

**§ 102–36.65 [Amended]**

■ 8. Amend § 102–36.65 by removing “FEDS” and adding “GSAXcess®” in its place.

■ 9. Amend § 102–36.90 by revising paragraphs (a) and (c) to read as follows:

**§ 102–36.90 How do we find out what personal property is available as excess?**

\* \* \* \* \*

(a) Check GSAXcess®, GSA’s website for searching and selecting excess personal property. For information on GSAXcess®, access <http://www.gsaxcess.gov>.

\* \* \* \* \*

(c) Check any available holding agency websites.

\* \* \* \* \*

**§ 102–36.125 [Amended]**

■ 10. Amend § 102–36.125 by removing from paragraph (a) “(FEDS)” and adding “(GSAXcess®)” in its place.

**§ 102–36.190 [Amended]**

■ 11. Amend § 102–36.190 by removing from paragraph (d) “part 101–44 of this title” and adding “part 102–37 of this chapter” in its place.

**§ 102–36.225 [Amended]**

■ 12. Amend § 102–36.225 by removing “part 101–47 of this title” and adding “part 102–75 of this chapter” in its place.

**§ 102–36.230 [Amended]**

■ 13. Amend § 102–36.230 by removing from paragraph (a) “the Federal Disposal System (FEDS)” and adding “GSAXcess®” in its place.

**§ 102–36.295 [Amended]**

■ 14. Amend § 102–36.295 by removing the last sentence.

**§ 102–36.300 [Amended]**

■ 15. Amend § 102–36.300 by—  
 ■ a. Removing from paragraph (a) “Personal Property Management Policy Division (MTP)” and adding “Office of Travel, Transportation, and Asset Management (MT)” in its place; and  
 ■ b. Removing from paragraph (a) “the Commonwealth of Puerto Rico, and the Commonwealth of” and adding “Puerto Rico, the Federated States of Micronesia, the Marshall Islands, Palau, and” in its place.

**§ 102–36.320 [Amended]**

■ 16. Amend § 102–36.320, by removing “part 101–44 of this title” each time it appears and adding “part 102–37 of this chapter” in its place.

**§ 102–36.325 [Amended]**

■ 17. Amend § 102–36.325 by removing “part 101–45 of this title” and adding

“part 102–38 of this chapter” in its place.

**§ 102–36.340 [Amended]**

■ 18. Amend § 102–36.340 by—  
 ■ a. Removing from paragraph (a)(4) the first “DOD” and adding “the Department of Defense (DOD)” in its place;  
 ■ b. Removing from paragraph (b) “dataplate to GSA Property Management Branch, San Francisco, California” and adding “data plate to GSA Property Management Branch (9FBP), San Francisco, CA 94102–3434” in its place;  
 ■ c. Removing from paragraph (c) “Aircraft Management Policy Division (MTA)” and adding “Office of Travel, Transportation, and Asset Management (MT)” in its place; and  
 ■ d. Removing from paragraph (c) “FAIRS see part 101–37 of this title” and adding “FAIRS, see part 102–33 of this chapter” in its place.

**§ 102–36.345 [Amended]**

■ 19. Amend § 102–36.345 by removing “part 101–37, subpart 101–37.6, of this title” and adding “part 102–33, subpart D, of this chapter” in its place.

**§ 102–36.360 [Amended]**

■ 20. Amend § 102–36.360 by removing “part 101–37 of this title” and adding “part 102–33 of this chapter” in its place.

**§ 102–36.365 [Amended]**

■ 21. Amend § 102–36.365 by removing “Public Law 105–27 (111 Stat. 244)” and adding “40 U.S.C. 555” in its place.

**§ 102–36.370 [Amended]**

■ 22. Amend § 102–36.370 by removing “Disaster Relief Act of 1974 (Public Law 93–288 (42 U.S.C. 5121) and Executive Orders 11795 (3 CFR, 1971–1975 Comp., p. 887) and” and adding “Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121–5206) and Executive Order” in its place.

**§ 102–36.380 [Amended]**

■ 23. Amend § 102–36.380 by removing “title IV of the Property Act” and adding “chapter 7 of title 40 of the United States Code” in its place.

**§ 102–36.390 [Amended]**

■ 24. Amend § 102–36.390 by removing from paragraph (e) “sec. 402(a) of the Property Act” and adding “40 U.S.C. 527” in its place.

**§ 102–36.400 [Amended]**

■ 25. Amend § 102–36.400 by removing “Sections 202 and 203 of the Property Act” and adding “40 U.S.C. 521–529, 549, and 551” in its place; and by

removing “receiving agency” and adding “Federal agency, State agency, or donee receiving the property” in its place.

**§ 102–36.405 [Amended]**

■ 26. Amend § 102–36.405 by removing “part 101–49 of this title” and adding “part 102–42 of this chapter” in its place.  
 ■ 27. Revise § 102–36.420 to read as follows:

**§ 102–36.420 How do we dispose of gifts from foreign governments or entities?**

Report foreign gifts on a SF 120 to GSA, Property Management Division (FBP), Washington, DC 20406, for possible transfer, donation or sale in accordance with the provisions of part 102–42 of this chapter.

**§ 102–36.440 [Amended]**

■ 28. Amend § 102–36.440 by removing “North Capitol and H Streets, NW” and adding “732 North Capitol Street, NW” in its place.

**§ 102–36.465 [Amended]**

■ 29. Amend § 102–36.465 by removing “part 101–46 of this title” and adding “part 102–39 of this chapter” in its place.

**§ 102–36.470 [Amended]**

■ 30. Amend § 102–36.470, by removing from paragraph (b) “section 203(i) of the Property Act” and adding “40 U.S.C. 548” in its place; and by removing from paragraph (c) “and” and adding “or” in its place.

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**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****49 CFR Part 575**

[Docket No. NHTSA–2006–25772]

RIN 2127–AJ76

**New Car Assessment Program (NCAP); Safety Labeling**

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

**SUMMARY:** A provision of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users requires new passenger vehicles to be labeled with safety rating information published by the National Highway Traffic Safety Administration

under its New Car Assessment Program. NHTSA is required to issue regulations to ensure that the labeling requirements "are implemented by September 1, 2007." This final rule is issued to fulfill that mandate.

**DATES:** *Effective Date:* This final rule is effective November 13, 2006.

*Compliance Date:* This final rule applies to covered vehicles manufactured on or after September 1, 2007. Optional early compliance by vehicle manufacturers is permitted before that date.

*Petitions for reconsideration:* Petitions for reconsideration of this final rule must be received not later than October 27, 2006.

**ADDRESSES:** Petitions for reconsideration of the final rule must refer to the docket number set forth above and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. In addition, a copy of the petition should be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For technical issues regarding the information in this document, please contact Mr. Nathaniel Beuse at (202) 366-1740. For legal issues, please contact Ms. Dorothy Nakama (202) 366-2992. Both of these individuals may be reached by mail at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

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#### I. Overview of SAFETEA-LU Labeling Provisions and Final Rule

Section 10307 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)<sup>1</sup> requires that each new passenger automobile that has been rated under the NHTSA's New Car Assessment Program (NCAP) must have those ratings displayed on a label on its new vehicle price sticker, known as the Monroney label.<sup>2</sup> SAFETEA-LU specifies detailed requirements for the label, including its content, size, location, and applicability, leaving the agency only limited discretion regarding the label.<sup>3</sup> It also requires NHTSA (by

<sup>1</sup> P.L. 109-59 (August 10, 2005); 119 Stat. 1144.

<sup>2</sup> The Monroney label is required by the Automobile Information Disclosure Act (AIDA) Title 15, United States Code, Chapter 28, Sections 1231-1233. SAFETEA-LU amended AIDA to require that NCAP ratings be placed on each vehicle required to have a Monroney label.

<sup>3</sup> "(g) if one or more safety ratings for such automobile have been assigned and formally published or released by the National Highway Traffic Safety Administration under the New Car Assessment Program, information about safety ratings that—

"(1) Includes a graphic depiction of the number of stars, or other applicable rating, that corresponds to each such assigned safety rating displayed in a clearly differentiated fashion indicating the maximum possible safety rating;

"(2) refers to frontal impact crash tests, side impact crash tests, and rollover resistance tests (whether or not such automobile has been assigned a safety rating for such tests);

"(3) contains information describing the nature and meaning of the crash test data presented and a reference to additional vehicle safety resources, including <http://www.safercar.gov>; and

"(4) is presented in a legible, visible, and prominent fashion and covers at least—

"(A) 8 percent of the total area of the label; or

"(B) an area with a minimum length of 4½ inches and a minimum height of 3½ inches; and

"(h) if an automobile has not been tested by the National Highway Traffic Safety Administration

delegation of authority from the Department of Transportation) to issue regulations to ensure that the new labeling requirements are implemented by September 1, 2007.

As required by SAFETEA-LU, the final rule provides that:

(1) New passenger automobiles manufactured on or after September 1, 2007 must display specified NCAP information on a safety rating label that is part of their Monroney label;

(2) The specified information must include a graphical depiction of the number of stars achieved by a vehicle for each safety test;

(3) Information describing the nature and meaning of the test data, and references to <http://www.safercar.gov> and NHTSA's toll-free hotline number for additional vehicle safety information, must be placed on the label;

(4) The label must be legible with a minimum length of 4½ inches and a minimum width of 3½ inches or 8 percent of the Monroney label, whichever is larger;

(5) Ratings must be placed on new vehicles manufactured 30 or more days after the manufacturer receives notification from NHTSA of NCAP ratings for those vehicles.

In its discretion, the agency decided to require that the label indicate the existence of safety concerns identified during NCAP testing, but not reflected in the resulting NCAP ratings. We have also required that the agency's toll-free hotline number appear on the label and adopted specifications for such matters as the wording and arrangement of some of the messages and the size of the font.

Given the extent to which the content of this rule is dictated by SAFETEA-LU, the final rule does not significantly differ from the proposed version of the rule. Nevertheless, in response to public comments, the final rule does differ from the proposal in several relatively minor respects. For example, it permits a smaller safety rating label for vehicles not tested by NHTSA and for which no safety ratings have been provided in any category of vehicle performance. In addition, it requires that, in addition to the agency's Web site, the agency's hotline number also appear on the label. Other changes include moving the safety concern information so that it is closer to the rating to which it applies.

#### II. Notice of Proposed Rulemaking

On January 30, 2006, NHTSA published in the **Federal Register** (71

under the New Car Assessment Program, or safety ratings for such automobile have not been assigned in one or more rating categories, a statement to that effect."

FR 4854) a notice of proposed rulemaking (NPRM) to implement the SAFETEA-LU labeling requirements. The agency described the proposed safety label requirements and provided rationales for them. NHTSA noted that, given the specificity of SAFETEA-LU, the agency had little discretion regarding most aspects of the proposed label.

In response to the NPRM, we received comments from: Advocates for Highway and Auto Safety (Advocates), Association of International Automobile Manufacturers, Inc. (AIAM), BMW, Competitive Enterprise Institute (CEI), DaimlerChrysler (DCX), U.S. Senator Mike DeWine of Ohio, Ford, General Motors (GM), Honda, Insurance Institute for Highway Safety (IIHS), National Automobile Dealers Association (NADA), National Mobility Equipment Dealers Association (NMEDA), Porsche, and Public Citizen. Several commenters urged that pickup trucks be labeled. Because of the specificity of the SAFETEA-LU provisions and because the NPRM was drafted in accordance with those provisions, the comments generally did not suggest labeling approaches that differed from that in the proposal. Among other things, they urged that labels for unrated vehicles be permitted to be smaller than the labels for rated vehicles, that a minimum font size be specified, that the provision of additional information on the labels of rated vehicles be permitted or required, and that the hotline phone number be placed on the labels. Comments were also offered on NHTSA's administration of the NCAP Program. The comments of each commenter are discussed below on an issue by issue basis.

