Source of flooding and location of referenced elevation	*Elevation in feet (NGVD) modified	Communities affected
Maps are available for inspection at the Municipal Plaza, 114 West Commerce, 7th Floor, San Antonio, Texas.		

* National Geodetic Vertical Datum of 1929.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: September 26, 2005.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 05–19815 Filed 10–3–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 591, 592 and 594

[Docket No. NHTSA–2000–8159; Notice 3]

RIN 2127–AJ63

Certification; Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards; Registered Importers of Vehicles Not Originally Manufactured To Conform to the Federal Motor Vehicle Safety Standards; Schedule of Fees Authorized by 49 U.S.C. 30141

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

ACTION: Final rule; response to a petition for reconsideration.

SUMMARY: This document responds to a petition for reconsideration of the August 24, 2004 final rule that amended regulations pertaining to the importation by registered importers (RIs) of motor vehicles that were not originally manufactured to comply with all applicable Federal motor vehicle safety, bumper, and theft prevention standards. The agency is not adopting the changes requested in the petition, except for one asking the agency to allow RIs to import motor vehicles that have been modified to comply with the Theft Prevention Standard and one asking the agency to allow an imported nonconforming motor vehicle to be operated on public roads prior to bond release solely for the purpose of conducting required EPA testing. Also, the agency has decided to eliminate the requirement for applicants for RI status to submit to the agency the social security numbers of its principals.

DATES: The amendments in this rule are effective on November 3, 2005. This final rule amends the final rule published on August 24, 2004 (69 FR 52070), which was effective on September 30, 2004.

Petitions: Petitions for reconsideration must be received by November 18, 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 Coleman Sachs, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, Room 6111, 400 Seventh Street, SW., Washington, DC 20590; Telephone: (202) 366–3151. For legal issues, you may contact Michael Goode, Office of Chief Counsel, Telephone: (202) 366–5263.

SUPPLEMENTARY INFORMATION:

I. Background

A. New Information Required Under Final Rule To Acquire and Maintain RI Registration

On August 24, 2004, NHTSA published (69 FR 52070) a final rule amending the agency's regulations that pertain to the importation by RIs of motor vehicles that were not originally manufactured to comply with all applicable Federal motor vehicle safety, bumper, and theft prevention standards. The agency noted that some RIs have engaged in conduct that, while not expressly prohibited by the RI regulations previously in effect, was nevertheless in need of scrutiny. See 69 FR at 52073. To address concerns about this conduct, the amendments require, among other things, that RIs and applicants for RI status submit additional information beyond what they had previously been required to submit to acquire and maintain their registrations.

One of the information items that each RI and applicant for RI status is required to submit under the final rule is the social security number of each of its principals or partners and each person authorized to sign statements certifying to NHTSA that vehicles the RI has imported or modified conform to all applicable Federal motor vehicle safety and bumper standards. As stated in the final rule at 52074, the agency decided to require this information so that it could determine whether any person associated with an applicant has ever been convicted of a misdemeanor or felony involving motor vehicles or the motor vehicle business.

B. Practices Prohibited Under Final Rule.

1. Importing Salvage or Reconstructed Motor Vehicles

The final rule also identified and proscribed certain practices of RIs that were not specifically addressed by the previously existing RI regulations because they were not contemplated at the time those regulations were adopted in 1989. Among these were efforts on the part of some RIs to import heavily damaged motor vehicles both before and after their repair (referred to as ''salvage vehicles''), or vehicles comprised of the body of one vehicle and the chassis and frame of another (referred to as ''reconstructed vehicles''). The agency noted that there can be no assurance that a salvage or reconstructed motor vehicle can be restored to a condition in which it complies or can be brought into compliance with the Federal motor vehicle safety standards (FMVSS). See 69 FR at 52089. As a consequence, the agency adopted a requirement in the final rule (49 CFR 591.5(f)(3)) for the importer to declare at the time of entry that the ''vehicle is not a salvage motor vehicle or a reconstructed motor vehicle.''

The agency also adopted definitions for each of these terms, which were added to those in 49 CFR 591.4. Under those definitions, a ''reconstructed motor vehicle means a motor vehicle whose body is less than 25 years old and which is mounted on a chassis or frame that is not its original chassis or frame and that is less than 25 years old.'' A ''salvage motor vehicle'' means:

A motor vehicle, whether or not repaired, which has been:

(1) Wrecked, destroyed, or damaged, to the extent that the total estimated or actual cost of parts and labor to rebuild or reconstruct the motor vehicle to its pre-accident condition and for legal operation on the streets, roads, or highways, exceeds 75 percent of its retail value at the time it was wrecked, destroyed, or damaged; or

(2) Wrecked, destroyed, or damaged, to which an insurance company acquires ownership pursuant to a damage settlement (other than a damage settlement in connection with a recovered theft vehicle unless such motor vehicle sustained sufficient damage to meet the 75 percent threshold specified in the first sentence); or

(3) Voluntarily designated as such by its owner, without regard to the extent of the motor vehicle's damage and repairs.

