DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 541, 542 and 543

[Docket No. NHTSA–2002–12231]

RIN 2127–A146

Federal Motor Vehicle Theft Prevention Standard

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

ACTION: Final rule.

SUMMARY: The final rule extends NHTSA's anti-theft parts marking requirement to two different groups of vehicles. First, the Anti Car Theft Act of 1992 required the Attorney General to make a finding that NHTSA "shall apply'' the parts marking requirements to below median theft rate passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating of 6,000 pounds or less, unless the Attorney General found that the extension would not substantially inhibit chop shop operations and motor vehicle thefts. The Attorney General did not make that finding about the extension. Accordingly, the Attorney General found that the standard should be extended. Since the Attorney General found that the standard should be extended, NHTSA is required by the Act to issue this final rule extending the parts marking requirement to all below median theft rate passenger cars and multipurpose passenger vehicles (MPVs) that have a gross vehicle weight rating of 6,000 pounds or less, but have not been exempted under 49 CFR Part 543 on the grounds that they are equipped with an effective anti-theft device as standard equipment.

Second, to increase the effectiveness of the first extension, this final rule also extends the parts marking requirement to below median theft rate light duty trucks with major parts that are interchangeable with a majority of the covered major parts of the below median theft rate multipurpose passenger vehicles and other passenger motor vehicles made subject to the requirement by the first extension. If this additional extension were not made, it would reduce the ability of investigators to treat the absence of intact markings on these multipurpose passenger vehicles and other passenger vehicles as a "red flag'' indicating a need for further investigation.

DATES: This final rule is effective September 1, 2006. Voluntary compliance is permitted before that time. If you wish to submit a petition for reconsideration of this rule, your petition must be received by June 7, 2004.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

Privacy Act: Anyone is able to search the electronic form of all petitions received into any of our dockets by the name of the individual submitting the petition (or signing the petition, 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 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For technical and policy issues, you may contact Deborah Mazyck, Office of Planning and Consumer Standards, (Telephone: 202–366–0846) (Fax: 202–493–2290).

For legal issues, you may contact George Feygin, Office of Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820).

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I. Background and Summary

A. 1984 Motor Vehicle Theft Law Enforcement Act

In 1984, Congress enacted the Motor Vehicle Theft Law Enforcement Act (the 1984 Theft Act), directing NHTSA to issue a theft prevention standard requiring vehicle manufacturers to mark the major parts [1] of "high-theft'' [2] lines of passenger motor vehicles (parts marking).[3] "Passenger motor vehicle'' was defined in the 1984 Theft Act so as to exclude multipurpose passenger cars, leaving passenger cars as the only included type of vehicle. Pursuant to that mandate, NHTSA issued a standard requiring the marking of the major parts of passenger cars as well as the marking of replacement parts for those major parts. The standard, found at 49 CFR Part 541, became effective on April 24, 1986.[4]

The parts marking requirement has remained largely unchanged over the years. Manufacturers can meet the parts marking requirement with indelibly marked labels that cannot be removed without becoming torn or rendering the number on the label illegible. If removed, the label must leave a residue on the part so that investigators will have evidence that a label was originally present. Alteration of the number on the label must leave traces of the original number or otherwise visibly alter the appearance of the label material. A replacement major part must be marked with the registered trademark of the manufacturer of the replacement part, or some other unique identifier, and the letter "R''.

As explained in a July 1998 agency report to Congress updating the findings of a 1991 agency report to Congress and evaluating the effects of the 1984 and 1992 Acts,[5] NHTSA stated that parts marking deters motor vehicle theft and aids theft investigators by (1) allowing investigators to trace a stolen car more easily to its owner, prove it was stolen, and make an arrest; (2) allowing investigators in most jurisdictions to treat the absence of intact markings as

[1] Currently, the list of major parts includes: engine, transmission, hood, fenders, side and rear doors (including sliding and cargo doors and decklids, tailgates, or hatchbacks, whichever is present), bumpers, quarter panels, and pickup boxes and/or cargo boxes. *See* 49 CFR 541.5.

[2] Under the 1984 Theft Act, a "high theft'' vehicle had or was likely to have had a theft rate greater than the median theft rate for all new vehicles for calendar years 1983 and 1984. Vehicles with theft rates higher (or lower) than the median theft rate are sometimes referred to in this document as "higher (or lower) than median theft rate.''

[3] *See* Pub. L. 98–547.

[4] *See* 50 FR 43166 (October 24, 1985).

[5] *See* July 1998 Report to Congress (Docket No. NHTSA–2002–12231–6).

a "red flag'' indicating a need for further investigation; and (3) in those jurisdictions requiring inspections of restored cars before they can be retitled, assisting officers in identifying vehicles that have been reassembled using stolen parts. Additionally, the agency noted that parts marking provides a useful tool in prosecuting chop shop owners and dealers of stolen vehicles and parts. Facilitating the prosecution of thieves, operators of chop shops, and dealers in stolen parts is a significant deterrent to motor vehicle theft and the operation of chop shops.

The 1984 Theft Act authorized exemptions from the parts marking requirement for vehicle lines in which antitheft devices were installed as standard equipment. Manufacturers were allowed to obtain two new exemptions per model year through the 1996 model year. Beginning with the 1997 model year, manufacturers were allowed to obtain one new exemption per model year. The manufacturer must petition NHTSA to obtain an exemption. The agency grants the exemption if it determines that the devices are likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts marking requirements.[6]

B. Anti Car Theft Act of 1992

As a result of a 1991 agency report to Congress and other information, Congress enacted the Anti Car Theft Act of 1992 (the 1992 Theft Act).[7] The 1992 Theft Act expanded the application of the parts marking requirement by expanding the definition of "passenger motor vehicle'' to include multipurpose passenger vehicles (MPVs) (*i.e.*, passenger vans and sport utility vehicles) and light duty trucks (LDTs) (*i.e.*, pickup trucks and cargo vans) with a gross vehicle weight rating (GVWR) of 6,000 pounds or less.[8] This definitional change brought above median theft rate MPVs and LDTs with a GVWR of 6,000 pounds or less within the parts marking requirement. Additionally, the 1992 Theft Act also expanded the group of vehicles considered to be "high theft'' [9] to include passenger motor vehicle lines that had or were likely to have theft rates below the median theft rate, but had major parts that were interchangeable with major parts of above median theft rate vehicles.[10] Finally, the 1992 Theft Act mandated that NHTSA apply the parts marking requirement to not more than 50% of the below median theft rate passenger vehicles (other than LDTs) that were not otherwise subject to that requirement.[11] NHTSA implemented these amendments in a final rule that was published on December 13, 1994, and became effective on October 25, 1995.