### III. The Final Rule

In this section, we describe the proposal<sup>4</sup> and the public comments, and explain our response to the comments and our selection of the final rule language.

#### A. Vehicles Covered by This Final Rule

Per SAFETEA-LU, this final rule applies to all vehicles required to have Monroney labels. Those labels are required on new "automobiles" by the Automobile Information Disclosure Act (AIDA) and derive their name from the primary author of AIDA, former Senator Mike Monroney. The Department of Justice (DOJ), which generally administers AIDA, interprets the term "automobiles," by definition, to include passenger vehicles and station wagons,

and, by extension, passenger vans. However, it does not include pickup trucks, as explained in AIDA's legislative history.<sup>5</sup> Also per SAFETEA-LU, the new safety labeling requirements apply to the included vehicles, whether or not they have been rated by the agency.

Accordingly, we proposed to require all new passenger cars, multipurpose passenger vehicles (sport utility vehicles and vans) and buses with a Gross Vehicle Weight Rating (GVWR) of 10,000 lbs or less to have a section for NCAP ratings on the Monroney label, whether or not they have been rated by NHTSA. Vehicles under 10,000 lbs GVWR generally comprise the light passenger vehicle fleet. Although NCAP ratings have thus far normally been conducted following the respective Federal motor vehicle safety standard (FMVSS) vehicle applicability,<sup>6</sup> the NCAP testing is not constrained by the FMVSS and could be changed in the future. For example, a Notice of Proposed Rulemaking for FMVSS No. 214, "Side impact protection," has proposed application for vehicles up to 10,000 lbs GVWR. Additionally, the agency posts information about the safety features of these vehicles on its Web site. SAFETEA-LU also directed the agency to provide rollover ratings for 15-passenger vans that have a GVWR of more than 8,500 lbs.

*1. Comment Requesting Narrower Coverage*—In response to the NPRM, the AIAM recommended that NHTSA revise the proposed applicability section (Section 575.301(b)) to establish a narrower scope by using the vehicle class definitions in 49 CFR Section 571.3 for the FMVSSs, or by adding language at the end of the definition that simply references the AIDA. AIAM cited the language from DOJ that NHTSA referred to in the NPRM, and argued that the proposed rule "would extend the scope of the NCAP labeling requirement even further to include multipurpose passenger vehicles and buses up to 10,000 gross vehicle weight, a level much higher than passenger cars and station wagons of the late 1950's when the AIDA was enacted." AIAM argued that the MPV class includes passenger and cargo vans as well as two- and four-wheel drive utility vehicles and potentially even certain pure trucks.

<sup>5</sup> See <http://www.usdoj.gov/civil/ocl/monograph> and click on "Automobile Information Disclosure." See discussion of pickup trucks in congressional debates on AIDA: 104 CONG. REC. H12387 (daily ed. June 26, 1958).

<sup>6</sup> Frontal and rollover rating have been done for vehicles under 8,500 lbs GVWR, and side impact ratings for vehicles under 6,000 lbs.

As noted above, we sought in the proposal to follow the guidance provided by DOJ, while also providing a clear definition of the vehicles covered by the proposed regulation. As indicated above, the term "automobile" is a statutory term used in AIDA. The statute is administered by DOJ, which has provided guidance on the meaning of "automobile" in light of current vehicles. DOJ has explained on its Web site that "(a)utomobiles, by definition, include passenger vehicles and station wagons, and by extension passenger vans and recreational vehicles. Not included, as explained in the legislative history, are pickup trucks."

We note that multipurpose passenger vehicles are, as the name implies, passenger vehicles, and small buses are passenger vans. We used these terms in the proposed applicability section because they are well understood terms. We also explained why vehicles up to 10,000 pounds GVWR were intended to be covered under SAFETEA-LU.

We did not include trucks in the proposed applicability section. Therefore, "pure trucks" were not covered. Moreover, since cargo vans are generally classified by the manufacturer as trucks, they were also not covered.

For purposes of the final rule, however, we have decided to express the applicability section of the regulation by reference to AIDA and language based on the DOJ guidance, rather than referring to terms as used in Part 571.3 for safety standards. Specifically, the regulatory text states that the section applies to "automobiles with a GVWR of 10,000 pounds or less, manufactured on or after September 1, 2007, that are required by the Automobile Information Disclosure Act, 15 U.S.C. 1231-1233, to have price sticker labels (Monroney labels), e.g., passenger vehicles, station wagons, passenger vans, sport utility vehicles, and recreational vehicles."

We are adopting this approach because Congress made the applicability of the NCAP labeling requirement dependent on whether a vehicle is an "automobile" required to have a Monroney label under AIDA, and because it is DOJ, rather than NHTSA, that administers and issues authoritative interpretations of that part of AIDA. Thus, while we want our regulation to be as clear as possible, we recognize that it is DOJ, rather than NHTSA, that would make any necessary interpretations under AIDA as to the meaning of "automobile."

We specified a 10,000 pound GVWR limit in the applicability section since that represents the highest weight rating that we currently anticipate might

<sup>4</sup> For a complete discussion of the issues raised in the NPRM, please refer to the January 30, 2006 NPRM (71 FR 4854).

receive NCAP ratings. The examples of covered vehicles are generally taken from the DOJ guidance. However, we added the term "sport utility vehicle" because it is a commonly used term and because we were advised by DOJ that it considered sport utility vehicles to be recreational vehicles under its guidance. We also confirmed with DOJ that 15-passenger vans are regarded as passenger vans.

In the NPRM, we discussed the fact that, as explained by DOJ, AIDA does not require Monroney labels for pickup trucks. Since Congress did not require NCAP information on vehicles not required to have a Monroney label, we did not propose to require any NCAP information on pickup trucks. However, because manufacturers routinely include labels essentially the same as Monroney labels on this class of vehicle, we stated that we anticipate that manufacturers will voluntarily include the NCAP information on them.

*2. Comments on Pickup Trucks—* Advocates, Public Citizen, and Senator Mike DeWine expressed the view that NHTSA had statutory authority independent of SAFETEA-LU to require NCAP ratings on pickup trucks. They cited 49 U.S.C. 30117(a), which states:

(a) Providing information and notice. [NHTSA] may require that each manufacturer of a motor vehicle or motor vehicle equipment provide technical information related to performance and safety required to carry out this chapter. The Secretary may require the manufacturer to give the following notice of that information when the Secretary decides it is necessary:

(1) to each prospective purchaser of a vehicle or equipment before the first sale other than for resale at each location at which the vehicle or equipment is offered for sale by a person having a legal relationship with the manufacturer, in a way the Secretary decides is appropriate.

(2) to the first purchaser of a vehicle or equipment other than for resale when the vehicle or equipment is bought, in printed matter placed in the vehicle or attached to or accompanying the equipment.

NHTSA notes that in their public comments, Ford and GM stated that they would voluntarily place NCAP ratings on their pickup trucks.

For the following reasons, NHTSA is not adopting a requirement requiring manufacturers to provide NCAP ratings on new pickup trucks.

First, the purpose of this rulemaking is to implement SAFETEA-LU's requirements for labeling automobiles with NCAP ratings. Congress selected the approach of using the Monroney labels to convey the NCAP ratings to consumers at the point of sale. The statute that requires those labels, AIDA,

does not, according to DOJ, apply to pickup trucks.

Second, we believe that the availability of authority under section 30117(a) of the Vehicle Safety Act to conduct a rulemaking to supplement the SAFETEA-LU is unclear. That Act authorizes NHTSA to require vehicle manufacturers to provide the agency "technical information related to performance and safety" and also to require manufacturers to provide such information to prospective purchasers at dealerships in a way that the agency decides is appropriate. This authority dates back to 1970 and before.

The specific language and structure of current section 30117(a), as well as that of the pre-codification version of that section, indicate that it is referring to information that is generated by the vehicle manufacturer. A natural reading of the language would not extend to test information and ratings generated by the government. The information that the Secretary may require manufacturers to provide is logically limited to information that the Secretary did not generate, as it would serve no purpose for the Secretary to require manufacturers to provide him/her with information that he/she has generated and thus already possesses.

Moreover, section 32302 (formerly in Title II of the Cost Savings Act, enacted in 1972), which authorized the NCAP program, includes an express provision providing that the agency may require passenger motor vehicle *dealers* to distribute the information to prospective buyers. The fact that Congress specifically spoke in this later enacted statute as to the nongovernmental avenue by which the agency could provide for dissemination of NCAP information is an added reason not to read section 30117(a) in an unusual manner as applying to this information.<sup>7</sup>

Third, since we anticipate that the vehicle manufacturers will voluntarily label their pickup trucks with NCAP ratings, we believe that a supplementary requirement is unnecessary in any event. As noted above, Ford and GM stated that they would voluntarily place NCAP ratings on new pickup trucks.

Finally, if Congress wants the provision of that information on pickup trucks to be mandatory, we believe that

<sup>7</sup> We note that in 1994, the agency published two notices in the *Federal Register* in which it claimed authority to require vehicle manufacturers to provide safety performance information developed through testing by NHTSA. However, the agency did not address in those notices the fact that the relevant provision of the Cost Savings Act provides that the agency may require passenger motor vehicle *dealers*, rather than manufacturers, to distribute the information to prospective buyers.

the best course of action would be to provide for that in legislation.

*3. Vehicles manufactured in more than one stage—*Raising an issue not expressly addressed in the NPRM, several commenters asked whether the NCAP ratings would apply to vehicles manufactured in more than one stage. We note that neither Section 10307 of SAFETEA-LU nor AIDA limit their requirements to vehicles manufactured in a single stage. However, NHTSA also notes that vehicles manufactured in more than one stage (which are manufactured in relatively small volumes) have never been the subject of NCAP testing, which tests only those passenger vehicles that are sold in high volumes.

SAFETEA-LU states: "(h) If an automobile has not been tested by the National Highway Traffic Safety Administration under the New Car Assessment Program, or safety ratings for such automobiles have not been assigned in one or more rating categories, a statement to that effect" must be provided on the safety rating label. Thus, although NCAP labeling requirements will apply to vehicles built in more than one stage, it is expected that manufacturers of those vehicles will only need to apply the shorter, smaller NCAP label (to be discussed subsequently in "Smaller Labels for Vehicles With No Ratings"), with the statement: "This vehicle has not been rated by the government for frontal crash, side crash, or rollover risk."

Finally, we note that any issue as to whether a specific multi-stage vehicle will be required under AIDA to have a Monroney label would need to be resolved by DOJ.

*4. Altered Vehicles—*The National Mobility Equipment Dealers Association (NMEDA) asked that "the proposed labeling requirements not apply to \* \* \* altered vehicles, including those that have been altered in such a manner as to render void any previous NCAP results." NMEDA is an association "dedicated to providing safe and quality adaptive transportation and mobility for consumers with disabilities." To accommodate special needs drivers, NMEDA members (and others) may make vehicle alterations that require affixing an alterers' label to the vehicle pursuant to 49 CFR Part 567.7, "Requirements for persons who alter certified vehicles." NHTSA agrees that in such cases, the continuing applicability of ratings on the safety rating label may be at issue. Therefore, in this final rule, if an alterer places a Part 567.7 alterers' label on a vehicle with a safety rating label, the alterer will

be required to place another label (adjacent to the Monroney label) stating: "This vehicle has been altered. The stated star ratings on the safety rating label may no longer be applicable."

#### B. Size of the Safety Rating Label

In the NPRM, we noted that SAFETEA-LU limits the space for the NCAP label to 8 percent of the total area of the existing label or to an area with a minimum length of 4½ inches and a minimum height of 3½ inches. The relevant SAFETEA-LU language (paragraph (g)(4)) states that the NCAP safety rating label

is presented in a legible, visible, and prominent fashion and covers at least—

(A) 8 percent of the total area of the label; or

(B) an area with a minimum length of 4½ inches and a minimum height of 3½ inches.

