of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone 202–493–6043), *carolina.mirabal@fra.dot.gov.*

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Act) requires that an agency adjust by regulation each maximum civil monetary penalty (CMP), or range of minimum and maximum CMPs, within that agency's jurisdiction by October 23, 1996 and to adjust those penalty amounts once every four years thereafter to reflect inflation. Public Law 101–410, 104 Stat. 890, as amended by Section 31001(s) of the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321–373, April 26, 1996, 28 U.S.C. 2461, note. Congress recognized the important role that CMPs play in deterring violations of Federal law and regulations and realized that inflation has diminished the impact of these penalties. In the Inflation Act, Congress found a way to counter the effect that inflation has had on the CMPs by having the agencies charged with enforcement responsibility administratively adjust the CMPs.

Calculation of the Adjustment

Under the Inflation Act, the inflation adjustment is calculated by increasing the maximum CMP, or the range of minimum and maximum CMPs, by the percentage that the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment (here, June 2004) exceeds the CPI for the month of June of the last calendar year in which the amount of such penalty was last set or adjusted (here, June 1998 for the ordinary maximum). Section 5(a) of the Inflation Act also specifies that the amount of the adjustment must be rounded to the nearest multiple of $100 for a penalty between $100 and $1,000, or to the nearest multiple of $5,000 for a penalty of more than $10,000 and less than or equal to $100,000. The first adjustment may not exceed an increase of ten percent. FRA utilized Bureau of Labor Statistics data to calculate adjusted CMP amounts.

FRA is authorized as the delegate of the Secretary of Transportation to enforce the Federal railroad safety statutes and regulations, including the civil penalty provisions at 49 U.S.C. ch. 213. 49 CFR 1.49; 49 U.S.C. ch. 201–213. FRA currently has 27 regulations that contain provisions that reference its authority to impose civil penalties if a person violates any requirement in the pertinent portion of a statute or the Code of Federal Regulations. In this final rule, FRA is retracting its June 8, 2005 amendments to each of those separate regulatory provisions and the corresponding footnotes in each Schedule of Civil Penalties that raised the ordinary maximum CMP from $11,000 to $15,000. The ordinary maximum CMP should remain at $11,000, as shown below:

The June 2004 CPI of 568.2 divided by the June 1998 CPI of 488.2 equals an inflation factor of 1.164; $11,000 multiplied by 1.164 equals $12,804, or an increase of $1,804. The increase of $1,804 is then rounded to the nearest multiple of $5,000, which in this case is $0. Thus, the ordinary maximum will remain at $11,000. In the final rule, 70 FR 33380, FRA erroneously rounded to the nearest multiple of $5,000 the amount of $12,804, instead of the increased amount ($1,804) as required by the Inflation Act.

List of Subjects in 49 CFR Parts 209, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 225, 228, 229, 230, 231, 232, 233, 234, 235, 236, 238, 239, 240, 241, and 244

Penalties, Railroad safety.

The Final Rule

In consideration of the foregoing, the final rule published on June 8, 2005 at 70 FR 33380 is hereby withdrawn.

Issued in Washington, DC on June 28, 2005.

Joseph H. Boardman,

Administrator, Federal Railroad Administration.

[FR Doc. 05–13185 Filed 7–5–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 573 and 577

[Docket No. NHTSA–2004–18341; Notice No. 2]

RIN 2127–AJ48

Defect and Noncompliance Responsibility and Reports Defect and Noncompliance Notification

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

ACTION: Final Rule; Response to Petitions for Reconsideration.

SUMMARY: This document responds to petitions for reconsideration of the June 23, 2004 dealer notification rule that amended several provisions of agency regulations on notifications by manufacturers of motor vehicles and motor vehicle equipment to dealers and distributors when they or NHTSA decide that vehicles or equipment contain a defect related to motor vehicle safety or do not comply with a Federal motor vehicle safety standard.

DATES: The amendments in this rule are effective on August 5, 2005.

Petitions: Petitions for reconsideration must be received by August 22, 2005 and should refer to this docket and the notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Mr. George Person, Office of Defects Investigation, Room 5319, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; Telephone: (202) 366–5210. For legal issues, you may contact Michael Goode, Office of Chief Counsel, Telephone: (202) 366–5263.

SUPPLEMENTARY INFORMATION:

I. Background

On September 27, 1993, NHTSA published a Notice of Proposed Rulemaking (NPRM) proposing several amendments to its regulations (49 CFR parts 573 and 577) concerning manufacturers' obligations to provide notification and remedy for motor vehicles and items of motor vehicle equipment found to contain a defect related to motor vehicle safety or a noncompliance with a Federal motor vehicle safety standard (58 FR 50314). On April 5, 1995, we issued a final rule (60 FR 17254) addressing most aspects of that NPRM, and on January 4, 1996, we amended several provisions of that final rule in response to petitions for reconsideration of that rule (61 FR 274). However, the agency did not promulgate regulations on dealer notification in the 1995 or 1996 rulemakings because we had not resolved the issues raised by the comments submitted in response to the NPRM.

In the NPRM, we proposed to require manufacturers to notify their dealers and distributors [1] of safety-related

[1] 49 U.S.C. 30118, 30119, and 30120 refer to notification to ''dealers,'' without referring to ''distributors.'' However, under 49 U.S.C. 30116, manufacturers of motor vehicles and motor vehicle equipment have certain responsibilities toward their distributors after it is determined that a product contains a safety-related defect or a noncompliance. Therefore, the notification requirements apply to both dealers and distributors. However, throughout the remainder of this

Continued

defects and noncompliances in their motor vehicles and equipment within five days after notifying the agency of their determination of a safety defect or noncompliance pursuant to 49 CFR part 573, Defect and Noncompliance Reports. In a May 19, 1999 supplemental notice of proposed rulemaking (SNPRM), NHTSA proposed a different approach (64 FR 27227). Rather than specify a particular time period, we proposed to require manufacturers to notify dealers within a reasonable time in accordance with a schedule that is to be submitted to the agency with the manufacturer's defect or noncompliance information report required by 49 CFR § 573.6 (this section was codified as § 573.5 prior to August 9, 2002). NHTSA published the final rule on June 23, 2004 (69 FR 34954). It adopted the proposal in the SNPRM for dealer notification within a reasonable time after the manufacturer decides that a defect that relates to motor vehicle safety or a noncompliance exists. 49 CFR 577.7(c)(1). In addition, the final rule established that, if the agency were to find that the public interest requires dealers to be notified at an earlier date than that proposed by the manufacturer, the manufacturer would have to notify its dealers in accordance with the agency's directive. *Id.* Finally, the final rule adopted the proposal in the SNPRM requiring that the dealer notification contain certain information and described the manner in which such notification is to be accomplished. 49 CFR 577.7(c) and 577.13.