In addition to making immediate changes in the application of the parts marking requirement, the 1992 Theft Act also required the Attorney General to conduct two separate reviews relating to parts marking and issue separate findings based on each review.

First, the 1992 Theft Act required the Attorney General to conduct an initial review of effectiveness and make a finding requiring that the Secretary of Transportation expand the parts marking requirement to all remaining lines of passenger motor vehicles (except LTDs), unless the Attorney General found instead that extending the requirement would not substantially inhibit chop shop operations and motor vehicle theft.[12] In effect, Congress created a rebuttable presumption, *i.e.*, parts marking should be expanded unless the Attorney General was able to make a finding against the effectiveness of parts marking. As will be discussed in greater detail below, the Attorney General did not make such a finding. [13] Accordingly, the Attorney General concluded that the parts marking requirement should be expanded. As a result of this finding, and in accordance with the 1992 Theft Act, we issue this final rule.

Second, the 1992 Theft Act requires the Attorney General to conduct a long-range review of parts marking effectiveness.[14] The Attorney General must make separate findings whether (a) parts marking has been effective in substantially inhibiting chop shop operations and motor vehicle theft,[15] and (b) whether the anti-theft devices for which the agency has granted exemptions are an effective substitute for parts marking in inhibiting motor vehicle theft.[16] If the Attorney General finds that the application of the parts marking requirement has not been effective, the agency must terminate the parts marking requirement. Only if the Attorney General finds that the anti-theft devices are an effective substitute can the agency continue to issue exemptions.

C. Attorney General's Initial Report (2000)

On July 21, 2000, the Attorney General transmitted to the Secretary of Transportation a report containing the results of the initial review. In the report, the Attorney General noted that

Under the Act, the Secretary is required to apply the theft standard to the remaining motor vehicle lines:

> unless the Attorney General finds * * * that applying the [vehicle theft prevention standard] to the remaining lines of passenger motor vehicles (except light duty trucks) not covered by that standard would not substantially inhibit chop shop operations and motor vehicle thefts.

The Attorney General did not make such a finding. Accordingly, the Attorney General concluded that the parts marking requirement should be expanded as required by the 1992 Act, because she could not find that requiring motor vehicle manufacturers to mark major parts in all motor vehicle lines would not substantially inhibit chop shop operations and motor vehicle thefts:

> I have determined that the available evidence warrants application of the vehicle theft prevention standard to the remaining motor vehicle lines. That is, the evidence does not support a finding that requiring motor vehicle manufacturers to mark major parts in all motor vehicle lines will not substantially inhibit chop shop operations and motor vehicle thefts.

Accordingly, the Attorney General instead concluded that the parts marking requirement should be expanded as required by the 1992 Act. Thus, in accordance with requirements of 1992 Theft Act, NHTSA was required to conduct a rulemaking proceeding extending the parts marking requirement.

D. Notice of Proposed Rulemaking (2002)

Pursuant to the Initial Report, on June 26, 2002, NHTSA published a Notice of Proposed Rulemaking (NPRM) to extend the parts marking requirement to all passenger cars and MPVs with a GVWR of 6,000 pounds or less (67 FR 43075) [Docket No. NHTSA–2002–12231]. NHTSA also proposed to extend the requirement to LTDs with major parts that are interchangeable with a majority of the covered major parts of MPVs. In addition, NHTSA requested comments on (1) more permanent methods of parts marking and (2) marking air bags and window glazing.

[6] *See* 49 CFR Part 543.

[7] *See* Pub. L. 102–519. October 25, 1992, codified in 49 U.S.C. Chapter 331. *Theft Prevention.*

[8] *See* 49 U.S.C. 33101(10).

[9] Under the 1992 Theft Act, a "high theft'' vehicle has or is likely to have a theft rate greater than the median theft rate for all new vehicles in the 2-year period covering calendar years 1990 and 1991. *See* 49 U.S.C. 33104(a)(1).

[10] *See* 49 U.S.C. 33104(a)(1)(C).

[11] *See* 49 U.S.C. 33103(a).

[12] *See* 49 U.S.C. 33103(c).

[13] Attorney General's Initial Review of Effectiveness is entitled "The Initial Report.'' *See* Docket No. NHTSA–2002–12231–5.

[14] *See* 49 U.S.C. 33103(d)(1).

[15] *See* 49 U.S.C. 33103(d)(1)(A).

[16] *See* 49 U.S.C. 33103(d)(1)(B).

NHTSA received 17 comments on the NPRM from automobile manufacturers and their trade associations, a trade association for automobile dealers, the insurance industry, law enforcement agencies, automobile parts manufacturers and special interest groups. Some comments supported the agency's proposal to expand the parts marking requirement, while other opposed it. In preparing its responses to the various comments questioning the Attorney General's Initial Report and finding, NHTSA informally consulted with officials at the U.S. Department of Justice, advising them of those comments and providing them with a draft of this notice.

After reviewing the comments, and in accordance with requirements of the 1992 Theft Act, NHTSA is extending the parts marking requirement to all lower than median theft rate passenger cars and multipurpose passenger vehicles with a GVWR of 6,000 pounds or less. The agency is also extending the requirement to light duty trucks with major parts that are interchangeable with a majority of the covered major parts of multipurpose passenger vehicles. At this time, NHTSA is not planning to propose requiring a more permanent method of parts marking. It is also not planning to seek authority to add air bags and glazing to the list of parts that must be marked.

II. Final Rule

A. Extension of Parts Marking

1. Below Median Theft Rate Theft Passenger Cars and Multipurpose Passenger Vehicles

A number of commenters from the automobile industry, including manufacturers and trade associations, collaterally challenged the Attorney General's initial report to DOT, arguing that the parts marking requirement should not be extended because the report does not conclusively prove the effectiveness of parts marking or that the basis for the report is inadequate. Specifically, Association of International Automobile Manufacturers (AIAM) commented that the Attorney General's finding does not conclusively demonstrate that expansion of parts marking requirements will be effective in reducing motor vehicle theft and chop shop operations.[17] In contrast, special interest and law enforcement groups supported parts marking as an effective deterrent to chop shop operations.