In its comments, Public Citizen stated that SAFETEA-LU requires a minimum, not maximum, space for the label; therefore, NHTSA is free to require automakers to place a larger label on the vehicle if it better facilitates consumer comprehension. In contrast, the National Automobile Dealers' Association urged NHTSA to specify 8 percent as the minimum label size, not the 4½ by 3½ (inches) minimum size. NADA stated that manufacturers should be urged to minimize the size of Monroney labels in order to limit field-of-view obstructions. It noted that new motor vehicles are often operated before first sale or lease during prospective test drives. Because of this, and AIDA's mandate that dealers maintain Monroney labels on vehicles until they are delivered to first purchasers, the labels are usually posted on side windows. NADA expressed concerns about field-of-vision obstructions posed by the Monroney labels.

NHTSA disagrees with Public Citizen that NHTSA can specify a larger minimum size for the safety rating label than the minimum sizes specified in SAFETEA-LU. As indicated above, the statute provides that the NCAP safety rating information must be presented in a legible, visible, and prominent fashion that "covers at least—(A) 8 percent of total area of the label; or (B) an area with a minimum length of 4½ inches and a minimum height of 3½ inches." We read this language as a determination by Congress as to the appropriate minimum size for the label, as opposed to delegating that decision to the discretion of the agency.

We recognize, however, that the language is potentially ambiguous. For example, one could read the language as providing manufacturers the option of selecting either (A) or (B), regardless of

the size of the label. A second reading would be that the relevant area for NCAP information must be at least 4½ inches by 3½ inches (15.75 square inches). If 8 percent of the total area of the label is larger than 15.75 inches, the information area must be at least 8 percent of the label.

Given the overall language of paragraph (g)(4), we believe the second reading is the better reading. As indicated above, this paragraph specifies that the NCAP information must be presented in "a legible, visible, and prominent fashion," and then specifies the minimum size for the area of the label that must be devoted to the information. The requirement that the area be at least 8 percent of the total area of the label helps ensure that the information will be prominent. We believe that the requirement that the area be at least 4½ inches by 3½ inches is necessary, in the case of very small Monroney labels where 8 percent of the total area would be less than 15.75 square inches, to ensure that the information will be legible. We believe that this should be readily evident to anyone who examines current Monroney labels. For this reason, while we appreciate the concerns expressed by NADA relating to possible field-of-vision obstructions posed by the Monroney labels, we believe that these minimum area requirements are statutorily required and necessary to accomplish Congress' purposes. We are therefore specifying in the regulatory text that the minimum area for the NCAP information must be 4½ by 3½ inches or 8 percent of the Monroney label, whichever is larger.

General Motors noted that SAFETEA-LU requires that the label be wider than it is high. GM noted that NHTSA's sample label in the NPRM appeared to be higher than it was wide. NHTSA agrees with GM's comment. SAFETEA-LU specifies that the label have an "area with a minimum length of 4½ inches and a minimum height of 3½ inches." Accordingly, the agency is revising the safety rating label example. In this final rule, we will provide length (4½ inches) and height (3½ inches) dimensions with the sample label example.

#### C. Smaller Labels for Vehicles With No Ratings

DaimlerChrysler and Porsche recommended that NHTSA permit a smaller label for vehicles with no ratings. NHTSA notes that it has never rated any Porsche vehicle, nor has it rated many Mercedes-Benz vehicles under NCAP. SAFETEA-LU states: "(h) if an automobile has not been tested by the National Highway Traffic Safety

Administration under the New Car Assessment Program, or safety ratings for such automobile have not been assigned in one or more rating categories, a statement to that effect" must be provided on the safety rating label.<sup>8</sup>

To avoid the redundancy of stating "Not Rated" five times, statements that would not provide customers and potential customers with additional information, NHTSA is permitting manufacturers of automobiles that are not rated in any NCAP category the option of using a smaller safety rating label in lieu of the full size label. This smaller label is permitted for automobiles with no ratings, automobiles not selected for NCAP testing, and automobiles selected for, but not yet rated for, front, side, or rollover risk. The option for the smaller safety rating label is not available for an automobile if NHTSA has provided at least one safety rating for the automobile. The smaller labels may also be used on automobiles to which NCAP tests do not apply (*i.e.*, because they are over the weight rating limit).

The smaller safety rating label is described as follows:

(1) The minimum size of this label is 4½ inches in width and 1½ inch in height.

(2) The label will have the same header, footer, and font size requirements as the 8 percent/4½ inches by 3½ inches label.

(3) The label will state: "This vehicle has not been rated by the government for frontal crash, side crash, or rollover risk" and "Source: National Highway Traffic Safety Administration (NHTSA)."

These specifications for the smaller safety label requirements provide information for customers who want additional information on why an automobile is not rated, and will identify the statement that the vehicle has not been rated as coming from a government agency, with at least the same header and footer information (with the NCAP Web site and NHTSA toll-free number) as the 8 percent/4½ inches by 3½ inches label.

We note that manufacturers should be aware that for vehicles that are

<sup>8</sup> We note that the size of the safety rating label is specified at paragraph (g)(4) of 15 U.S.C. 1232 (Automobile Information Disclosure Act). Paragraph (g) applies "if one or more safety ratings for such automobile have been assigned or formally published or released by the National Highway Traffic Safety Administration under the New Car Assessment Program." A separate paragraph (h) applies to automobiles not tested under NCAP or not assigned safety ratings in one or more categories. Paragraph (h) includes no size specifications for the labels for non-rated automobiles.

subsequently rated by the agency, they will still have 30 days to post new ratings in the proper format for a vehicle with one or more ratings. The agency is not providing additional time to a manufacturer that must modify the Monroney label to make room for the larger 8 percent/4½ inches by 3½ inches label. This is necessary to ensure that agency's providing the opportunity to use a smaller label does not result in delaying the labeling of vehicles once they have been assigned one or more NCAP ratings.

#### *D. No Additional Information May Be Provided in the Safety Rating Label*

In the NPRM, NHTSA stated its belief that Congress intended to limit the NCAP label information to that specified in SAFETEA-LU. Thus, NHTSA proposed that no additional information of any kind, other than the same information provided in a language other than English, may be voluntarily provided in the NCAP label area. NHTSA does not construe the same information provided in a language other than English to be additional information. In response to the NPRM, NADA stated that the option of safety ratings labels in languages other than English should not be permitted, since nothing in AIDA, as amended "suggests the authority or discretion to do so." NHTSA notes that providing NCAP in a language other than English is entirely at the manufacturer's discretion.

Ford suggested that the safety rating label allow for the inclusion of additional footnotes or information on the label indicating the presence of safety features (such as electronic stability control), the [www.safercar.gov](http://www.safercar.gov) reasons for no ratings and other information as listed on [www.safercar.gov](http://www.safercar.gov), and certification label language to indicate compliance with all applicable FMVSSs. The Advocates, BMW, IIHS, and Public Citizen suggested adding IIHS and *Consumer Reports* ratings and Web addresses. The CEI suggested adding language stating that large cars usually offer more protection in a crash than do small cars. Senator DeWine provided the following comments:

My statements on the Senate Floor on March 8, 2005, and May 12, 2005, reinforce the requirement that frontal, side impact, and rollover testing information be included. Neither of these statements refer to inclusion of any other safety data, and an explanatory diagram utilized on the Senate Floor did not include information other than the three types of ratings previously mentioned. In this sense, the NPRM accurately reflects congressional intent by restricting the

"Government Safety Ratings" portion of the label to only those ratings identified in SAFETEA-LU, plus any foreign language interpretations of the same.

In this final rule, NHTSA adopts as final its NPRM language, and is not permitting any information on the safety rating label other than that specified in SAFETEA-LU. The safety rating label is not intended to provide all of NHTSA's Web-based information, but to provide consumers with certain important point-of-sale information about a specific vehicle's star ratings, and to encourage consumers to visit [www.safercar.gov](http://www.safercar.gov) or to call NHTSA's hotline for more specific information regarding vehicle safety. NHTSA does not see a feasible way to permit the suggested additional information in a meaningful way without detracting from or creating confusion about either information specified by SAFETEA-LU or the additional information regarding safety concerns, which NHTSA considers pertinent consumer information. Further, including the suggested additional information could adversely affect the visibility, legibility and prominence of the mandated information, especially if minimum size labels were used.

The AIAM noted that the proposed regulatory text did not prohibit additional information in the safety rating label area. NHTSA agrees with this comment. In Section 575.301(e)(10) of the final rule, the agency has included a prohibition against additional information. The specified NCAP information provided in a language other than English is not construed to be "additional information."

In addition, NHTSA will not require that information that is already provided on vehicle certification labels be placed on the safety rating label. Providing certification label information in two places provides no additional information to the consumer. The presence of additional information on the NCAP label would detract from the required information.

In his comments, Senator DeWine also stated the following:

It is worth noting, however, that automakers have included various forms of safety data on Monroney labels in the past, including selected NCAP results, ratings from the Insurance Institute for Highway Safety, and so on. Given the intent of the legislation to improve consumers' ability to make safety-conscious choices at the point of sale, I do not suggest that the final rule include a restriction on placement of additive safety data elsewhere on the Monroney label, so long as inclusion of additive data is legal under all applicable statutes and regulations, does not mislead consumers or contradict the

information required pursuant to the AIDA amendment, and presents a meaningful improvement on the safety data included inside the "Government Safety Information" box.

Consistent with Senator DeWine's comments, nothing in this final rule prevents any manufacturer from providing the suggested additional information on the Monroney label, outside of the NCAP safety rating area. However, since authority to regulate the Monroney label outside of the safety rating label resides with DOJ, NHTSA is not amending its regulatory text of the final rule to address the placing of additional information outside of the safety rating label.

#### *E. Content of the Label*

SAFETEA-LU requires that the safety label include "a graphic depiction of the number of stars, or other applicable rating, that corresponds to each such assigned safety rating displayed in a clearly differentiated fashion indicating the maximum possible safety rating" for front, side, and rollover testing conducted by the agency. The statute further specifies that the label must be legible, visible, and prominent, and that it contain "information describing the nature and meaning of the crash test data presented and a reference to additional vehicle safety resources, including <http://www.safercar.gov>," the NHTSA safety rating Web site. Finally, with regard to content, SAFETEA-LU specifies that "if an automobile has not been tested by the National Highway Traffic Safety Administration under the New Car Assessment Program, or safety ratings for such automobile have not been assigned in one or more rating categories, a statement to that effect" must appear. The following sections describe the proposed contents of the safety rating label, the public comments, and NHTSA's response to the comments.

**1. Use of Solid Stars**—Since 1994, the agency has used solid stars to communicate vehicle test results to consumers. NHTSA has conducted a substantial amount of research, and has found that consumers easily understand the stars.

Based on that research, NHTSA stated in the NPRM its belief that using solid stars is the most effective way to display a vehicle's star rating to consumers. Therefore, the agency proposed that the label use solid stars to represent a vehicle's star rating in a particular rating category. We also proposed to require the label to include a statement that "Star ratings range from 1 to 5 stars (★★★★★) with 5 being the highest". This proposed approach would fulfill

the statutory requirement that the graphic depiction of the vehicle rating be displayed in a clearly differentiated fashion while also indicating the maximum possible rating.

Senator DeWine wrote in support of the use of solid stars “[i]n light of [NHTSA’s] research, and the legislative intent of maximizing consumer awareness of safety factors.” In this final rule, solid stars are specified. NHTSA also received comments on the proposed statement. These comments, and NHTSA’s response, are addressed in the section on “General Area.”

2. “Not Rated”—In the NPRM, NHTSA explained that new models selected for testing by NHTSA cannot be tested simultaneously and, therefore, not all ratings can be available at the same time. We rely on <http://www.safercar.gov> to keep consumers informed of the status of vehicles that will be tested and availability of new ratings as soon as they are available. Since the agency understood that manufacturers will not be able to keep information on the safety rating label as current as NHTSA can on a Web site, we proposed that “Not Rated” be used in the appropriate rating category until a rating has been released by the agency. NHTSA proposed “Not Rated” rather than “Not Tested” to prevent any consumer misconception that a vehicle has not been tested to ensure compliance with NHTSA’s Federal Motor Vehicle Safety Standards.