In response to the final rule, the agency received four petitions for reconsideration. Two joint petitions were received: Public Citizen (PC) and the Center for Auto Safety (CAS) (collectively PC/CAS) and Motor and Equipment Manufacturers Association (MEMA) and the Automotive Aftermarket Suppliers Association (AASA) (collectively MEMA/AASA). The Juvenile Products Manufacturers Association, Inc. (JPMA) and General Motors Corporation (GM) filed separate petitions.

PC/CAS objected to the provision allowing notification of dealers within a reasonable time and argued that the five-day period proposed in the NPRM should be instituted. GM asked the agency to clarify that manufacturers are required to verify that they sent the dealer notifications, rather than that the notifications were actually received by their dealers. MEMA/AASA, JPMA, and GM objected to the inclusion of a provision in the final rule on manufacturers' notification of offers to repurchase equipment in dealer inventory.

The issues raised by the petitioners are addressed below.

II. Discussion

A. Timing of Dealer Notification

Statutory and Regulatory Framework

Under 49 U.S.C. 30118(c), a manufacturer of motor vehicles or replacement equipment must notify NHTSA and owners, purchasers, and dealers of the vehicle or equipment as provided by 49 U.S.C. 30119(d) if the manufacturer learns that the vehicle or equipment contains a defect and decides in good faith that the defect is related to motor vehicle safety, or does not comply with an applicable federal motor vehicle safety standard. This notification must be accomplished within a reasonable time after the manufacturer first decides that a safety-related defect or noncompliance exists under 49 U.S.C. 30118(c). 49 U.S.C. 30119(c)(2). Similarly, if NHTSA decides, pursuant to 49 U.S.C. 30118(b), that the vehicle or equipment contains a safety-related defect or does not comply with an applicable standard, the Administrator is required to order the manufacturer to notify owners, purchasers, and dealers of vehicle or equipment of the defect or noncompliance. In these instances, notification is to be given within a reasonable time prescribed by NHTSA. 49 U.S.C. 30119(c)(1).

In addition to statutory requirements, NHTSA regulations delineate various aspects of manufacturers' notification obligations. For over 30 years, 49 CFR part 573, Defect and Noncompliance Responsibility and Reports, has set forth requirements for manufacturers' notification of NHTSA of a safety-related defect or noncompliance. In addition, 49 CFR part 577, Defect and Noncompliance Notification, has set out requirements for manufacturers' notification of owners of motor vehicles and motor vehicle equipment of a safety defect or noncompliance.

Dealer Notification in the 1993 NPRM

The September 1993 NPRM proposed that manufacturers conducting safety recalls provide their dealers with a document that contained the information set forth in the report submitted to the agency pursuant to 49 CFR part 573, within five working days after submitting the report to NHTSA.

A large number of parties commented on the dealer notification proposal in the NPRM, including manufacturer and dealer associations, individual manufacturers, and Advocates for Highway and Auto Safety. All manufacturing and dealer entities objected to the proposed five-day dealer notification requirement. Those objecting included Toyota Motor Corporate Services of North America, Inc. (Toyota), Volkswagen of America, Inc. (VWoA), Chrysler Corporation (Chrysler), American Automobile Manufacturers Association (AAMA), Association of International Automobile Manufacturers (AIAM), National Automobile Dealers Association (NADA), and five heavy truck manufacturers.

The manufacturer and dealer commenters explained the procedure for dealer notification in operation for almost two decades since the enactment of the 1974 Amendments to the National Traffic and Motor Vehicle Safety Act (Safety Act). 88 Stat. 1470 *et seq.* In essence, under the operating procedure, manufacturers provided notice to dealers within a reasonable time after deciding that there was a safety-related defect or noncompliance. As the commenters pointed out, this procedure was working well and there was no need for the proposed five-day dealer notification period. The heavy truck manufacturers maintained that manufacturers act responsibly without the five-day rule, citing as an example a steering gear recall, in which the affected manufacturers notified dealers within one day of the defect determination and advised drivers to park their trucks.

AAMA and NADA emphasized the statutory basis of dealer notification. They explained that section 153(b) of the Safety Act, as amended, (which has been recodified in 49 U.S.C. 30119(c)[2]) requires provision of notice of a safety-related defect to a dealer within a reasonable time after the determination of a defect. They argued that the reasonable time concept allows flexibility by taking into account the differing circumstances and complexities of any particular remedy program. Chrysler argued that circumstances requiring early notification can be taken care of in the present framework by the agency reviewing the issue with the manufacturer and resolving it based upon the reasonable time requirement.

preamble, we will refer to dealers and distributors as ''dealers,'' except where differentiation is required.

[2] The National Traffic and Motor Vehicle Safety Act, as amended, was repealed in the course of the 1994 recodification of various laws pertaining to the Department of Transportation and was reenacted and recodified without substantive change. Pub. L. 103–272, 108 Stat. 745, 941–973, 1379, 1385, 1388, 1397, 1399.

VWoA, Chrysler and Toyota addressed the practical implications of Section 2504 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240, 105 Stat. 1914, 2083–2084. Under that provision, which is now codified at 49 U.S.C. 30120(i), in essence, when a manufacturer has given notice to a dealer about a new vehicle or equipment in a dealer's possession that contains a defect related to motor vehicle safety or does not comply with an applicable standard, the dealer may sell the vehicle or equipment only if it is remedied before delivery under the sale. Toyota pointed out that this statutory stop sale provision does not require a stop sale of vehicles on the date of filing the defect report with NHTSA, but only after the manufacturer's notification to the dealer. In VWoA's and Chrysler's view, there was no need for the regulation to specify a specific time within which a manufacturer must notify its dealers because of the self-interest of the manufacturer once the defect has been determined. According to AAMA, this self-interest is most manifest in cases where there have been imminent safety defects in newly produced vehicles in dealer inventories. In such situations, manufacturers recognize that early notification of dealers, with the consequent embargo of products, is likely to provide a significant safety benefit, and they routinely act accordingly.

Conversely, in recall situations involving older vehicles, where few to no new vehicles would be in dealers' inventory, or where the defect does not pose an imminent safety risk, AAMA argued that there is no safety benefit from an early notification. AAMA called the proposed five-day dealer notification period ''unworkable, unnecessary, and in most cases, likely to be counterproductive.'' Likewise, Toyota commented that not all safety recalls are on the same level of importance. For example, where there is a minor labeling problem, it is both unreasonable and inconsistent for the manufacturer to stop sale of thousands of dollars of in-stock vehicles when in-use vehicles are being operated before the commencement of the recall. NADA emphasized that a stop sale where there is no safety risk puts an unfair burden on dealers because new vehicle inventory is a large portion of a dealer's overhead.

Similarly, VWoA maintained that where the defect is time or mileage dependent and is not going to arise immediately, there is no practical reason to notify dealers until the dealer has received the necessary diagnostic and repair training or parts to correct the defect. AAMA and Chrysler pointed out that publicity in situations where the remedy is not yet ready creates owner frustration and confusion, and results in a lower overall recall completion rate (the percentage of vehicles remedied). Thus, early notification is counterproductive.