The automobile industry criticisms of the Attorney General's finding appear to be based on an incorrect understanding of the 1992 Theft Act. The 1992 Theft Act did not premise the extension of the parts marking requirement upon the Attorney General's issuance of a report proving the effectiveness of parts marking. Instead, Congress mandated that NHTSA extend parts marking *unless* the Attorney General found that parts marking is not effective. While the mandate renders the criticisms of the Attorney General's initial report essentially inapposite for the purposes of this final rule, we note that the Attorney General's report did, in fact, reflect consideration of all of the factors (*e.g.*, additional costs, effectiveness, competition, and available alternative factors) specified by the 1992 Theft Act. *See* 49 U.S.C. 33103(c). The details of the criticisms of the report are discussed below.

In its comments, Volkswagen (VW) alleged that the Attorney General's finding was "based to a great extent on anecdotal input from a few law enforcement organizations.'' This is an inaccurate characterization of the basis for the Attorney General's finding. In preparing the July 2000 initial report, the Attorney General relied on a cross-sectional time series analysis of auto theft data, and a law enforcement personnel survey, both prepared by Abt Associates. The Abt Associates report, along with information generated from public comments on the effectiveness of parts marking, resulted in determination that parts marking is a cost effective method of reducing auto theft. As to the law enforcement survey, the Attorney General found that it "supports the expansion of parts marking.''

All but one of the 47 investigators surveyed by Abt Associates believed that auto parts marking should be extended to all automobile lines and to all types of noncommercial vehicles, especially to pickup trucks. The majority of the investigators surveyed indicated that marking vehicle parts aids in identifying and arresting those involved in trafficking in stolen vehicles and stolen parts. Specifically, 75 percent of the auto theft investigators from big cities surveyed felt that parts marking is useful or very useful in arresting chop shop owners and operators and those who deal in stolen vehicles.

Investigators identified four ways in which the marking of auto parts provides assistance.

The agency believes that the data sufficiently support the conclusion that the "evidence does not support a finding that requiring motor vehicle manufacturers to mark major parts in all motor vehicle lines will not substantially inhibit chop shop operations and motor vehicle thefts.'' Abt Associates utilized all available information to prepare the DOJ report on the effectiveness of expanding the auto parts marking.

In its first comment, DaimlerChrysler suggested that the Attorney General's findings did not adequately consider the statutory factors in 49 U.S.C. 33103 (c). In response to this comment, we note that the Attorney General considered the factors of cost, effectiveness, competition, and available alternative factors, as required by 49 U.S.C. 33103 (c). Specifically, Attorney General noted that NHTSA had found that estimated costs of parts marking is substantially less than the statutory limit of $24.86 (in 2000 dollars) per vehicle and that the cost for even small manufacturers was less than the statutory limit. With respect to effectiveness, the Attorney General noted that the theft "investigators identified the lack of permanence as the most significant obstacle to increasing the effective use of markings' and urged "DOT to require permanent, non-removable markings.'' After evaluating the effect on competition, the Attorney General found that extending the parts marking requirement would not harm competition. In evaluating available alternative factors, the Attorney General considered the availability of alternative methods of reducing theft. She concluded that anti-theft devices best serve their purpose when they are used in conjunction with parts marking, and not as a substitute for parts marking.

On February 13, 2003, DaimlerChrysler (DC) submitted additional comments.[18] In those comments, DC suggested that NHTSA refrain from issuing a final rule because it believed that NHTSA had not yet received from DOJ "all the information supporting'' Attorney General's finding on parts marking effectiveness, as required by 49 U.S.C. 33103(c). The Attorney General's Report included a summary of a comment from Volvo Cars of North America (Volvo). DC states that it was unable to obtain a copy of the Volvo comment from DOJ and that the document did not appear to exist.

We have received the full record from the Attorney General, including the letter submitted by Volvo. The letter submitted by Volvo was placed in the

[17] *See* Docket No. NHTSA–2002–12231–13. See also National Automobile Dealer's Association (NADA) comment. NADA commented that the Attorney General's finding has not proven parts marking to be effective, but also conceded that the standard's questionable effectiveness might partially be due to its underutilization by the insurance industry and by law enforcement. (Docket No. NHTSA–2002–12231–17).

[18] Docket No. NHTSA–2002–12231–30.

docket on November 6, 2003.[19] In its comments about the Volvo submission to the Attorney General, DaimlerChrysler stated that the Attorney General's report is inconclusive because Volvo has commented "insurance data supports no marking for low theft cars with anti-theft devices.'' We note that Volvo did not present any insurance data that would indicate that parts marking would not substantially inhibit chop shop operations. Instead, Volvo simply presented evidence showing that certain vehicles equipped with anti-theft devices have lower-than average theft rate. These data do not in any way support a finding that expanded parts marking would not substantially inhibit chop shop operations.

DaimlerChrysler and the Alliance of Automobile Manufacturers suggested that they were denied a complete, meaningful opportunity to comment on NHTSA's proposal because the public comments submitted in response to the Department of Justice's September 11, 1998 request for comments (63 FR 48758) in connection with its initial review were not available in NHTSA's docket during the comment period. We disagree. As noted above, the statutory mandate to extend the parts marking requirement based on the Attorney General's findings renders the criticisms of the Attorney General's initial report essentially inapposite for the purposes of this final rule. Likewise, the mandate renders the record on which the Attorney General based her report inapposite for the purposes of this final rule. The 1992 Act does not contemplate that this agency should base its decision in this rulemaking on the record compiled by the Attorney General.

Ford asserted that the Attorney General did not separately consider the effectiveness of passive anti-theft systems.[20] As previously discussed, the Attorney General considered anti-theft systems as an alternative to parts marking and concluded that anti-theft devices should be used in conjunction with parts marking, as opposed to as a replacement of parts marking. We note that 49 U.S.C. 33103 (c) did not require that the Attorney General to find a single most effective anti-theft device. Instead, the inquiry was limited to whether available information indicated that expanded parts marking requirement would not substantially inhibit chop shop operations. The fact that a passive anti-theft device could also act to inhibit chop-shop operations does not release NHTSA from a legal obligation to extend the parts marking requirement based on Attorney General's findings.

As stated above, the 1992 Theft Act requires NHTSA to extend the parts marking requirements, unless the Attorney General finds in his Initial Report on parts marking effectiveness that such a requirement would not substantially inhibit chop shop operations and motor vehicle thefts. Since the Attorney General did not make that finding, NHTSA must complete a rulemaking to extend the standard. In its comment, Advocates for Highway and Auto Safety emphasized this point by stating that: "the Secretary of Transportation, and by delegation NHTSA, has no legal option other than to expand parts marking requirement * * * '' and "In light of the Attorney General's conclusion that vehicle parts marking is an effective deterrent to auto theft, the agency is statutorily required to extend the scope of the Theft Prevention Standard * * *.''[21]

2. Below Median Theft Rate Light Duty Truck Lines Having Major Parts Interchangeable With Below Median Theft Rate Passenger Cars and Multipurpose Passenger Vehicles

The 1992 Theft Act mandated the extension of the parts marking requirement to above median theft rate MPVs and LDTs, to below median theft rate MPVs and LDTs that have major parts that are interchangeable with the major parts of above median theft rate vehicles, and to the below median theft rate MPVs covered by this final rule. However, the Act did not mandate the extension of the requirement to other below median theft rate LDTs.

