

(1) The identity of the person designated by the employer to answer driver questions about the materials;

(2) The categories of drivers who are subject to the provisions of this part;

(3) Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance with this part;

(4) Specific information concerning driver conduct that is prohibited by this part;

(5) The circumstances under which a driver will be tested for alcohol and/or controlled substances under this part, including post-accident testing under § 382.303(d);

(6) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver, including post-accident information, procedures and instructions required by § 382.303(d);

(7) The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with this part;

(8) An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences;

(9) The consequences for drivers found to have violated subpart B of this part, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under part 40, subpart O, of this title;

(10) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04;

(11) Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a co-worker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and or referral to management.

(c) *Optional provision.* The materials supplied to drivers may also include information on additional employer policies with respect to the use of alcohol or controlled substances, including any consequences for a driver found to have a specified alcohol or controlled substances level, that are based on the employer's authority independent of this part. Any such additional policies or consequences

must be clearly and obviously described as being based on independent authority.

(d) *Certificate of receipt.* Each employer shall ensure that each driver is required to sign a statement certifying that he or she has received a copy of these materials described in this section. Each employer shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver.

§ 382.603 Training for supervisors.

Each employer shall ensure that all persons designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing under § 382.307. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. Recurrent training for supervisory personnel is not required.

§ 382.605 Referral, evaluation, and treatment.

The requirements for referral, evaluation, and treatment must be performed in accordance with 49 CFR part 40, Subpart O.

Date Issued: August 8, 2001.

Brian M. McLaughlin,

Associate Administrator for Policy and Program Development.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-01-10381]

RIN 2127-AI51

Federal Motor Vehicle Safety Standards: Interior Trunk Release

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

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In October 2000, NHTSA published a final rule establishing a new Federal motor vehicle safety standard that will require passenger cars with trunks to be equipped with a release

latch inside the trunk compartment. Four organizations filed petitions for reconsideration of this rule.

In response to these petitions, the agency is making several substantive changes to the final rule. It is excluding hatchbacks and station wagons. It is also excluding sub-compartments that are formed within the trunk compartment when a convertible power top folds down into the trunk. The agency is changing the definition of "trunk lid" to explicitly exclude the lids of interior storage compartments. The agency is revising the definition of "trunk compartment" to include standard equipment in the determination of the size of the trunk compartment. The agency is amending the standard to require that interior trunk releases on passenger cars with front trunk compartments unlatch the primary, but not the secondary, latch if the passenger car is moving when the trunk release is actuated. The agency is providing an additional year of lead-time for passenger cars with front trunk compartments.

The agency is also denying requests: To exclude passenger cars with trunk lids that contact the three-year-old child dummy (used to determine whether a trunk compartment is large enough to be subject to the standard) before latching, or provide those cars with an additional year of lead-time; to require that the ignition be in the "off" position for an automatic trunk release system to operate; to require that an automatic trunk release system may unlatch the trunk lid only when a person inside the trunk compartment is moving; and to allow means for temporary disabling of automatic trunk release systems.

Finally, the agency is adding a requirement that manufacturers irrevocably select which compliance option, manual or automatic, they will employ.

DATES: Effective date: The effective date for the amendments in this final rule is September 1, 2001.

Petitions for reconsideration deadline: If you wish to petition for reconsideration of this final rule, you must submit it so that we receive your petition not later than October 1, 2001.

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

FOR FURTHER INFORMATION CONTACT: For technical and policy questions: Kenneth O. Hardie, Office of Crash Avoidance Standards, NHTSA, 400 Seventh Street,

SW, Washington, DC 20590 (Telephone: 202-366-6987) (Fax: 202-493-2739).

For legal questions: Dion Casey, Office of Chief Counsel, NHTSA, 400 Seventh Street, SW, Washington, D.C. 20590 (Telephone: 202-366-2992) (Fax: 202-366-3820).