2. Releasing Custody of Vehicle, or Titling Vehicle in a Name Other Than the RI's, Prior to Bond Release

The agency observed in the preamble to the final rule that an RI may license or register an imported motor vehicle for use on public roads, or release custody of a motor vehicle to a person for license or registration for use on public roads ''only after 30 days after the registered importer certifies [to NHTSA] that the motor vehicle complies [with applicable FMVSS].'' See 69 FR at 52082, quoting 49 U.S.C. 30146(a)(1). An RI performs this function by submitting to the agency a statement certifying that the vehicle complies with all applicable standards in effect on its date of manufacture, supported by documentary and photographic evidence of the modifications that it made to the vehicle to achieve conformity with those standards. This submission is commonly referred to as a ''conformity package.'' The agency noted in the final rule that it has construed 49 U.S.C. 30146(a)(1) as allowing an RI to license or register a vehicle, or release custody of a vehicle for use on public roads less than 30 days after receipt of the conformity package if NHTSA has notified the RI that the DOT Conformance bond furnished for the vehicle at the time of importation has been released. *Id.* The agency further noted that it has attempted to accommodate RIs by expediting the process for releasing Conformance bonds, and had been able in 2002 to achieve a reduction in the processing time to an average of five days from the receipt of the conformity package. *Id.* Despite these efforts to reduce the processing time for the release of Conformance bonds, the agency noted that ''in some instances vehicles imported from Canada have been shipped directly to auction houses or dealers and sold very soon after entry, before bonds were released, and in some instances, even before we had received a certification of conformity from the RI.'' *Id.*

To curtail these practices, in the final rule the agency adopted certain measures to better ensure that RIs retain imported nonconforming vehicles for the requisite period before they are released for use on public roads. Among these is a provision (added to 49 CFR 592.6(e)(5)) stating that an RI may not ''release custody of [a motor vehicle it imports] to a person for sale, or for license or registration for use on public streets, roads, and highways, or for titling in a name other than that of the Registered Importer who imported the vehicle'' until the DOT Conformance bond furnished for the vehicle at the time of importation has been released or until 30 days have elapsed from the date the RI submits a conformity package covering the vehicle to NHTSA. As part of the final rule, NHTSA also amended the provision on bond forfeiture at 49 CFR 592.9(e) to state that a bond may be forfeited if an RI ''licenses or registers the vehicle, including titling the vehicle in the name of another person, unless 30 calendar days have elapsed after the Registered Importer has filed a complete certification [of conformity].''

C. Duties of a Registered Importer Amended Under the Final Rule

The final rule amended 49 CFR 592.6, which specifies the duties of a registered importer, to address specific problematic activities by some RIs and to clarify the duties of an RI. One of the amendments to 49 CFR 592.6 requires an RI to certify, at the time it submits a conformity package for a nonconforming vehicle it has imported, either that the vehicle is not required to comply with the parts marking requirements of the Theft Prevention Standard at 49 CFR Part 541, or that the vehicle complied with those requirements as originally manufactured. See 49 CFR 592.6(d)(1)(i) and (ii). Another new requirement, specified at 49 CFR 592.6(d)(7), is for the RI to submit to the agency, as part of the conformity data for the second and each subsequent vehicle of a particular make, model, and model year that it brings into conformity with all applicable standards, information including a description of the modifications performed (§ 592.6(d)(1)(ii)), unaltered front, side, and rear photographs of the vehicle (§ 592.6(d)(1)(vi)), and unaltered photographs and documentation sufficient to demonstrate conformity with all applicable Federal motor vehicle safety and bumper standards to which the vehicle was not originally manufactured to conform (§ 592.6(d)(1)(viii)). A third requirement, specified at 49 CFR 592.6(j)(1), is for the RI to allow representatives of NHTSA, upon demand and the presentation of credentials, to inspect facilities where a vehicle for which the RI has submitted a certificate of conformity to the agency is being modified, repaired, or stored, and any facility where any record or other document relating to the modification, repair, testing or storage of such a vehicle is kept. A fourth requirement, at 49 CFR 592.6(e)(1), prohibits an RI, prior to the release of the DOT Conformance bond furnished for a vehicle at the time of importation, from operating the vehicle on the public streets, roads, and highways for a purpose other than transportation to and from a franchised dealership of the vehicle's original manufacturer for remedying a noncompliance or a safety-related defect.

D. Suspension and Revocation of Registered Importer Registrations

The final rule also amended 49 CFR 592.7, which specifies the acts and omissions that may result in the suspension or revocation of an RI's registration, as well as the process for taking such action and the conditions for reinstating a suspended registration. One provision of that section (§ 592.7(a)(2)) states that NHTSA may automatically suspend an RI's registration if the Administrator decides that the RI has knowingly filed a false or misleading certification with the agency.

E. Petition for Reconsideration

In response to the final rule, the agency received one petition for reconsideration. This was submitted by Mr. Philip Trupiano of Auto Enterprises, Inc., an RI located in Warren, Michigan. The petition offered various objections and suggestions. In the petition, Mr. Trupiano takes exception to some aspects of the requirement in the final rule that bars RIs from importing salvage vehicles. The petition also challenges NHTSA's authority to seek forfeiture of a DOT conformance bond if an RI licenses or titles the vehicle covered by the bond less than 30 days after submitting to NHTSA conformance certification data on that vehicle. The petition further seeks the amendment of the provision in the final rule requiring an RI to divulge to the agency the social security numbers of its principals. The requested amendment would restrict access to that information and ensure that it is used only for the purpose of carrying out the vehicle safety laws administered by NHTSA. In addition, the petition seeks amendments to a provision of the final rule enumerating the responsibilities of an RI. The requested amendments would permit RIs to import motor vehicles that have been modified to comply with the Theft Prevention Standard, would waive the requirement

for an RI to submit information and photographs to document the modifications that it makes to a nonconforming vehicle, would require the agency to provide an RI with at least 48 hours advance notice before inspecting one of its facilities, and would allow an RI who is also an Independent Commercial Importer (ICI) licensed by the Environmental Protection Agency (EPA) to operate a vehicle on public roads to conduct testing required by that agency. Lastly, the petition seeks the amendment of provisions specifying the acts and omissions that may result in the revocation or suspension of an RI's registration. The requested amendment would make an RI's registration subject to automatic suspension for knowingly filing ''a fraudulent certification'' instead of a ''false or misleading certification.'' Each of these issues is addressed below:

II. Discussion

A. Prohibition Upon the Importation of Salvage Vehicles

The final rule includes a requirement for the importer of a motor vehicle to declare at the time of entry that the ''vehicle is not a salvage motor vehicle or a reconstructed motor vehicle. See 49 CFR 591.5(f)(3). The petitioner agrees with the principle that salvage vehicles should be prohibited from entry and that vehicles that are not capable of being repaired to comply with the FMVSS should not be allowed on American roads. He contends, however, than an RI may lack knowledge that any given vehicle it is importing is a repaired salvage vehicle if the repairs to that vehicle were properly done. As a consequence, the petitioner asserts that the prohibition upon the importation of salvage vehicles is not practical, is overly restrictive, and wrongly assumes that RIs are capable of determining whether any vehicle they import is a repaired salvage vehicle. Moreover, the petitioner contends that this prohibition has no clear statutory basis and could subject to civil liability an RI who unknowingly imports a salvage vehicle.