Dealer Notification in the 1997 Notice

Pursuant to the Paperwork Reduction Act, the agency published a **Federal Register** notice requesting public comment on the potential paperwork burdens associated with the proposed rule. 62 FR 63598–63599 (Dec. 1, 1997). The notice referred to the agency's proposal to establish a time limit within which manufacturers must notify dealers and to a paperwork burden on manufacturers in writing letters to NHTSA to request a delay in providing dealer notification beyond the five days specified in the rule. 62 FR 63598.

Manufacturer trade associations and a motor vehicle dealer trade association submitted comments. AAMA again opposed the five-day notice proposal; AAMA's principal argument was that the statutory reasonable time standard controls timing issues. AAMA added that their position was underscored by the agency's retreat from a restrictive time requirement proposed in the same rulemaking effort to amend 49 CFR parts 573 and 577. In particular, in 1996, the agency changed a requirement that manufacturers provide a detailed schedule for any owner notification campaign in a recall that would not begin within 30 days of the filing of a defect and noncompliance information report under 49 CFR 573.5 (recodified at § 573.6 in 2002) (Part 573 Report) or end within 75 days of that report. AAMA quoted language from the **Federal Register** notice revising the rule wherein the agency stated that ''manufacturers will have flexibility to tailor the recall notification schedule [to owners] to the circumstances of the particular recall * * * while NHTSA will retain the ability, on a case-by-case basis, to ensure that the timing of recall notification is reasonable.'' 61 FR at 275. Ford opposed the five-day notification period, stating ''there is no evidence to support the need for a final rule on this [dealer notification] matter,'' and suggested that the agency terminate rulemaking action on dealer notification. Similarly, AIAM argued that there is no need for a five-day notice when the current procedure involving a reasonable time for notification has worked, and the agency has sufficient authority to require early notification when manufacturers do not act voluntarily. AIAM also asserted that there is no safety benefit in an early notice where there is no imminent safety risk; and the artificial sense of urgency results in a financial burden to dealers, market disruption, and confusion to consumers. NADA emphasized that the statute imposes a reasonable time standard rather than a five-day default period, and that the current system provides for the flexibility necessary in recall situations that are complex and variable.

The 1999 SNPRM

After considering the information presented in the comments on the 1993 proposed rule and the 1997 Paperwork Reduction Act notice, NHTSA published the SNPRM on May 19, 1999. 64 FR 27227. In the SNPRM, the agency proposed to require manufacturers to notify their dealers of safety defects and noncompliances in accordance with a schedule submitted to the agency with the manufacturer's Part 573 Report. The SNPRM stated that such a schedule will be reviewable by NHTSA to assure that the notification will be within a reasonable time.

In the SNPRM, the agency explained:

> This decision to permit greater flexibility than originally proposed is based on NHTSA's recognition that the process of dealer notification has worked well for over 20 years, notwithstanding the absence of formal regulatory requirements. In conformity with the statutory duty to notify dealers within a ''reasonable time'' (49 U.S.C. 30119(c)(2)), manufacturers have generally notified their dealers of defects and noncompliances in a manner that has allowed repairs to be performed promptly, with minimal disruption of the dealers' operations.
>
> Where manufacturers have concluded that a defect or noncompliance presented an immediate safety risk, they have notified their dealers as soon as the defect or noncompliance determination was made, and have directed the dealers to stop sales (and leases) until the problem is corrected. On occasion, however, NHTSA and a manufacturer have disagreed about when notification should occur or whether immediate notification and immediate cessation of sales is appropriate. For this reason, the agency needs to know the manufacturer's proposed schedule for dealer notification so it can assess the safety implications of that schedule. Therefore, NHTSA is proposing a new section 573.5(c)(8)(iii), which would require the manufacturer to include the estimated date of its dealer notification in its Part 573 defect or noncompliance report, in the same manner as section 573.5(c)(8)(ii) currently requires the submission of the manufacturer's proposed schedule for its owner notification and remedy campaign. In addition, to eliminate the possibility that any

disagreements between NHTSA and the manufacturers concerning the notification date of dealers, NHTSA is proposing a new section 577.7(c)(1), [which] requires manufacturers to comply with a NHTSA order to notify their dealers on a specific date, if the agency has found that notification at that time is in the public interest. In making such determinations, the agency will consider such factors as the severity of the safety risk; the likelihood of occurrence of the defect or noncompliance; availability of an interim remedial action by the owner; whether an initial dealer inspection would identify suspect vehicles or equipment items; the time frame in which the defect will manifest itself; whether there will be a delay in the availability of the remedy from the manufacturer; and, in those recalls where a delay is expected, the anticipated length of such delay. [64 FR at 27228]

In response to the SNPRM, twelve entities, including trade associations of the motor vehicle and motor vehicle equipment industries, and automobile dealers submitted comments. Comments by the Alliance and AIAM, TMA and NADA supported the proposal in the SNPRM for notification of dealers within a reasonable time. There were no objections to the proposed reasonable time standard. Petitioners Public Citizen and the Center for Auto Safety did not comment.

The June 2004 Final Rule

The June 2004 rule requires manufacturers to furnish dealers with notification of a safety-related defect or noncompliance in accordance with a schedule that manufacturers are to submit to the agency with their defect or noncompliance information report required by 49 CFR 573.6(c)(8)(ii). 49 CFR 577.7(c). The notification to dealers must be provided within ''a reasonable time'' after the manufacturer decides that a defect related to motor vehicle safety or noncompliance exists. If the agency finds that the public interest requires dealers to be notified at an earlier date than that proposed by the manufacturer, the manufacturer must provide the required notification in accordance with the agency's directive. *Id.* The rule included a number of factors that the agency may consider. *Id.* The rule also set forth the required content of the dealer notification and the manner in which such notification is to be accomplished. *Id;* § 577.13. In the preamble to the rule, NHTSA responded to comments on the SNPRM. Beyond that, it incorporated by reference the rationale in the SNPRM. 69 FR at 34955.

Petition for Reconsideration of the Reasonable Time Standard

One petition for reconsideration of the June 2004 rule, submitted by PC/CAS, objected to the provision requiring dealer notification within a reasonable time after the manufacturer decides that a defect that relates to motor vehicle safety or a noncompliance exists. The petition requested the agency to reverse the rule and adopt a requirement that manufacturers notify their dealers within five days of the manufacturer's notice to NHTSA as proposed in 1993. Following receipt of the notice, the dealer would be prohibited from delivering the vehicle under a sale until parts were available and repairs were made. 49 U.S.C. 30120(i). In PC/CAS's view, the simplest and safest step for consumers is if they are never sold a defective vehicle in the first place. Petition at 6. The petitioners assert that under a reasonable time standard, defective vehicles will be sold and remain unfixed for an indeterminate amount of time, thus exposing their owners to an otherwise avoidable safety risk.