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
- II. Petitions for Reconsideration and NHTSA's Responses
 - A. Application
 - 1. Hatchback Models
 - 2. Station Wagon Models
 - 3. Interior Storage Compartments
 - 4. Sub-Compartments
 - 5. Small Trunks
 - B. Performance Requirements
 - 1. Complete Unlatching of Front-Opening Trunk Lids
 - 2. Operation While the Vehicle Is in Motion
 - 3. Operation When Trapped Person Is Stationary
 - 4. Temporarily Disabling the System
 - C. Test Conditions for Trunk Size Determination
 - D. Irrevocable Election
 - E. Lead-Time
- III. Rulemaking Analyses and Notices
 - A. Executive Order 12866 and DOT Regulatory Policies and Procedures
 - B. Regulatory Flexibility Act
 - C. National Environmental Policy Act
 - D. Executive Order 13132 (Federalism)
 - E. Civil Justice Reform
 - F. Paperwork Reduction Act
 - G. National Technology Transfer and Advancement Act
 - H. Unfunded Mandates Reform Act
 - I. Regulation Identifier Number (RIN)

I. Background

On October 20, 2000, NHTSA published a final rule establishing a new Federal motor vehicle safety standard (FMVSS No. 401, Interior Trunk Release) to address the problem of trunk entrapment. (65 FR 63014). Trunk entrapment can occur accidentally, such as when a child playing a game climbs into a trunk and pulls down the trunk lid, and intentionally, such as when a criminal forces a person into the trunk. The agency estimated that 21 people have died in 11 incidents of accidental trunk entrapment from 1987 to 1999. Eleven of these were children who died in three separate incidents when they locked themselves in the trunk of an automobile during a three-week period in July and August of 1998. The standard provides persons who find themselves trapped inside a passenger car trunk a chance to get out of the trunk alive.

Standard No. 401 requires all new passenger cars with trunks to be equipped with an interior trunk release inside the trunk compartment,

beginning September 1, 2001.

Manufacturers may comply with the standard by installing a manual release latch or an automatic release system which detects the presence of a person in the trunk and automatically unlatches the trunk lid.

To aid readers in understanding this document, we have set out the short standard, as published, in its entirety:

§ 571.401—Standard No. 401; Interior trunk release.

S1. Purpose and scope. This standard establishes the requirement for providing a trunk release mechanism that makes it possible for a person trapped inside the trunk compartment of a passenger car to escape from the compartment.

S2. Application. This standard applies to passenger cars that have a trunk compartment.

S3. Definitions.

Trunk compartment means a space that:

- (a) Is intended to be used for carrying luggage,
- (b) Is wholly separated from the occupant compartment of a passenger car by a permanently attached partition or by a fixed or fold-down seat back and/or partition,
- (c) Has a trunk lid, and
- (d) Is large enough so that the three-year-old child dummy described in Subpart C of Part 572 can be placed inside the trunk compartment and, with the test dummy in the trunk compartment, the trunk lid can be closed and latched. (Note: For purposes of this standard, the Part 572 Subpart C test dummy need not be equipped with the accelerometers specified in Part 572.21.)

Trunk lid means a movable body panel that provides access from outside a motor vehicle to a trunk compartment.

S4. Requirements.

S4.1 Each passenger car with a trunk compartment must have an automatic or manual release mechanism inside the trunk compartment that unlatches the trunk lid.

S4.2(a) Each manual release mechanism installed pursuant to S4.1 of this section must include a feature, like lighting or phosphorescence, that allows the release mechanism to be easily seen inside the closed trunk.

(b) Each automatic release mechanism installed pursuant to S4.1 of this section must unlatch the trunk lid within 5 minutes of when the lid is closed with a person inside the trunk compartment.

S4.3 Actuation of each release mechanism required by S4.1 of this section must completely release the trunk lid from all latching positions of the trunk lid latch, notwithstanding the requirements of any other standards in part 571 of this title.