In response to the NPRM, AIAM suggested use of the phrases “to be tested” and/or “no seat,” in addition to or in place of “Not Rated.” NADA stated that it “objects” to using “not rated” as it would confuse consumers, and suggested that for vehicles without rear seats, manufacturers be permitted to use the phrase “not applicable” in the test results section of the label where rear seat ratings would have been posted had the vehicle had a rear seat.

For this final rule, NHTSA has decided to let manufacturers have the option of using the phrase “to be rated,” if the manufacturer has received documentation from NHTSA that the vehicle will be tested. This option applies to any vehicle otherwise required to be labeled “Not Rated.” For vehicles with very small or no rear seats, the final rule maintains that the label state “Not Rated.” NHTSA has decided to specify “Not Rated” rather than “Not Applicable” to minimize confusion. NHTSA is concerned that a “Not Applicable” designation for the rear seat area may be misunderstood to mean that the FMVSSs or NCAP testing do not apply to the rear seat area. Further, this is consistent with the

terminology we use on <http://www.safercar.gov>.

3. *Safety Concerns on the Safety Rating Label*—For the past several years, NHTSA has informed consumers of test occurrences resulting in safety concerns that are not reflected in the star rating. Examples of such safety concerns are high likelihoods of thigh injury, pelvic injury, or head injury; fuel leakage; and door openings. When asked about how safety concerns would influence their decision, most respondents responded that “having information about crash test anomalies is important and they would use the information to assist them in making a decision to purchase one vehicle over another”.<sup>9</sup> Furthermore, the agency stated its belief that consumers would be misled if, when shopping for a vehicle, the NHTSA Web site indicated that there was a safety concern but none appeared on the label at the point of sale. On the NHTSA Web site, information describing the safety concern and any remedy taken by the manufacturer is described by clicking on the hypertext. Given the space constraints for safety information and for the Monroney label in general, NHTSA recognizes that requiring manufacturers to include the same level of information on the label as appears on the NHTSA Web site could easily result in the text’s being so small as to be illegible. NHTSA believed it important that the label show consumers how to find more information on the safety concern.

For these reasons, NHTSA proposed that when testing identifies a safety concern associated with a vehicle, the symbol



be placed in the appropriate rating category positioned as a superscript to the right of the right-most star in the rating category.<sup>10</sup> NHTSA also proposed to require the text “Safety Concern: Visit <http://www.safercar.gov>.”

NADA stated that it “objects to the idea of requiring the use of the exclamation point concern symbol,” stating that several dealers suggested that the symbol would “raise unnecessary questions for prospective purchasers.” NADA suggested that in lieu of the safety warning, the proposed reference to <http://www.safercar.gov> be revised to read: “Visit <http://www.safercar.gov> for more detailed vehicle safety information.”

<sup>9</sup> “Focus Groups Regarding Presentations of Crash Test Anomalies” NHTSA–2004–19104–1.

<sup>10</sup> Detailed information concerning the specific safety rating will be published in a NHTSA press release as well as posted on the [safercar.gov](http://www.safercar.gov) Web site

While we have considered NADA’s comment, we continue to believe, for the reasons stated above, that there is a need to alert prospective purchasers to test occurrences resulting in safety concerns that are not included in the star rating. With the inclusion of NHTSA’s toll-free hotline number in the footer area, prospective purchasers who wish further information about the safety concern can either visit <http://www.safercar.gov> or call the toll-free number.

The AIAM commented that by convention, a superscript is proportional to the base text size. Therefore, NHTSA should clarify whether the safety concern icon, a superscript to the star rating, needs to be proportional to the font size of the base star rating. NHTSA agrees that this recommendation would make the size of the safety concern icon more objective. In this final rule, the safety concern icon is specified to make it proportional to the font size of the star ratings. Therefore, when placed next to a star as a superscript, the safety concern icon maintains a proportional ratio of 3:2, or 66 percent of the font size of the star(s). However, when used as an explanatory symbol (in the general area of the label), the safety concern symbol is not a superscript, and therefore, it should be the same font size as the explanatory text.

4. *No Specific Font Type*—After reviewing the literature, NHTSA concluded that there is no single “best” font type for readability. Therefore, in the NPRM, we did not propose a single font type for use on the label. NADA commented that NHTSA should specify a font type to “promote consistency,” but did not offer a suggestion for a font type. Other than this, NHTSA received no comments addressing the font type issue. Thus, this final rule specifies no font type for the safety rating label.

5. *Font Sizes of Text and Star Ratings*—In order to ensure that the label is readable, NHTSA proposed that the text “Frontal Crash,” “Side Crash,” “Rollover,” “Driver,” “Passenger,” “Front Seat,” “Rear Seat,” and “Not Rated,” and where applicable, the star graphic indicating each rating, as well as any text in the header and footer areas of the label have a minimum font size of 12 point. NHTSA noted that 12 point would make the safety rating label consistent with NHTSA’s Automobile Parts Content Label (49 CFR part 583) which is often placed on the Monroney label. NHTSA further proposed that all other text or symbols on the label have a minimum font size of 8 point.

In response to the NPRM, GM stated that it supports NHTSA’s proposed font



sizes. The Advocates and Public Citizen urged that all fonts on the safety rating label be a minimum of 12 point. Senator DeWine urged that the explanatory statements on the safety rating label be a minimum of 10 point. NADA recommended that the font size of the label be consistent with the 8 percent of the Monroney label standard, and not be a specific minimum font size.

In this final rule, NHTSA has decided to make final the font sizes that it proposed in the NPRM; 12-point font for the header and footer, 8 point font for the explanatory information, and 12 point font for everything else. NHTSA has decided not to provide all information in the same font size (12 point font) because to do so would detract from the star ratings themselves. Assuming that the labels are kept to the minimum size, use of the same font size would result in less open space on the safety rating label and could make the label appear crowded and confusing. Using a 10 point font for the explanatory notes makes the information on the safety rating label seem too uniform, with less focus on the star ratings themselves.

#### F. Layout of the Safety Rating Label

The agency proposed to require that the safety rating label portion of the Monroney label be surrounded by a dark line and be sub-divided into the following six areas: (1) A heading area; (2) frontal crash area; (3) side crash area; (4) rollover area; (5) general text area; and (6) footer area. The areas would be placed horizontally in the following descending order, and that each area would take up the entire horizontal area: the heading area is at the top, followed by the frontal, side, rollover, general, and footer area (at the bottom). NHTSA also proposed that the border of the label be surrounded by a dark line and that the frontal, side, rollover, and general areas be separated from each other by dark lines. All dark lines would have a minimum width of 3 points. We stated our belief that the dark lines would enable consumers to readily distinguish among and decipher the information on the safety rating label.

NHTSA received no comments on the overall format of the safety rating label or on the heading area and rollover area. For these areas, NHTSA adopts as final its proposed format for these areas. The format of each sub area is outlined below.

1. *Heading Area*—The heading area would help consumers find and identify the NHTSA safety rating information on the Monroney label. The agency proposed that the heading read “Government Safety Ratings” in white

lettering and that the heading area be printed with a dark background that easily contrasts with white lettering. NHTSA received no comments on the heading area and is adopting as final its proposal.

2. *Frontal Area*—Currently, NHTSA provides consumers with frontal crash ratings for two seating positions; the driver and the right front passenger. Ratings for each seating position are based on the combined chance of serious injury to the head and chest. The term “Frontal Crash” and “Frontal Star Rating” are used interchangeably to describe the frontal crash test results, while the driver and the right front passenger test positions are only referred to as “Driver” and “Passenger,” respectively. Consistent with these terms, NHTSA proposed that “Frontal Crash” be used to describe the frontal crash test ratings and that “Driver” and “Passenger” be used to describe the seating positions and the applicable star rating.

For the frontal area section, NHTSA also proposed to require that the statements: “Star ratings based on the risk of injury in a frontal impact” and “Frontal ratings should ONLY be compared to other vehicles of similar size and weight” be provided at the bottom of the frontal area to help explain to consumers the nature and meaning of the test.

In response to the NPRM, NADA expressed concern about the language making comparisons with vehicles of “similar size and weight.” NADA stated that since it may be “too presumptive” to assume that prospective purchasers know what is meant by “similar size or weight,” there should be reference to <http://www.safercar.gov> (which “does a good job of defining the NCAP vehicle classes”) or a footnote noting it in the frontal crash area of the label. The CEI made a similar suggestion about <http://www.safercar.gov> in the frontal crash area.

NHTSA is not adopting these suggestions because the reference to <http://www.safercar.gov> is repetitive. For these reasons, NHTSA will adopt as final its proposal.

3. *Side Area*—The agency currently conducts side impact tests that provide consumers with side ratings for the first and second row of a vehicle. For each of these positions, ratings are based on the chance of serious injury to the chest. The terms “Side Crash” and “Side Star Rating” are used interchangeably to describe the side crash test results. The first and second row test positions are referred to as “Front Seat” and “Rear Seat,” and “Front Passenger” and “Rear Passenger” interchangeably. Consistent

with this terminology, NHTSA proposed that “Side Crash” be used to describe the side crash test ratings, and that “Front Seat” and “Rear Seat” be used to describe the seating positions and the applicable star rating. For the side area, NHTSA also proposed that the statement “Star ratings based on the risk of injury in a side impact” be used at the bottom of this section to help explain to consumers the nature and meaning of the test.

NADA suggested that for vehicles without rear seats, manufacturers be permitted to use the phrase “Not Applicable” in the test results section of the label where rear seat ratings would have been posted had the vehicle had a rear seat. This issue was addressed above under the heading: “Not Rated.”

4. *Rollover Area*—The rollover resistance ratings currently provided by the agency estimate the risk that a vehicle will roll over if it is involved in a single-vehicle crash. Ratings are based on the combined result of the static measurement of certain vehicle properties and the results of a dynamic maneuver test. The terms “Rollover” and “Rollover Rating” are used interchangeably to describe the risk estimates. Consistent with this terminology, NHTSA proposed that “Rollover” be used to describe the rollover resistance ratings.

Some vehicles can have both a 4x2 and 4x4 version, each of which can have a different rollover rating. In the NPRM, the agency stated that it wants to make clear that the NCAP rollover rating that appears on a vehicle must be the rating that applies to the appropriate trim version of that vehicle, *i.e.*, 4x2 or 4x4. NHTSA also proposed that the statement “Star ratings based on the risk of rollover in a single-vehicle crash” be used at the bottom of the rollover area to explain to consumers the nature and meaning of the rollover tests. NHTSA received no comments on the rollover area and thus adopts as final its proposal.

5. *General Area*—By their very nature, rating systems have a highest and lowest scale. NHTSA has described its five-star rating system in terms such as “ratings range from one to five stars,” indicating to consumers that the maximum rating in each category is five stars.<sup>11</sup> In the NPRM, NHTSA stated its belief that the safety label should also contain similar wording which would be the first line in the general area. Therefore, NHTSA proposed that the text “Star ratings range from 1 to 5 stars (★★★★★) with 5 being the highest,” be in the general

<sup>11</sup> <http://www.safercar.gov>, Agency Press Releases, Buying a Safer Car Brochure.”



area to remind consumers that the maximum rating is five stars. We stated that in this way, the Congressional requirement that the graphic depiction of the vehicle rating be displayed in a clearly differentiated fashion while also indicating the maximum possible rating, would be fulfilled.

In response to the NPRM, Senator DeWine and Public Citizen suggested that NHTSA specify a blanket statement indicating that star ratings range from 1 star to 5 stars, with 5 being the highest, and that all vehicles receive at least one star. NHTSA notes that a statement largely to this effect was proposed for the general area on the safety rating label. NHTSA does not believe it necessary to emphasize the fact that any rated vehicle receives at least one star. Thus, in this final rule, NHTSA adopts as final the text proposed in the NPRM.