PC/CAS contend that, as a matter of law, the Safety Act places significant restrictions on manufacturers and dealers in selling new vehicles with safety defects or a noncompliance, and implies real urgency in remedial action. *Id.* at 3. In their view, the rule is contrary to the ''intent'' of the Safety Act. *Id.* at 2, 8. Their argument does not address the central provision in the Safety Act, as amended and recodified, on the time for notification, 49 U.S.C. 30119(c). That provision states: ''[n]otification required under section 30118 of this title shall be given within a reasonable time—(1) prescribed by the Secretary, after the manufacturer receives notice of a final decision under section 30118(b); or (2) after the manufacturer first decides that a safety-related defect or noncompliance exists under section 30118(c) of this title.'' The petition pertains to the second clause, which applies to recalls initiated by manufacturers.[3] The language of this provision sets a standard of a reasonable time. The statute does not dictate a single period of time as the reasonable time period that would apply to manufacturers' notifications of dealers in all circumstances. Instead, as we interpret the Safety Act, as amended and recodified, a reasonable time means a time that is reasonable in the circumstances.[4]

Petitioners point to several subsections of the Act to support their view. For example, they cite 49 U.S.C. 30118(c), which requires manufacturers to notify owners, purchasers and dealers as provided by section 30119(d) if the manufacturer learns the vehicle contains a defect and decides in good faith that the defect is related to motor vehicle safety. Petitioners also refer to 49 U.S.C. 30116(a), which provides, in part, that if after a manufacturer sells a vehicle to a dealer and, before the dealer sells the vehicle, it is decided that the vehicle contains a safety-related defect or does not comply with an applicable motor vehicle safety standard, the manufacturer shall repurchase the vehicle or immediately give the dealer the part needed to make the vehicle comply with the standards or correct the defect. These subsections do not dictate a specific time for manufacturers' notifications to dealers.

Petitioners also refer to subsections that were added to the Safety Act, as amended. As discussed above, 49 U.S.C. 30120(i), provides that if the manufacturer has provided notice under section 30118 to a dealer about a new motor vehicle or replacement equipment in the dealer's possession at the time of notification that contains a safety-related defect or noncompliance, the dealer may sell the vehicle or equipment only if the defect is remedied before delivery under the sale. The second, 49 U.S.C. 30120(j), prohibits a person from selling any new or used motor vehicle equipment for installation on a motor vehicle that is the subject of a decision under 49 U.S.C. 30118(b) or a notice required under 49 U.S.C. 30118(c) in a condition that it may be reasonably be used for its original purpose unless the defect or noncompliance is remedied as required under section 30120 before delivery under the sale. These provisions preclude a dealer from delivering a vehicle or equipment under a sale after receiving notice of a safety-related defect or noncompliance from a manufacturer. But, they do not specify a particular time when the manufacturer must provide notice of the defect to a dealer.

PC/CAS also object to the provisions in the rule under which NHTSA could direct a manufacturer to provide notice to dealers. In the SNPRM, after stating that the manufacturer's proposed schedule may be reviewed by the Administrator, NHTSA proposed that the Administrator

[3] The first clause applies to recalls ordered by NHTSA's Administrator. Very few vehicle recalls have been ordered under 49 U.S.C. § 30118(b). Any such order would include a notification schedule.

[4] In the preamble to the 1996 rule, in the context of the manufacturer's provision to the NHTSA of estimated dates when they will first provide notice to owners of recalled vehicles, we noted that the agency may examine ''whether the manufacturer's time frame for the recall is reasonable under the circumstances.'' 61 FR at 275.

may order a manufacturer to send the notification to dealers on a specific date where the Administrator finds, after consideration of available information, that such notification is in the public interest. The factors that the Administrator may consider include, but are not limited to, the severity of the safety risk; the likelihood of occurrence of the defect or noncompliance; whether a dealer inspection would identify vehicles or equipment items that contain the defect or noncompliance; whether there will be a delay in the availability of the remedy from the manufacturer; and, in those recalls where a delay is expected, the anticipated length of such delay.

Proposed § 577.7(c)(1), 64 FR at 27231.

NHTSA received a number of comments on the proposal. Following the agency's consideration of the matter, NHTSA promulgated the final rule, which provides in part:

The Administrator may direct a manufacturer to send the notification to dealers on a specific date if the Administrator finds, after consideration of available information and the views of the manufacturer, that such notification is in the public interest. The factors that the Administrator may consider include, but are not limited to, the severity of the safety risk; the likelihood of occurrence of the defect or noncompliance; the time frame in which the defect or noncompliance may manifest itself; availability of an interim remedial action by the owner; whether a dealer inspection would identify vehicles or items of equipment that contain the defect or noncompliance; and the time frame in which the manufacturer plans to provide the notification and the remedy to its dealers. [§ 577.7(c)(1)]

In the preamble to the final rule, we noted that the final rule contained several changes to the proposal. 69 FR at 34956. We revised proposed paragraph (c) of § 577.7 to provide for consideration of the views of the manufacturer in ordering notification to dealers at a date earlier than that proposed by the manufacturer. We also indicated that we added two additional factors, namely, availability of an interim remedial action by the owner and the time frame in which the defect may manifest itself, that will be considered by the agency when deciding whether to require dealer notification on a specific date. These two factors had been discussed in the preamble to the SNPRM along with the other factors that became part of the regulatory text in the final rule.

PC/CAS criticize the three changes adopted in the final rule. Petition at 7. They assert that the ''views of the manufacturer'' is a catch-all for whatever the industry will say it means.'' PC/CAS's observation is not a fair characterization of the provision. As noted in the preamble to the final rule, NHTSA's defect and noncompliance notification rule contained a provision requiring that the manufacturers' notification of owners of recalled vehicles and equipment be furnished within a reasonable time after the manufacturer first decides that either a defect that relates to motor vehicle safety or a noncompliance exists (49 CFR 577.7(a)(1)). 69 FR at 34956. The rule further provided that NHTSA may direct a manufacturer to send the notification to owners on a specific date. § 577.7(c)(1); 69 FR at 34959. Under that provision on owner notification, the agency considers available information and the ''views of the manufacturer''. *Id.* The dealer notification provision parallels the related owner notification provision. Second, the provision on consideration of the views of the manufacturer is procedural. NHTSA need not adopt the views of the manufacturer. Third, it makes good sense for the agency to consider the views of the manufacturer before ordering it to provide notice to dealers on a specific date. Ordinarily, the agency's decision would be more informed if the agency considered the views of the regulated entity, as contrasted to ordering the entity to take an action on a specific date without first asking for its views. We would add that in other circumstances, formal or informal, NHTSA often considers the views of the manufacturer, which may possess pertinent information unknown to the agency. For instance, when determining whether to accelerate a manufacturer's remedy program the agency is required to consult with the manufacturer. See 49 CFR 573.14(c). Finally, PC/CAS's criticisms are not supported by any facts or analysis.

