act, directed OMB to establish government-wide standards in the form of guidelines designed to maximize the ''quality,'' ''objectivity,'' ''utility,'' and ''integrity'' of information that Federal agencies disseminate to the public. The Act also required agencies to develop their own conforming data quality guidelines, based upon the OMB model. OMB issued final guidelines implementing the Data Quality Act (67 FR 8452, Feb. 22, 2002). On October 1, 2002, the Department of Transportation promulgated its own final information quality guidelines that take into account the unique programs and information products of DOT agencies (67 FR 61719). The DOT guidelines were reviewed and approved by OMB prior to promulgation.

NHTSA made information quality a primary focus well before passage of the Data Quality Act, and has made implementation of the new law a priority. NHTSA has reviewed its data collection, generation, and dissemination processes in order to ensure that agency information meets the standards articulated in the OMB and DOT guidelines, and plans to review and update these procedures as appropriate.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 results in $109 million (106.99/98.11 = 1.09). The assessment may be included in conjunction with other assessments.

These amendments to the final rule (67 FR 45822 at 45872–45883) are not estimated to result in expenditures by State, local or tribal governments of more than $109 million annually. It is

not estimated to result in the expenditure by motor vehicle and motor vehicle equipment manufacturers, child restraint system manufacturers, and tire manufacturers of more than $109 million annually.

List of Subjects

49 CFR Part 573

Motor vehicle equipment, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

49 CFR Part 577

Motor vehicle equipment, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

49 CFR Part 579

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

■ In consideration of the foregoing, 49 CFR chapter V is amended as follows:

PART 573—DEFECT AND NONCOMPLIANCE RESPONSIBILITY AND REPORTS

■ 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. Sections 573.3(b), (c), (d), and (e) are amended by revising the phrase ''§§ 573.5 and 573.6'' to read ''§§ 573.6 and 573.7.''

■ 3. Section 573.3(f) is amended by revising the references to ''§ 573.5'' and § 573.6'' respectively to read ''§ 573.6'' and ''§ 573.7'' respectively.

PART 577—DEFECT AND NONCOMPLIANCE NOTIFICATION

■ 4. The authority citation for part 577 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.

§ 577.5 [Amended]

■ 5. Section 577.5(a) is amended by revising the reference to ''§ 573.5(c)(9)'' to read ''§ 573.6(c)(9).''

§ 577.10 [Amended]

■ 6. Section 577.10(a) is amended by revising the reference to ''§ 573.6'' to read ''§ 573.7.''

PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

■ 7. 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.

Subpart A—General

■ 8. Section 579.4(c) is amended by revising the definitions of ''field report, paragraph (2) of ''minimal specificity,'' the second sentence of ''model year,'' ''rear-facing infant seat,'' ''seats,'' and adding the definition of ''work product,'' to read as follows:

§ 579.4 Terminology.

* * * * *

(c) Other terms. * * *

* * * * *

Field report means a communication in writing, including communications in electronic form, from an employee or representative of a manufacturer of motor vehicles or motor vehicle equipment, with respect to a vehicle or equipment that has been transported beyond the direct control of the manufacturer, a dealer, an authorized service facility of such manufacturer, or an entity known to the manufacturer as owning or operating a fleet, to a manufacturer, regarding the failure, malfunction, lack of durability, or other performance problem of a motor vehicle or motor vehicle equipment, or any part thereof, produced for sale by that manufacturer, regardless of whether verified or assessed to be lacking in merit, but does not include a document covered by the attorney'client privilege or the work product exclusion.

* * * * *

Minimal specificity means:

* * * * *

(2) For a child restraint system, the manufacturer and the model (either the model name or model number), * * *

* * * * *

Model year * * * For equipment and tires, it means the year that the item was produced.

* * * * *

Rear-facing infant seat means a child restraint system that is designed to position a child to face only in the direction opposite to the normal direction of travel of the motor vehicle.

Seats means all components of a motor vehicle that are subject to FMVSS Nos. 202, 207, and 209, including all electrical and electronic components within the seat that are related to seat positioning, heating, and cooling. This term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

* * * * *

Work product means a document in the broad sense of the word, prepared in anticipation of litigation where there is a reasonable prospect of litigation and not for some other purpose such as a business practice, and prepared or requested by an attorney or an agent for an attorney.

■ 9. Section 579.5(d) is revised to read as follows:

§ 579.5 Notices, bulletins, customer satisfaction campaigns, consumer advisories, and other communications.

* * * * *

(d) Each copy shall be in readable form and shall be submitted not later than five working days after the end of the month in which it is issued. However, a document described in paragraph (b) of this section and issued before April 1, 2003, need not be submitted.

Subpart C—Reporting of Early Warning Information

■ 10. The first sentence of the introductory text of § 579.21 is revised to read as follows:

§ 579.21 Reporting requirements for manufacturers of 500 or more light vehicles annually.