Finally, NHTSA proposed that the text "Source: National Highway Traffic Safety Administration (NHTSA)" appear as the last line in the general area. NHTSA stated its belief that placing this statement at the bottom of the general area would give consumers the added confidence that manufacturers are not supplying the ratings and that instead the ratings are from a government agency. NHTSA received no comments on the last line, and adopts as final the language it proposed.

**6. Footer Area**—A footer area would help consumers identify the agency's Web site where additional NHTSA safety information can be found. The agency proposed that the heading read "VISIT [www.safercar.gov](http://www.safercar.gov)" in white lettering and that the footer area be printed with a dark background that easily contrasts with white lettering. This also would fulfill the mandate from Congress that the label contain reference to [www.safercar.gov](http://www.safercar.gov) and additional vehicle safety resources, as the Web site provides other safety information.

In response to the NPRM, Senator DeWine and Public Citizen suggested that NHTSA's toll-free hotline number be specified on the safety rating label, in addition to <http://www.safercar.gov>. NHTSA concurs with this suggestion. Including the hotline number may make it easier for consumers without internet access to find out more about a particular vehicle's rating. Thus, in the final rule, the footer area will specify NHTSA's hotline number in addition to <http://www.safercar.gov>. To save space, the word "Visit" is removed. As discussed in the next section, in this final rule, NHTSA is also revising the regulatory text wording for the footer area to "a font that easily contrasts with a dark background."

**7. Color of Font Must Contrast Easily With a Dark Background**—NHTSA proposed to require that, unless otherwise noted, the background be in a color that contrasts easily with dark text and that dark text be used. This proposal sought to ensure a stark contrast so that the information can be easily read. In response to the NPRM, Ford noted that the regulatory text under the heading area specifies "a font that easily contrasts with a dark background," but the text under "footer area" specifies a white font on the dark background. Ford further noted that the regulatory text under "Footer Area" and "General Information" specifies that a black line be used, but that several sections of the text specify the use of a dark line within the label format. Public Citizen stated that NHTSA should require a background color of white or off-white.

After reviewing the public comments, in this final rule, NHTSA is revising the regulatory text in its final rule to specify a font/background that easily contrasts, rather than specifying colors. To do so will allow manufacturers to provide color safety rating labels if they wish to do so. Therefore, NHTSA revises the regulatory text wording for the footer area to "a font that easily contrasts with a dark background."

#### G. New Labeling and Re-Labeling Issues

In the NPRM, NHTSA explained the labeling procedure for newly introduced vehicles, carry-over vehicles,<sup>12</sup> and redesigned vehicles. In June of each year, NHTSA collects vehicle information from vehicle manufacturers to help the agency identify new vehicle models, redesigned vehicles, and carry-over vehicles. After it analyzes the information provided, NHTSA determines and announces at NHTSA's NCAP Web site: <http://www.safercar.gov>,<sup>13</sup> which models are carry-over models, which new models are not being tested, and new models that are being tested. NHTSA also sends a letter to each manufacturer, indicating the manufacturer's vehicles that have been selected for NCAP testing.

In the NPRM, NHTSA stated its intent to maintain this current process. However, in addition to the letter sent to manufacturers indicating the models that have been selected for testing with the advent of the safety rating labels on the Monroney label, NHTSA now plans

to send a separate letter officially informing each manufacturer as to the models NHTSA has determined are carry-over models, and the NCAP star rating(s) of those models. NHTSA plans to provide these letters to the manufacturers as soon as a determination is made regarding the status of models (*i.e.*, carry-over or non-carryover) to ensure that the manufacturers can place NCAP star ratings on these models as soon as the new year of production is begun.

For newly tested vehicles, NHTSA stated that it will maintain its current quality control process and posting of results on [www.safercar.gov](http://www.safercar.gov). Once NHTSA has completed the quality control process, it plans to send a letter to the manufacturer of the tested model informing them of the model's NCAP rating. This letter will also inform the manufacturer of the agency's determination as to trim lines<sup>14</sup> and corporate twin models to which the ratings will apply.

**1. Optional Testing, Non-Carryover Vehicles and Redesigned Vehicles**—Although it provides information on a significant portion of vehicles sold in the U.S., the agency does not rate every single vehicle nor is it able to retest vehicles that have undergone a significant safety improvement during the model year. Therefore, in 1987, the agency published a notice establishing an optional test program.<sup>15</sup> The optional program serves to provide consumers with up-to-date safety information on new vehicles that have undergone a mid-model year production change, models with optional safety equipment that the agency had not selected for testing, or a make and model not selected for testing by the agency. The optional NCAP program operates according to the same guidelines and procedures as the regular NCAP. Further, in order for a vehicle that has already been tested by the agency to qualify for testing under the optional NCAP program, the vehicle's manufacturer must submit to NHTSA evidence that it has changed the vehicle in a way likely to improve significantly the NCAP test results for that vehicle. The agency then analyzes the manufacturer's submission and informs the manufacturer whether it has approved the vehicle for optional testing.

Every year, a number of tests are conducted under this program, with

<sup>12</sup> Carry-over vehicles are vehicles that have been tested under the NCAP program in previous years, and whose design has not changed, therefore retaining its safety rating.

<sup>13</sup> Through carry-over vehicles and new testing, NCAP provides ratings for about 80 percent of the (non-motorcycle) passenger vehicle fleet each year.

<sup>14</sup> Most car models come in more than one trim line, each of which has different standard equipment and available options.

<sup>15</sup> Initial criteria published on August 21, 1987 (52 FR 31691), and then revised on February 5, 1988 (53 FR 3479).

many being mid-model year safety changes. For those vehicles that fall into this category, and whose ratings may no longer be accurate (because the production change has occurred prior to NHTSA granting the request), the agency proposed that when the agency grants an optional NCAP test request, a manufacturer may immediately begin to label those changed vehicles as "Not Rated." Upon completion of the optional NCAP testing, the manufacturer would be notified of the results. Thirty days after notification, it would then be required to display the ratings on the safety rating label.

A non-carryover vehicle is a vehicle whose safety rating would no longer apply when the vehicle is continued into the new model year. In most cases, the inapplicability results from the vehicle's having undergone significant changes between model years. Addressing the issue of non-carryover vehicles, Senator DeWine stated that NHTSA should maintain the previous NCAP ratings on non-carryover vehicles until NHTSA re-tests the new model and the manufacturer starts labeling with the "new" rating. Senator DeWine noted:

The language of the AIDA amendment is clear on this point and does not appear to give NHTSA the flexibility to rescind NCAP ratings once they have been published. Section 10307 of SAFETEA-LU states that "if one or more safety ratings \* \* \* have been assigned and formally published or released by the National Highway Traffic Safety Administration under the New Car Assessment Program," that information must be included on the Monroney label. Labeling a vehicle that has been rated as "not rated" may, in some cases, be a prima facie violation of the law.

Senator DeWine also stated that, on redesigned vehicles (a vehicle whose safety rating ceases to be applicable due to design changes made during the model year), the previous NCAP rating should be maintained, but the label should include a graphic notation and a short statement that a design change has been made, which may affect the displayed rating. Public Citizen stated that for vehicles that were redesigned during the year, the pre-model year score and any applicable safety concerns should be maintained, but the following text should also be on the label: "This model has been redesigned and is being retested. Prior test results may or may not apply. To check whether new test results are now available, call 1-800-XXXX." Public Citizen further commented that for redesigned vehicles, the term "unrated" is inaccurate and misleading to consumers. Advocates commented that

for vehicles that were redesigned mid-year, the previous NCAP ratings should be maintained until NHTSA performs an optional NCAP test of the new model.

The concern expressed by Advocates, Senator DeWine and Public Citizen appears to be that under the NPRM, once NHTSA approves optional NCAP testing for a vehicle model that has been redesigned during the model year, the safety ratings on the new production of that vehicle would be "Not Rated." Although manufacturers would have an incentive to redesign vehicles with poor safety ratings, Advocates noted that "there is no guarantee that a redesign will improve the vehicle safety ratings of the redesigned vehicle line." Even if the vehicle safety ratings turn out to be the same as they were before the redesign, the manufacturer gains by having "Not Rated" on the safety labels of the redesigned vehicles for the period before the vehicle is rated again.

In response, NHTSA notes that optional tests are carried out as soon as vehicles are available. There could be ratings as early as 14 days after vehicles become available. In addition, one of the purposes of NCAP rating is to provide an incentive for manufacturers to redesign vehicles with "poor safety ratings." The use of a "Not Rated" label in the interim period during which the vehicle is being tested and rated is worthwhile as the agency only grants permission for optional tests for vehicles that have undergone a safety improvement if the improvement is deemed likely to significantly increase one of the vehicles' NCAP ratings. Customers with a special interest in a particular vehicle and who are willing to wait to buy a redesigned vehicle, can be informed of updates about the vehicle's safety rating by visiting <http://www.safercar.gov>, or calling NHTSA's toll-free hotline number. Because there are many competing vehicles in the marketplace, those consumers unwilling to wait, and who may be wary of a "Not Rated" label, may decide to focus only on similar vehicles with high ratings.

After reviewing the comments, in this final rule, NHTSA has decided not to require the manufacturer to provide "old ratings" on redesigned vehicles or vehicles with NHTSA recognized safety changes. Specifying "old ratings" would be to require manufacturers to provide information that NHTSA has determined is no longer accurate for that vehicle.

Before a manufacturer may begin labeling redesigned or non-carryover vehicles as "Not Rated" and/or "To Be Rated," NHTSA must first conduct an engineering analysis on changes that

were made to the vehicle and then determine whether those changes will likely affect the vehicle's safety performance. Therefore, the vehicle must have had an engineering change that would affect the safety performance of the vehicle in an NCAP test. NHTSA will not perform a test on, allow an optional test on, or require a manufacturer to label as "Not Rated," a vehicle if the vehicle only has cosmetic changes. This policy is consistent with <http://www.safercar.gov>, which posts a "Not Rated" or "To Be Rated" on the Web site for redesigned vehicles and vehicles with significant safety changes.

Finally, BMW suggested that NHTSA should allow each manufacturer to apply the safety rating(s) to all model variants that the manufacturer believes should have that specific rating, without notifying NHTSA. NHTSA does not agree with this suggestion. SAFETEA-LU requires that manufacturers label vehicles with NCAP ratings that have been formally published or released. In the NPRM, NHTSA proposed that formal release of the NCAP ratings would occur when NHTSA sends a letter to the manufacturer informing it of the vehicles and trim lines, or variants of a vehicle, to which the ratings will apply. Allowing manufacturers to label vehicles without this NHTSA letter would not be consistent with SAFETEA-LU, as the ratings would not have been officially published or released by the agency. NHTSA believes it is important to review the manufacturers' test data that establish the trim lines or variants of a vehicle that have the same NCAP rating, to ensure legitimacy and customer confidence in the ratings program. The agency has also evaluated self-certification as an option for manufacturers to provide ratings. Of the new vehicles tested under the NCAP Program, a relatively small percentage (approximately 7 percent of the entire vehicle fleet) will arrive at dealers before ratings have been released and labels bearing those ratings can be placed on them. While the agency has evaluated many ways of reducing the number of tested vehicles without ratings, including buying vehicles directly from the manufacturer (as opposed to a dealer) and allowing the manufacturers to provide their own NCAP ratings, the agency has decided not to change its current procedures because it does not want the integrity of the program to be at issue and because manufacturer-provided ratings may not reveal potential safety concerns.

*2. Re-Labeling of Vehicles Produced Before NHTSA Notifies Manufacturers of Safety Rating Information—NHTSA*

did not propose to require manufacturers to re-label vehicles produced before NHTSA has notified them of safety rating information for those vehicles; the vehicles that are required to have the NCAP star rating will be determined based on the date of notification and on the date of vehicle manufacture. NHTSA tentatively determined that the cost and burden on manufacturers of a re-labeling requirement would have little benefit in a large number of cases. This is especially true since some vehicles would have already been sold. However, under NHTSA's proposal, manufacturers would be able to re-label vehicles voluntarily, should they choose, by replacing the entire Monroney label (not just the section with the NCAP information).