II. Petitions for Reconsideration and NHTSA's Responses

NHTSA received petitions for reconsideration of the final rule from General Motors North America (GM), and Porsche Cars North America, Inc. (Porsche). The agency also received requests for interpretation of the final

rule from Volkswagen of America (VW) and the Alliance of Automobile Manufacturers (Alliance), whose members are the BMW Group, Daimler Chrysler, Fiat, Ford Motor Company, GM, Isuzu, Mazda, Mitsubishi Motors, Nissan, Porsche, Toyota, VW, and Volvo. VW and the Alliance requested that if NHTSA disagreed with their interpretations of the final rule, the agency treat the letters as petitions for reconsideration. The Alliance also filed a letter which contained comments supporting the GM and Porsche petitions for reconsideration.

A. Application

1. Hatchback Models

In their letters, VW and the Alliance requested that NHTSA issue a letter of interpretation to confirm their understanding of Standard No. 401 as not applying to hatchback models. VW and the Alliance requested that NHTSA determine that the hinged rear door ("hatch") of hatchback models is a "back door" rather than a "trunk lid." VW and the Alliance requested that if the agency disagreed with their understanding of the standard, that the agency treat their letters as petitions for reconsideration.

S3 of Standard No. 401 defines "trunk compartment" as a space that:

- (a) is intended to be used for carrying luggage,
- (b) is wholly separated from the occupant compartment of a passenger car by a permanently attached partition or by a fixed or fold-down seat back and/or partition,
- (c) has a trunk lid, and
- (d) is large enough so that the three-year-old child dummy described in Subpart C of Part 572 can be placed inside the trunk compartment and, with the test dummy in the trunk compartment, the trunk lid can be closed and latched.

The issue presented by VW and the Alliance is whether the hatch on hatchback¹ models is a "trunk lid" or a "back door." S3 of Standard No. 401 defines a "trunk lid" as "a moveable body panel that provides access from outside a motor vehicle to a trunk compartment." Standard No. 206, Door Locks and Door Retention Components, defines "back door" as "a door or door system on the back end of a motor vehicle through which passengers can enter or depart the vehicle, or cargo can

¹ NHTSA uses the term "hatchback" in several of its standards and regulations, but does not define it. The Environmental Protection Agency has defined it in 40 CFR 600.002-85(a)(34) to mean "a passenger automobile where the conventional luggage compartment, i.e., trunk, is replaced by a cargo area which is open to the passenger compartment and accessed vertically by a rear door which encompasses the rear window."

be loaded or unloaded; but does not include: (a) A trunk lid * * *."

NHTSA intended the terms "back door" and "trunk lid" to be mutually exclusive. The agency made this distinction when it extended the door lock and retention requirements of Standard No. 206, which originally covered only side doors, to back doors, including the hatch on hatchback models. (60 FR 50124, September 28, 1995). NHTSA did not intend for trunk lids to have to meet the lock and retention requirements, so the agency specifically excluded trunk lids from the definition of "back door."

NHTSA intended to echo the distinction between a "back door" and a "trunk lid" in the final rule establishing Standard No. 401. In the preamble of that final rule, the agency stated that "the requirements in * * * Standard No. 206 only apply if the moveable panel is not a trunk lid, and the requirements in this standard [No. 401] only apply if the moveable panel is a trunk lid." (65 FR 63019).

Despite this distinction, however, the hatch on some hatchback models may meet both the definition of "back door" and the definition of "trunk lid" in the October 2000 final rule. For example, a hatch may satisfy the latter part of the definition of a "back door," i.e., a "door on the back end of a motor vehicle through which passengers can enter or depart the vehicle, or cargo can be loaded or unloaded." It is possible that some hatches may also satisfy the definition of a "trunk lid," i.e., "a moveable body panel that provides access from outside a motor vehicle to a trunk compartment." A "trunk compartment" is, in turn, defined as a space that "is intended to be used for carrying luggage," "is wholly separated from the occupant compartment * * * by a permanently attached partition or by a fixed or fold-down seat back and/or partition," "has a trunk lid [the hatch]," and is large enough to fit the three-year-old child dummy.

NHTSA recognizes that it may have used conflicting language in the NPRM and the final rule establishing Standard No. 401. In the NPRM, NHTSA said that the standard would not apply to the hatch on hatchback models. The agency stated that its proposed definition of "trunk lid" would mean that "the requirement for an interior release would not apply to vehicles that do not typically have trunk lids, like hatchback cars, station wagons, pickup trucks, sport utility vehicles, and vans." (64 FR 70675).