The petitioner observes that there are providers of vehicle history information who can identify whether a particular vehicle had been assigned a previous salvage or rebuilt brand. In view of the availability of this information, the petitioner asks NHTSA to require the RI to perform a computer database search of Canadian motor vehicle registration records covering every Canadian province or territory to determine whether the vehicle has ever had a salvage or rebuilt brand, and to provide a copy of the search confirming no prior salvage history as part of the documentation it submits to the agency to certify that the vehicle conforms to all applicable standards. In addition to, or as an alternative to this requirement, the petitioner states that the agency should require the RI to employ on a full-time basis a licensed collision repair mechanic, or where such licensing is not required, a mechanic holding an Automotive Service Excellence (''ASE'') certification in collision repair to inspect vehicles for evidence of repaired damage. If the agency chooses not to adopt either of the above suggestions, the petitioner asks that it change the operative language of 49 CFR 591.5(f)(3) to restrict the importation of repaired salvage vehicles only when the RI has knowledge of that status.

Agency response: The agency is denying petitioner's request. The rationale for adopting the prohibition on the importation of salvage or reconstructed vehicles was stated in the notice of proposed rulemaking (NPRM) that preceded the final rule. There, the agency stated that ''when a vehicle has been heavily damaged or reconstructed, we have no assurance that it can be restored to a condition in which it complies, or can be brought into compliance with, the Federal motor vehicle safety standards.'' See 65 FR at 69824. An RI would face a significant burden in proving, to the agency's satisfaction, that a vehicle that has been heavily damaged or reconstructed has been brought into compliance with all applicable FMVSS. Absent such proof, there would be no basis on which the agency could release the DOT Conformance bond furnished for the vehicle at the time of entry.

To avoid these problems, the provision adopted in the final rule requires RIs to file a declaration, at the time of entry, stating that the vehicle is not a salvage motor vehicle or a reconstructed motor vehicle. This declaration is to be made on the HS–7 Declaration form, which is the official NHTSA form required to import a motor vehicle. To make such a declaration, it is incumbent upon the RI to determine that the vehicle to be imported is not a salvage motor vehicle or a reconstructed motor vehicle. There are various ways to assure that the vehicle has not been salvaged or rebuilt.

The petitioner suggests two alternative methods to determine whether the vehicle is a salvage or a reconstructed vehicle—a computer database search of registration records or an inspection by a certified collision specialist. The petitioner specifically recommends that RIs be required to perform a computer database search of Canadian motor vehicle registration records covering every Canadian province or territory to determine whether the vehicle has ever had a salvage or a rebuilt brand. The agency notes that it rejected a similar request, made in response to the NPRM. The request there in issue sought an amendment requiring RIs to conduct lien searches across Canada and then to provide a statement regarding this research on each vehicle they import, to ensure that there are no outstanding Canadian liens on the vehicle. See 69 FR at 52075.

NHTSA's regulation imposes a requirement to preclude the importation of salvage motor vehicles and rebuilt motor vehicles. The agency will not delete this requirement and substitute in its place steps that may be taken to achieve this end result. While it recognizes that the computer database search recommended by the petitioner may be helpful in certain circumstances, NHTSA is not requiring that such a search be performed. RIs are nevertheless free to perform the computer database search the petitioner suggests to assess whether a particular vehicle is a salvage or a reconstructed motor vehicle.

The agency also rejected a comment to the NPRM requesting an amendment similar to the petitioner's other alternative—to require the RI to employ on a full-time basis a licensed collision repair mechanic, or where such licensing is not required, an ASE certification in collision repair to inspect vehicles for evidence of repaired damage. The comment addressed in the final rule recommended that NHTSA require that an RI be specifically licensed to operate as a motor vehicle repair facility and to have at least one employee who is a licensed mechanic in the State where the RI is located. See 69 FR at 52076. In rejecting this comment, the agency stated that it is not conversant with the laws of the various States that relate to this issue, and observed that there may be some that do not require the licensing of auto repair mechanics. *Id.* For the same reason, the agency is unwilling to accept the petitioner's suggestion that it require RIs to employ full-time mechanics licensed in collision repair to inspect vehicles for evidence of repaired damage. However, the agency recognizes that inspection of the vehicle by a repair specialist would often be a reasonable approach for RIs to take. Any such inspection would have to occur following the vehicle's importation into the United States, and therefore could not provide the basis for the importer's declaration at the time of

entry that the vehicle is not a salvage motor vehicle or a reconstructed motor vehicle.

The petitioner expressed concern that the provision at issue could subject to civil liability an RI that unknowingly imports a salvage or a reconstructed motor vehicle. The agency recognizes that sanctions, such as civil penalties or the suspension or revocation of an RI registration, could be brought against an RI that files a false declaration, *i.e.*, one that declares that a vehicle is not a salvage or a reconstructed vehicle if it is discovered after importation that the vehicle is, in fact, such a vehicle. In these circumstances, the agency gives consideration to the circumstances of the violation. See e.g., 49 U.S.C. 30165(b) (''In determining the amount of a civil penalty or compromise, the appropriateness of the penalty or compromise to the * * * gravity of the violation shall be considered.''). See also 49 CFR 592.7(b), affording an RI that is notified that its registration may be suspended or revoked ''an opportunity to present data, views, and arguments * * * as to whether the violation occurred, why the registration ought not be suspended or revoked, or whether the suspension should be shorter than proposed.''). An RI that faced civil penalties or the revocation or suspension of its registration for improperly declaring a salvage or reconstructed vehicle could therefore raise its documented due diligence as a factor that may mitigate a penalty or other sanction.