Extension of parts marking to below median theft rate MPVs, but not to below median theft rate LDTs, would have created a situation in which the major parts of below median theft rate MPVs would be marked, while below median theft rate LDTs that share major parts with these same MPVs would not be subject to parts marking requirements. Failure to apply the parts marking requirement to these below median theft rate LDTs would create a supply of legally unmarked parts interchangeable with the marked parts of the below median theft rate MPVs. This could confuse law enforcement personnel and hinder effective prosecution of chop shop operators. This is because it would have been difficult or even impossible to draw, with any confidence, inferences from the absence of a mark on a major part on a below median theft rate MPV. Such a part might have been one that originally been required to be marked, but had its marking removed because the part came from a stolen vehicle. But such a part also might have come from a below median theft rate vehicle whose parts were not required to be marked. In order to remedy this potential problem, we proposed that below median theft rate LDTs that have major parts interchangeable with below median theft rate MPVs would be subject to parts marking requirements.

We received a single comment on this proposal. In its comments, NADA questioned NHTSA's statutory authority for adopting this proposal. Nevertheless, NADA did not oppose the concept.

As noted above, below median theft rate LDTs were not included in the mandate for extension of the parts marking requirement.[22] Because below median theft rate LDTs not otherwise subject to parts marking requirement may have major parts that are interchangeable with MPVs that are subject to parts marking requirement, we find it necessary to use our implied discretionary authority to require that both types of vehicles with interchangeable parts be parts marked. Congress addressed the issue of whether to make a general extension of parts marking to all remaining vehicles. It decided to mandate extending parts marking generally to remaining cars and MPVs, but not to mandate its extension generally to remaining LDTs. However, it did not address the narrower and more focused issue of whether supplementary action involving some of the remaining LDTs was necessary to make that extension to remaining cars and MPVs effective. Congress has already made the judgment that coverage of vehicles with interchangeable parts is necessary and appropriate to making parts marking effective for vehicles with theft rates above the median. We believe that a similar judgment is warranted here.

Under 49 U.S.C. 33104(2), below median theft rate passenger motor vehicles (including MPVs and LDTs) cannot be subjected to parts marking based on interchangeability of parts if the below median theft rate vehicles account for more than 90 percent of total annual production of all lines of vehicles that may contain these interchangeable parts. This statutory exclusion applies to below median theft rate vehicles if they account for more than 90 percent of total annual production of all lines of vehicles

[19] Docket No. NHTSA–2002–12231–33.

[20] Docket No. NHTSA–2002–12231–21.

[21] *See* Docket No. NHTSA–2002–12231–23; see also comments by VW, acknowledging that NHTSA is obligated to expand parts marking based on Attorney General's finding (NHTSA–2002–12231–20).

[22] *See* 49 U.S.C. 33103(b)(1).

containing interchangeable parts. For example, if a given below median theft rate LDT line would become subject to parts marking pursuant to this final rule because it shares major parts with an MPV line that is also subject to parts marking requirement, the LDT line would nevertheless be excluded if it accounted for more than 90 of total production of both lines.

NHTSA has also decided to extend parts marking to those below median theft rate LDTs that have major parts interchangeable with passenger cars. We believe that extending this requirement to passenger cars is consistent with the intent of both the 1992 Theft Act and the NPRM. NHTSA does not anticipate any additional burdens on the manufacturers as a result of this additional extension because we are unaware of any LDTs that have parts that are interchangeable with passenger motor vehicles other than MPVs. However, in the future, a manufacturer could produce an LDT with major parts interchangeable with a passenger motor vehicle other than an MPV. This additional requirement anticipates this possibility. As previously discussed, an LDT line that accounts for more than 90 percent of the total production of all lines containing parts interchangeable with the parts of that line would be excluded from this requirement.

As of the effective date of this final rule, manufacturers will have to report to NHTSA new and existing LTD lines with a majority of major parts interchangeable with passenger cars and MPVs pursuant to 49 CFR 542.2.

B. Continued Availability of Exemptions for Vehicles With Antitheft Devices

Section 33106 of 49 U.S.C., Chapter 331, provides that vehicle manufacturers of a high-theft vehicle lines may petition NHTSA for an exemption from the parts-marking requirements, including this parts marking expansion pursuant to the Attorney General's initial report, based on availability of an anti-theft device. NHTSA may exempt a high theft vehicle line from the parts marking requirement if the manufacturer installs an antitheft device as standard equipment on the entire vehicle line for which it seeks an exemption, and NHTSA determines that the antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the part-marking requirements.

Manufacturers were permitted to receive up to two new exemptions per model year for model years 1988–1996. For model years 1997–2000, manufacturers were permitted only one new exemption per model year. After model year 2000, the number of new exemptions is contingent on a finding by the Attorney General, which will be part of a long-range review of effectiveness, to be conducted after this final rule is published. As discussed in the NPRM, after consulting with DOJ, the agency decided it could continue granting one exemption per model year pending the results of the long-term review.

This final rule will not affect the granting of anti-theft device exemptions. Commenters indicated support for these exemptions. The Alliance of Automobile Manufacturers (Alliance) noted that, as currently drafted, Part 543 applies only to high-theft vehicles and suggested that NHTSA revise this language to allow exemptions for all vehicles subject to the parts marking requirement. The agency agrees with this suggestion and is making that change in this final rule. However, the agency emphasizes that manufacturers are still limited to one new exemption per model year.

C. Exclusion of Small Volume Manufacturers

Currently, there are approximately four vehicle manufacturers that qualify as small businesses under the Small Business Administration's regulations. Because of their small sales volumes, these manufacturers' vehicles have not been subject to the theft prevention standard.[23] Extending the theft prevention standard to all passenger cars and MPVs would require these manufacturers to comply with the standard for the first time. In the NPRM, the agency noted that fixed costs associated with parts marking would be spread over a smaller number of vehicles for these manufacturers, resulting in higher per vehicle costs. The agency estimated that these fixed costs would cause the per vehicle costs to exceed the statutory limit for manufacturers making fewer than 373 vehicles each year for sale in the United States. Therefore, the agency proposed to exclude those manufacturers who make fewer than 500 vehicles for sale in the United States each year from the parts marking requirement.