With regard to the second factor—availability of an interim remedy—PC/CAS comment that the agency did not explain why consumers should be burdened with addressing a safety defect. The point of this factor was not one of burdening consumers. When the recall remedy is not yet available, a common industry practice in appropriate cases has been for manufacturers to notify consumers to take some action, either to obtain whatever current repair may be available from a dealer or other authorized repair shop, or to take a precautionary action in operation of the vehicle. Similarly, this factor addresses any type of action (in vehicle operation or to the vehicle) that can be taken by the owner or performed at the owner's request by a dealer. For example, if there were an electrical defect in a non-essential accessory, the accessory could be unplugged from a wiring harness.

Third, PC/CAS argue that the factor on the time frame in which the defect will manifest itself is 180 degrees from the agency's initial position in 1993. Petition at 7. But the time in which the defect will manifest itself ordinarily is a valid consideration. If the defect will not manifest itself for a significant period of time, well beyond that in which the recall remedy will be available, a deferred notification to dealers is not problematic. PC/CAS's reference to language from the 1993 NPRM (58 FR 50317) that discussed the proposed requirement for manufacturers to provide justification in their defect report for any requests for delays of the recall or remedy does not dictate a different approach. The agency has rejected the approach proposed in the 1993 NPRM. In the 1996 notice responding to petitions, the agency deleted the extensive scheduling information required in the Part 573 Report under the 1995 rule. In addition, in the 1999 SNPRM, the agency explained its misgivings with the approach in the 1993 NPRM. The June 2004 rule implicitly rejected that approach.

More generally, PC/CAS assert that the agency's determination of what is a reasonable time for dealer notification will turn on factors pertaining to the availability of the remedy, rather than safety considerations. The agency disagrees. The regulation specifies a public interest test. Section 577.7(c)(1). One factor is the severity of the safety risk. Another is the likelihood of occurrence of the defect or noncompliance. A third is the time frame in which the defect or noncompliance may manifest itself. In any event, the factors set forth in section 577.7(c)(1), which employs the phrase ''include, but are not limited to'', are not all inclusive.

The rule addressed the range of circumstances encountered in vehicle and equipment recalls by employing the statutory phrase of notification ''within a reasonable time'' after the manufacturer decides that the defect or noncompliance exists. As both AAMA and NADA observed in their comments on earlier notices, the reasonable time standard permits the flexibility needed in the complex and variegated motor vehicle recall circumstances. The rule's approach is sufficiently flexible to consider the factual predicate for the recall and the wide range of circumstances giving rise to a recall.

In cases where the defect presents an immediate danger in new vehicles, we expect manufacturers, as they routinely

have done, to notify dealers within a short period of time after determining that a safety related defect exists. For example, recently Mitsubishi recalled its Model Year 2006 Eclipse vehicles. The vacuum brake booster may not have been crimped together and could come apart. If it does, the master cylinder will be disconnected and the vehicle will have complete brake failure. Mitsubishi promptly notified dealers. We believe that the regulation should be clarified to assure prompt notification in circumstances such as this. Thus, we are adding a provision to section 577.7(c)(1). The new provision states that in the case of defects or noncompliances that present an immediate and substantial threat to motor vehicle safety, the manufacturer shall transmit this notice to dealers and distributors within three business days of its transmittal of the Defect and Noncompliance Information Report under § 573.6 to NHTSA, except that when the manufacturer transmits the notice by other than electronic means, the manufacturer shall transmit this notice to dealers and distributors within five business days of its transmittal of the Defect and Noncompliance Information Report to NHTSA. Once the manufacturer has prepared the report to NHTSA, if it transmits the dealer notice electronically, it will be able to prepare and electronically transmit the dealer notice within three business days. Manufacturers with large dealer networks employ electronic communications with dealers. If the manufacturer uses a means other than electronic communication to dealers, we are allowing five business days.

We also believe that provisions on Defect and Noncompliance Information Reports should be modified slightly to improve our oversight. Currently, section 573.6(b) provides that each report shall be submitted not more than 5 working days after a defect in a vehicle or item of equipment has been determined to be safety related, or a noncompliance with a motor vehicle safety standard has been determined to exist. Required information that is not available within that period is to be submitted as it becomes available. *Id.* We are amending this section to provide that, at a minimum, information required by subparagraphs (1), (2) and (5) of paragraph (c) of this section shall be submitted in the initial report. The remainder of the information required by paragraph (c) that is not available within the five-day period shall be submitted as it becomes available. This would assure that we are provided timely information on the defect or noncompliance. Manufacturers have this information and commonly provide it in the initial report.

Some products contain potential or latent safety defects that do not manifest themselves for a considerable period of time. For example, vehicle manufacturers produce vehicles that are identical or almost identical in runs that last a number of model years. When a manufacturer identifies a defective part in a make and model of a vehicle, the manufacturer is required to include in its Part 573 Report all of the range of model years of that make and model of vehicle that contain the problematic part, even if failures have not been experienced in current model year vehicles. When the Part 573 Report covers current production vehicles, it does not mean that new vehicles on dealers' lots per se present an immediate safety risk. In fact, in some new vehicles, there is no present safety concern.

As noted in the SNPRM, in many recalls, the safety consequences of the defect are unlikely to arise until the vehicle has been in service for an extended period of time, such as where the problem is caused by corrosion or metal fatigue. 64 FR at 27228. The following examples further indicate some of the situations in which immediate notification of dealers would not be necessary, and support our view that the five-day rule sought by PC/CAS is not warranted.

A common type of progressive failure is accumulative wear of parts. In a new vehicle, the parts would not be worn. Over a period of many months or years, the parts could fail as a result of wear. An example where a component progressively wore and ultimately failed is ball joint failures in Toyota Tundra vehicles. In May 2005, Toyota initiated a recall covering vehicles with possible flaws in ball joints, which are parts in the suspension system of vehicles (Recall No. 05V225). The problem stemmed from scratches on the surface of some ball joints as newly manufactured. This could progress to wear and then to failures in which the ball joint could separate, which could result in a loss of control of the vehicle. The first ball joint separation occurred after 8 months and most occurred after tens of thousands of miles. The ball joints in new vehicles did not present safety issues.

In another instance, a part wore over time as a result of chafing. In September 1997 Ford recalled approximately 125,000 MY 1992–1993 Ford Thunderbird and Mercury Cougar vehicles to repair a fuel line leak (No. 97V159). The fuel line chafed against the floor pan at times when the vehicle was in motion, which eventually could create a pin hole fuel leak. The amount of chafing was mileage dependent and also increased under rough road conditions. Vehicles did not experience failures until they had been driven over 40,000 miles, except for one after 27,000 miles and another after 32,000 miles.