In view of these considerations, the agency will not amend the language of 49 CFR 591.5(f)(3) to qualify the declaration in the manner the petitioner has suggested.

B. Forfeiture of Conformance Bond for Failure To Retain Custody of Imported Nonconforming Vehicle

The petitioner also takes issue with provisions in the final rule (49 CFR 591.8(d)(3) and 592.9(e)) that prohibit an RI from releasing custody of an imported nonconforming motor vehicle to any person for license or registration for use on public roads, streets, or highways, or from licensing or registering the vehicle from the date of entry until 30 calendar days after it has certified compliance of the vehicle to the Administrator, unless the RI is sooner notified that the Administrator has accepted its certification of the vehicle's compliance and permits the bond to be released. As amended, section 592.9(e) states that the bond may be forfeited if the RI releases custody of the vehicle to any person for license or registration for use on public roads, streets, or highways, or licenses or registers the vehicle, including titling the vehicle in the name of another person, unless 30 calendar days have passed from the date the RI files a certificate of conformity with the agency and the RI has not received written notice from the agency to hold the vehicle for the agency's inspection.

The petitioner specifically contends that NHTSA lacks statutory authority to adopt the above provisions and observes that if those provisions are allowed to stand, as amended, there will be fewer surety bond companies that issue conformance bonds and huge increases in the cost of such bonds to importers. The petitioner notes that the amount of the conformance bond has been set by the agency at 150% of the dutiable value of the vehicle. Observing that the average new car today can cost in excess of twenty thousand dollars, the petitioner states that an RI can face a penalty of up to thirty thousand dollars for failing to bring a single vehicle into compliance with all applicable standards. The petitioner questions why a penalty of such magnitude should be imposed on an RI when it has only defaulted on the bond conditions by titling or registering the vehicle within thirty days, or by releasing the vehicle after the RI has modified it to conform to all applicable standards and submitted a statement of conformity to the Administrator.

The petitioner asserts that almost all titles obtained for vehicles imported for resale are ''Resale'' titles that specifically prohibit the licensing or registration of the vehicle on the public roads. The petitioner further observes that the act of titling does not place the vehicle on public roads, and that only the issuance of a license plate to the end user can accomplish that. Observing that the only purpose of the challenged provisions can be to further delay the importation process, the petitioner finds them out of character with the agency's earlier attempt in this rulemaking proceeding to entirely relax the bonding requirement for Canadian market vehicles.

The petitioner contends that under the controlling statute (49 U.S.C. 30141(d)(1)), the purpose of the conformance bond is to ensure that the vehicle will comply with applicable FMVSS within a reasonable time after importation or will be exported at no cost to the Government or exported from the United States. The petitioner asserts that there is nothing in the controlling statute that confers, or appears to confer on the Administrator the authority to declare the default of a conformance bond under the circumstances described above. According to the petitioner, a more appropriate means for the agency to address violations that do not involve issues of compliance with the FMVSS is by taking civil penalty action against the violator.

The petitioner requests that the language prohibiting titling of the vehicle be stricken from the provisions at issue, and that the agency issue clarification to the RI community and surety companies that reinforces the statutory language that the conformance bond is for the purpose of ensuring that a nonconforming vehicle is brought into compliance with applicable standards by an RI or is exported from, or abandoned to, the United States.

Agency response: The agency is denying the petitioner's request for these changes. Contrary to the petitioner's assertions, the agency finds the provisions at issue to be amply supported by the statute that controls the vehicle importation process. For example, 49 U.S.C. 30146(a)(1) explicitly provides that an RI

> may license or register an imported motor vehicle for use on public streets, roads, or highways, or release custody of a motor vehicle imported by the registered importer * * * to a person for license or registration for use on public streets, roads, or highways, only after 30 days after the registered importer certifies to the Secretary of Transportation, in the way the Secretary prescribes, that the motor vehicle complies with each standard prescribed in the year the vehicle was manufactured and that applies in that year to that vehicle. * * * A vehicle may not be released if the Secretary gives written notice before the end of the 30-day period that the Secretary will inspect the vehicle. * * *

Consistent with this statutory provision, one of the conditions of the DOT Conformance bond, in existence since the regulations governing those instruments were first issued on March 28, 1990 (55 FR 11375, 11379), has been as follows:

> In the case of a Registered Importer, not to release custody of the vehicle to any person for license or registration for use on public roads, streets, or highways, or license or register the vehicle from the date of entry until 30 calendar days after it has certified compliance of the vehicle to the Administrator, unless the Administrator has notified the principal before 30 calendar days that (s)he has accepted such certification, and that the vehicle and bond may be released, except that the vehicle shall not be released if the principal has received written notice from the Administrator that an inspection of the vehicle may be required or that there is reason to believe that such certification is false or contains a misrepresentation.

See 49 CFR 591.8 (prior to the September 30, 2004 revision). This

language is also reflected in the contents of the DOT Conformance bond itself. See condition 3 of the HS–474 Bond to Ensure Conformance with Motor Vehicle Safety and Bumper Standards (revised January 1990), a copy of which can be found in Appendix A to 49 CFR Part 591, or accessed from NHTSA's Web site at *www.nhtsa.dot.gov/cars/rules/import.*

From the outset of the RI program, some fifteen years ago, the DOT Conformance bond has been subject to forfeiture if the RI releases custody of a nonconforming vehicle to any person for license or registration for use on public roads, streets, or highways, or licenses or registers the vehicle from the date of entry until 30 calendar days after it has certified compliance of the vehicle to the Administrator, unless the Administrator earlier releases the bond. The final rule has not amended this requirement in any respect, except to add titling of a vehicle in the name of another entity as an unlawful act. As noted in the NPRM (65 FR 69810, 69820), we added this prohibition to ensure that the RI retains the ability to export the vehicle, or abandon it to the United States, upon demand, for its failure to conform the vehicle within the requisite period, as required by 49 U.S.C. 30141(d)(1)(B) and 49 CFR 591.7(d)(6).