In response to the NPRM, Advocates commented that NHTSA should require re-labeling of all vehicles manufactured prior to an NCAP test if they have not yet been sold. Similarly, Senator DeWine stated that NHTSA should require re-labeling of all vehicles still at the plant, whether they have been labeled yet or not. Ford stated that manufacturers should have the option of re-labeling such vehicles, but it should not be mandatory. GM supported NHTSA's decision not to make re-labeling mandatory. NADA concurred with NHTSA's decision to allow manufacturers to send out replacement Monroney labels for those vehicles displaying old or no safety labels, once new test data are available.

After carefully considering the public comments, NHTSA is adopting the position it proposed in the NPRM and is not requiring re-labeling of vehicles that were manufactured prior to the labeling deadline (30 days after NCAP test results are provided to the manufacturer). Requiring manufacturers to re-label would result in significant costs to manufacturers both in re-labeling of vehicles and in potential delays in new vehicles' being shipped to dealers.

After consulting with DOJ, both DOJ and this agency believe that manufacturers may voluntarily re-label vehicles to reflect updated NCAP information by replacing the entire Monroney label (not just the section with the NCAP information). We note, however, that DOJ further advises that while this is permissible, the re-labeling must be done in a manner so that the consumers do not see the vehicle while it is without a Monroney label.

#### *H. NCAP Rating Labels Are Placed Within 30 Days After Receipt of NHTSA Notification of Test Results*

To reach as many consumers as possible, vehicles should have their ratings displayed as soon as possible. Therefore, NHTSA proposed to require vehicle manufacturers to place the NCAP ratings on the Monroney label of new vehicles 30 days after their receipt of NHTSA's notification of the test results. The agency indicated that it had tentatively concluded that this is a reasonable time frame since manufacturers know that they may need to add the NCAP rating, and can take that into account in designing the Monroney labels. The only change that would need to be made on the label is placing the number of stars and safety concern (if applicable) that the vehicle received in the appropriate area.

In response to the NPRM, both AIAM and GM wrote in support of the 30 day period for inclusion of ratings on the Monroney label. Senator DeWine and Public Citizen recommended that the 30 day period be shortened. Public Citizen recommended shortening the time period to 5, or at most, 10 days, since manufacturers receive advance notice of the test results from NHTSA. Ford and AIAM generally supported the 30 day period, but requested the possibility of an extension if technical concerns should arise. DaimlerChrysler suggested that NHTSA specify "30 business days" rather than "30 calendar days" because national and corporate holidays that occur throughout the year may interfere with the 30 day period, and may result in insufficient time to label vehicles if only "30 calendar" days are allowed. NHTSA notes that the term "business days" may differ depending on the company (since many companies have official shut down periods during the summer and/or around the end of the year), and may even differ depending on the national origin of the company since U.S. Federal holidays differ from the holidays of other nations.

In proposing "30 days," NHTSA meant "30 calendar days." NHTSA decided on "30 days" after considering the time needed to implement labeling of vehicles and taking national and corporate holidays into account, along with existing labeling procedures, manufacturing locations, and shipping, when it concluded that 30 calendar days provided enough time for manufacturers to label vehicles. Allowing a time period longer than 30 days would mean customers would have less timely information. No technical or other convincing reasons were offered to justify a longer time.

Advocates noted that under NHTSA's proposal, manufacturers would not be required to change the safety rating labels on any vehicle built before NHTSA notification of the safety ratings, *i.e.*, up to 30 days after the notification, even though the vehicles built pre-and-post 30 days after notification would be identical in terms of safety performance. Since re-labeling of vehicles built before the 30-day period would not be mandatory, if the safety ratings are not "impressive," Advocates stated: "Consumers who see the previously built vehicles will only see out-of-date information on the safety labels of these vehicles." NHTSA notes that consumers will be able to access the most current safety rating information about a vehicle by visiting the <http://www.safercar.gov> Web site or by calling NHTSA's toll-free hotline number.

Before issuing the NPRM, NHTSA considered whether to propose a time period shorter than 30 days. NHTSA concluded that a shorter time period does not allow sufficient time for labeling by some manufacturers, especially those manufacturing vehicles outside the United States. Factors that might result in delays in label production by manufacturers include labeling of imported vehicles at ports; the fact that in many cases, label production is contracted out to another company; and differences in printing processes and printing equipment among manufacturers.

Regarding Public Citizen's comment that manufacturers receive advance notice of the ratings, NHTSA notes that this statement is not fully accurate. While many manufacturers attend the tests and thus receive the preliminary test results, not every one does so. Thus, shortening the 30 day time period would put an undue burden on those manufacturers that do not. Even if a manufacturer were present at the NCAP test, the manufacturer would not have access to the final, official results until NHTSA releases the ratings simultaneously to them and to consumers. Before making a final determination on the rating, NHTSA performs a thorough quality control check of the data. During this quality control process and analysis, the lab test results could change from those preliminarily reported. The quality control process, which occurs between the test and the official release of the test results, is not included in the manufacturers' 30 day deadline to label vehicles with NCAP results. The 30-day requirement reflects the time needed by manufacturers to implement the labeling change upon official notification of ratings by the agency.

Finally, regarding Ford's comment that in the event of technical concerns, manufacturers may need an extension of the 30 day time period, NHTSA notes that technical concerns are resolved during the agency's quality control process. Once quality control of the test results is complete, manufacturers are notified of results and have 30 days to begin labeling the vehicles.

For the reasons explained above, the agency has clarified "30 days" so that it now reads "30 calendar days" in the regulatory text.

#### I. Other Issues

In response to the NPRM, commenters raised the following additional issues regarding the administration of the NCAP Program, but not with the safety rating labels. Since changes to the safety rating labels were not suggested, the raising of these issues did not result in changes to the final regulatory text. The issues, and NHTSA's response, are as follows.

Public Citizen stated that as an alternative to stars, NHTSA should use an A through F grading scale, "as in school grading systems." This is a suggestion to make a fundamental change to the NCAP star rating program, which has been in effect since 1994. Regarding the safety labeling rulemaking at issue, since the A through F grading scale was not proposed in the NPRM, it is outside the scope of the rulemaking, and therefore, will not be adopted in the final rule. Public Citizen also suggested that NHTSA upgrade its crash test criteria and add new tests for compatibility, handling or active safety, rollover crashworthiness and pedestrian safety. The Advocates similarly urged NHTSA to upgrade the NCAP Program by "providing consumers with more comparative safety information."

NHTSA notes that it is considering potential improvements to make it more effective. However, since these comments address the broader issue of NCAP program administration, not specifically safety rating labeling, they are outside the scope of this rulemaking.

Ford commented that when agency determines test dates for vehicle testing, NHTSA should "batch" (test the same class of vehicles during the same time period) NCAP tests to prevent manufacturers whose vehicles were rated first from having a competitive advantage. NHTSA is not adopting this recommendation. In view of the large number of vehicles that the agency tests annually, batching vehicles is inconsistent with providing consumers with safety ratings in a timely manner. For any one class of vehicles, models are introduced into the market

throughout the year, and not in "batches."

DaimlerChrysler recommended that NHTSA notify manufacturers by mid-March of each calendar year about the vehicles which NHTSA will consider as carryovers for the subsequent model year. DaimlerChrysler noted that introduction of carryover vehicles can begin as early as May in any calendar year. NHTSA notes that it annually issues request letters to manufacturers for new model year vehicles and sets a deadline of early June for manufacturers to provide NHTSA with this information. However, NHTSA notes that a manufacturer is free to provide NHTSA with carry-over information even earlier. We consistently review requests throughout the year, and have always provided a prompt response to the manufacturer.

Ford also suggested that NHTSA request information on new, redesigned, and carryover vehicles bi-annually since many new vehicles are introduced throughout the calendar year. NHTSA notes that since manufacturers are already free to submit information to NHTSA throughout the year, it sees no need to limit manufacturers to bi-annual submissions or to require such submissions. The present system, under which manufacturers provide information to the agency at their discretion, has made NHTSA aware of early vehicle launches (since manufacturers frequently provide this information in their June submissions). NHTSA has often included vehicles launched mid-year in its vehicle selections for NCAP testing. In addition, even if NHTSA does not select a vehicle for testing, the manufacturer can always request an optional NCAP test.

Senator DeWine commented that it is essential that the NCAP rollover ratings apply only to the trim line of the vehicle tested, be it 4x2 or 4x4. Along these lines, Ford suggested that NHTSA meet with each manufacturer individually to discuss which of its vehicles NHTSA plans to test and the trim lines or variants to which the rating will apply. NHTSA notes that manufacturers already provide trim line information when the information is requested in June. NHTSA then uses this information (and when necessary, test data) to make an engineering judgment as to the trim lines to which the rating will apply. In addition, in its annual request letter, NHTSA asks manufacturers for the names of trim lines and variants of each model vehicle. NHTSA reviews the provided information and promptly responds in a letter to the manufacturers, specifying the vehicles to which the NCAP rating applies,

before the vehicle is tested. This procedure prevents unnecessary delay in providing the results to customers (for certain trim variants) and prevents manufacturers from waiting until they receive notification of their NCAP test results before notifying NHTSA of sister vehicles and similar trim variants. NHTSA encourages manufacturers to review the letter promptly to make sure NHTSA's decision on the applicability of ratings to sister vehicles and any trim variants are accurate before a vehicle is tested and rated.

Ford recommended that NHTSA publish safety concern test procedures and criteria and establish a procedure for the agency to notify manufacturers of potential future safety concern items and criteria so that the manufacturers may evaluate them. In a press release dated April 18, 2002, NHTSA discussed the criteria used by the agency for safety concerns. In that press release, NHTSA stated that results that raise serious safety issues, but are not reflected in star ratings, would be noted as safety concerns. Because it cannot predict in advance all possible safety concerns, the agency does not believe that it is possible to generate an exhaustive list of all future safety concerns. Past safety concerns have included fuel leaks in excess of Federal Motor Vehicle Safety Standard No. 301, door openings greater than six inches, injury values (not reflected in the star ratings) that exceed thresholds set forth by corresponding FMVSSs, and structural failure or non-intended performance of vehicle components during testing. Further, NHTSA has already made manufacturers aware of the types of issues that occurred in the past and that NHTSA has deemed to be safety concerns. Therefore, NHTSA sees no reason to establish yet another review process.

Ford suggested that a consumer education program be established to help launch the addition of NCAP ratings to the Monroney label. Suggested information for consumers would include: Clear definitions of all ratings and terminology used on the NCAP label, the <http://www.safercar.gov> Web site, and the Buying a Safer Car Brochure; the vehicle selection process for vehicles scheduled for NCAP testing; and NCAP testing parameters and test timing. Many of these issues are already addressed at <http://www.safercar.gov>. Additionally, we will work with NADA and other interested parties to help educate dealers and consumers about the new safety label.

#### IV. Statutory Basis for the Final Rule

The statutory basis for the final rule is Section 10307 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59 (August 10, 2005; 119 Stat. 1144). That section requires each new passenger automobile that has been rated under NHTSA's New Car Assessment Program (NCAP) to have those ratings displayed on the Monroney label. SAFETEA-LU specifies a number of detailed requirements for the label, including content, format, and location. It also requires NHTSA (by delegation of authority from the Department of Transportation) to issue regulations to ensure that the new labeling requirements are implemented by September 1, 2007.

More specifically, section 10307 specifies that the label must:

(1) Include a graphic depiction of the number of stars, or other applicable rating, that corresponds to each such assigned safety rating displayed in a clearly differentiated fashion indicating the maximum possible safety rating;

(2) Refer to frontal impact crash tests, side impact crash tests, and rollover resistance tests;

(3) Contain information describing the nature and meaning of the crash test data presented and a reference to additional vehicle safety resources, including <http://safercar.gov>; and

(4) Present its information in a legible, visible, and prominent fashion and cover at least—

(A) 8 percent of the total area of the label; or

(B) An area with a minimum length of 4½ inches and a minimum height of 3½ inches.

If an automobile has not been tested under the NCAP Program or safety ratings for such automobile have not been assigned in one or more categories, section 10307 requires a statement to that effect to be provided.

In this final rule, NHTSA implements the requirements of section 10307 of SAFETEA-LU by adding a new section to 49 CFR part 575, Consumer Information. Section 575.301, *Vehicle Labeling of Safety Rating Information*, provides that:

(1) New passenger automobiles manufactured on or after September 1, 2007 must display specified NCAP information on a safety rating label that is part of their Monroney label;

(2) The specified information must include a graphical depiction of the number of stars achieved by a vehicle for each safety test;

(3) Information describing the nature and meaning of the test data, and

references to <http://www.safercar.gov> and NHTSA's toll-free hotline number for additional vehicle safety information, must be placed on the label;

(4) The label must be legible with a minimum length of 4½ inches and a minimum width of 3½ inches or 8 percent of the Monroney label, whichever is larger;

(5) Ratings must be placed on new vehicles manufactured 30 or more days after the manufacturer receives notification from NHTSA of NCAP ratings for those vehicles.

As discussed above, in its discretion, the agency decided to require that the label indicate the existence of safety concerns identified during NCAP testing, but not reflected in the resulting NCAP ratings. It also decided to require that the agency's toll-free hotline number appear on the label and adopted specifications for such matters as the wording and arrangement of some of the messages and the size of the font. Section 575.301 permits a smaller safety rating label for vehicles not tested by NHTSA and for which no safety ratings have been provided in any category of vehicle performance.

#### V. Rulemaking Analyses and Notices

##### A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rule under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be "non-significant" under the Department of Transportation's regulatory policies and procedures. The agency has concluded that the impacts of this rule are so minimal that preparation of a full regulatory evaluation is not required.

This final rule implements a statutory requirement for manufacturers to add NCAP rating information to the existing Monroney label. We have considered and concluded that the one-time design cost, the cost of redesign to replace "Not Rated" with stars each time a vehicle is rated, and the increase in cost of adding the NCAP safety information to the existing Monroney label all to be minor. No other NCAP procedures need to be modified as a result of this rulemaking.

We estimate that the cost of a label would be \$0.08 to \$0.14 per vehicle (in 2004 dollars). This estimate assumes that the size of the Monroney label is made larger to include this information. If the label is kept the same size and this information is just added to the label,

the cost would be about \$0.01 per vehicle. In either case, the costs are considered minimal.

##### 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 (SBREFA) of 1996), whenever an agency is required to publish a notice of 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 the rule will not have a significant economic impact on a substantial number of small entities. 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.

NHTSA has considered the effects of this rule under the Regulatory Flexibility Act. There are four small motor vehicle manufacturers in the United States building vehicles that will be affected by this rule. There are other small businesses involved in multistage manufacturing. Those small businesses that are final stage manufacturers of covered vehicles must label their vehicles with the abbreviated label specified in this final rule as "Not Rated." I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The statement for the factual basis for this certification is that this rule does not add a significant economic cost (estimated to be less than \$0.15 per vehicle) to the cost of a motor vehicle.

##### C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (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. For the following reasons, NHTSA concludes that this final rule will not impose any new collection of information requirements for which a 5 CFR Part 1320 clearance must be obtained. As earlier described, this final rule will

require vehicle manufacturers to include on their Monroney labels the safety rating information published for NCAP. In the NPRM, we proposed how NHTSA would describe the appearance of the label, and specify to the manufacturers, in both individual letters to the manufacturers and on NHTSA's NCAP Web site (<http://www.safercar.gov>), the information specific to a particular motor vehicle model and make that the vehicle manufacturer must put on the Monroney label.

Because, in this final rule, NHTSA specifies the format of the label, and the information each manufacturer must include on the Monroney label, this "collection of information" falls within the exception described in 5 CFR Section 1320.3(c)(2) which states in part: "The public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within this definition."

NCAP ratings are created by NHTSA. This final rule requires vehicle manufacturers to take NHTSA's NCAP ratings (which NHTSA will supply to each manufacturer) and report them on Monroney labels, thus disclosing them to potential customers (*i.e.*, the public). For vehicles with no NCAP ratings, in this final rule, NHTSA specifies verbatim, an abbreviated label with the statement: "This vehicle has not been rated by the government for frontal crash, side crash, or rollover risk." Alterers of previously certified vehicles would include the following NHTSA-specified phrase on a label: "This vehicle has been altered. The stated star ratings on the safety rating label may no longer be applicable." For these reasons, this final rule imposes a "collection of information" requirement for which 5 CFR part 1320 approval need not be obtained.

#### D. National Environmental Policy Act

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

#### E. Executive Order 13132 (Federalism)

The agency has analyzed this rule in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule has no substantial effects on the States, on the current Federal-State relationship, or on the current distribution of power and

responsibilities among the various local officials.

#### F. Civil Justice Reform

This rule will not have any retroactive effect. Parties are not required to exhaust administrative remedies before filing suit in court.

#### G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The agency searched for, but did not find any voluntary consensus standards relevant to this rule.

#### H. Unfunded Mandates Reform Act

This rule will not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995. This rule will not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### List of Subjects in 49 CFR Part 575

Consumer protection, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, 49 CFR part 575 is amended to read as follows:

#### PART 575—CONSUMER INFORMATION

■ 1. The authority citation for part 575 is revised to read as follows:

**Authority:** 49 U.S.C. 32302, 30111, 301115, 30117, 30166, and 30168, Pub. L. 104-414, 114 Stat. 1800, Pub. L. 109-59, 119 Stat. 1144, 15 U.S.C. 1232(g); delegation of authority at 49 CFR 1.50.

#### Subpart A—Regulations Issued Under Section 112(d) of the National Traffic and Motor Vehicle Safety Act; General

■ 2. The heading for subpart A is revised to read as set forth above.

■ 3. Subpart D is added to read as follows:

#### Subpart D—Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU); Consumer Information

##### § 575.301 Vehicle Labeling of Safety Rating Information.

(a) *Purpose and Scope.* The purpose of this section is to aid potential purchasers in the selection of new passenger motor vehicles by providing them with safety rating information developed by NHTSA in its New Car Assessment Program (NCAP) testing. Manufacturers of passenger motor vehicles described in paragraph (b) of this section are required to include this information on the Monroney label. Although NHTSA also makes the information available through means such as postings at <http://www.safercar.gov> and <http://www.nhtsa.dot.gov>, the additional Monroney label information is intended to provide consumers with relevant information at the point of sale.

(b) *Application.* This section applies to automobiles with a GVWR of 10,000 pounds or less, manufactured on or after September 1, 2007, that are required by the Automobile Information Disclosure Act, 15 U.S.C. 1231-1233, to have price sticker labels (Monroney labels), *e.g.*, passenger vehicles, station wagons, passenger vans, sport utility vehicles, and recreational vehicles.

(c) *Definitions.* (1) *Monroney label* means the label placed on new automobiles with the manufacturer's suggested retail price and other consumer information, as specified at 15 U.S.C. 1231-1233.

(2) *Safety rating label* means the label with NCAP safety rating information, as specified at 15 U.S.C. 1232(g). The safety rating label is part of the Monroney label.

(d) *Required Label.* (1) Except as specified in paragraph (f) of this section, each vehicle must have a safety rating label that is part of its Monroney label, meets the requirements specified in paragraph (e) of this section, and conforms in content, format and sequence to the sample label depicted in Figure 1 of this section. If NHTSA has not provided a safety rating for any category of vehicle performance for a vehicle, the manufacturer may use the smaller label specified in paragraph (f) of this section.

(2) The label must depict the star ratings for that vehicle as reported to the vehicle manufacturer by NHTSA.

(3) Whenever NHTSA informs a manufacturer in writing of a new safety rating for a specified vehicle or the continued applicability of an existing safety rating for a new model year,

including any safety concerns, the manufacturer shall include the new or continued safety rating on vehicles manufactured on or after the date 30 calendar days after receipt by the manufacturer of the information.

(4) If, for a vehicle that has an existing safety rating for a category, NHTSA informs the manufacturer in writing that it has approved an optional NCAP test that will cover that category, the manufacturer may depict vehicles manufactured on or after the date of receipt of the information as "Not Rated" or "To Be Rated" for that category.

(5) The text "Frontal Crash," "Side Crash," "Rollover," "Driver," "Passenger," "Front Seat," "Rear Seat" and where applicable, "Not Rated" or "To Be Rated," the star graphic indicating each rating, as well as any text in the header and footer areas of the label, must have a minimum font size of 12 point. All remaining text and symbols on the label (including the star graphic specified in paragraph (e)(8)(i)(A) of this section, must have a minimum font size of 8 point.

(e) *Required Information and Format.*

(1) *Safety Rating Label Border.* The safety rating label must be surrounded by a solid dark line that is a minimum of 3 points in width.

(2) *Safety Rating Label Size and Legibility.* The safety rating label must be presented in a legible, visible, and prominent fashion that covers at least 8 percent of the total area of the Monroney label (*i.e.*, including the safety rating label) or an area with a minimum of 4½ inches in length and 3½ inches in height on the Monroney label, whichever is larger.

(3) *Heading Area.* The words "Government Safety Ratings" must be in boldface, capital letters that are light in color and centered. The background must be dark.

(4) *Frontal Crash Area.* (i) The frontal crash area must be placed immediately below the heading area and must have dark text and a light background. Both the driver and the right front passenger frontal crash test ratings must be displayed with the maximum star ratings achieved.

(ii) The words "Frontal Crash" must be in boldface, cover two lines, and be aligned to the left side of the label.

(iii) The word "Driver" must be on the same line as the word "Frontal" in "Frontal Crash," and must be aligned in the center of the label. The achieved star rating for "Driver" must be on the same line, aligned to the right side of the label.

(iv) If NHTSA has not released the star rating for the "Driver" position, the

text "Not Rated" must be used in boldface. However, as an alternative, the words "To Be Rated" (in boldface) may be used if the manufacturer has received written notification from NHTSA that the vehicle has been chosen for NCAP testing.

(v) The word "Passenger" must be on the same line as the word "Crash" in "Frontal Crash," below the word "Driver," and centered. The achieved star rating for "Passenger" must be on the same line, aligned to the right side of the label.

(vi) If NHTSA has not released the star rating for "Passenger," the words "Not Rated" must be used in boldface. However, as an alternative, the words "To Be Rated" (in boldface) may be used if the manufacturer has received written notification from NHTSA that the vehicle has been chosen for NCAP testing.

(vii) The words "Star ratings based on the risk of injury in a frontal impact," followed (on the next line) by the statement "Frontal ratings should ONLY be compared to other vehicles of similar size and weight," must be placed at the bottom of the frontal crash area.

(5) *Side Crash Area.* (i) The side crash area must be immediately below the frontal crash area, separated by a dark line that is a minimum of three points in width. The text must be dark against a light background. Both the driver and the rear seat passenger side crash test rating must be displayed with the maximum star rating achieved.

(ii) The words "Side Crash" must cover two lines, and be aligned to the left side of the label in boldface.

(iii) The words "Front Seat" must be on the same line as the word "Side" in "Side Crash" and be centered. The achieved star rating for "Front Seat" must be on the same line and aligned to the right side of the label.

(iv) If NHTSA has not released the star rating for "Front Seat," the words "Not Rated" must be used in boldface. However, as an alternative, the words "To Be Rated" (in boldface) may be used if the manufacturer has received written notification from NHTSA that the vehicle has been chosen for NCAP testing.