The Alliance, AIAM, Ferrari and Lamborghini commented on the number of vehicles that defined a small volume manufacturer. Each of the commenters urged the agency to change the definition of a small volume manufacturer from those who make fewer than 500 vehicles for sale in the United States each year to those who make fewer than 5,000 vehicles for sale in the United States each year. Lamborghini and the Alliance pointed out that the definition should be the same for all safety standards, as it is for the Environmental Protection Agency and California Air Resources Board emissions regulations. AIAM noted that due to the limited market for their replacement parts, these vehicles are unlikely targets of thieves who would sell parts off of the vehicle. Commenters were also divided on whether or not small volume manufacturers could comply with the parts marking requirement within the statutory cost limit.

Further analysis of data with respect to theft rates of vehicles produced by small volume manufacturers indicates that a very limited number of these vehicles are stolen. Model Year 2001 Preliminary Theft Data showed only two vehicles produced by manufacturers that produce fewer than 5,000 vehicles were stolen in calendar year 2001. We note that stolen parts from low production vehicles may be a less marketable commodity to chop shop operators, because owners buy exclusively from authorized service facilities. Additionally, NHTSA has taken into account the definition of "small volume manufacturer'' in the vehicle standards and believes that the definition of "small volume manufacturers'' here should, in the interest of consistency, be expanded to include those manufacturers who make fewer than 5,000 vehicles for sale in the U.S. each year. Therefore, those manufacturers who make fewer than 5,000 vehicles for sale in the U.S. each year will be excluded from the expansion of the theft prevention standard.

D. Other Issues

1. More Permanent Methods of Parts Marking

In the NPRM, NHTSA stated that the agency is considering proposing performance requirements that would necessitate the use of more permanent methods of parts marking. The NPRM included several questions similar to the questions that the agency asked when it published the preliminary version of its 1998 Report to Congress.

Most commenters strongly recommend identifying and evaluating the costs associated with more permanent methods before a final rule is issued. The comments support performance requirements that would necessitate the use of more permanent parts marking methods. Subsequent to the comment-closing period, the agency received information from four

[23] 13 CFR 121.201.

companies relative to more permanent marking methods.

DataDot Technology presented information on vehicle identification in the form of microdots that could be sprayed on specific parts of the motor vehicle, each of which incorporate the Vehicle Identification Number (VIN). Retainagroup provided the agency with information on laser etching of motor vehicle parts that could be done at the manufacturing plant. Avery Dennison provided information on several types of etching for window glazing (compound liquid etch, direct laser etch and sand blast), labels (pressure sensitive adhesive, heat applied (laser), radio frequency identification tags using microtechnology chips, cloth and thermal transmitted) that are currently available. In 1997, 3M presented information on labels that leave the VIN covertly in the paint of a vehicle, which is detected by using an ultraviolet light. However, the agency received very limited cost information on these newest technologies.

After reviewing the information presented by these companies, NHTSA has decided not to propose requiring more permanent methods of parts marking at this time. The agency believes that more specific cost information is needed in order to consider the possibility of initiating a new proposal for performance requirements and test procedures. Accordingly, NHTSA will continue to monitor future developments of any new permanent parts marking methods and associated costs. NHTSA expects that these new technologies will become more affordable as they advance, increasing the likelihood of staying within the statutory limit.

2. Marking of Air Bags and Window Glazing

Currently, air bags and window glazing are not classified as major parts subject to the parts marking requirement. In the NPRM, the agency requested comments on the potential costs and benefits of marking air bags and window glazing and whether the agency should seek the statutory authority to extend parts marking to these parts.

A number of commenters supported expanding the list of vehicle parts to be marked under the parts marking standard to include air bag modules and major pieces of window glazing. The motor vehicle manufacturers and their trade associations did not support marking of air bags or window glazing. Comments reflected a definite split of opinion between the motor vehicle groups and law enforcement.

Air bag theft is a widespread problem. The National Insurance Crime Bureau, an organization who partners with insurers and law enforcement agencies to detect, prevent and deter fraud and theft, reports that approximately 50,000 air bags are stolen each year, resulting in an annual loss of more than $50 million to vehicle owners and their insurers. Air bags have quickly become a primary accessory on the black market for stolen vehicle parts. A new air bag, which retails for approximately $1,000 from a car dealer, costs $50 to $200 on the black market. Vehicle manufacturers provided information on various safety risks foreseeable during labeling or inscribing the VIN on the air bags on the production line (*i.e.*, an air bag's suddenly deploying, endangering unsuspecting workers). However, some manufacturers indicate that they are voluntarily cross-referencing the air bag serial number with the VIN, and that this information would be available to law enforcement.

Based on the information provided on window glazing, NHTSA is not convinced that window glazing theft is a widespread problem. While an argument could be made that the marking of more parts would increase the difficulty of running a profitable "chop shop," in the past there have been concerns that adding glazing to the list of major parts would push the cost of each vehicle over the statutory cost limit.

After reviewing these comments, NHTSA does not believe that there is a compelling reason at this time to seek the statutory authority necessary to extend the parts marking requirement to air bags and window glazing.

3. Gross Vehicle Weight Rating

While the NPRM did not request comments from the public on changing the GVWR limit of 6,000 pounds, the Metro Transit Police and the International Association of Auto Theft Investigators (IAATI) urged NHTSA to expand parts marking of passenger vehicles, MPVs and light duty trucks to all vehicles with a GVWR of 10,000 lbs or less. Metro Transit Police and IAATI commented that by limiting the GVWR to 6,000 pounds or less, the most expensive MPV, trucks and vans that are targeted by thieves would be excluded from component parts marking.

The statute authorizing parts marking defines "passenger motor vehicle" as having an upper GVWR limit of 6,000 pounds (49 U.S.C. 33101). Therefore, NHTSA does not have the authority to apply this standard to vehicles with a GVWR greater than 6,000 pounds.

4. National Stolen Passenger Motor Vehicle Information System

Although the NPRM did not address the National Stolen Passenger Motor Vehicle Information System (NSPMVIS) or its effects on expanding parts marking, the agency received comments on this issue. The NSPMVIS will contain the vehicle identification numbers of stolen passenger motor vehicles and stolen passenger motor vehicle parts. Additionally, the system will be able to verify the theft status of salvage and junk motor vehicles and covered major parts.