Long before he submitted the instant petition, Mr. Trupiano had written to the agency, on November 11, 1999, asking whether an RI may obtain a title for resale purposes for a vehicle that it has imported, prior to the time the conformance bond covering the vehicle is released by the agency. The agency responded by letter dated April 17, 2000 (accessible on the agency's Web site at *http://www.nhtsa.dot.gov/cars/rules/interps/files/title.ztv.html*). We noted in this response that we do not construe 49 U.S.C. 30146(a)(1) ''as prohibiting an RI from obtaining a title in its own name to a vehicle it has imported for resale, while the vehicle is still bound by its [Conformance] bond, in order to expedite the subsequent licensing or registration of that vehicle for on-road use after the bond has been released.'' *Id.* The agency stated, however, that the title could not be in the name of the customer on whose behalf the vehicle is imported, as that would be inconsistent with the bond condition requiring the vehicle to be exported or abandoned to the United States in the event that an insufficient showing of conformity is made and the bond is not released. *Id.* See 49 U.S.C. 30141(d)(1)(B). The agency further noted that ''if the RI has transferred or reassigned title to the vehicle to the ''customer on whose behalf the vehicle is imported'' before the bond has been released, the RI could not fulfill its duty to export or abandon the nonconforming vehicle because it would no longer own the vehicle.'' *Id.* The agency observed that in this instance, its only recourse would be to foreclose on the bond, which would be ''insufficient to fulfill the safety purpose of the statute and the bond which is to ensure that imported noncomplying vehicles be brought into compliance before being licensed for use, and used, on the public roads.'' *Id.* There have been no changes in the underlying statute or in the RI program itself that would cause the agency to reassess the validity of this position.

For the same reasons cited in its letter to Mr. Trupiano, the agency denies his request that it strike from the regulation language prohibiting the titling of an imported nonconforming vehicle in the name of a person other than the RI prior to bond release. The agency notes that with the exception of the two instances in which Mr. Trupiano has raised issues regarding this requirement, no other RI has identified it as posing any problem.

C. Requirement for an RI To Submit to the Agency the Social Security Numbers of Its Principals

The petitioner seeks the amendment of provisions in the final rule (49 CFR 592.5(a)(4)(ii) and (iii)) requiring an RI or an applicant for RI status to submit to the agency, among other information items needed to acquire or retain an RI registration, the social security numbers of its principals. The petitioner states that he understands that NHTSA officials reviewing RI applications or renewals have appropriate reasons to request social security numbers, especially to determine the applicant's or incumbent's financial ability to conduct recall campaigns to remedy safety-related defects or noncompliances with safety standards in the vehicles it imports. The petitioner expresses concern, however, that ''other NHTSA employees who have no valid reason to have access to this private information may make it public with obvious breach of privacy and potential identity theft and other related problems.'' To guard against such an eventuality, the petitioner asks the agency to amend the provisions in question to restrict access to that information and to ensure that it is used only for the purpose of carrying out the vehicle safety laws administered by NHTSA.

Agency response: Since receiving the petition, the agency has reassessed the need for an applicant for RI status to submit to the agency the social security numbers of its principals. As previously noted, the agency sought this information so that it could determine whether any person associated with an applicant has been convicted of a misdemeanor or felony involving motor vehicles or the motor vehicle business, such as title fraud, odometer fraud, auto theft, or the sale of stolen vehicles. See 69 FR at 52074. The agency has since learned that a social security number is not an information element that is needed for the purpose of conducting a background check on an applicant for a Federal license. Accordingly, the agency is amending sections 592.5(a)(4)(ii) and (iii) to eliminate the requirement for applicants for RI status to submit this information.

D. Requested Amendments to the Provision Enumerating the Responsibilities of an RI

The petitioner requests the agency to make certain amendments to 49 CFR 592.6, which enumerates the responsibilities of an RI. Each of these requests, and the agency's response thereto, is set forth below.

1. To Permit Importation of Vehicles Modified To Comply With The Theft Prevention Standard

The petitioner first requests the agency to amend section 592.6(d)(1) to expressly permit the importation of a motor vehicle modified prior to importation by any entity to comply with the Theft Prevention Standard at 49 CFR part 541. The provision currently requires an RI to certify to the Administrator, upon the completion of modifications necessary to conform the vehicle to applicable standards, that either ''(1) the vehicle is not required to comply with the parts marking requirements of the theft prevention standard, or (2) the vehicle complies as manufactured with those parts marking requirements.''

Agency response: In the final rule, the agency precluded an RI from conforming a motor vehicle to comply with the Theft Prevention Standard following importation. The agency took this position after considering a comment in response to the NPRM (65 FR at 69810), which noted that the statute authorizing the Theft Prevention Standard (49 U.S.C. 33114), unlike the statutes authorizing the Safety and the Bumper Standards (49 U.S.C. 30112, 30146, and 32506), has no provision to allow a vehicle that does not comply with that standard to be brought into conformity following importation. See 69 FR at 52079. Although it recognized that it could not allow conforming modifications to be performed following

importation, the agency did not intend to preclude the importation of vehicles that are modified to comply with the Theft Prevention Standard prior to importation. However, the text of the provision adopted by the agency in 49 CFR 592.6(d)(1) inadvertently went beyond this intent by prohibiting the importation of a vehicle that was not originally manufactured to comply with the parts marking requirements of the Theft Prevention Standard. Because we did not intend to preclude the importation of vehicles that are modified to comply with the Theft Prevention Standard prior to importation, we are amending section 592.6(d)(1). As amended, the section excludes vehicles that do not comply with the Theft Prevention Standard at the time of importation, as opposed to those that were not originally manufactured to comply with that standard.