For each reporting period, a manufacturer whose aggregate number of light vehicles manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States, during the calendar year of the reporting period or during each of the prior two calendar years is 500 or more shall submit the information described in this section. * * *

■ 11. The first sentence of the introductory text of § 579.22 is revised to read as follows:

§ 579.22 Reporting requirements for manufacturers of 500 or more medium-heavy vehicles and buses annually.

For each reporting period, a manufacturer whose aggregate number of medium-heavy vehicles and buses manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States, during the calendar year of the reporting period or during either of the prior two calendar years is 500 or more shall submit the information described in this section. * * *

■ 12. The first sentence of the introductory text of § 579.23 is revised to read as follows:

§ 579.23 Reporting requirements for manufacturers of 500 or more motorcycles annually.

For each reporting period, a manufacturer whose aggregate number of motorcycles manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States, during the calendar year of the reporting period or during either of the prior two calendar years is 500 or more shall submit the information described in this section. * * *

■ 13. The first sentence of the introductory text of § 579.24 is revised to read as follows:

§ 579.24 Reporting requirements for manufacturers of 500 or more trailers annually.

For each reporting period, a manufacturer whose aggregate number of trailers manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States, during the calendar year of the reporting period or during either of the prior two calendar years is 500 or more shall submit the information described in this section. * * *

■ 14. The first sentence of the introductory text of § 579.25 is revised to read as follows:

§ 579.25 Reporting requirements for manufacturers of child restraint systems.

For each reporting period, a manufacturer who has manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported child restraint systems into the United States, shall submit the information described in this section. * * *

■ 15. The first and second sentences of the introductory text of § 579.26 are revised to read as follows:

§ 579.26 Reporting requirements for manufacturers of tires.

For each reporting period, a manufacturer (including a brand name owner) who has manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported tires in the United States shall submit the information described in this section. For paragraphs (a) and (c) of this section, the manufacturer shall submit information separately with respect to each tire line, size, SKU, plant where manufactured, and model year of tire manufactured during the reporting period and the four calendar years prior to the reporting period, including tire lines no longer in production. * * *

■ 16. Section 579.27(a) is revised to read as follows:

§ 579.27 Reporting requirements for manufacturers with respect to vehicles not otherwise covered by this subpart, for manufacturers of original equipment, and for manufacturers of replacement equipment other than child restraint systems and tires.

(a) *Applicability.* This section applies to all manufacturers of vehicles with respect to vehicles that are not covered by reports on light vehicles, medium-heavy vehicles and buses, motorcycles, or trailers submitted pursuant to §§ 579.21 through 579.24 of this part, to all manufacturers of original equipment, to all manufacturers of replacement equipment other than manufacturers of tires and child restraint systems, and to registered importers registered under 49 U.S.C. 30141(c).

* * * * *

■ 17. Section 579.28(c) is revised to read as follows:

§ 579.28 Due date of reports and other miscellaneous provisions.

* * * * *

(c) *One-time reporting of historical information.* No later than September 30, 2003:

(i) Each manufacturer of vehicles covered by §§ 579.21 through 579.24 of this part shall file separate reports providing information on the numbers of warranty claims recorded in the manufacturer's warranty system, and field reports, that it received in each calendar quarter from April 1, 2000, to March 31, 2003, for vehicles manufactured in model years 1994 through 2003 (including any vehicle designated as a 2004 model);

(ii) Each manufacturer of child restraint systems covered by § 579.25 of this part shall file separate reports covering the numbers of warranty claims recorded in the manufacturer's warranty system and consumer complaints (added together), and field reports, that it received in each calendar quarter from April 1, 2000, to March 31, 2003, for child restraint systems manufactured from April l, 1998 to March 31, 2003, and

(iii) Each manufacturer of tires covered by § 579.26 of this part shall file separate reports covering the numbers of warranty adjustments recorded in the manufacturer's warranty adjustment system for tires that it received in each calendar quarter from April 1, 2000, to March 31, 2003, for tires manufactured from April 1, 1998 to March 31, 2003.

(2) Each report filed under paragraph (c)(1) of this section shall include production data, as specified in paragraph (a) of 579.21 through 579.26 of this part and shall identify the alleged system or component covered by warranty claim, warranty adjustment, or field report as specified in paragraph (c) of 579.21 through 579.26 of this part.

* * * * *

Issued on: April 10, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–9199 Filed 4–10–03; 3:12 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030407078–3078–01; I.D. 040103A]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces that lobster trap/pot and anchored gillnet fishermen are requested to remove on a voluntary basis their gear from an area totaling approximately 1,810 square nautical miles (nm^2) (3,354 km^2), east and southeast of Cape Cod, MA for 15 days and anchored gillnet fishermen are asked to remove their gear voluntarily from the Sliver Area of the Great South Channel Critical Habitat. These fishermen are also asked not to set additional gear during this period. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours April 10, 2003, through 2400 hours April 25, 2003.

ADDRESSES: Copies of the proposed and final Dynamic Area Management rules, Environmental Assessment (EA), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9328; or Kristy Long,