Corrosion may also cause slow, progressive failures. For example, in January 2005 Ford recalled 261,000 MY 2000—2002 Focus vehicles (No. 05V030). In that recall, dealers were instructed to conduct inspections and to replace rear door latches that do not latch properly. In a highly corrosive environment, some door latch assemblies corroded over an extended period of time, which prevented the proper engagement of the door latch ''catch'' to the latch striker on the vehicle body. Some owners experienced difficulty opening or closing the door, and eventually some doors did not latch properly. As revealed in the agency investigation, the failure condition did not manifest itself until the vehicles were in service for approximately two years or more, with the exception of two earlier failures, the earliest of which is unlikely to have been related to corrosion.

Similarly, in July 2004, Ford recalled 899,060 MY 1999–2001 Ford Taurus and Mercury Sable vehicles (No. 04V332) registered in the high corrosion states to repair front suspension coil springs, which may fracture and puncture the adjacent tire. The potential for corrosion causing a spring fracture increases with the number of miles and years in service. Data compiled during the agency investigation indicate that the vast majority of the failures occurred after the vehicles had been in service for two years. The earliest failure occurred after 7 months and the second after 10 months in service.

Some defects stem from materials degradation over time. For example, in August 1998, Chrysler Corporation notified the agency that it would be conducting a recall of 722,387 vehicles manufactured between 1992 and 1997 to replace several rubber o-ring seals in the fuel injection assembly that were prone to lose sealing capacity prematurely (No. 98V184). Prolonged exposure to high underhood temperatures and some aggressive automotive fuels caused the o-rings to experience compressive stress relaxation and lose their sealing force. The degradation of the defective o-rings took place over many months. Warranty data related to leakage in certain parts of the fuel rail assembly provided the first evidence of the problem over two years after the oldest vehicles were

built. Chrysler replaced the o-rings with seals made from a new material that was more resistant to high temperatures and aggressive fuels.

Plastics degradation led to a recall in November 1998 by Volkswagen of 6,217 MY 1992–1994 Corrado vehicles to address heat exchanger end cap ruptures (No. 98V295). The plastic cap degraded over time due to heat and some failed, resulting in a release of hot coolant. Warranty claims submitted by Volkswagen in the investigation show that the vehicles were at least three years old when the failures occurred, except for one that occurred after 9 months and another after two years. The majority of the failures occurred when the vehicles were four and five years old.

The alternative sought by PC/CAS—a rule requiring notice within a specific period of time in all cases—is excessive. It would provide an overbroad margin of safety in circumstances where it is not necessary to stop the sale of vehicles on dealers' lots. It would ground numerous vehicles that are not yet unsafe until parts could be produced, supplied, and installed. This approach, which would place an unnecessary and unjustified burden on those dealers who have large inventories of vehicles within the scope of a Part 573 Report, was proposed in the NPRM as a five-day notification period, and properly rejected.

PC/CAS do not challenge NHTSA's assessment that the process of dealer notification using the reasonable time standard has worked well for 20 years (64 FR at 27228; 69 FR at 34955 (incorporating SNPRM) and 34957), other than on theoretical grounds. Instead, they quibble with NHTSA's statement in the SNPRM that requiring 5 days notice in all cases could have perverse effects. NHTSA stated that a mandatory timeframe could encourage some manufacturers to delay making defect determinations to give them time to develop remedies and stockpile parts. PC/CAS argues that a delayed defect determination violates the Safety Act and subjects the manufacturer to civil penalties. While that is true, it does not resolve the central issue of the timing of dealer notification. As reflected in the examples above, in numerous circumstances there is no factual safety justification for requiring a manufacturer to provide notice to dealers within five days of the submission of their Part 573 Reports to NHTSA. The approach to dealer notification in the June 2004 rule should not be undone simply because a rigid regulation, such as that proposed in the NPRM, could be written to require early dealer notification in all cases and, under such a regime, an untimely notification could violate the Act or a rule.

PC/CAS also criticize the final rule for not requiring that the dealer notification schedule be a mandatory piece of information in the initial filing of the Part 573 defect report. Section 573.6(b) states that each Defect and Noncompliance Report shall be submitted by a manufacturer to NHTSA not more than 5 working days after a defect in a vehicle or item of equipment has been determined to be safety related or a noncompliance with a standard has been determined to exist. The information requirements for the report are set forth in § 573.6(c). Under the rule, including the amendment discussed above, certain information that is required by paragraph (c) that is not available within the five-day period is to be submitted as soon as it becomes available. § 573.6(b). The agency believes that requiring that the manufacturer's initial submission be complete, with all of the information specified in paragraph (c), is not sound. Indeed, it would delay the notification to NHTSA of the existence of a safety-related defect until all of the information is available. Such a delay is inconsistent with 49 U.S.C. 30118 and 30119, 49 CFR 573.6(b) (requirement of reporting within 5 days of determination of noncompliance or safety-related defect) and the agency's strong interest in receiving reports of defects as soon as possible. It is not uncommon that some information, such as a description of the manufacturer's program for remedying the defect or noncompliance (§ 573.6(c)(8)), is not available when the Part 573 Report is filed. 61 FR at 275. The formulation of the dealer notification schedule often is contingent on the availability of such information. At times, it is not known when the manufacturer submits the Part 573 defect report.

In addition, the petitioners argue that since the rate of remedying vehicles after sale is less than the 100 percent repairs achievable prior to sale of new vehicles on dealers' lots, a higher number of consumers will be at risk. Petition at 2. Their argument is theoretical. As noted above, the statutory ''reasonable time'' standard for dealer notification has been in place for three decades. Historically, the vast majority of vehicles covered by a safety recall have been remedied. In circumstances involving severe problems, manufacturers and dealers have embargoed the sale of new vehicles, particularly after the enactment of ISTEA. Today's amendment to 49 CFR 577.7(c)(1) provides further assurances that when the defect or noncompliance in a new motor vehicle presents and immediate and substantial risk to motor vehicle safety, the vehicle will not be sold until repaired. As to other vehicles, manufacturers and at times dealers provide notice of recalls to owners, the vast majority of which bring the vehicles to dealers for recall work. Also, owners commonly have vehicles serviced by dealers when the vehicles, such as those at issue, are under warranty. When vehicles are brought to dealers for warranty work, the dealers check the manufacturers' records on those vehicles and perform outstanding recall repairs.[5] In the end, the petition simply does not demonstrate with compelling real world evidence that the historical approach is fundamentally flawed.

PC/CAS also assert that a lack of public information about the defect does not allow the generation of any public pressure on manufacturers to develop a quick remedy. In particular, PC/CAS state that the public frequently will face a substantial delay in being informed of the defect because the agency does not routinely place Part 573 Reports on its Web site until weeks or months after the manufacturer's submission. Petition at 7. This is based on an incorrect understanding of agency practices. The Part 573 Reports are routinely placed on our website as soon as practicable, which currently is within a week of receipt.