However, in the final rule, the agency stated:

Concerning the applicability of this Standard to hatchbacks, if a moveable body panel, that provides access to a space wholly partitioned from the occupant compartment, encloses that space upon closing a permanently attached lid such as a hatchback lid, then the closing lid is considered a trunk lid for the purposes of this rule. (65 FR 63017).

(This statement was intended to indicate that hatchbacks were included only if the cargo area were actually wholly separated from the occupant compartment. Conversely, hatchbacks were excluded if the cargo area was only partially separated from the occupant compartment, e.g., by means of netting or by a roll-out shade that leaves open spaces on the side.)

In addition, in response to comments from the Ford Motor Company recommending that Standard No. 401 specifically exclude vehicles with hinged back doors, such as vans, SUVs, station wagons, and hatchbacks, that must comply with the latch requirements of Standard No. 206, the agency stated:

Contrary to Ford's assertions, S3 of Standard No. 206 expressly provides that the term "back door" does not include a "trunk lid." Thus, the requirements in S4.4.2 of Standard No. 206 only apply if the moveable panel is not a trunk lid, and the requirements in this standard only apply if the moveable panel is a trunk lid. (65 FR 63019).

The agency does not wish to apply Standard No. 401 to any hatchbacks. The agency notes that the Expert Panel on Trunk Entrapment, which was formed prior to the Standard No. 401 NPRM to study the problem of trunk entrapment, did not address hatchbacks, nor were there any data presented to the panel indicating that persons have died as a result of their being inadvertently or intentionally locked in the rear of hatchbacks. Absent such evidence, NHTSA is excluding them from Standard No. 401. However, the agency will reconsider the applicability of Standard No. 401 to some or all hatchbacks if data indicate that trunk entrapment deaths are occurring in them.

The agency is amending Standard No. 401 by excluding vehicles with a back door from the standard, adding a definition of "back door," and changing the definition of "trunk lid," as follows:

S2. Application. This standard applies to passenger cars that have a trunk compartment. This standard does not apply to passenger cars with a back door.

Back door means a door or door system on the back end of a passenger car through which cargo can be loaded or unloaded. The term includes the hinged back door on a hatchback or a station wagon.

Trunk lid means a moveable body panel that is not designed or intended as a passenger car entry point for passengers and that provides access from outside a passenger car to a trunk compartment. The term does not include a back door or the lid of a storage compartment located inside the passenger compartment of a passenger car.

2. Station Wagon Models

VW and the Alliance also asked the agency to confirm their understanding that Standard No. 401 does not apply to station wagon models equipped with luggage compartment covers. In its letter, VW stated:

Volkswagen and Audi station wagon models provide a luggage compartment cover, which operates like a roll-out shade or a net that the customer can use to provide privacy or retention for the luggage area. The luggage compartment cover can be released and rolled back even when the back door is closed and is made of soft material that can be moved aside by anyone who may be inside the luggage compartment when the cover is closed. It is Volkswagen's interpretation that such station wagon luggage compartment covers do not form an enclosed space, which would require an interior release for the back door of its station wagon models.

In its letter, the Alliance stated:

Station wagon models have open luggage compartment areas with direct access from the luggage compartment into the occupant seating area and therefore clearly do not have trunk compartments as defined in FMVSS 401. However, some station wagon models are provided with luggage cover accessories which operate like a roller shade or a netting and which are made of soft materials that can be moved aside to provide access from the covered luggage area to the passenger compartment.

For purposes of Standard No. 401, NHTSA has concluded that the rear door on station wagon models is not, and should not be treated as, a trunk lid. This conclusion is based primarily on the regulatory text in the final rule. Being full of openings, a net would clearly not "wholly separate" (emphasis added) the passenger compartment from the luggage area. Likewise, if a roll-out shade leaves any openings between the passenger compartment and the luggage area, the rear door is not a trunk lid under the final rule.