2. To Waive the Requirement for an RI To Submit Information and Photographs to Document the Modifications That It Makes to a Nonconforming Vehicle

The petitioner next requests the agency to amend 49 CFR 592.6(d)(7) to waive the requirement for an RI to submit, with second and subsequent certification submissions that it makes to the agency for a given make, model, and model year vehicle, unaltered front, side, and rear photographs of the vehicle, as required by 49 CFR 592.6(d)(6)(vi); unaltered photographs and documentation sufficient to demonstrate conformity with all applicable Federal motor vehicle safety and bumper standards to which the vehicle was not originally manufactured to conform, as required by 49 CFR 592.6(d)(6)(viii); as well as a statement that it has brought the vehicle into conformity with all Federal motor vehicle safety and bumper standards that apply to the vehicle, and a description, with respect to each standard for which modifications were needed, of the modifications performed, as required by 49 CFR 592.6(d)(6)(ii). The petitioner contends that the information and photographs required by these sections would be redundant, superfluous, and create unnecessary additional burdens on the RI without providing any safety benefit to the public. In particular, the petitioner asserts that pictures of the outside of a car do not show any distinguishable differences relevant to a compliance evaluation, especially in the case of a vehicle originally manufactured for sale in Canada. In lieu of furnishing this evidence to NHTSA, the petitioner suggests that RIs making modifications to vehicles, such as the replacement of instrument clusters on Canadian market vehicles or more extensive modifications in the case of non-Canadian vehicles, should be required to maintain in their records evidence, including written invoices of parts purchases and labor operations that can be requested by NHTSA on an individual basis or viewed during an agency inspection visit, as contemplated under 49 CFR 592.6(j).

Agency response: The agency notes that if it were to grant this request, it would essentially relieve the RI from any obligation to establish to the agency's satisfaction, upon the completion of conformance modifications, that it has brought a nonconforming vehicle into compliance with all applicable standards. The agency would thereby relinquish the principal tool at its disposal to ensure that nonconforming vehicles offered for importation into the United States are successfully modified to comply with all applicable safety and bumper standards.

The agency will not eliminate the need for an RI to submit documentation to verify the conformity status of nonconforming vehicle it has imported or modified. For one thing, the governing statute (49 U.S.C. 30146(a)) contemplates that a certification of compliance be made to the Secretary of Transportation, in the manner the Secretary prescribes, to permit the release of a conformance bond furnished at the time of entry. The agency further notes that the alternative to the submission of conformity data that the petitioner recommends (*i.e.*, that NHTSA conduct periodic inspections at RI facilities of records, including written invoices of parts purchases and labor operations) is simply not workable since it is dependent on the existence of human and financial resources that are not available to the agency. The petitioner takes issue particularly with the requirement in 49 CFR 592.6(d)(6)(vi) for the submission of unaltered front, side, and rear photographs of the vehicle. The agency requires these photographs so that it can confirm that the vehicle is of the make, model, and model year that it was declared to be at the time of importation, and that it is equipped with all required turn signal lamps, sidemarkers, and other lighting equipment. For those reasons, the agency has decided to deny this request.

3. To Require the Agency To Provide an RI at Least 48 Hours Advance Notice Before Conducting an Inspection of the RI's Facilities.

The petitioner asks the agency to amend 49 CFR 592.6(j), which requires an RI to allow representatives of NHTSA, ''upon demand and upon presentation of credentials,'' to inspect any facility identified by the RI as one in which a nonconforming vehicle is being modified, repaired, tested, or stored, and any facility where any record or other document relating to the modification, repair, testing, or storage of these vehicles is kept. The requested amendment would require the agency to provide an RI with at least 48 hours advance notice before inspecting one of its facilities. In support of this request, the petitioner observes that RIs are small businesses with limited resources and employees. The petitioner contends that sufficient notice is necessary for these entities to be able to ensure that the appropriate personnel are on hand to respond to the agency official's questions and to prepare to make available any records that may be requested.

Agency response: As a general matter, regulatory agencies need to be able to conduct inspections without notice to obtain a true picture of whether the regulated entity is complying with applicable requirements. In contrast, advance notice would provide time for the regulated entity to undertake corrective actions between the time of the notice and the inspection. In these circumstances, the inspection does not provide a representative picture of the degree to which the regulated entity is adhering to the requirements it must meet. Moreover, limiting inspections to those preceded by advance notice encourages some level of noncompliance because the regulated entity knows that it will have time to undertake corrective measures before the inspection is conducted.

The agency does periodically conduct inspections at RI facilities to ensure the adequacy of those facilities for vehicle modification and storage, to assess the state of the records the RI is required to maintain on the vehicles it modifies, and to ensure that the RI has sufficient personnel on hand to perform its responsibilities. The periodic inspections also allow the agency to ascertain whether the RI is properly holding vehicles prior to bond release. Advance notice of a pending inspection would significantly undermine the agency's ability to ensure that these and other obligations of an RI are being

carried out. As a consequence, the agency denies this request.

4. To Allow Nonconforming Vehicles To Be Operated on Public Roads Prior to Bond Release for the Purpose of Conducting EPA Emissions Tests

The petitioner requests an amendment to 49 CFR 592.6(e)(1), which prohibits an RI from operating on public streets, roads, and highways a nonconforming vehicle that has not been bond released, ''for a purpose other than transportation to and from a franchised dealership of the vehicle's original manufacturer for remedying a noncompliance or safety-related defect.'' The requested amendment would allow an RI that is also an Independent Commercial Importer (ICI) recognized by the Environmental Protection Agency (EPA) to operate a nonconforming vehicle on public roads prior to bond release ''for the purpose of mileage accumulation to operate and stabilize the emissions control systems in the vehicle, as required by EPA prior to emissions laboratory testing.'' The petitioner notes that this mileage is set by the EPA to be between 2,000 and 10,000 miles, depending on the type of vehicle and the engine displacement. The petitioner observes that otherwise, the ICI could not begin the emissions development program until after the safety certification process is complete.