B. Verification of Notice to Dealers

In the NPRM we had proposed that manufacturers maintain records to verify that they notified their dealers of the defect or noncompliance and that the dealers received the notification. Subsequently, as stated in the SNPRM: ''The agency has decided that it would be unduly burdensome, and perhaps impracticable, to require manufacturers to keep records reflecting that each dealer received the notification. The proposed new section 577.11(d) required that manufacturers be able to verify that it has sent the notification to its dealers and the date of such notification.''

The final rule essentially adopted the proposal in the SNPRM. In particular, proposed section 577.11(d) was moved to section 577.7(c)(2)(i) and illustrative language was added. The preamble to the final rule proceeded to say that:

[5] Of course, in general, far fewer than all the vehicles covered by a recall are defective. *See United States* v. *General Motors Corp.,* 581 F.2d 420, 438–439 (D.C. Cir. 1975).

> We are revising proposed § 577.7(c)(2)(i) to identify examples of what will be considered to be verifiable electronic means of notification, such as receipts or logs from electronic mail or satellite distribution systems. AAM/AIAM and MIC recommended this change in order to clarify the meaning of verifiable electronic means. However, the examples referenced are not the only types of verifiable electronic means that would be permissible, since other technology that provides comparable information may become available.

69 FR at 34956.

In its petition, GM points out that the preamble to the final rule appears to evert to the 1993 proposal to require proof of receipt by a dealer. In responding to a recommendation that manufacturers be allowed to send notifications by first class mail, we stated:

> While we have authorized the use of various means of notification, we have required that the manufacturer be able to verify that the notifications were sent to *and received by* each dealer. Since there is no way to verify receipt of first class mail, we have rejected this suggestion. [emphasis added]

69 FR at 34957. The phrase ''and received by'' was an inadvertent misstatement. We confirm that manufacturers are not required to verify that the notification was received by their dealers. There is no need for any clarification to the regulatory text of section 577.7(c)(2)(i). That section does not include language indicating that a manufacturer must prove receipt of the notification by its dealers. The meaning is confirmed by section 577.13(d), which states that ''[t]he manufacturer shall, upon the request of the Administrator, demonstrate that it sent the required notification to each of its known dealers and distributors and the date of such notification.''

C. Content of Dealer Notification—Requiring Manufacturers To Provide Notice Containing Offer To Repurchase Equipment

Section 30116 of the Safety Act, as amended, sets forth certain actions that manufacturers must take following a decision that a motor vehicle or an item of motor vehicle equipment is defective or noncompliant under 49 U.S.C. 30118. Section 30116(a) provides for the manufacturer's repurchase of the motor vehicle or equipment or, for vehicles, for the manufacturer's provision of parts or equipment needed to make the vehicle comply with the standards or correct the defect. In 49 U.S.C. 30116(c), Congress provided that the parties shall establish the value of the installation of the part and amount of reimbursement and, if they do not agree or the manufacturer does not comply with the statute, a Federal cause of action whereby the dealer may bring suit against the manufacturer.

In the final rule, section 577.13(c) required that for notifications of defects or noncompliances in items of motor vehicle equipment, the notification to dealers shall contain the manufacturer's offer to repurchase the items that remain in dealer or distributor inventory at a specified price, or as otherwise agreed to between the manufacturer and the dealer.

In its petition for reconsideration, JPMA asserts that equipment manufacturers have the statutory right to elect the remedy, that the final rule unreasonably interprets the Safety Act to preclude repair or replacement of equipment in dealer inventory, and that the final rule interferes with contractual relationships. JPMA observes that historically the agency has allowed such repair or replacement. GM asserts similar legal arguments and contends that there is no need for this type of regulation. It points out that items in dealer inventory are inspected and repaired as need be, as opposed to being repurchased. MEMA/AASA make legal arguments similar to those of JPMA and GM.

JPMA is correct that historically NHTSA has not opposed manufacturers' repair or replacement of items of equipment in dealer inventory that are the subject of a defect and noncompliance report under 49 CFR part 573. Indeed, we recognized that practice in the last clause of section 577.13(c), which in addition to a repurchase by the manufacturer recognized the appropriateness of arrangements as otherwise agreed to between the manufacturer and the dealer.

On reconsideration, we agree with GM and JPMA that section 577.13(c) is unnecessary and are deleting it. Manufacturers and equipment dealers have worked cooperatively in the past to satisfactorily handle inventory affected by a recall campaign. At this time, we do not see a safety need for additional notice requirements.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT 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 a ''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.

NHTSA has considered the impact of this rulemaking under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures, and for the following reasons has determined that it is not a ''significant regulatory action'' within the meaning of Sec. 3 of E.O. 12866 and is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. This document was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.''

For the following reasons, NHTSA concludes that this final rule will not have any quantifiable cost effect on motor vehicle manufacturers or motor vehicle equipment manufacturers. In response to petitions for reconsideration, this final rule requires that the information required in paragraphs (1), (2) and (5) of 49 CFR 573.6(c) be submitted in the manufacturer's initial Defect and Noncompliance Information Report that is submitted within 5 working days after a defect in a vehicle or item of equipment has been determined to be safety related, or a noncompliance with a motor vehicle safety standard has been determined to exist. These items of information are not new, are ordinarily submitted in the initial report and insofar as they are not it would not be burdensome to submit them in the initial report, as opposed to later. Second, while the rule retains the standard for notification of dealers within a reasonable time after the manufacturer decides that the defect or noncompliance exists that appears in the statute and the June 2004 final rule, it also adds a provision for prompt notice to dealers in circumstances where there is an immediate and

substantial risk to motor vehicle safety. This states the proper application of the reasonable time standard in the circumstances. Manufacturers have informed us and we have observed that under the reasonable time standard, they provide such prompt notice to dealers where the safety risks warrants it. Thus, this amendment does not add a real burden. Third, as made clear in the discussion above, manufacturers are not required to verify that their notifications were received by their dealers. Finally, this final rule eliminates an unnecessary paragraph in notices to equipment dealers. The section 577.13 notification to dealers and distributors need no longer include the manufacturer's offer to repurchase the items that remain in dealer or distributor inventory or as otherwise agreed to between the manufacturer and dealer.

Because the economic effects of this final rule are so minimal, no further regulatory evaluation is necessary.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBFEFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

The Administrator has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The statement of the factual basis for the certification is that this final rule, formulated in response to petitions for reconsideration, does not change the information required by paragraphs (1), (2) and (5) of 49 CFR 573.6(c), but does require that it be submitted in the manufacturer's initial Defect and Noncompliance Information Report. These items of information are ordinarily submitted in the initial report and insofar as they are not it would not be burdensome to submit them in the initial report, as opposed to later. Second, within the existing standard for notification of dealers within a reasonable time after the manufacturer decides that the defect or noncompliance exists that appears in the statute and the June 2004 final rule, this rule adds a provision for prompt notice to dealers in circumstances where there is an immediate and substantial risk to motor vehicle safety. Manufacturers have informed us and we have observed that under the reasonable time standard, they provide such prompt notice to dealers where the safety risks warrants it. Under the statute and June, 2004 rule it would not have been appropriate for manufacturers to defer notice where the defect in a vehicle presented an immediate and substantial risk to motor vehicle safety. Thus, this amendment to the rule thus does not add a significant burden. Third, this final rule eliminates an unnecessary paragraph in notices to equipment dealers. It does not alter the underlying substantive provision of the statute or historical practice whereby manufacturers offer to repurchase the items that remain in dealer or distributor inventory or reach an alternative agreement.