This conclusion is consistent with the Standard No. 401 NPRM. In the NPRM, NHTSA proposed to exclude the rear door of station wagon models. The agency stated that its proposed definition of "trunk lid" would mean that "the requirement for an interior release would not apply to vehicles that do not typically have trunk lids, like

hatchback cars, station wagons, pickup trucks, sport utility vehicles, and vans.” (64 FR 70675). Moreover, NHTSA is also concerned that, if the agency were to require the rear door of station wagon models to have an interior release mechanism, a child seated in the rear of a station wagon might be able to activate the mechanism and open the rear door while the station wagon is in motion.

Thus, the agency is amending Standard No. 401 by adding a definition of “back door,” changing the definition of “trunk lid,” and excluding vehicles with a back door from the standard as noted above in the section on hatchback models.

3. Interior Storage Compartments

The Alliance expressed concern regarding the applicability of Standard No. 401 to interior storage compartments in convertibles. The Alliance stated:

It is conceivable that if a convertible top is down, a vehicle interior compartment door could be opened from outside the vehicle. In some vehicles, the interior storage compartment could accommodate a 3-year-old dummy.

For example, the Toyota MR2-Spyder, a two-seat convertible, has two interior storage compartments, one behind each of the seats. In this vehicle, in order to open the compartment doors, the driver's seat and/or passenger's seat would have to be inclined forward. Otherwise, the seat in front of the interior compartment would block the compartment door. The Alliance argued that, in this case, even if a trunk release were required and installed in the interior compartment, the compartment doors would not open enough to allow egress from the compartment, unless the seats are inclined forward. Thus, the Alliance asked the agency to confirm that Standard No. 401 does not apply to interior storage compartments.

NHTSA agrees with this interpretation. The agency does not consider interior storage compartments to be “trunk compartments.” The lids of interior storage compartments do not provide access from outside a motor vehicle to a trunk compartment. The agency did not intend for interior storage compartments to be subject to the requirements of Standard No. 401. To address this, the agency is revising the definition of “trunk lid” to read as follows:

Trunk lid means a moveable body panel that is not designed or intended as a vehicle entry point for passengers and that provides access from outside a motor vehicle to a trunk compartment. It does not mean the lid of a storage compartment located inside the passenger compartment of the vehicle.

4. Sub-Compartments

The Alliance stated that some convertible models are equipped with a power top that folds down into the vehicle trunk, thereby partitioning the trunk space into sub-compartments. There may be sufficient room for a three-year-old child to become trapped in such a sub-compartment when the top is stowed. However, for this to happen, the child would have to access a sub-compartment during the short time when the power top is actively being stowed. Further, stowing the power top requires the vehicle key to be actuated and a button to be continuously pressed, indicating that an adult is present. In addition, for the sub-compartment to be accessible during this time, a child would have to be in the trunk compartment already. Based upon these circumstances, the Alliance asked NHTSA to confirm its understanding that the interior trunk release need not be accessible to children trapped in the sub-compartments created by stowing a convertible power top in the vehicle's trunk compartment.

The Alliance's understanding is correct. The agency believes that it is highly unlikely that a child could become trapped in such a sub-compartment under the circumstances described in the Alliance letter. Thus, the interior trunk release in convertible models with power tops that stow in the trunk compartment need not be accessible to a child trapped in the sub-compartments created by stowing the power top.

The trunk compartment of a convertible model with a power top that stows in the trunk still must have an interior trunk release. A person may become trapped in the trunk compartment while the power top is up. The agency is only stating that the interior trunk release in such a model need not be accessible to a child trapped in the sub-compartments created in the trunk compartment by stowing the power top.

To address this, the agency is revising the definition of “trunk compartment” to add the following at the end:

(b) does not include a sub-compartment within the trunk compartment.

5. Small Trunks

Standard No. 401 requires a trunk compartment to have an interior trunk release mechanism if the trunk compartment “[i]s large enough so that the three-year-old child dummy described in Subpart C of Part 572 can be placed inside the trunk compartment

and, with the test dummy in the trunk compartment, the trunk lid can be closed and latched.”