The Automotive Recyclers Association (ARA) believes that NHTSA's proposed rule extending parts marking requirements to all passenger cars and MPVs would have a destructive effect on the entire automotive recycling industry. This stems from the direct consequences it has on the recently proposed DOJ rule to implement the NSPMVIS. ARA states that under NHTSA's proposed rule to extend parts marking to virtually all passenger cars and MPVs, the entire vehicle population will fall under the requirements of the NSPMVIS rule. ARA believes that the burden and cost of compliance to legitimate small, professional auto recyclers would be enormous.

Congress mandated NSPMVIS and this extension with the intention that each should be carried out concurrently. NHTSA does not have the authority to provide exemptions from the NSPMVIS, but will initiate discussion with DOJ to explore options to minimize unnecessary burdens.

III. Appendix C to Part 541

In reviewing the Theft Prevention Standard for this final rule, the agency noticed that Appendix C refers to 1983/84 median theft rates. Since the agency now uses the 1990/1991 median theft rate to determine whether a vehicle is high theft, this Appendix is amended to reflect this.

IV. Cost

In the "Final Regulatory Evaluation (FRE), Expansion of Auto Parts Marking Requirement Part 541," February 2004, the agency estimates the value of thefts that could potentially be reduced by the final rule is $38.8 million ($2.756 billion * 0.22 * 0.064).[24] It is estimated that an additional 3.25 million vehicles per year will have to be marked by this final rule. The estimated cost is $6.03

[24] 0.22 is the percentage of vehicle thefts that are represented by vehicles not being marked currently, but will be marked pursuant to this final rule. 0.064 is the agency's estimate of the potential effectiveness of the proposal in terms of the reduction in economic loss for unrecovered thefts.

per vehicle. Thus, the total annual cost is $19.6 million (in 2000 dollars). There is an additional cost of $0.50 or less per replacement part. The number of replacement parts sold per year for 3.25 million vehicles is not known. These costs are consistent with the cost estimates in the NPRM. For a detailed discussion of costs associated with this rulemaking, please see the Final Regulatory Evaluation (FRE) in the docket for this rulemaking.

Only commenter, DaimlerChrysler, commented that NHTSA had underestimated the actual costs incurred by manufacturers. DaimlerChrysler provided confidential cost estimates indicating that Mercedes-Benz USA, which currently does not have to mark any vehicles, would incur costs greater than the $24.86 limit per vehicle. The agency analyzed these cost estimates, which assumed that fixed costs such as purchasing printers would be paid off in the first year of use. If these fixed costs were amortized over a 3-year period, the typical assumption used by NHTSA in its cost estimates, the costs would be below the $24.86 limit. DaimlerChrysler's ongoing cost estimates were much lower after the first model year.

V. Effective Date

The agency proposed September 1, 2005 as the effective date for the new rule. AIAM and the Alliance, manufacturer trade associations, both commented that this would be sufficient leadtime to implement the new requirements, provided that the agency did not adopt a requirement for more permanent methods of parts marking.

IAATI and the Metro Transit Police commented that many manufacturers are beginning to introduce new model year vehicles prior to September of the previous year. Therefore, they urged NHTSA to change the effective date so that parts marking would be required for all 2006 model year vehicles.

IAATI and Metro Transit Police are correct in saying that manufacturers have begun introducing new model year vehicles earlier. However, NHTSA is concerned that if their suggestion were adopted, manufacturers who choose to change their model year designations early would be penalized because they would be required to comply with these new requirements with less leadtime. NHTSA agrees that it would be preferable for all vehicles for a certain model year to have parts marking. Therefore, we are allowing manufacturers to comply with the new requirements early if they wish to introduce a new model year prior to the effective date and wish to have all vehicles marked the same.

However, given the time that has elapsed since the publication of the NPRM, NHTSA is changing the effective date to September 1, 2006. We anticipate that many manufacturers will be able to comply prior to that date voluntarily. However, for manufacturers that must comply with the parts marking requirements for the first time, this two-year plus leadtime should allow sufficient time to acquire any necessary equipment and otherwise prepare for the effective date.

VI. Rulemaking Analyses and Notices

A. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review.'' The agency has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures, and has determined that it is not "significant'' under them. In the FRE, Expansion of Auto Parts Marking Requirement Part 541, June 2003, the agency estimated the value of thefts that could potentially be reduced by the final rule is $38.8 million.

It is estimated that an additional 3.25 million vehicles per year will have to be marked. The estimated cost is $6.03 per vehicle. Thus, the total annual cost is $19.6 million (in 2000 dollars). There is an additional cost of $0.50 or less per replacement part. The number of replacement parts sold per year for 3.25 million vehicles is not known.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as amended, requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. A Regulatory Flexibility Analysis (RFA) describing the impact of proposed rules on small entities is included in the FRE for this final rule. Based on this analysis, NHTSA has excluded manufacturers of less than 5,000 vehicles annually for sale in the United States from this final rule.

C. National Environmental Policy Act

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

D. Executive Order 13132 (Federalism)

NHTSA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132 and have determined that it does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. The final rule will not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates 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 the expenditure of 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, as it is here.

This final rule will not result in expenditures by State, local or tribal governments or automobile or automobile parts manufacturers of more than $109 million annually.

F. Civil Justice Reform

This final rule does not have any retroactive effect. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This final rule will not preempt the states from adopting laws or regulations on the same subject, except that it will preempt a state regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

G. Paperwork Reduction Act

The Department of Transportation has not submitted an information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1995 (Pub.L. 104–13, 44 U.S.C. Chapter 35). This rule does not impose any new information collection requirements on manufacturers.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

We are unaware of any voluntary consensus standards for theft parts marking.

List of Subjects

49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

49 CFR Part 542

Administrative practice and procedure, National Highway Traffic Safety Administration, Reporting requirements.

49 CFR Part 543

Administrative practice and procedure, National Highway Traffic Safety Administration, Reporting requirements.

■ In consideration of the foregoing, NHTSA is amending 49 CFR Chapter V as follows:

PART 541—FEDERAL MOTOR VEHICLE THEFT PREVENTION STANDARD

■ 1. The authority citation for Part 541 continues to read as follows:

Authority: 49 U.S.C. 322, 33101, 33102, 33103, 33105; delegation of authority at 49 CFR 1.50.

■ 2. Section 541.3 is revised to read as follows:

§ 541.3 Application.