Agency response: The agency contacted the EPA with regard to this matter. The EPA stated that mileage accumulation is needed to stabilize a new vehicle's catalyst and emissions control systems before pre-certification testing is conducted to obtain an EPA certificate of conformity. The EPA stated that it prefers the mileage accumulation to be performed on a closed test track, but that it will grant permission for the mileage accumulation to be performed on public roads when the use of a test track is not feasible. This permission must be granted in writing and that permission will only be granted to an ICI that holds a current certificate of conformity from the EPA, and the ICI has imported the vehicle under an EPA Declaration form 3520–1 on which Code J is checked. The EPA further indicated that the amount of mileage accumulated is generally in the range of 2,000 miles, plus or minus 250 miles.

Based on the information that it obtained from the EPA, the agency is amending the provision at issue to allow an imported nonconforming vehicle to be operated on public roads prior to bond release for the purpose of mileage accumulation to stabilize the vehicle's catalyst and emissions control systems in preparation for pre-certification testing to obtain an Environmental Protection Agency (EPA) certificate of conformity, but only insofar as the vehicle has been imported by an Independent Commercial Importer (ICI) that holds a current certificate of conformity from the EPA, the ICI has imported the vehicle under an EPA Declaration form 3520–1 on which Code J is checked, and the EPA has granted the ICI written permission to operate the vehicle on public roads for that purpose.

E. Requested Amendments to the Provision Specifying the Acts and Omissions That May Result in the Revocation or Suspension of an RI's Registration

The petitioner requests an amendment to 49 CFR 592.7(a)(2), which states: ''If the Administrator decides that a Registered Importer has knowingly filed a false or misleading certification, (s)he shall promptly notify the Registered Importer in writing that its registration is automatically suspended.'' The requested amendment would make an RI's registration subject to automatic suspension for knowingly filing ''a fraudulent certification'' instead of a ''false or misleading certification.'' In support of this request, the petitioner contends that ''such a drastic enforcement measure, which could cause irreversible harm to the RI, must be made only on the basis that the violation poses genuine harm to the safety of the motoring public.'' The petitioner observes that even though ''automatic suspension should obviously not be used to punish clerical error,'' use of the terminology ''false or misleading'' in the section at issue ''could be misconstrued and used by an overzealous official as the basis for automatically suspending an RI's license.'' For the petitioner, the basis for an automatic suspension should therefore be the filing of a ''fraudulent certification'' instead of a ''false or misleading'' one.

Agency response: The agency notes that the language of § 592.7(a)(2) is derived from the controlling statute, 49 U.S.C. 30141(c)(4)(B), which directs the Secretary of Transportation to establish procedures for ''automatically suspending a registration for not paying a fee under subsection (a)(3) of this section in a timely manner or for knowingly filing a false or misleading certification under section 30146 of this title.'' In light of this requirement, the agency will not amend the provision at issue in the manner petitioner has requested. The agency also notes that it disagrees with the petitioner's contention that the only violations that can result in the suspension of an RI registration are those that pose genuine harm to the safety of the motoring public.

F. Technical Amendment

The agency is also revising the text of 49 CFR 592.5(f) to correct two erroneous citations to other regulations that appear in that section. As presently written, section 592.5(f) states that an RI ''must affirm in its annual statement that all information provided in its application or pursuant to § 592.6(r), or as may have been changed in any notification that it has provided to the Administrator in compliance with § 592.6(m), remains correct.'' Sections 592.6(q) and 592.6(l) are substituted for the two provisions cited in this text, to correctly identify the provisions in which the described requirements are found.

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. The three non-technical amendments adopted in this rulemaking, which

permit RIs to import motor vehicles that have been modified to comply with the Theft Prevention Standard, allow an RI who is also an ICI to operate an imported nonconforming motor vehicle on public roads prior to bond release solely for the purpose of conducting required EPA testing, and relieve an applicant for RI status of the need to disclose to the agency the social security numbers of its principals, can only benefit entities that stand to be affected and have no adverse consequences, financial or otherwise, for any party. 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. The three non-technical amendments adopted in this final rule pertain only to RIs and applicants for RI registration. They have no bearing on motor vehicle manufacturers or motor vehicle equipment manufacturers, and therefore have no quantifiable cost effect on those entities.

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 Deputy 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 a petition for reconsideration, makes three non-technical amendments to the agency's regulations to allow RIs to import motor vehicles that have been modified to comply with the Theft Prevention Standard, to allow an RI that is also an ICI to operate a nonconforming motor vehicle on public roads prior to bond solely release for the purpose of conducting required EPA testing, and to relieve applicants for RI status of the need to disclose to the agency the social security numbers of their principals. As such, the amendments can only have a beneficial economic impact on the entities that stand to be effected, and imposes no adverse economic impact on any party.

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. 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 as to 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

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule eliminates an existing requirement for an applicant for RI status to submit to the agency the social security number of each of its principals, and does not impose any new information collection requirements for which a 5 CFR part 1320 clearance must be obtained.

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 in 49 CFR Part 592

Imports, Motor Vehicle Safety, Motor vehicles.

■ In consideration of the foregoing, 49 CFR part 592 is amended as follows:

PART 592—REGISTERED IMPORTERS OF VEHICLES NOT ORIGINALLY MANUFACTURED TO CONFORM TO THE FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for Part 592 of Title 49 continues to read as follows:

Authority: Pub. L. 100–562, 49 U.S.C. 322(a), 30117, 30141–30147; delegation of authority at 49 CFR 1.50.

■ 2. Section 592.5 is amended by revising paragraph (a)(4)(i); revising paragraph (a)(4)(ii); revising the first sentence in paragraph (a)(4)(iii); and revising the second sentence in paragraph (f), to read as follows:

§ 592.5 Requirements for registration and its maintenance.

(a) * * *

(4) * * *

(i) If the applicant is an individual, the application must include the full name, street address, and date of birth of the individual.

(ii) If the applicant is a partnership, the application must include the full name, street address, and date of birth of each partner; if one or more of the partners is a limited partnership, the application must include the names and street addresses of the general partners and limited partners; if one or more of the partners is a corporation, the application must include the information specified by either paragraph (a)(4)(iii) or (iv) of this section, as applicable;

(iii) If the applicant is a non-public corporation, the application must include the full name, street address, and date of birth of each officer, director, manager, and person who is authorized to sign documents on behalf of the corporation. * * *

* * * * *

(f) * * * The Registered Importer must affirm in its annual statement that all information provided in its application or pursuant to § 592.6(q), or as may have been changed in any notification that it has provided to the Administrator in compliance with § 592.6(l), remains correct, and that it continues to comply with the requirements for being a Registered Importer. * * *

* * * * *

■ 3. Section 592.6 is amended by revising paragraphs (d)(1)(ii) and (e)(1) to read as follows:

§ 592.6 Duties of a registered importer.

* * * * *

(d) * * *

(1) * * *

(ii) The vehicle complies with those parts marking requirements as manufactured, or as modified prior to importation.

* * * * *

(e) * * *

(1) Operate the motor vehicle on the public streets, roads, and highways for any purpose other than:

(i) Transportation to and from a franchised dealership of the vehicle's original manufacturer for remedying a noncompliance or safety-related defect; or

(ii) Mileage accumulation to stabilize the vehicle's catalyst and emissions control systems in preparation for pre-certification testing to obtain an Environmental Protection Agency (EPA) certificate of conformity, but only insofar as the vehicle has been imported by an Independent Commercial Importer (ICI) who holds a current certificate of conformity with the EPA, the ICI has imported the vehicle under an EPA Declaration form 3520–1 on which Code J is checked, and the EPA has granted the ICI written permission to operate the vehicle on public roads for that purpose.

* * * * *

Issued: September 29, 2005.

Jacqueline Glassman,

Deputy Administrator.

[FR Doc. 05–19843 Filed 10–3–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 092605B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the 2005 Shallow-Water Grouper Commercial Fishery

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS has determined that the red grouper quota for the commercial fishery will have been reached by October 10, 2005, and therefore closes the commercial fishery for shallow-water grouper (red, black, gag, scamp, yellowfin, yellowmouth, rock hind, and red hind) in the exclusive economic zone (EEZ) of the Gulf of Mexico. The existing regulations require closure of the entire shallow-water grouper commercial fishery when either the red grouper quota or the shallow-water grouper quota is reached or is projected to be reached. This closure is necessary to protect the shallow-water grouper resource.

DATES: Closure is effective 12:01 a.m., local time, October 10, 2005, until 12:01 a.m., local time, on January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Jason Rueter, telephone 727–824–5305, fax 727–824–5308, e-mail *Jason.Rueter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. Those regulations set the commercial quota for red grouper in the Gulf of Mexico at 5.31 million lb (2,413,636 kg) for the current fishing year, January 1 through December 31, 2005. Those regulations also require closure of the entire shallow-water grouper commercial fishery when either the red grouper quota or the shallow-water grouper quota is reached.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect with the Office of the **Federal Register**. Based on current statistics, NMFS has determined the available commercial quota of 5.31 million lb (2,413,636 kg) for red grouper will be reached on or before October 10, 2005. Accordingly, NMFS is closing the commercial shallow-water grouper fishery in the Gulf of Mexico EEZ from 12:01 a.m., local time, on October 10, 2005, until 12:01 a.m., local time, on January 1, 2006. The operator of a vessel with a valid reef fish permit having shallow-water grouper aboard must have landed and bartered, traded, or sold such shallow-water grouper prior to 12:01 a.m., local time, October 10, 2005.

During the closure: (1) the sale or purchase of shallow-water grouper taken from the EEZ is prohibited; (2) when the recreational grouper fishery is open, the bag and possession limits specified in 50 CFR 622.39(b) apply to all harvest or possession of red grouper and shallow-water grouper in or from the Gulf of Mexico EEZ; and (3) when the recreational grouper fishery is closed, all harvest or possession of grouper in or from the Gulf EEZ is prohibited. The prohibition on sale or purchase does not apply to sale or purchase of red grouper or shallow-water grouper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, October 10, 2005, and were held in cold storage by a dealer or processor.

Classification

This action is required under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds the need to immediately implement this action to close the fishery constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because it requires time during which harvest would likely exceed the quota. Similarly, there is a need to implement this measure in a timely fashion to prevent an overage of the commercial quota of Gulf red grouper, given the capacity of the fishing fleet to exceed the quota quickly. Any delay in implementing this action would be impractical and contrary to the Magnuson-Stevens Act, the FMP, and the public interest. For these reasons, NMFS finds good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is waived.

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

Dated: September 28, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–19849 Filed 9–29–05; 2:43 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030912231; I.D. 071905B]

Fisheries of the Northeastern United States; Scup Fishery; Adjustment to the 2005 Winter II Quota; Correction

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS published a temporary rule in the Federal Register on August 2, 2005, to adjust the 2005 Winter II commercial scup quota and possession limit. NMFS has since received information that a substantial amount of scup landed during the 2005 Winter I period were misreported as porgies via the Electronic Dealer Reporting System. This action corrects the adjusted 2005 Winter II commercial scup quota and possession limit.

DATES: This rule is effective November 1, 2005, through December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279.

SUPPLEMENTARY INFORMATION: NMFS published a final rule in the **Federal Register** on November 3, 2003 (68 FR 62250) implementing a process for years