In its letter, the Alliance stated:

Alliance member companies have evaluated this space requirement on some vehicles and found cases where the trunk lid could not close and latch if the trunk lid is rested on the dummy in the trunk compartment. However, if the trunk lid were “slammed” or pushed down, squeezing the dummy into the compartment with the lid, the trunk lid could be latched. If a child was actually in this situation, we believe no movement would be afforded to allow the child to operate a trunk release nor would the child be expected to be able to “slam” down the trunk lid onto themselves.

The Alliance asked the agency to confirm its understanding that trunk lids that contact the dummy before latching are not required to have an interior release mechanism.

NHTSA disagrees with this understanding. The agency notes that while the three-year-old child dummy used in the evaluation of the size of the trunk compartment is not pliable, children are. A child may bend and squeeze him/herself into a space in which a dummy would not be able to fit due to its inflexibility. Moreover, although a child in such a trunk compartment may not be able to pull down and close the trunk lid, a second child may be able to push the trunk lid down, trapping the first child in the trunk compartment. In addition, many vehicles manufactured by members of the Alliance have closure assisting devices as part of the trunk latch design. These provide the closure force that is necessary to perform latching, without the need for slamming. Thus, the agency believes that if the trunk lid can be closed with the three-year-old child dummy in the trunk compartment, the trunk lid is required to have an interior release.

The Alliance's argument that a child trapped in such a small trunk would not have enough room to operate a manual trunk release is not persuasive because the standard allows vehicles to be equipped with automatic trunk releases as well as manual releases.

Since NHTSA disagreed with this portion of the Alliance letter, the agency treated it as a petition for reconsideration. That part of the Alliance petition is denied.

B. Performance Requirements

1. Complete Unlatching of Front-Opening Trunk Lids

§4.3 of Standard No. 401 requires the trunk release mechanism to “completely release the trunk lid from all latching positions of the trunk lid latch,

notwithstanding the requirements of any other" Federal motor vehicle safety standards. Standard No. 113, Hood Latch System, requires front opening hoods which, in any open position, partially or completely obstruct a driver's forward view through the windshield to be provided with a second latch position on the hood latch system or with a second hood latch system. The purpose of Standard No. 113 is to prevent front opening hoods from flying open and obstructing the driver's view while the vehicle is in motion.

Porsche manufactures several passenger car models with front opening hoods. In its petition for reconsideration, Porsche maintained that having a trunk release mechanism that unlocks or opens a front opening hood from all latching positions or latches while the vehicle is in motion results in risk of injuring the driver, passenger, and other motorists whether the release functions as intended or inadvertently. Thus, Porsche requested that the agency "modify S4.3 of the final rule to indicate that, for front-opening hoods, only the primary latch need be completely released."

Porsche requested that if NHTSA denied this recommendation, the agency provide manufacturers the option of disabling the interior trunk release system when the passenger car is in motion. Porsche stated that it currently deactivates the standard electro-mechanical hood release on its passenger cars when they have obtained a speed of $5 \text{ km/h} \pm 2 \text{ km/h}$.

NHTSA is granting Porsche's request to amend Standard No. 401 to indicate that for front opening hoods, only the primary latch need be completely released. As NHTSA stated in the preamble to the final rule, the agency believes that allowing a trapped person to get out of the trunk is paramount. However, NHTSA recognizes the significant additional risk of completely releasing a front opening hood while the passenger car is in motion. The release of both the primary and secondary latches when the passenger car is in motion could result in the hood flying open and obstructing the driver's forward view through the windshield. In addition, if the driver were to apply the brakes in such a situation, the trapped person could be ejected from the trunk compartment.

The agency agrees with Porsche that if only the primary latch is released when the passenger car is in motion, the hazard of collision and possible ejection of the trapped person would be greatly reduced. In addition, release of the primary latch would at least provide the

trapped person with access to outside air and increase the possibility of the trapped person being noticed by others.

The agency notes that this change would not favor victims of intentional entrapment. Such victims would not be able to completely release the trunk lid and escape, at least not while the passenger car was in motion. To address this, the agency is requiring that the trunk lid open completely when the passenger car is stationary or moving at a speed of less than 3 km/h .

Thus, the agency is adding a paragraph (b) to S4.3 of Standard No. 401, to read as follows:

S4.3(b) For passenger cars with a front trunk compartment that has a front opening hood required to have a secondary latch position, actuation of the release mechanism required by paragraph S4.1 of this standard when the passenger car is in motion (at a speed of 3 km/h or more) must release the primary latch position, but not the secondary latch position. At all other times, actuation of the release mechanism required by paragraph S4.1 of this standard must completely release the trunk lid from all latching positions of the trunk lid latch. The passenger cars described in this paragraph are excluded from the requirements of this standard until September 1, 2002.

The agency notes that the amended text requires actuation of the release mechanism when the passenger car is stationary or moving at a speed of less than 3 km/h to release the latch completely from all latch positions, regardless of the previous state of the latches or whether the primary latch has been released during passenger car movement. Since NHTSA is granting this request, the agency does not have to address Porsche's request to provide manufacturers the option of disabling the interior trunk release system when the vehicle is in motion.

The agency realizes that this amendment adds some complexity to the design of trunk release systems for passenger cars with a trunk compartment located in the front. It also imposes an additional performance requirement associated with the speed of the passenger car. However, the agency has not estimated the costs of this additional burden. The agency believes that very few passenger cars have a trunk compartment located in the front. Moreover, the agency notes that Porsche stated that it currently deactivates the standard electro-mechanical hood release on its passenger cars when they have obtained a speed of $5 \text{ km/h} \pm 2 \text{ km/h}$. Thus, the requirement that the front hood lid only release the primary latch when the passenger car has obtained a speed of 3 km/h should not be a substantial burden.

2. Operation of Automatic Systems While the Vehicle Is in Motion

Standard No. 401 permits passenger car manufacturers to install an automatic trunk release system which detects the presence of a person in the trunk and automatically unlatches the trunk lid. S4.2(b) of the standard requires such systems to "unlatch the trunk lid within 5 minutes of when the lid is closed with a person inside the trunk compartment." The standard does not specify that the automatic trunk release system must operate only when the passenger car is stationary.

In its petition for reconsideration, GM stated that it has designed an automatic trunk release system that senses a combination of motion and a difference in temperature in the trunk compartment, *i.e.*, a difference in the temperature of the trunk compartment and the temperature of an object in the trunk compartment. However, the system is not designed to operate while the passenger car is in motion because unsecured cargo (such as a basketball) often moves in the trunk while the passenger car is in motion. If automatic trunk release systems are required to operate while the passenger car is in motion, GM argued, motion detectors, even when used in combination with a temperature sensor, could not be used without the risk of causing unwanted trunk releases and possible adverse safety consequences.

GM also stated that motion sensors could not be used if automatic trunk release systems are required to operate while the passenger car is stationary for a short time, such as when the passenger car is in gear but stopped at a stop light. GM said that there are two reasons for this:

First, motion is imminent when the ignition is on, and an unwanted trunk release could occur. [We take this to mean the trunk lid could open right before the vehicle resumes motion.] Second, the vehicle's ability to measure the speed at which it is moving has poor resolution at very low speeds. Therefore, a vehicle that is inching forward in a parking lot or at a stop light will not register motion, but the motion sensor in the trunk will register the motion of the cargo that is moving as a result of the vehicle's motion.

GM claimed that its testing has demonstrated that a truck passing a stopped passenger car can generate movement inside the trunk compartment of the stopped car that could mimic human-like motion. In addition, GM stated that persons moving inside the passenger compartment can cause motion to be registered inside the trunk compartment

even though the passenger car is stationary.

Either of these occurrences could cause the trunk lid to open while the passenger car is in motion. GM also stated that it is not aware of any child trunk entrapment incident involving a passenger car that was in motion shortly after the child become trapped.

For these reasons, GM's automatic trunk release system is designed to operate only when the passenger car is stationary and the ignition is off. GM stated:

GM believes that requiring a passive [automatic] system to work when the vehicle is in motion or when motion is imminent will impose a significant and unwarranted design restriction that may preclude manufacturers from introducing passive systems. GM believes that such a restriction is not necessary to achieve the purposes of FMVSS 401, and that the final rule should allow manufacturers the flexibility to determine optimal design solutions, including the use of motion detectors in passive trunk release systems.