For these reasons, and for the reasons described in our discussion on Executive Order 12866 and DOT Regulatory Policies and Procedures, NHTSA concludes that this final rule will not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

NHTSA has analyzed these amendments for the purposes of the National Environmental Policy Act and determined that they will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

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

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132. The agency has determined that this rule will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. This rule will not have any substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. The reason is that this final rule applies to motor vehicle manufacturers and to motor vehicle equipment manufacturers, not to the States or local governments. Thus, the requirements of Section 6 of the Executive Order do not apply.

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires federal 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 by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written assessment is needed, Section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows NHTSA to adopt an alternative

other than the least costly, most cost-effective or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of more than $100 million annually. Accordingly, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

F. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988 ''Civil Justice Reform,'' this agency has considered whether this final rule would have any retroactive effect. NHTSA concludes that this final rule will not have any retroactive effect. Judicial review of the rule may be obtainable under 5 U.S.C. 702. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

The Dealer Notification Rule, as published in June 2004 and as amended by this rule, involves an information collection under the Paperwork Reduction Act of 1995. NHTSA is in the process of obtaining clearance for requirements of the dealer notification rule. On May 6, 2005, NHTSA published notice that an information collection request has been forwarded to the Office of Management and Budget for review. 70 FR 24163. The comment period in the notice expired on June 6, 2005. NHTSA sought to revise a currently approved request, OMB No. 2127–0004.

H. Executive Order 13045

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

This rulemaking does not involve any environmental, health or safety risks that disproportionately affect children.

I. Privacy Act

Anyone is able to search the electronic form of all submissions received into any of our dockets by the name of the individual submitting the comment or petition (or signing the comment or 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.*

J. 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 NHTSA to use voluntary consensus standards in its 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 the agency to provide Congress, through the OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

After conducting a search of available sources, we have concluded that there are no voluntary consensus standards applicable to this final rule.

K. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects

49 CFR Part 573

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

49 CFR Part 577

Motor vehicle safety.

■ In consideration of the foregoing, Parts 573 and 577 of Chapter V of Title 49 of the Code of Federal Regulations are amended to read as follows:

PART 573—DEFECT AND NONCOMPLIANCE RESPONSIBILITY AND REPORTS

■ 1. The authority citation for Part 573 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 30102, 30103, 30116–30121, 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 573.6 is amended by revising paragraph (b) to read as follows:

§ 573.6 Defect and noncompliance information report.

* * * * *

(b) Each report shall be submitted not more than 5 working days after a defect in a vehicle or item of equipment has been determined to be safety related, or a noncompliance with a motor vehicle safety standard has been determined to exist. At a minimum, information required by paragraphs (1), (2) and (5) of paragraph (c) of this section shall be submitted in the initial report. The remainder of the information required by paragraph (c) of this section that is not available within the five-day period shall be submitted as it becomes available. Each manufacturer submitting new information relative to a previously submitted report shall refer to the notification campaign number when a number has been assigned by the NHTSA.

* * * * *

PART 577—DEFECT AND NONCOMPLIANCE NOTIFICATION

■ 3. The authority citation for Part 577 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 30102, 30103, 30116–30121, 30166; delegation of authority at 49 CFR 1.50.

■ 4. Section 577.7 is amended by revising paragraph (c)(1) as follows:

§ 577.7 Time and manner of notification.

* * * * *

(c) * * *

(1) Be furnished within a reasonable time after the manufacturer decides that a defect that relates to motor vehicle safety or a noncompliance exists. In the case of defects or noncompliances that present an immediate and substantial threat to motor vehicle safety, the manufacturer shall transmit this notice to dealers and distributors within three business days of its transmittal of the Defect and Noncompliance Information Report under 49 CFR 573.6 to NHTSA, except that when the manufacturer transmits the notice by other than electronic means, the manufacturer shall transmit this notice to dealers and distributors within five business days of its transmittal of the Defect and

Noncompliance Information Report to NHTSA. In all other cases, the notification shall be provided in accordance with the schedule submitted to the agency pursuant to § 573.6(c)(8)(ii), unless that schedule is modified by the Administrator. The Administrator may direct a manufacturer to send the notification to dealers on a specific date if the Administrator finds, after consideration of available information and the views of the manufacturer, that such notification is in the public interest. The factors that the Administrator may consider include, but are not limited to, the severity of the safety risk; the likelihood of occurrence of the defect or noncompliance; the time frame in which the defect or noncompliance may manifest itself; availability of an interim remedial action by the owner; whether a dealer inspection would identify vehicles or items of equipment that contain the defect or noncompliance; and the time frame in which the manufacturer plans to provide the notification and the remedy to its dealers.

* * * * *

§ 577.13 [Amended]

■ 5. Section 577.13 is amended by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

Issued: June 30, 2005.

Jeffrey W. Runge,

Administrator.

[FR Doc. 05–13249 Filed 7–5–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 062905A]

Fisheries of the Exclusive Economic Zone Off Alaska; ''Other Flatfish'' in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for ''other flatfish'' in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2005 ''other flatfish'' total allowable catch (TAC) in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 6, 2005, through 2400 hrs, A.l.t., December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2005 ''other flatfish'' TAC in the BSAI is 4,375 metric tons (mt) as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005) and the apportionment from the non-specified reserve of groundfish to ''other flatfish'' in the BSAI, effective July 6, 2005, published in the Rules section of today's **Federal Register**.

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the 2005 ''other flatfish'' TAC in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,375 mt, and is setting aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for ''other flatfish'' in the BSAI.

After the effective date of this closure the maximum retainable amounts at §§ 679.20(e) and (f) apply at any time during a trip.

''Other flatfish'' consists of all flatfish species, except for Pacific halibut, flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder, and Alaska plaice.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of ''other flatfish'' in the BSAI.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 29, 2005.

Alan D. Risenhoover

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 062905B]

Fisheries of the Exclusive Economic Zone Off Alaska; ''Other Flatfish'' in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; apportionment of reserves; request for comments.

SUMMARY: NMFS apportions amounts of the non-specified reserve of groundfish to the ''other flatfish'' initial total allowable catch (ITAC) in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the fishery to continue operating. It is intended to promote the goals and objectives of the fishery management plan for the BSAI.

DATES: Effective July 6, 2005 through 2400 hrs, Alaska local time (A.l.t.), December 31, 2005. Comments must be received at the following address no later than 4:30 p.m., A.l.t., July 15, 2005.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by: