DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 585

[Docket No. NHTSA 2005–22323]

RIN 2127–AI98

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

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

ACTION: Final rule.

SUMMARY: In this document, NHTSA is amending its safety standard on occupant crash protection to establish the same 56 km/h (35 mph) maximum speed for frontal barrier crash tests using belted 5th percentile adult female test dummies as we previously adopted for tests using belted 50th percentile adult male dummies. The agency is adopting this amendment to help improve crash protection for small statured occupants. The new requirement is phased-in in a manner similar to the phase-in for the 56 km/h (35 mph) maximum speed test requirement using the 50th percentile adult male dummy, but beginning 2 years later, i.e., September 1, 2009.

DATES: *Effective Date:* This final rule is effective November 29, 2006.

Petitions for Reconsideration: If you wish to submit a petition for reconsideration of this rule, your petition must be received by October 16, 2006.

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

See the **SUPPLEMENTARY INFORMATION** portion of this document (Section VIII; Rulemaking Analyses and Notice) for DOT's Privacy Act Statement regarding documents submitted to the agency's dockets.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Ms. Lori Summers, Office of Crashworthiness Standards (Telephone: 202–366–1740) (Fax: 202–366–2739).

For legal issues, you may call Mr. Edward Glancy, Office of the Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820).

You may send mail to these officials at National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*, requires passenger cars and other light vehicles to be equipped with seat belts and frontal air bags to prevent or mitigate the effects of occupant interaction with the vehicle interior in a crash. While air bags have been very effective in increasing the number of people saved in moderate and high speed frontal crashes, they have occasionally been implicated in fatalities in instances where vehicle occupants were very close to the air bag when it deployed. This is particularly true of vehicles produced in the 1990s.

On May 12, 2000, NHTSA published in the **Federal Register** (65 FR 30680) a final rule to require that future air bags be designed to create less risk of serious air bag-induced injuries than then-current air bags and provide improved frontal crash protection for all occupants, by means that include advanced air bag technology (advanced air bag rule). That final rule was consistent with the requirements of the Transportation Equity Act for the 21st Century (TEA 21), enacted by Congress in June 1998, which required us to issue a rule amending FMVSS No. 208:

> * * * to improve occupant protection for occupants of different sizes, belted and unbelted, under Federal Motor Vehicle Safety Standard No. 208, while minimizing the risk to infants, children, and other occupants from injuries and deaths caused by air bags, by means that include advanced air bags.

The advanced air bag rule established two phase-in schedules. For the first phase-in, which began September 1, 2003 and will be completed by September 1, 2006, NHTSA required vehicle manufacturers to install advanced air bag systems that reduce the risk of air bag-induced injury (particularly to young children and small adult drivers), while improving the frontal crash protection provided by air bag systems to occupants of different sizes. For the second phase-in, which will begin on September 1, 2007, the agency required manufacturers to improve further the frontal protection provided by their vehicles by meeting a belted rigid barrier crash test at higher test speeds.

Prior to the advanced air bag rule, the crash tests specified in FMVSS No. 208 used only one size dummy, a 50th percentile adult male dummy. NHTSA also used that dummy in frontal crash tests conducted under the New Car Assessment Program (NCAP), although at a higher speed. The FMVSS No. 208 belted rigid barrier test was conducted at speeds up to 48 km/h (30 mph), while the NCAP test was conducted at a speed of 56 km/h (35 mph).

For the advanced air bag rule, NHTSA specified the use of both 50th percentile adult male and 5th percentile adult female dummies for the standard's crash tests.[1] The first phase-in requires vehicles to be certified as passing the test requirements for both of these dummies, while unbelted, in a 32 km/h (20 mph) to 40 km/h (25 mph) rigid barrier test (unbelted rigid barrier test requirements), and test requirements for the same two dummies, while belted, in a rigid barrier crash test with a maximum test speed of 48 km/h (30 mph) (belted rigid barrier test requirements).

The second phase-in will require vehicles to be certified as passing the belted rigid barrier test requirements at speeds up to and including 56 km/h (35 mph) using the 50th percentile adult male dummy. NHTSA and the industry have had considerable experience with conducting belted tests at 56 km/h (35 mph) using this dummy in connection with the NCAP program.

In the preamble to the advanced air bag rule, we stated

> We did not propose including the 5th percentile adult female dummy in [the 56 km/h (35 mph) phase-in] requirement because we had sparse information on the practicability of such a requirement. NHTSA will initiate testing to examine this issue and anticipates proposing increasing the test speed for belted tests using the 5th percentile adult female dummy to 56 km/h (35 mph), beginning at the same time that the 50th percentile adult male is required to be used in belted testing at that speed.

[1] The advanced air bag rule also specified the use of 1-year-old infant dummies, 3- and 6-year-old child dummies, and 5th percentile adult female dummies in its test requirements to minimize the risk to infants, children, and other occupants from injuries and deaths caused by air bags.

(60 FR 30680, 30690.) The agency reiterated this position when it denied a petition to begin rulemaking immediately to establish a requirement for vehicles to meet a 0–56 km/h (0–35 mph) belted rigid barrier test with the 5th percentile adult female dummy (66 FR 65376; December 18, 2001). However, the agency continued research on the feasibility and practicability of increasing the test speed for belted testing using this dummy.

II. Notice of Proposed Rulemaking (NPRM) and Summary of Comments

A. The NPRM

On August 6, 2003, we published in the **Federal Register** (68 FR 46539) a notice of proposed rulemaking (NPRM) to increase the test speed for the belted rigid barrier test using the 5th percentile adult female dummy to 56 km/h (35 mph). We proposed the same phase-in schedule as that already adopted for the 50th percentile adult male dummy, *i.e.*, beginning September 1, 2007.

In the NPRM, we cited the results of 18 crash tests conducted by NHTSA, some in conjunction with Transport Canada. We tentatively concluded that the test results indicated both a need for and the feasibility of extending the 56 km/h (35 mph) maximum speed for the rigid barrier test to include the 5th percentile adult female dummy. The testing indicated that a belted 5th percentile adult female dummy may be subject to higher injury measures than a belted 50th percentile adult male dummy in comparable frontal barrier crash tests, when both are seated in accordance with the applicable FMVSS No. 208 seating procedures.

The tested vehicles included small and medium passenger cars, sport utility vehicles, minivans, and a pickup truck. None of the tested vehicles were designed to meet the new test requirements of the advanced air bag rule. Of the 18 vehicles tested, 12 were able to meet the driver and right front passenger dummy Injury Assessment Reference Values (IARVs) required under FMVSS No. 208. The six vehicles that exceeded the IARVs for the 5th percentile adult female dummy were found to exceed injury measures in the head, chest, and/or neck regions. When comparable NCAP crash tests were conducted with 50th percentile adult male dummies, none of the adult male dummies exceeded the IARVs.

We estimated that the proposed requirements, if adopted, could prevent between five and six small occupant fatalities per year and could also reduce two to three moderate to severe injuries yearly (MAIS 2+).[2] We also explained that beyond reducing the rates of injury and fatality to small-stature occupants, increasing the maximum belted test speed for testing with the 5th percentile adult female dummy would extend improved belted crash protection to occupants of different sizes. We stated that the proposed amendment would address the potential hazard to all belted occupants who are very close to both the air bag module and the steering wheel or instrument panel.

In the NPRM, we tentatively concluded that compliance with the proposal would result in a nominal additional cost to vehicle manufacturers. We noted that the test procedure itself is already required at a lower impact speed in FMVSS No. 208; only the maximum impact speed would be raised. We stated that, as indicated by the 12 vehicles that met all IARVs in NHTSA's test program, many vehicles already meet the proposed requirement. We also stated our belief that to the extent additional measures may prove necessary, improving performance beyond the 48 km/h (30 mph) requirement could involve relatively simple changes. We estimated that the overall cost of the proposal would range from minimal costs to $24.56 million, depending on the implementation of technologies. A complete discussion of how NHTSA arrived at its estimates of both benefits and costs was presented in a Preliminary Regulatory Evaluation.[3]

B. Summary of Public Comments on the NPRM

We received comments from five companies or organizations: General Motors (GM), DaimlerChrysler, the Alliance of Automobile Manufacturers (Alliance), TRW Automotive, and the Insurance Institute for Highway Safety (IIHS). The commenters generally supported improved crash protection for belted small statured occupants, but did not support the agency's proposal to increase the test speed for FMVSS No. 208's belted barrier test using the 5th percentile adult female dummy to 56 km/h (35 mph).

GM raised concerns about practicability. That company commented that none of the 18 vehicles that NHTSA tested and analyzed for practicability and benefits were certified to the advanced air bag provisions of FMVSS No. 208. GM stated that the restraint systems in the vehicles tested by the agency do not represent the same balancing of requirements that is necessary to meet the advanced air bag provisions, which are more complex and demanding than the ones to which the 18 vehicles were certified. GM also stated that NHTSA had not considered the compliance margins necessary to ensure that each vehicle would meet the IARVs for the proposed test conditions.

GM also raised concerns about leadtime. That manufacturer stated that if testing demonstrates that the IARVs can be met at the proposed higher speed, and if the countermeasures necessary to enable that performance do not negatively affect other aspects of occupant protection, manufacturers will need time to bring these countermeasures into production. GM stated that given its experience in developing vehicles and occupant protection systems designed to meet the advanced air bag requirements, a minimum postponement of two years in the effective date of the proposed rule would be necessary to accommodate the necessary testing and product development.

Several commenters addressed the estimated benefits. GM stated that the benefits estimated by the agency are very small and are projections based on old air bag technology. It also stated that increasing the maximum test speed to 56 km/h (35 mph) for the belted 5th percentile adult female dummy could have unintended consequences for belted small stature occupants involved in low severity frontal collisions. GM stated that the severity of the 56 km/h (35 mph) rigid barrier test would force stiffer restraint systems than are presently needed in the current 48 km/h (30 mph) frontal barrier test required by the advanced air bag final rule. According to GM, stiffening the restraint system would have an adverse affect on the older, weaker, smaller population since their injury tolerance is lower than the younger, stronger population.

DaimlerChrysler stated that the agency's projected benefits are statistically minor, an overestimate, and cannot be absolutely quantified. The Alliance raised several issues about the agency's methodology for estimating benefits, and argued that the action could result in no safety benefits or even negative safety effects.

IIHS stated that the agency failed to provide a clear assessment of the benefits and offered little compelling evidence that vehicle design changes resulting from the proposed rule would be meaningful in real-world crashes.

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[2] MAIS (Maximum Abbreviated Injury Scale) represents the maximum injury severity at an Abbreviated Injury Scale (AIS) level, regardless of the nature or location of the injury. The AIS ranks individual injuries by body region on a scale of 1 to 6 as follows: 1=minor, 2=moderate, 3=serious, 4=severe, 5=critical, and 6=maximum/currently untreatable.

[3] Docket No. NHTSA–2003–15732–2.

IIHS also stated that other measures to improve frontal crash protection, such as offset deformable barrier tests or pole tests, would be more beneficial and be more representative of real-world crashes.

Some commenters recommended that the agency defer the rulemaking to a later date. DaimlerChrysler stated that the prudent course of action would be to defer rulemaking until enough vehicles certified to the advanced air bag requirements are in commerce and their field performance with small females can be assessed. That company suggested waiting until the end of Phase II of the advanced air bag phase-in schedule.

GM stated that an Alliance-sponsored panel of experts, referred to as the Blue Ribbon Panel, is currently engaged in a major real-world data gathering program to provide a greater factual basis for future air bag rulemakings, and suggested that the agency wait until after the panel has finished its work before proceeding on this rulemaking.

GM and the Alliance also expressed concerns about differences between how NHTSA and Transport Canada are addressing improved protection for belted small statured occupants. The Alliance noted that Transport Canada has proposed a more stringent chest compression requirement for 5th percentile adult female dummies in 48 km/h (30 mph) tests. The Alliance expressed concern that each country's proposal may require opposing or at least non-complementary design strategies in order to meet the different proposed test requirements.

DaimlerChrysler reiterated concerns it has previously identified about the 5th percentile adult female Hybrid III dummy, including ones about neck structure and response, dummy interference with deploying air bags, and the Nij neck injury criterion. DaimlerChrysler stated its belief that neck tension limits alone appear to be the only significant factor in the Nij neck injury criterion to predict neck injury accurately.

TRW commented on the test set-up procedures for the 5th percentile adult female dummy driver. It argued that the positioning of the steering wheel is not realistic with regard to conditions in the field. IIHS stated that the agency should change its dummy seating procedures consistent with a petition it had previously submitted.

III. The Final Rule and Response to Public Comments

A. Agency Decision—Overview

After carefully considering the comments, we have decided to issue a final rule increasing the maximum test speed for the belted rigid barrier test using the 5th percentile adult female dummy from 48 km/h (30 mph) to 56 km/h (35 mph), the same speed we adopted for 50th percentile adult male dummies. We believe this amendment is consistent with the goal of providing improved frontal crash protection for all occupants. This was one of the primary goals of our advanced air bag rule and also of TEA 21.

We recognize that the benefits directly attributable to this rule are relatively small, since most of the restraint system improvements needed to meet this rule were required by the advanced air bag rule. Among other things, the advanced air bag rule added the 5th percentile adult female dummy to the FMVSS No. 208 48 km/h (30 mph) belted rigid barrier crash test and also increased the maximum speed for that test to 56 km/h (35 mph) for the 50th percentile adult male dummy. These test requirements, as well as other new tests using the 5th percentile adult female dummy, already require improved protection for occupants of different sizes.

In the preamble to advanced air bag rule, however, we stated that we anticipated proposing to increase the maximum test speed for the belted rigid barrier test using the 5th percentile adult female dummy to 56 km/h (35 mph), the same maximum speed specified for the 50th percentile adult male dummy. We did not propose this higher speed as part of the advanced air bag rulemaking because of lack of available test data.

This rulemaking is thus intended to complete the agency's consideration of an issue that was partially addressed in the advanced air bag rulemaking. As discussed earlier, we conducted a series of 18 vehicle crash tests in support of the NPRM. Moreover, as discussed below, we subsequently conducted five additional crash tests of vehicles certified to the advanced air bag requirements.

After considering the comments, we continue to believe that the available test data indicate both a need for and the feasibility of extending the 56 km/h (35 mph) maximum speed for the rigid barrier test to include the 5th percentile adult female dummy. While many vehicles would meet the higher test speed requirements using 5th percentile adult female dummies even in the absence of this rule, we believe that FMVSS No. 208 should require the same level of high speed crash protection for small statured occupants as for larger occupants.

The final rule is essentially the same as the proposal, except for the timing of the phase-in. The new requirement is phased-in in a manner similar to the phase-in for the 56 km/h (35 mph) maximum speed test requirement using the 50th percentile adult male dummy, but begins two years later, *i.e.*, September 1, 2009. The additional leadtime will provide manufacturers the time needed to meet design challenges associated with some vehicles and incorporate these additional requirements into their product development schedules without undue consequences.

Given that this phase-in is two years later, and recognizing that many vehicles already comply with the new requirement, we are not including advance credits as part of this phase-in, although carryover credits earned during the phase-in will be allowed.

The implementation schedule for the new requirement is as follows:

—35 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2009;

—65 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2010, with an allowance of carryover credits from vehicles built after September 1, 2009.

—100 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2011, with an allowance of carryover credits from vehicles built after September 1, 2009.

—All light vehicles manufactured on or after September 1, 2012.

Manufacturers that sell two or fewer carlines in the United States at the beginning of the first year of the phase-in (September 1, 2009) will have the option of omitting the first year of the phase-in, if they fully comply beginning on September 1, 2010.

Manufacturers that produce or assemble fewer than 5,000 vehicles for the U.S. market per year may defer compliance with the new requirement until September 1, 2012.

Consistent with our usual policy concerning multi-stage vehicles, multi-stage manufacturers and alterers may defer compliance with the new requirement until September 1, 2013.

We are adopting phase-in reporting requirements similar to those used in other phase-ins.

B. Response to Public Comments by Issue

1. Vehicle Crash Tests and Practicability Concerns

As indicated above, to support the NPRM, we tested 18 vehicles in 56 km/h (35 mph) barrier crash tests, some in conjunction with Transport Canada, with belted 5th percentile adult female dummies. The vehicles tested included small and medium passenger cars, sport utility vehicles, minivans, and a pickup truck. Of the 18 vehicles tested, 12 were able to meet the driver and right front passenger IARVs required under FMVSS No. 208.

GM commented that none of the 18 vehicles were certified to the advanced air bag provisions of FMVSS No. 208. GM stated that the restraint systems in the vehicles tested by the agency do not represent the same balancing of requirements that is necessary to meet the advanced air bag provision of FMVSS No. 208, which are more complex and demanding than the provisions for which the vehicles were certified. That company argued that testing of vehicles with restraint systems balanced to meet the advanced air bag requirements is necessary to make an informed feasibility assessment.

We note that vehicles with advanced air bags were not available during the time we were developing the NPRM. Consequently, the agency tested fleet-representative vehicles that were equipped with the most advanced air bag and seat belt technology of the time. Most of the vehicles included force-limited seat belts, pretensioners, and dual stage air bag inflation. One vehicle included a driver seat track sensor.

We also note that since publication of the NPRM, NHTSA has tested five additional vehicles that have been certified to the advanced air bag requirements of FMVSS No. 208. These vehicles include the 2004 Honda Accord, 2004 Ford Taurus, 2004 Honda Odyssey, 2004 Chevrolet Avalanche, and 2004 Jeep Liberty. All five of the vehicles tested met the proposed requirements.[4]

GM also stated in its comments that NHTSA had not considered the compliance margins necessary to ensure that each vehicle would be capable of meeting the IARVs for the proposed test conditions. GM stated that if a 20 percent compliance margin were applied, then only five of the eighteen vehicles cited in the NPRM would meet the IARVs.

As to the issue of margin of compliance, we agree that manufacturers need to ensure that all of their vehicles meet a test requirement established by a Federal safety standard. As we noted in the rulemaking for advanced air bags, examination of compliance and certification data for pre-redesigned air bags shows that manufacturers often certified vehicles with much less than a 20 percent margin of compliance. We agree, however, that calculations of 20 percent compliance margins are useful for analytical and discussion purposes.

As indicated above, 12 of the 18 vehicles tested in support of the NPRM met the driver and right front passenger IARVs required under FMVSS No. 208. Of these 12, five had more than a 20 percent compliance margin and three others had almost exactly a 20 percent compliance margin. Thus, eight of the 12 had compliance margins of approximately 20 percent or more, while four had smaller compliance margins. None of the 18 vehicles were designed to meet the test requirements of the advanced air bag rule. Given this fact, and the number of available means discussed in the NPRM and the PRE for improving performance, we continue to believe that these test results demonstrated the practicability of the new requirements.

Moreover, of the five additional vehicles we tested that have been certified to the advanced air bag requirements of FMVSS No. 208, four of the vehicles met the standard's driver and right front passenger IARVs in 56 km/h (35 mph) barrier crash tests using the 5th percentile adult female dummy with 20 percent compliance margins. The fifth vehicle, the Chevrolet Avalanche, resulted in a passenger Nij value of 1.0, providing it no margin of compliance. We note that this vehicle did not incorporate force-limiters or pretensioners to improve restraint performance, whereas the other four advanced air bag-equipped vehicles employed both of these technologies. Thus, we believe that additional restraint technologies are available that could be used for this vehicle. Moreover, since some vehicles passed the requirements without these technologies, we also believe that adjustments to air bag characteristics and/or firing threshhold could be used to enable this vehicle to comply with the requirements by comfortable margins for certification.

GM also submitted a comment discussing the results of what it referred to as rapid proposal evaluation testing.[5] That company evaluated one truck and one car program that were near the end of their development and validation for meeting the advanced air bag requirements, in light of the proposal. GM stated that simple changes will not suffice for the two programs to meet the proposed speed increase. GM stated that significant restraint system rebalancing or vehicle structural changes would be needed, which would require longer leadtime than the agency proposed.

While we have considered GM's comment, we believe the test results of the five vehicles equipped with advanced air bags address the concerns raised by GM about feasibility. Leadtime issues are discussed later in this document.

2. Unintended Consequences

GM expressed concern that increasing the maximum test speed to 56 km/h (35 mph) for the belted 5th percentile adult female dummy could have unintended consequences for belted small stature occupants involved in low severity frontal collisions. GM stated that the severity of the 56 km/h (35 mph) rigid barrier test will force stiffer restraint systems than presently needed for the current 48 km/h (30 mph) frontal barrier test required by the advanced air bag final rule. According to GM, stiffening the restraint system would have an adverse affect in crashes of lower severity on the older, weaker, smaller population since their injury tolerance is lower than the younger, stronger population. GM submitted a theoretical analysis in support of its comments, which concluded that limiting the restraint load to the injury threshold load of the small occupant produced the lowest number of occupant injuries over the spectrum of frontal accident severities.

The Alliance stated that the same air bag and belt system is used for different size occupants in other crash modes. It argued that if that system has been optimized for those crash modes then any change made to it will produce less than optimal results for those modes, resulting in disbenefits.

We believe that the concerns expressed by GM and the Alliance about adverse consequences to occupants in other crash modes are addressed by the overall requirements of the advanced air bag rule. As noted earlier, the purpose of that rule was to require that future air bags be designed to create less risk of serious air bag-induced injuries than then-current air bags and provide improved frontal crash protection for all occupants. Vehicles designed to meet the rigid barrier crash test with 5th percentile adult female dummies at a

[4] The Chevrolet Avalanche had a passenger Nij value of 1.0, providing it no margin of compliance.

[5] Docket No. NHTSA–2003–15732–11 and 12.

maximum speed of 56 km/h (35 mph) will have to meet all of the requirements of the advanced air bag rule. That rule specifies test requirements at various test speeds/impact conditions including lower severity speeds and offset/oblique conditions, different dummy sizes, and restraint status.

With respect to GM's stated concern about belted small stature occupants involved in low severity frontal collisions, we note that the belted rigid barrier requirement must be met using 5th percentile adult female dummies at speeds from 0 to the maximum specified speed. Vehicles must also meet a 40 percent offset frontal deformable barrier test using belted 5th percentile adult female dummies at speeds from 0 to 40 km/h (25 mph). Vehicles must also meet unbelted test requirements using that dummy, as well as low risk tests at the driver position.

NHTSA believes that the overall requirements of the advanced air bag rule, including the amendment made in today's rule, will encourage manufacturers to optimize their occupant protection systems to adequately protect all sizes of occupants both in low and high severity crashes.

IIHS commented that by potentially further increasing the complexity of the restraint system, the proposed rule would increase the possibility of a system failure. However, that organization did not provide any support for this position. As indicated above, some vehicles being manufactured today meet the requirements of the advanced air bag rule and also meet the proposed requirement by a 20 percent margin.

3. Timing of Agency Decision

As indicated above, some commenters recommended that we defer this rulemaking until the performance of vehicles equipped with advanced air bags can be assessed. GM recommended that the agency wait until the work of the Blue Ribbon panel is completed.

While we agree that the field experience with advanced air bag-equipped vehicles is very limited, we do not believe it is necessary or appropriate to wait until there is sufficient experience with advanced air bags to assess their performance before completing this rulemaking We are addressing in this rulemaking a remaining issue from the advanced air bag rulemaking, whether it is practicable to establish the same 56 km/h (35 mph) maximum test speed for belted rigid barrier tests using the 5th percentile adult female dummy as was established for the same test using 50th percentile adult male dummies.

As we explained in the advanced air bag rulemaking, we did not propose including the 5th percentile adult female dummy in the 56 km/h (35 mph) phase-in requirement because we had sparse information on the practicability of such a requirement. We announced that we would initiate testing to examine this issue and anticipated proposing increasing the test speed for belted tests using the 5th percentile adult female dummy to 56 km/h (35 mph), beginning at the same time that the 50th percentile adult male is required to be used in belted testing at that speed.

We have conducted the anticipated testing to support the proposal, and believe it is appropriate to proceed with a final rule. We believe it could take 10 or more years to accumulate significant field experience with advanced air bags and small females. In the meantime, improved protection for occupants of different sizes would not occur, and the benefits associated with the rule would be lost.

NHTSA is aware of the work of the Blue Ribbon Panel and has attended its annual presentation of case findings. Much of the field work has focused on the performance of depowered air bag-equipped vehicles, rather than vehicles equipped with advanced air bags. At this point in time, the data collection is complete, and the analysis is ongoing and expected to be completed by the end of this year. A public meeting is scheduled for May 2007. However, since the advanced air bag phase-in did not begin until model year 2004, the data reflect limited on-road exposure with respect to fifth percentile adult females. Therefore, we do not believe its work will provide significant information relevant to this specific rulemaking.

4. Harmonization With Canada

As indicated above, GM and the Alliance expressed concerns about differences between how NHTSA and Transport Canada are addressing improved protection for belted small statured occupants. The Alliance noted that Transport Canada has proposed a more stringent chest compression requirement for 5th percentile adult female dummies in 48 km/h (30 mph) tests. That organization expressed concern that each country's proposal may require opposing or at least non-complementary design strategies in order to meet the different proposed test requirements. The Alliance stated that assuming that the interior space and the vehicle stiffness are constant, engineering judgment would suggest that different restraint system solutions would be needed to manage the higher crash loads in the 56 km/h (35 mph) test, as opposed to restraints needed to reduce chest loading in order to meet the chest compression limit proposed by Transport Canada for the 48 km/h (30 mph) test.

GM stated that it believes regulations should be harmonized with other countries, particularly in North America, whenever possible. It also stated that it believes that Transport Canada's approach is at least more directionally appropriate and more likely to reduce crash injuries and fatalities in small stature occupants and the elderly.

On June 30, 2001, Transport Canada published a notice of intent to amend its occupant crash protection standard to improve chest protection in frontal collisions, particularly for the small and aging population. For one aspect of the regulation, Transport Canada proposed a 0–48 km/h (0–30 mph) full frontal rigid barrier crash test requirement using a 5th percentile adult female dummy and a 0–40 km/h (0–25 mph) fixed offset deformable barrier crash test requirement as in FMVSS No. 208. However, Transport Canada also proposed a reduced chest deflection limit of 41 mm in the full frontal rigid barrier crash test and 32 mm in the offset deformable barrier crash test. NHTSA's chest deflection limit is 52 mm for the 5th percentile dummy.

We agree it is desirable to develop harmonized regulations whenever possible. We note that NHTSA and Transport Canada have met together on six occasions between May and October of 2004 to fully discuss the merits of the two proposals.

While we recognize the differences between the proposals and that manufacturers would not want to be required to develop multiple restraint systems for the North American market, we believe that the two proposals do not require non-complementary design strategies. As indicated above, the Alliance was concerned that different restraint system solutions could be needed to manage the higher crash loads in the 56 km/h (35 mph) test, as opposed to restraints needed to reduce chest loading in order to meet the chest compression limit proposed by Transport Canada for the 48 km/h (30 mph) test. We evaluated test results of 11 vehicles that were subjected to rigid barrier crash tests using the 5th percentile adult female dummy at both 48 km/h (30 mph) and 56 km/h (35 mph). Nine of the 11 vehicles were able to comply with the chest protection requirements of both proposals with approximately a 20 percent margin of compliance. This testing indicates that

when keeping vehicle stiffness and interior space constant, different restraint packages are not necessary to meet both the NHTSA and Transport Canada proposals.

5. Concerns About the 5th Percentile Adult Female Dummy

In commenting on the NPRM, DaimlerChrysler reiterated concerns it has previously identified about the Hybrid III 5th percentile adult female dummy, including ones about neck structure and response, dummy interference with deploying air bags, and the Nij neck injury criterion. That manufacturer stated that these issues were discussed in numerous submissions during the advanced air bag rulemaking, and most recently in its petition for reconsideration of the July 2002 final rule on the 5th percentile adult female dummy.

We note that the issues raised by DaimlerChrysler are not specific to this proposed requirement. Nij is already incorporated as an injury criterion in FMVSS No. 208, for both in-position and out-of-position test conditions using the 5th percentile adult female dummy. We did not propose any new injury criteria or modifications to the dummy neck as part of the proposal.

DaimlerChrysler has provided comments and petitions on these issues before, and the agency has denied its requests. For example, in a final rule published in the **Federal Register** on November 19, 2003, we stated:

> The agency also determined that the Nij formula incorporates the relevant measurements for evaluating neck injury during frontal impact and that much of the automotive industry has accepted Nij as a valid injury measurement. See 66 FR 65376, 65399. DaimlerChrysler has not provided any new information with respect to these two issues in its current petition for reconsideration. The agency still concurs with our previous determination and therefore is denying DaimlerChrysler's petition with respect to * * * Nij measurements.

68 FR 65189.

Most recently, the agency denied DaimlerChrysler's petition for reconsideration of the July 2002 final rule on the 5th percentile adult female dummy, referred to in its comments on this rulemaking, in a document published in the **Federal Register** (70 FR 13227) on March 18, 2005.

Because DaimlerChrysler has not presented new data or arguments in support of its concerns about this issue, we are not making changes in this rulemaking in response to its concerns.

6. Test Set-Up Procedure

In the NPRM, we proposed to use the seat set-up and dummy positioning procedures specified for the existing 0–48 km/h (0–30 mph) frontal rigid barrier test for the belted 5th percentile adult female dummy. The set-up includes the use of the mid-tilt and mid-telescoping positions of the steering wheel (when available).

We received two comments concerning the test procedure set-up, from IIHS and TRW. IIHS commented that dummy seating procedures in crash tests should be based on where drivers really sit and not on arbitrary seating positions that can be manipulated to optimize crash test results. It stated that NHTSA should change its regulations so anthropomorphic data are used to determine seating positions during tests, as it petitioned the agency in September 2002.

TRW stated that it believes the proposed test set-up procedures for the 5th percentile adult female dummy at the driver position, particularly with respect to the steering wheel orientation, are not realistic with regard to field conditions. That company stated that the proposal fails to recognize the different statures of the 5th percentile adult female dummy and the 50th percentile adult male dummy. It believes that representative driving positions as indicated in the IIHS/University of Michigan Transportation Research Institute (UMTRI) positioning procedures should be adopted. TRW noted that the UMTRI procedure calls for adjusting a telescoping wheel to a full-forward (untelescoped) position. TRW also recommended that the tilt position for the 5th percentile adult female dummy be lowered one or two notches from mid-position since it believes that would be a more representative position for an occupant of this stature.

We note that since publishing the NPRM, the agency denied IIHS's petition for rulemaking on amending the seating procedure in a document published in the **Federal Register** (69 FR 8160) on February 23, 2004. In that document, we stated:

> * * * NHTSA denies this petition for rulemaking based on a lack of compelling beneficial evidence supporting the UMTRI procedure and the agency's views about the adequacy of the current seating procedure * * * The agency has no immediate plans to conduct research on an alternative seating method for either the driver or passenger positions. However, NHTSA may revisit the seat position issue at a later time depending on the agency's future research needs and priorities.

The current seating procedure for the 5th percentile adult female dummy was developed in the late 1990s, in consideration of work performed by the Society of Automotive Engineers (SAE) Hybrid III 5th Seating Procedure Task group and NHTSA's Vehicle Research Test Center. We believe that neither TRW nor IIHS have provided data or arguments demonstrating that amending the procedure would result in benefits. We also believe that since a great deal of testing has been performed using the existing procedure, both by government agencies and industry, we should avoid making unnecessary changes in the procedure.

For steering set-up, the procedure specifies the use of the mid-tilt and mid-telescoping positions of the steering wheel. These represent nominal positions. However, we also believe that it is reasonable to assume that some small statured drivers will drive with the steering wheel in this position, particularly if multiple-sized drivers routinely drive a vehicle.

TRW noted that NHTSA specifies a lower wheel tilt for the driver out-of-position procedure for the ''chin on rim'' test. The test procedure states that if the steering wheel can be adjusted to allow the chin to rest on the uppermost portion of the wheel, then the adjustment should be made. TRW stated that this position would help to present the air bag in a more uniform position to the small female driver.

However, we believe that the positioning procedure for the low risk deployment test is not relevant to the positioning procedure proposed for this rulemaking. Unlike the low risk tests, the normal seating position for the 5th percentile adult female dummy in the high speed crash tests is not intended to encompass a worst-case scenario for air bag interaction.

TRW also stated that if the tilt remains in the higher position, and the IARVs are close to compliance limits for the small female dummy, system designs might need to be changed to provide equal margins for mid-size occupants and smaller occupants. That company stated that, as a consequence, the driver air bag system may need to be more aggressive (larger air bag, higher output and/or slope inflator) to keep the small occupant off the rim. According to TRW, these designs may have the unintended consequence of more neck and chest interaction with the deploying air bag for all sized occupants who may be out-of-position during deployment.

We note, however, that vehicles are also required to meet the low risk deployment tests and neck and chest injury requirements in the low-speed

offset and high-speed full frontal barrier tests. As discussed earlier, vehicle crash tests indicate that many vehicles can meet the advanced air bag requirements, including driver low risk deployment tests, and the proposed 35 mph crash test using the 5th percentile adult female dummy with the steering wheel positioned as currently specified in FMVSS No. 208.

TRW also stated that if the agency does not change the mid-position specification, the possibility exists for adding additional lower detents to the wheel tilt mechanism, thus lowering the ''mid-tilt'' position without compromising the ability of the wheel to be adjusted for larger occupants. TRW stated that the result might be a trade-off in performance for larger occupants.

However, TRW did not provide any data to support its statement. Therefore, it is unclear what tradeoffs are implied.

TRW also stated that there is evidence from tests and computer models that show that the overall injury numbers improve for a 5th percentile adult female dummy when the wheel is tilted farther down from the mid-position. We note that while it may be easier to pass the test in the position advocated by TRW, this does not mean that it is in the interest of safety to adjust the steering wheel position for the specified test. As indicated above, it is reasonable to assume that some small statured drivers will drive with the steering wheel adjusted in the mid-position. Moreover, the 5th percentile adult female dummy seating procedure proposed in the NPRM is used in other tests in FMVSS No. 208, which are outside of the scope of this rulemaking. Also, as indicated above, given the amount of testing that has been performed using the existing procedure, we believe we should avoid making unnecessary changes.

7. Leadtime

GM commented that a minimum postponement of two years in the effective date of the proposed rule is necessary to accommodate testing and product development.

While a number of vehicles already meet the proposed requirement as well as the advanced air bag requirements, we recognize that some models involve greater design challenges than others. For example, in its comments, GM compared the vehicle deceleration (pulse) characteristics of the Impala to other vehicles, and showed that the vehicle pulse for the Impala is significantly less aggressive (slower deceleration) than most of the vehicles in its fleet. Some vehicles have shorter front overhangs with tighter packaging, with the result that less front crush space is available. For these vehicles, the restraint system is more challenged to provide the crash energy absorption needed.

As discussed earlier, we proposed the same phase-in schedule for the higher 56 km/h (35 mph) rigid barrier test using belted 5th percentile adult female dummies as that already adopted for 50th percentile adult male dummies, *i.e.*, beginning September 1, 2007.

After considering the comments, we have decided to phase in the new requirement in a similar manner to the one for 50th percentile adult male dummies. However, given the short time until the compliance date for the higher speed test requirement using 50th percentile male dummies and the impact on product development plans, we have decided to begin the phase-in for the higher speed test requirement using 5th percentile female dummies two years later, *i.e.*, September 1, 2009. The additional leadtime will provide manufacturers the time needed to meet any design challenges associated with some vehicles and incorporate these additional requirements into their product development schedules without undue consequences.

The details of the phase-in are provided above in the section titled ''Agency Decision—Overview,'' so we will not repeat them here.

8. Alternative Tests

IIHS commented that other measures to improve frontal crash protection would prove far more beneficial than the proposed requirement. It stated that these measures include offset deformable barrier and pole tests, which it believes are more representative of real world crash experience.

We note that consideration of an offset deformable barrier crash test or a pole test is outside the scope of this rulemaking. We proposed to amend an existing test procedure speed, and not an entirely new frontal crash test procedure. We also note that IIHS did not present any data to quantify how an offset deformable barrier or pole test would be more beneficial or more representative of real world crashes.

C. Benefits and Costs

In conjunction with the NPRM, the agency prepared a Preliminary Regulatory Evaluation (PRE) that analyzed the benefits and costs associated with the proposed requirements. The agency has prepared a Final Regulatory Evaluation (FRE) to accompany this final rule. The FRE addresses comments concerning benefits and costs, including comments on the methodologies used in the PRE. The following summarizes the FRE's conclusions regarding the benefits and costs associated with this rule.

1. Benefits

The rule will annually prevent an estimated 2–4 fatalities and reduce 2 MAIS 2–5 non-fatal injuries, once all light vehicles on the road comply with it. The low and high ends of the range are dependent on assumptions about injury probability curves for head injury.

The relatively low magnitude of these benefits reflects the fact that the majority of the vehicle changes necessary to meet this rule are already being made to meet the May 2000 advanced air bag final rule, and most vehicles designed to meet that rule already meet this rule. As indicated above, four of five vehicles with advanced air bags tested by NHTSA met the requirements of this rule with 20 percent compliance margins. Relative to the May 2000 advanced air bag final rule, this rule is designed to further improve air bag technologies to expand benefits to small stature occupants under the same severity crash test conditions as required for the 50th percentile males.

2. Costs

The total net cost of this final rule could range from $0.0 to $9.0 million (2004 economics). The same technology countermeasures will be used by the manufacturers to comply with the rule as they use to comply with the May 2000 advanced air bag final rule. They may not need to make any additional changes, they may need to redesign their air bags but add no costs, or they may add technologies to vehicles that didn't need them before this final rule. The agency estimates the total cost of the rule will most likely be $4.5 million.

IV. Rulemaking Analyses and Notices

A. Vehicle Safety Act

Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms.[6] These motor vehicle safety standards set a minimum standard for motor vehicle or motor vehicle equipment performance.[7] When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety

[6] 49 U.S.C. 30111(a).

[7] 49 U.S.C. 30102(a)(9).

information.[8] The Secretary also must consider whether a proposed standard is reasonable, practicable, and appropriate for the type of motor vehicle or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths.[9] The responsibility for promulgation of Federal motor vehicle safety standards has been delegated to NHTSA.[10]

In developing this final rule, the agency carefully considered the statutory requirements of 49 U.S.C. Chapter 301. We also note that the issue addressed by this rule arose during the agency's advanced air bag rulemaking required by the Transportation Equity Act for the 21st Century (TEA 21), enacted by Congress in June 1998. That statute required us to issue a rule amending FMVSS No. 208:

> * * * to improve occupant protection for occupants of different sizes, belted and unbelted, under Federal Motor Vehicle Safety Standard No. 208, while minimizing the risk to infants, children, and other occupants from injuries and deaths caused by air bags, by means that include advanced air bags.

As discussed in the preamble to the advanced air bag rule, the agency did not propose to include the 5th percentile adult female dummy in the 56 km/h (35 mph) belted rigid barrier test requirement because we had sparse information on the practicability of such a requirement. Instead, we addressed this issue in this later rulemaking, after conducting a series of vehicle crash tests to obtain the information we needed to analyze this issue.

This final rule was preceded by an NPRM, in which we discussed the results of the vehicle crash tests conducted to support the rulemaking. We have also conducted five additional crash tests of vehicles certified to the advanced air bag requirements.

In preparing this document, the agency carefully evaluated the comments, testing results and other available information. We have also updated our cost and benefits analysis. Thus, this document reflects our consideration of all relevant, available information.

B. 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 budget 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.

This rulemaking document was reviewed by the Office of Management and Budget under E.O. 12866. It is considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) because of significant public interest.

This final rule amends FMVSS No. 208 by increasing the maximum belted frontal barrier crash test speed from 48 km/h (30 mph) to 56 km/h (35 mph) for the 5th percentile adult female dummy. This is the same test speed as is specified for the 50th percentile adult male dummy.

As noted above in the section entitled Benefits and Costs, the agency estimates that the rule will prevent 2–4 fatalities and reduce 2 MAIS 2–5 non-fatal injuries. The total net cost could range from $0.0 to $9.0 million (2004 economics). The agency estimates the total cost of the rule will most likely be $4.5 million.

A complete discussion of how NHTSA arrived at these benefits and costs may be found in the FRE located in the docket for this rulemaking.

C. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 60l *et seq.*, NHTSA has evaluated the effects of this final rule on small entities. I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities.

The following is the agency's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The rule directly affects motor vehicle manufacturers, second stage or final manufacturers, and alterers. SIC code number 3711, *Motor Vehicles and Passenger Car Bodies*, prescribes a small business size standard of 1,000 or fewer employees. SIC code No. 3714, *Motor Vehicle Part and Accessories*, prescribes a small business size standard of 750 or fewer employees.

The majority of motor vehicle manufacturers would not qualify as a small business. These manufacturers, along with manufacturers that do qualify as a small business, are already required to comply with the 48 km/h (30 mph) maximum crash test speed requirements using 5th percentile adult female dummies under the advanced air bag rule of FMVSS No. 208. Measures to provide protection up to 48 km/h (30 mph) are already being implemented, and many tested vehicles already comply with requirements as amended by this rule. Improving performance as necessary to meet the 56 km/h (35 mph) requirement can generally be achieved through changes in safety belt design or changes in air bag inflation characteristics with low-cost algorithm changes. Furthermore, small volume manufacturers are given the option of waiting until the end of the phase-in to meet the new requirements.

Most of the intermediate and final stage manufacturers of vehicles built in two or more stages and alterers have 1,000 or fewer employees. But again, these companies already are required to comply with the 48 km/h (30 mph) belted 5th percentile adult female dummy requirement. These companies can either rely on the original equipment manufacturer's certification, or employ similar low cost measures as the large manufacturers. Also, final stage manufacturers and alterers can wait until one year after the end of the phase-in to meet the new requirements. Accordingly, there will be no significant economic impact on small businesses, small organizations, or small governmental units by these amendments. For these reasons the agency has not prepared a regulatory flexibility analysis.

D. Executive Order No. 13132

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

[8] 49 U.S.C. 30111(b).

[9] *Id.*

[10] 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

responsibilities among the various local officials. However, under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use.

E. National Environmental Policy Act

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

F. Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995, 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 contains a ''collection of information'' as that term is defined by OMB at 5 CFR 1320. As a result of this final rule, NHTSA proposes to revise a currently approved collection of information as follows. NHTSA will also ask for an extension of the revised collection of information for three more years.

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: Part 585—Phase-in Reporting Requirements.

Type of Request—Revision of a Currently Approved Collection of Information.

OMB Clearance No.—2127–0599.

Form Number—This collection of information will not use any standard forms.

Requested Expiration Date of Clearance—At present, Clearance No. 2127–0599 is scheduled to expire on October 31, 2006. NHTSA will ask for a 3-year extension of this collection of information (with revisions) through October 31, 2009. As a result of this final rule, NHTSA anticipates asking for another extension of this collection, through October 31, 2012.

Summary of the Collection of Information

In the ''Rulemaking Analyses and Notices'' section of the August 6, 2003 NPRM, NHTSA discussed the Paperwork Reduction Act consequences of its proposed collection of information (See 68 FR at 46544–46545.) As a result of this final rule, NHTSA amends its description of the collection of information in the NPRM as follows. As discussed earlier, the final rule is essentially the same as the proposal, except for the timing of the phase-in. The new requirement is phased-in in a manner similar to the phase-in for the 56 km/h (35 mph) maximum speed test requirement using the 50th percentile adult male dummy, but begins two years later, *i.e.*, September 1, 2009. The additional leadtime will provide manufacturers the time needed to meet design challenges associated with some vehicles and incorporate these additional requirements into their product development schedules without undue consequences.

We are adopting phase-in reporting requirements similar to those used in other phase-ins. For each year of the phase-in period, manufacturers are required to provide to NHTSA, within 60 days after the August 31 end date of each ''production year,'' information identifying the vehicles (by make, model, and vehicle identification number (VIN)) that have been certified as complying with the belted barrier test upgrade.

As discussed earlier, the implementation schedule for the new requirement is as follows:

—35 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2009 (with the phase-in report to NHTSA due on October 31, 2010);

—65 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2010, with an allowance of carryover credits from vehicles built after September 1, 2009 (with the phase-in report to NHTSA due on October 31, 2011);

—100 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2011, with an allowance of carryover credits from vehicles built after September 1, 2009 (with the phase-in report to NHTSA due on October 31, 2012).

—All light vehicles manufactured on or after September 1, 2012.

Manufacturers that sell two or fewer carlines in the United States at the beginning of the first year of the phase-in (September 1, 2009) will have the option of omitting the first year of the phase-in, if they fully comply beginning on September 1, 2010.

Manufacturers that produce or assemble fewer than 5,000 vehicles for the U.S. market per year may defer compliance with the new requirement until September 1, 2012. Pursuant to this final rule, these manufacturers do not have to file any reports to NHTSA.

Consistent with our usual policy concerning multi-stage vehicles, multi-stage manufacturers and alterers may defer compliance with the new requirement until September 1, 2013. Pursuant to this final rule, these manufacturers do not have to file any reports to NHTSA.

Description of the Need for the Use of the Information

NHTSA needs this information to ensure that vehicle manufacturers are certifying their applicable vehicles as meeting the new belted barrier test using the 5th percentile female. NHTSA will use this information to determine whether a manufacturer has complied with the amended requirements of FMVSS No. 208 during the phase-in period.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)

NHTSA estimates that 21 vehicle manufacturers will submit the required information.

For each report, the manufacturer will provide, in addition to its identity, several numerical items of information. The information includes:

(a) Total number of vehicles manufactured for sale during the preceding production year,

(b) Total number of vehicles manufactured during the production year that meet the regulatory requirements, and

(c) Information identifying the vehicles (by make, model, and vehicle identification number (VIN)) that have been certified as complying with the belted barrier test upgrade.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting From the Collection of Information

Approved Clearance for October 31, 2003 through October 31, 2006—At present, OMB Clearance 2127–0599 gives NHTSA approval to collect 1,281 burden hours a year from industry, or 61 hours from each of 21 manufacturers. This figure of 61 hours represents the burden hours that would result if reports for two separate but related phase-ins were due the same year, *e.g.*, both the higher speed test requirement using 50th percentile adult male test dummies and the higher speed test requirement using the 5th percentile adult female dummies. At no time from October 31, 2003 through October 31, 2006 has there been a requirement for manufacturers to provide two such

phase-in reports. Thus, this figure of 61 hours should have been 60 hours per manufacturer, or a total collection of information burden on industry of 1,260 hours.

Request for Clearance for October 31, 2006 through October 31, 2009—NHTSA is asking OMB to extend Clearance 2127–0599 for an additional three years, October 31, 2006 through October 31, 2009. NHTSA notes that for the first year of this period, November 1, 2006 through October 31, 2007, the reporting requirement relates to the optional earning of advanced credits for Phase II. If all manufacturers choose to earn advanced credits, the burden hours would be the same as for one of the years of the phase-in *i.e.*, 60 hours.

The phase-in period for Phase II (higher speed test requirement using 50th percentile adult male test dummies) will begin on September 1, 2007, with the report due on October 31, 2008. From November 1, 2007 through October 31, 2009, NHTSA estimates that each manufacturer will again incur 60 burden hours per year, through October 31, 2009. The burden hours for OMB Clearance, 2127–0599 will remain at 60 hours multiplied by 21 manufacturers per year (1,260 hours). Thus, in its OMB Form 83–I submission for approval to extend OMB Clearance 2127–0599 to collect information from October 31, 2007 through October 31, 2009, NHTSA will ask that the collection of information be revised to reflect the lower figure of 1,260 hour figure for the two years in which reports (60 burden hours a year on 21 manufacturers).

Anticipated Request for Clearance for October 31, 2009 through October 31, 2012—The first year of the phase-in for the higher speed test requirement using 5th percentile adult female dummies covers the production period from September 1, 2009 through August 31, 2010. The report will be due by October 31, 2010, a time after OMB Clearance 2127–0599 expires on October 31, 2009.

According to the phase-in schedule specified in this final rule, the three year period from October 31, 2009 through October 31, 2012 will include one year (covering the production period from September 1, 2009 through August 31, 2010) when manufacturers will report on both the last year of the phase-in for the higher speed test requirement using 50th percentile adult male test dummies and the first year of the higher speed test requirement using 5th percentile adult female dummies. For this one year, there will be an increase of one burden hour, resulting in a total of 61 burden hours per manufacturer, or a total burden of 1,281 hours on industry. This estimate is based on the fact that the reporting format for the test requirements using both the 50th percentile adult male test dummies and the 5th percentile adult female test dummies is identical. The data collection will involve only computer tabulation (using the same reporting format) and manufacturers will provide the information to NHTSA in an electronic (as opposed to paper) format. The data will cover the same types of vehicles for both the upgrade of the belted barrier test using the 50th percentile adult male test dummies and the upgrade using the 5th percentile adult female test dummies.

The additional two years in the period from October 31, 2010 through October 31, 2012, will include the phase-in reporting requirement for light vehicle manufacturers only for the higher speed test requirement using 5th percentile adult female test dummies. We estimate that the reporting burden for manufacturers will be the same as was the reporting burden for the higher speed test requirement using 50th percentile adult male test dummies, 60 burden hours per year. Thus, for each of the two years from October 31, 2010 through October 31, 2012, the reporting burden on light vehicle manufacturers is 60 hours per year.

There are 0 hours of recordkeeping burdens resulting from the collection of information.

NHTSA estimates that there are no additional cost burdens resulting from this final rule. There are no capital or start-up costs as a result of this collection. Manufacturers could collect and tabulate the information by using existing equipment. Thus, there are no additional costs to respondents or recordkeepers.

Because the scope of this collection of information differs from that described in the NPRM, NHTSA invites comment on its estimates of the total annual hour and cost burdens resulting from this collection of information. Please submit any comments to the NHTSA Docket Number referenced in the heading of this document or to: Ms. Lori Summers, Office of Rulemaking, NHTSA, 400 Seventh St., SW., Washington, DC 20590. Ms. Summers' telephone number is: (202) 366–1740. Comments are due within 30 days of the date of publication of this document in the **Federal Register**.

G. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' The amendments use the technical standards currently in FMVSS No. 208 and only increase the maximum speed for the frontal barrier crash test using the 5th percentile adult female dummy from 48 km/h (30 mph) to 56 km/h (35 mph). No voluntary consensus standard uses a maximum speed of 56 km/h (35 mph) for a frontal rigid barrier crash test using a 5th percentile adult female dummy.

H. Civil Justice Reform

This rule will not have any retroactive effect. As noted above in the discussion of Executive Order No. 13132, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file a suit in court.

I. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure 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). This rulemaking would not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of $100 million annually.

J. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) 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 rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866 and does not involve decisions based on environmental, health, or safety risks that disproportionately affect children. The rule increases the maximum belted frontal crash barrier test speed from 48 km/h (30 mph) to 56 km/h (35 mph) for the 5th percentile adult female dummy.

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.

L. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects in 49 CFR Parts 571 and 585

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

■ In consideration of the foregoing, NHTSA is amending 49 CFR parts 571 and 585 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.208 is amended by adding S14.6 through S14.7 and revising S15.1 and S16.1(a) to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S14.6 *Vehicles manufactured on or after September 1, 2009, and before September 1, 2012 (Phase-in of higher maximum speed (56 km/h (35 mph)) belted test requirement using 5th percentile adult female dummies).*

(a) For vehicles manufactured for sale in the United States on or after September 1, 2009, and before September 1, 2012, a percentage of the manufacturer's production, as specified in S14.6.1, shall meet the requirements specified in S15.1(b) (in addition to the other requirements specified in this standard).

(b) Manufacturers that sell two or fewer carlines, as that term is defined at 49 CFR 583.4, in the United States may, at the option of the manufacturer, meet the requirements of this paragraph instead of paragraph (a) of this section. Each vehicle manufactured on or after September 1, 2010, and before September 1, 2012, shall meet the requirements specified in S15.1(b) (in addition to the other requirements specified in this standard).

(c) Vehicles that are manufactured in two or more stages or that are altered (within the meaning of 49 CFR 567.7) after having previously been certified in accordance with Part 567 of this chapter are not subject to the requirements of S14.6.

(d) Vehicles that are manufactured by a manufacturer that produces fewer than 5,000 vehicles worldwide annually are not subject to the requirements of S14.6.

S14.6.1 *Phase-in schedule.*

S14.6.1.1 *Vehicles manufactured on or after September 1, 2009, and before September 1, 2010.* Subject to S14.6.2(a), for vehicles manufactured by a manufacturer on or after September 1, 2009, and before September 1, 2010, the amount of vehicles complying with S15.1(b) shall be not less than 35 percent of:

(a) If the manufacturer has manufactured vehicles for sale in the United States during both of the two production years prior to September 1, 2009, the manufacturer's average annual production of vehicles manufactured on or after September 1, 2007, and before September 1, 2010, or

(b) The manufacturer's production on or after September 1, 2009, and before September 1, 2010.

S14.6.1.2 *Vehicles manufactured on or after September 1, 2010, and before September 1, 2011.* Subject to S14.6.2(b), for vehicles manufactured by a manufacturer on or after September 1, 2010, and before September 1, 2011, the amount of vehicles complying with S15.1(b) shall be not less than 65 percent of:

(a) If the manufacturer has manufactured vehicles for sale in the United States during both of the two production years prior to September 1, 2010, the manufacturer's average annual production of vehicles manufactured on or after September 1, 2008 and before September 1, 2011, or

(b) The manufacturer's production on or after September 1, 2010, and before September 1, 2011.

S14.6.1.3 *Vehicles manufactured on or after September 1, 2011, and before September 1, 2012.* Subject to S14.6.2(c), for vehicles manufactured by a manufacturer on or after September 1, 2011, and before September 1, 2012, the amount of vehicles complying with S15.1(b) shall be 100 percent of the manufacturer's production during that period.

S14.6.2 *Calculation of complying vehicles.*

(a) For the purposes of complying with S14.6.1.1, a manufacturer may count a vehicle if it is manufactured on or after September 1, 2009, but before September 1, 2010.

(b) For purposes of complying with S14.6.1.2, a manufacturer may count a vehicle if it:

(1) Is manufactured on or after September 1, 2009, but before September 1, 2011, and

(2) Is not counted toward compliance with S14.6.1.1.

(c) For purposes of complying with S14.6.1.3, a manufacturer may count a vehicle if it:

(1) Is manufactured on or after September 1, 2009, but before September 1, 2012, and

(2) Is not counted toward compliance with S14.6.1.1 or S14.6.1.2.

S14.6.3 *Vehicles produced by more than one manufacturer.*

S14.6.3.1 For the purpose of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under S14.6.1, a vehicle produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S14.6.3.2.

(a) A vehicle that is imported shall be attributed to the importer.

(b) A vehicle manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer that markets the vehicle.

S14.6.3.2 A vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR Part 585, between the manufacturer so specified and the manufacturer to which the

vehicle would otherwise be attributed under S14.6.3.1.

S14.7 *Vehicles manufactured on or after September 1, 2012. (Higher maximum speed (56km/h (35 mph)) belted test requirement using 5th percentile adult female dummies*). Each vehicle shall meet the requirements specified in S15.1(b) (in addition to the other requirements specified in this standard). However, vehicles that are manufactured in two or more stages or that are altered (within the meaning of 49 CFR 567.7) after having been previously certified in accordance with Part 567 of this chapter may comply with the requirements specified in S15.1(a) instead of S15.1(b), if they are manufactured before September 1, 2013.

* * * * *

S15.1 *Belted Test.*

(a) Each vehicle that is certified as complying with S14.1 or S14.2 shall, at each front outboard designated seating position, meet the injury criteria specified in S15.3 when tested under S16.1(a)(1).

(b) Each vehicle that is certified as complying with S14.6 or S14.7 shall, at each front outboard designated seating position, meet the injury criteria specified in S15.3 when tested under S16.1(a)(2).

* * * * *

S16.1 *General provisions.* * * *

(a) *Belted test.*

(1) *Vehicles certified to S14.1 or S14.2.* Place a 49 CFR Part 572 Subpart O 5th percentile adult female test dummy at each front outboard seating position of a vehicle, in accordance with the procedures specified in S16.3 of this standard. Impact the vehicle traveling longitudinally forward at any speed, up to and including 48 km/h (30 mph), into a fixed rigid barrier that is perpendicular within a tolerance of ± 5 degrees to the line of travel of the vehicle under the applicable conditions of S16.2 of this standard.

(2) *Vehicles certified to S14.6 or S14.7.* Place a 49 CFR Part 572 Subpart O 5th percentile adult female test dummy at each front outboard seating position of a vehicle, in accordance with the procedures specified in S16.3 of this standard. Impact the vehicle traveling longitudinally forward at any speed, up to and including 56km/h (35 mph), into a fixed rigid barrier that is perpendicular within a tolerance of ± 5 degrees to the line of travel of the vehicle under the applicable conditions of S16.2 of this standard.

* * * * *

PART 585—PHASE-IN REPORTING REQUIREMENTS

■ 3. The authority citation for Part 585 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 4. Section 585.14 is amended by redesignating paragraph (c) as (d) and adding new paragraph (c) to read as follows:

§ 585.14 Definitions.

* * * * *

(c) *Phase three of the advanced air bag reporting requirements of Standard No. 208* refers to the requirements set forth in S14.6 and S14.7 of Federal Motor Vehicle Safety Standard No. 208, 49 CFR 571.208.

* * * * *

■ 5. Section 585.15 is amended by adding new paragraph (b)(3) and revising paragraph (d) to read as follows:

§ 585.15 Reporting requirements.

* * * * *

(b) * * *

(3) Within 60 days after the end of the production years ending August 31, 2010, August 31, 2011, and August 31, 2012, each manufacturer shall submit a report to the National Highway Traffic Safety Administration regarding its compliance with phase three of the advanced air bag requirements of Standard No. 208 for its vehicles produced in that production year. The report shall provide the information specified in paragraph (d) of this section and in § 585.2 of this part.

* * * * *

(d) *Phase-in report content.*

(1) *Basis for phase-in production requirements.* For production years ending August 31, 2003, August 31, 2004, August 31, 2005, August 31, 2007, August 31, 2008, August 31, 2009, August 31, 2010, and August 31, 2011, each manufacturer shall provide the number of vehicles manufactured in the current production year, or, at the manufacturer's option, for the current production year and each of the prior two production years if the manufacturer has manufactured vehicles during both of the two production years prior to the year for which the report is being submitted.

(2) *Production of complying vehicles.* Each manufacturer shall report for the production year for which the report is filed the number of vehicles, by make and model year, that meet the applicable advanced air bag requirements of Standard No. 208, and to which advanced air bag requirements the vehicles are certified. Provide this information separately for phase two and phase three of the advanced air bag reporting requirements.

■ 6. Section 585.16 is revised to read as follows:

§ 585.16 Records.

Each manufacturer shall maintain records of the Vehicle Identification Number of each vehicle for which information is reported under § 585.15(c)(1) until December 31, 2011. Each manufacturer shall maintain records of the Vehicle Identification Number of each vehicle for which information is reported under § 585.15(d)(2) until December 31, 2013.

Issued: August 23, 2006.

Nicole R. Nason,

Administrator.

[FR Doc. 06–7225 Filed 8–30–06; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060621176–6219–02; I.D. 052306A]

RIN 0648–AU50

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Great South Channel Scallop Dredge Exemption Area

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to modify the regulations implementing the Northeast (NE) Multispecies Fishery Management Plan (FMP) to allow vessels issued either a General Category Atlantic sea scallop permit or a limited access sea scallop permit, when not fishing under a scallop days-at-sea (DAS) limitation, to fish for scallops with small dredges (combined width not to exceed 10.5 ft (3.2 m)) within the Great South Channel Scallop Dredge Exemption Area. This final rule responds to a request from the fishing industry to add this area to the list of exempted fisheries. The intent of this action is to allow small scallop dredge vessels to harvest scallops in a manner that is consistent with the bycatch reduction objectives of the FMP.

DATES: Effective August 31, 2006.