(v) The words "Rear Seat" must be on the same line as the word "Crash" in "Side Crash," below the words "Front Seat," and centered. The achieved star rating for "Rear Seat" must be on the same line, aligned to the right side of the label.

(vi) If NHTSA has not released the star rating for "Rear Seat," the text "Not Rated" must be used in boldface. However, as an alternative, the text "To Be Rated" (in boldface) may be used if

the manufacturer has received written notification from NHTSA that the vehicle has been chosen for NCAP testing.

(vii) The words: "Star ratings based on the risk of injury in a side impact." must be placed at the bottom of the side crash area.

(6) *Rollover Area.* (i) The rollover area must be immediately below the side crash area, separated by a dark line that is a minimum of three points in width. The text must be dark against a light background. The rollover test rating must be displayed with the maximum star rating achieved.

(ii) The word "Rollover" must be aligned to the left side of the label in boldface. The achieved star rating must be on the same line, aligned to the right side of the label.

(iii) If NHTSA has not tested the vehicle, the words "Not Rated" must be used in boldface. However, as an alternative, the words "To Be Rated" (in boldface) may be used if the manufacturer has received written notification from NHTSA that the vehicle has been chosen for NCAP testing.

(iv) The words: "Star ratings based on the risk of rollover in a single vehicle crash." must be placed at the bottom of the rollover area.

(7) *Graphics.* The star graphic is depicted in Figure 3 and the safety concern graphic is depicted in Figure 4.

(8) *General Information Area.* (i) The general information area must be immediately below the rollover area, separated by a dark line that is a minimum of three points in width. The text must be dark and the background must be light. The text must state the following, in the specified order, on separate lines:

(A) "Star ratings range from 1 to 5 stars (★ ★ ★ ★ ★), with 5 being the highest." and

(B) "Source: National Highway Traffic Safety Administration (NHTSA)"

(9) *Footer Area.* The text "www.safercar.gov or 1-888-327-4236" must be provided in boldface letters that are light in color, and be centered. The background must be dark.

(10) *Safety Concern.* For vehicle tests for which NHTSA reports a safety concern as part of the star rating, the label must:

(i) Depict, as a superscript to the star rating, the related symbol, as depicted in Figure 4 of this section, at ⅔ the font size of the base star, and

(ii) Include at the bottom of the relevant area (*i.e.*, frontal crash area, side crash area, rollover area), as the last line of that area, the related symbol, as depicted in Figure 4 of this section, in



the same font size as the rest of the line, and the text "Safety Concern: Visit <http://www.safercar.gov> or call 1-888-327-4236 for more details."

(11) No additional information may be provided in the safety rating label area. The specified information provided in a language other than English is not considered to be additional information.

(f) *Smaller Safety Rating Label for Vehicles with No Ratings.* (1) If NHTSA has not released a safety rating for any category for a vehicle, the manufacturer may use a smaller safety rating label that meets paragraphs (f)(2) through (f)(5) of this section. A sample label is depicted in Figure 2.

(2) The label must be at least 4½ inches in width and 1½ inches in height.

(3) *Heading Area.* The text must read "Government Safety Ratings" and be in

12-point boldface, capital letters that are light in color, and be centered. The background must be dark.

(4) *General Information.* The general information area must be below the header area. The text must be dark and the background must be light. The text must state the following, in 8-point font, in the specified order:

(i) "This vehicle has not been rated by the government for frontal crash, side crash, or rollover risk."

(ii) "Source: National Highway Traffic Safety Administration (NHTSA)."

(5) *Footer Area.* The text "[www.safercar.gov](http://www.safercar.gov) or 1-888-327-4236" must be provided in boldface letters that are light in color, and be centered. The background must be dark.

(6) No additional information may be provided in the smaller safety rating label area. The specified information

provided in a language other than English is not considered to be additional information.

(g) *Labels for alterers.* (1) If, pursuant to 49 CFR 567.7, a person is required to affix a certification label to a vehicle, and the vehicle has a safety rating label with one or more safety ratings, the alterer must also place another label on that vehicle as specified in this paragraph.

(2) The additional label (which does not replace the one required by 49 CFR 567.7) must read: "This vehicle has been altered. The stated star ratings on the safety rating label may no longer be applicable."

(3) The label must be placed adjacent to the Monroney label or as close to it as physically possible.

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Figure 1 to Sec. 575.301  
**Sample Label for a Vehicle with At Least One NCAP Rating**

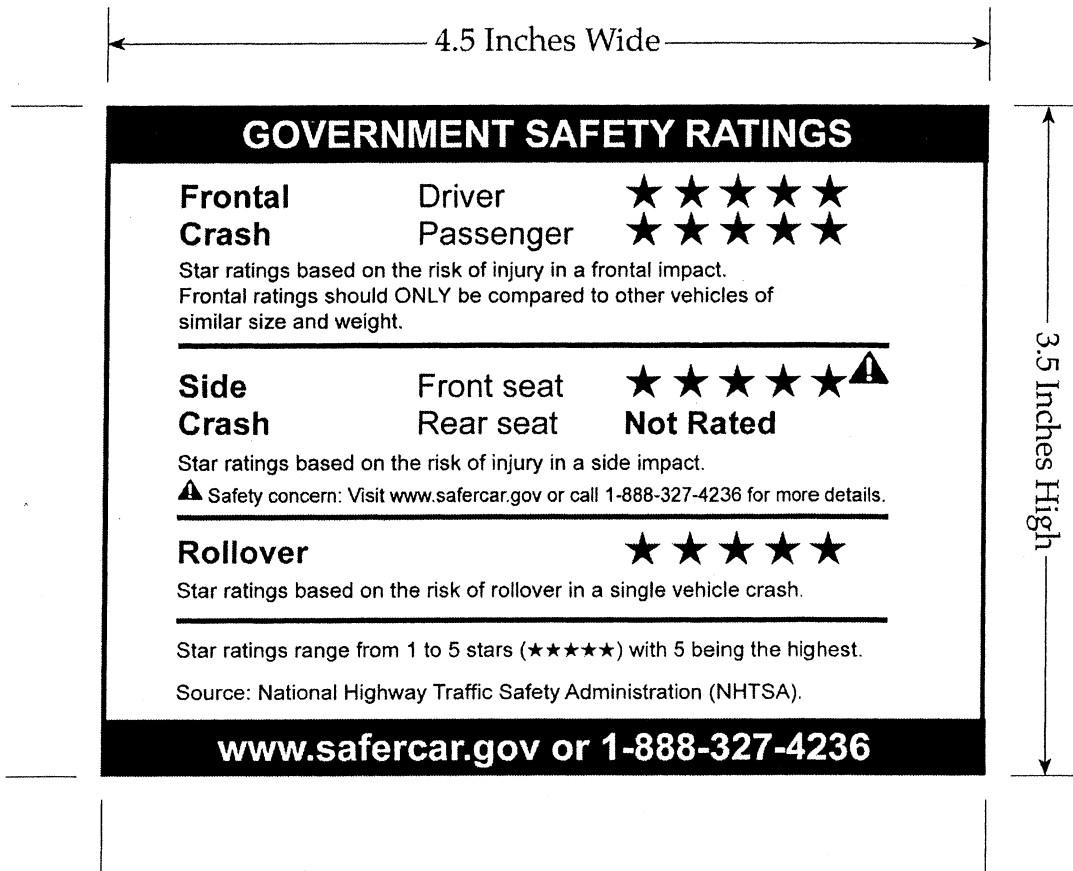


Figure 2 to Sec. 575.301  
**Sample Label for a Vehicle with No NCAP Ratings**

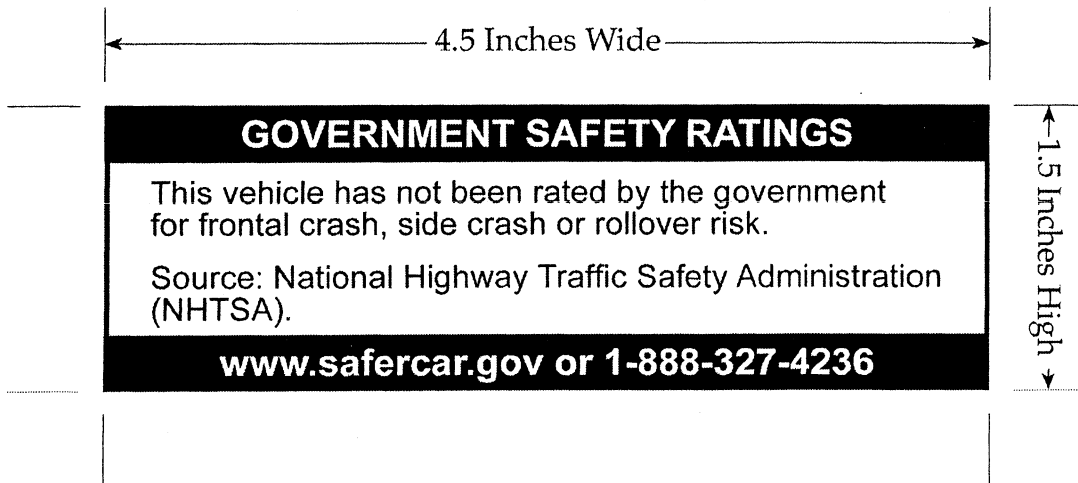


Figure 3 to Sec. 575.301  
**Sample Star Rating Graphic for Sec. 575.301**



Figure 4 to Sec. 575.301  
**Sample Safety Concern Graphic for Sec. 575.301**



Issued on: September 1, 2006.

**Nicole R. Nason,**  
 Administrator.

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018-AU32**

**Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Rota Bridled White-Eye (*Zosterops rotensis*)**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for the Rota Bridled White-eye (*Zosterops rotensis*) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 3,958 acres (ac) (1,602 hectares (ha)) fall within the boundaries of the critical habitat designation on the Island of Rota, Commonwealth of the Northern Mariana Islands (CNMI).

**DATES:** This rule becomes effective on October 12, 2006.

**ADDRESSES:** Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours, at the Pacific Islands Fish and Wildlife Office,

U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3-122, Box 50088, Honolulu, HI 96850 (telephone 808-792-9400). The final rule and economic analysis will also be available on the Internet at <http://www.fws.gov/pacificislands>.

**FOR FURTHER INFORMATION CONTACT:**

Patrick Leonard, Field Supervisor, Pacific Islands Fish and Wildlife Office, at the above address (telephone 808-792-9400; facsimile 808-792-9581). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339, 7 days a week and 24 hours a day.

**SUPPLEMENTARY INFORMATION:**

**Role of Critical Habitat in Actual Practice of Administering and Implementing the Act**

Attention to and protection of habitat is paramount to successful conservation actions. The role that designation of critical habitat plays in protecting habitat of listed species, however, is often misunderstood. As discussed in more detail below in the discussion of exclusions under the Act section 4(b)(2), there are significant limitations on the regulatory effect of designation under the Act section 7(a)(2). In brief, (1) Designation provides additional protection to habitat only where there is a Federal nexus; (2) the protection is relevant only when, in the absence of designation, destruction or adverse modification of the critical habitat would in fact take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to agency decision-making would not

prevent the destruction or adverse modification); and (3) designation of critical habitat triggers the prohibition of destruction or adverse modification of that habitat, but it does not require specific actions to restore or improve habitat.

Currently, only 475 species, or 36 percent of the 1,310 listed species in the U.S. under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,310 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, the section 10 incidental take permit process, and cooperative, nonregulatory efforts with private landowners. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

In considering exclusions of areas originally proposed for designation, we evaluated the benefits of designation in light of *Gifford Pinchot Task Force v. United States Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir 2004). In that case, the Ninth Circuit invalidated the Service's regulation defining "destruction or adverse modification of critical habitat." In response, on December 9, 2004, the Director issued guidance to be considered in making section 7 adverse modification determinations. This critical habitat designation does not use the invalidated regulation in our consideration of the benefits of including areas in this final designation. The Service will carefully