This standard applies to the following:

(a) Passenger motor vehicle parts identified in § 541.5(a) that are present:

(1) In passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating of 6,000 pounds or less; and

(2) In light duty trucks that NHTSA has finally determined pursuant to 49 CFR part 542, to be high theft based on the 1990/91 median theft rate and listed in appendix A of this part.

(3) In light duty trucks that NHTSA has finally determined pursuant to 49 CFR part 542, to have a majority of major parts interchangeable with those of a passenger motor vehicle identified in paragraphs (a)(1) and (2) of this section and listed in appendix B of this part.

(b) Replacement parts for passenger motor vehicles described in paragraphs (a)(1) and (2) of this section, if the part is identified in § 541.5(a).

(c) This standard does not apply to passenger motor vehicle parts that are present in passenger cars, multipurpose passenger vehicles, and light duty trucks manufactured by a motor vehicle manufacturer that manufactures fewer than 5,000 vehicles for sale in the United States each year.

■ 3. Section 541.5 is amended by revising the first sentence of paragraph (e)(2) as follows:

§ 541.5 Requirements for passenger motor vehicles.

* * * * *

(e) * * *

(2) Each manufacturer subject to paragraph (e)(1) of this section shall, not later than 30 days before the line is introduced into commerce, inform NHTSA in writing of the target areas designated for each line subject to this standard. * * *

* * * * *

■ 4. Appendix A to Part 541 is revised to read as follows:

Appendix A to Part 541—Light Duty Truck Lines Subject to the Requirements of This Standard

Manufacturer	Subject lines
General Motors	Chevrolet S–10 Pickup. GMC Sonoma Pickup.

■ 5. Appendix A–I to Part 541 is amended by revising the title to read as follows:

Appendix A–I to Part 541—Lines with Antitheft Devices Which are Exempted From the Parts-Marking Requirements of This Standard Pursuant to 49 CFR Part 543

■ 6. Appendix A–II to Part 541 is amended by revising the title to read as follows:

Appendix A–II to Part 541—Lines with Antitheft Devices which are Exempted in-Part from the Parts-Marking Requirements of this Standard Pursuant to 49 CFR Part 543

■ 7. Appendix B to Part 541 is revised to read as follows:

Appendix B to Part 541—Light Duty Truck Lines With Theft Rates below the 1990/91 Median Theft Rate, Subject to the Requirements of This Standard

Manufacturer	Subject lines
None	

■ 8. Appendix C to Part 541 is amended by revising the title and the Application and Methodology sections to read as follows:

Appendix C to Part 541—Criteria for Selecting Light Duty Truck Lines Likely To Have High Theft Rates

* * * * *

Application

These criteria apply to lines of passenger motor vehicles initially introduced into commerce on or after September 1, 2005.

Methodology

These criteria will be applied to each line initially introduced into commerce on or after September 1, 2005. The likely theft rate for such lines will be determined in relation to the national median theft rate for 1990 and 1991. If the line is determined to be likely to have a theft rate above the national median, the Administrator will select such line for coverage under this theft prevention standard.

* * * * *

PART 542—PROCEDURES FOR SELECTING LINES TO BE COVERED BY THE THEFT PREVENTION STANDARD

■ 9. The authority citation for Part 542 continues to read as follows:

Authority: 15 U.S.C. 2021, 2022, and 2023; delegation of authority at 49 CFR 1.50.

■ 10. The title of Part 542 is revised to read as follows:

PART 542—PROCEDURES FOR SELECTING LIGHT DUTY TRUCK LINES TO BE COVERED BY THE THEFT PREVENTION STANDARD

■ 11. Section 542.1 is revised to read as follows:

§ 542.1 Procedures for selecting new light duty truck lines that are likely to have high or low theft rates.

(a) Scope. This section sets forth the procedures for motor vehicle manufacturers and NHTSA to follow in

the determination of whether any new light duty truck line is likely to have a theft rate above or below the 1990/91 median theft rate.

(b) Application. These procedures apply to each manufacturer that plans to introduce a new light duty truck line into commerce in the United States on or after September 1, 2005, and to each of those new lines.

(c) Procedures. (1) Each manufacturer shall use the criteria in Appendix C of part 541 of this chapter to evaluate each new light duty truck line and to conclude whether the new line is likely to have a theft rate above or below the 1990/91 median theft rate.

(2) For each new light duty truck line, the manufacturer shall submit its evaluations and conclusions made under paragraph (c) of this section, together with the underlying factual information, to NHTSA not less than 15 months before the date of introduction. The manufacturer may request a meeting with the agency during this period to further explain the bases for its evaluations and conclusions.

(3) Within 90 days after its receipt of the manufacturer's submission under paragraph (c)(2) of this section, the agency independently evaluates the new light duty truck line using the criteria in Appendix C of part 541 of this chapter and, on a preliminary basis, determines whether the new line should or should not be subject to § 541.2 of this chapter. NHTSA informs the manufacturer by letter of the agency's evaluations and determinations, together with the factual information considered by the agency in making them.

(4) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(3) of this section. The manufacturer shall submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(3) of this section. The request shall include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30-day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(5) Each of the agency's preliminary determinations under paragraph (c)(3) of this section shall become final 45 days after the agency sends the letter specified in paragraph (c)(3) of this section unless a request for reconsideration has been received in accordance with paragraph (c)(4) of this section. If such a request has been received, the agency makes its final determinations within 60 days of its receipt of the request. NHTSA informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

■ 12. Section 542.2 is revised to read as follows:

§ 542.2 Procedures for selecting low theft light duty truck lines with a majority of major parts interchangeable with those of a passenger motor vehicle line.

(a) Scope. This section sets forth the procedures for motor vehicle manufacturers and NHTSA to follow in the determination of whether any light duty truck lines that have or are likely to have a low theft rate have major parts interchangeable with a majority of the covered major parts of a passenger motor vehicle line.

(b) Application. These procedures apply to:

(1) Each manufacturer that produces—

(i) At least one passenger motor vehicle line identified in 49 CFR 541.3(a)(1) and (2) that has been or will be introduced into commerce in the United States, and

(ii) At least one light duty truck line that has been or will be introduced into commerce in the United States and that the manufacturer identifies as likely to have a theft rate below the median theft rate; and

(2) Each of those likely sub-median theft rate light duty truck lines.

(c) Procedures. (1) For each light duty truck line that a manufacturer identifies under appendix C of part 541 of this chapter as having or likely to have a theft rate below the median rate, the manufacturer identifies how many and which of the major parts of that line will be interchangeable with the covered major parts of any of its passenger motor vehicle lines.

(2) If the manufacturer concludes that a light duty truck line that has or is likely to have a theft rate below the median theft rate has major parts that are interchangeable with a majority of the covered major parts of a passenger motor vehicle line, the manufacturer determines whether all the vehicles of those lines with sub-median or likely sub-median theft rates will account for more than 90 percent of the total annual production of all of the manufacturer's lines with those interchangeable parts.

(3) The manufacturer submits its evaluations and conclusions made under paragraphs (c)(1) and (2) of this section, together with the underlying factual information, to NHTSA not less than 15 months before the date of introduction. During this period, the manufacturer may request a meeting with the agency to further explain the bases for its evaluations and conclusions.

(4) Within 90 days after its receipt of the manufacturer's submission under paragraph (c)(3) of this section, NHTSA considers that submission, if any, and independently makes, on a preliminary basis, the determinations of those light duty truck lines with sub-median or likely sub-median theft rates which should or should not be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of the agency's preliminary determinations, together with the factual information considered by the agency in making them.

(5) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(4) of this section. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(4) of this section informing it of the agency's evaluations and preliminary determinations. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30-day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(6) Each of the agency's preliminary determinations made under paragraph (c)(4) of this section becomes final 45 days after the agency sends the letter specified in that paragraph unless a request for reconsideration has been received in accordance with paragraph (c)(5) of this section. If such a request has been received, the agency makes its final determinations within 60 days of its receipt of the request. NHTSA informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

PART 543—EXEMPTION FROM VEHICLE THEFT PREVENTION STANDARD

■ 13. The authority citation for Part 543 continues to read as follows:

Authority: 15 U.S.C. 2025; delegation of authority at 49 CFR 1.50.

■ 14. Section 543.3 is revised to read as follows:

§ 543.3 Application.

This part applies to manufacturers of passenger motor vehicles, and to any interested person who seeks to have NHTSA terminate an exemption.

■ 15. Section 543.5(a) is revised to read as follows:

§ 543.5 Petition: General requirements.

(a) For each model year through model year 1996, a manufacturer may petition NHTSA to grant exemptions for up to two additional lines of its passenger motor vehicles from the requirements of part 541 of this chapter. For each model year after model year 1996, a manufacturer may petition NHTSA to grant an exemption for one additional line of its passenger motor vehicles from the requirements of part 541 of this chapter.

* * * * *

Issued on March 29, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–7492 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1572

[Docket No. TSA–2003–14610; Amendment No. 1572–3]

RIN 1652–AA17

Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Drivers License; Final Rule

AGENCY: Transportation Security Administration (TSA), Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: The Transportation Security Administration (TSA) is issuing this final rule, which amends its Interim Final Rule (IFR) establishing security threat assessment standards for commercial drivers authorized to transport hazardous materials. TSA is changing the date on which fingerprint-based background checks must begin in all States to January 31, 2005. TSA is making this change so that the States will have enough time to make changes to their existing commercial driver safety and testing programs to facilitate implementation.

DATES: Effective April 6, 2004.

FOR FURTHER INFORMATION CONTACT: For technical questions: John Berry, Credentialing Program Office, Transportation Security Administration Headquarters, East Building, Floor 8, 601 12th Street, telephone: (571) 227–1757, e-mail: *John.Berry1@dhs.gov.* Steve Sprague, Maritime and Land, Transportation Security Administration Headquarters, West Building, Floor 9, 701 12th Street, Arlington, VA, telephone: (571) 227–1468, e-mail *Steve.Sprague@dhs.gov.*

For legal questions: Christine Beyer, Office of Chief Counsel, Transportation Security Administration Headquarters, West Building, Floor 8, TSA–2, 601 South 12th Street, Arlington, VA 22202–4220; telephone: (571) 227–2657; e-mail: *Christine.Beyer@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments: TSA is not requesting comments to this final rule.

Availability of Rulemaking Document

You can get an electronic copy of this final rule using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*; or

(3) Visiting TSA's Laws and Regulations web page at *http://www.tsa.gov/laws_regs/gov_index.shtm.*

In addition, copies are available by writing or calling the individuals in the **FOR FURTHER INFORMATION CONTACT** section. Please be sure to identify the docket number when making requests.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information or advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question regarding this document may contact the persons listed in the **FOR FURTHER INFORMATION CONTACT** section for information or advice. You can get further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/laws/law_lib.html.*

Background

On May 5, 2003, TSA published an interim final rule (IFR) that requires a security threat assessment of commercial drivers who are authorized to transport hazardous materials.[1] The IFR implements several statutory mandates, discussed below, including a check of relevant criminal and international databases, and appeal and waiver procedures. In the IFR, TSA also stated that it would provide guidance on how fingerprints would be collected and adjudicated.

TSA requested and received comments from the States, labor organizations, and trucking industry associations. In addition, TSA held working group sessions with the States to discuss potential fingerprinting systems that would achieve the statutory requirements, but would not adversely impact the States.

Based on the comments received and the working sessions with the States, on November 7, 2003, TSA amended the IFR to delay the date on which fingerprint collection would begin.[2] The amended IFR provided that the States must begin to collect fingerprints and the accompanying identification information as of April 1, 2004. Any State unable to meet this deadline was required to submit a fingerprint collection plan to TSA and request an extension of time (waiver) to submit the biographical information. The amended IFR required all States to be in compliance with the rule by December 1, 2004.

As a result of comments and correspondence received since November 2003, TSA has determined to eliminate the April 1, 2004 deadline. At present, more than thirty-five States have requested an extension of time to establish a fingerprint collection program. In addition, several States, in their requests for an extension of time, expressed concern over their ability to meet the December 1, 2004 deadline for all States to be in compliance with the rule. For this reason, discussed in greater detail below, fingerprinting will begin no later than January 31, 2005.

Under legislation passed in late 2003,[3] DHS must charge a fee for the cost of any credential and background check provided through the Department for workers in the field of transportation. DHS, through TSA, is in the process of preparing rulemaking documents to establish reasonable fees for this and other similar credentialing programs. With the proposed deadline extension, TSA will work to coordinate the timing of fee assessments with the fingerprint-based portion of the background records check.

USA PATRIOT Act

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act was enacted on October 25, 2001.[4] Section 1012 of the USA PATRIOT Act amended 49 U.S.C. Chapter 51 by

[1] 68 FR 23852, May 5, 2003.

[2] 68 FR 63033, November 7, 2003.

[3] Pub. L. 108–90, October 1, 2003, 117 Stat. 1137, Section 520.

[4] Pub. L. 107–56, October 25, 2001, 115 Stat. 272.