To address this issue, GM recommended that language such as "a stationary vehicle with the key off" be added to S4.2(b) of Standard No. 401.

NHTSA is denying GM's request to amend S4.2(b) so that automatic trunk release systems do not have to operate while the passenger car is in motion. NHTSA understands GM's concerns with respect to inanimate objects moving in the trunk compartment causing the trunk lid to open while the passenger car is in motion. However, the agency has concluded that the conditions suggested by GM are not suitable.

GM stated that it was not aware of a child entrapment incident involving a passenger car that was in motion shortly after the child became entrapped.

NHTSA is aware of at least two possible such incidents. An Associated Press account of the five children who died in Utah in August 1998, reported that a relative of two of the five children who died in the trunk compartment drove the vehicle around the neighborhood searching for the children, unaware that their bodies were in the vehicle's trunk compartment. The newspaper account stated that this situation was similar to another incident in New Mexico, where four children died in July 1998 after climbing into the trunk compartment of a vehicle. Relatives searching for the children drove the vehicle for nearly an hour before finding their bodies in the trunk compartment.

In neither case is it clear how long the children had been trapped in the trunk compartments before their relatives began driving the car. Consequently,

NHTSA considers the 5 minute time limit in S4.2(b) a reasonable safety requirement for all automatic trunk release systems, whether or not the passenger car is moving.

NHTSA also believes that the suggested requirement that the key that controls activation of the passenger car's engine be in the "off" position before the automatic trunk release system will operate could preclude possible escape from the trunk compartment by trapped persons. Individuals trapped in the trunk compartment (as a result of criminal entrapment or inadvertent trunk locking) would be unable to escape if the key or controlling device were intentionally or inadvertently left by the driver in some position other than the "off" position. Thus, the agency is denying the GM request to amend the standard to require that the key be in the "off" position for the automatic trunk release system to operate.

3. Operation of Automatic Systems When Trapped Person Is Stationary

GM also stated that its automatic trunk release system cannot detect a person in the trunk compartment if that person remains stationary. The system requires some motion to activate the trunk release. If automatic systems are required to open the trunk when a person, whether stationary or moving, is inside the trunk compartment for five minutes, the GM system will be precluded. Thus, GM recommended that language be added to S4.2(b) requiring automatic trunk release systems to unlatch the trunk lid only when the trapped person is moving and attempting to escape.

GM suggested revising S4.2(b) as follows:

S4.2(b) Each automatic release mechanism installed pursuant to S4.1 of this section must unlatch the trunk lid within 5 minutes when all of the following conditions are met:

- (1) the vehicle is stationary;
- (2) the key that controls activation of the vehicle's engine is in the "off" position;
- (3) the lid is closed; and
- (4) a person inside the trunk compartment is simulating an attempt to escape by continually reaching for two or more of the interior sides of the trunk by gross arm(s) and/or leg(s) motion for three minutes.

NHTSA is denying GM's request to amend the standard by requiring that an automatic trunk release system may unlatch the trunk lid only when a person inside the trunk compartment is moving. The agency has determined that such a requirement would result in an ineffective system. According to GM's study, and a child psychologist who testified before the Expert Panel on

Trunk Entrapment, many children who become trapped in trunk compartments simply "shut down" and passively wait for rescue. An automatic trunk release system that depends on the occupant continually moving around for three minutes appears to require greater effort by the trapped person than a manual trunk release system, which simply requires the trapped person to pull a lever.

NHTSA wishes to accommodate as broad an array of technologies as possible. The agency agrees with GM that an automatic trunk release system offers some conceptual advantages for helping trapped persons escape from the trunk, especially young children who may have trouble activating a manual trunk release system. However, the conditions suggested by GM for activation of its automatic system would result in trunk release systems that would not effectively accomplish the safety purpose of Standard No. 401. In the near term, GM may equip its vehicles with a manual trunk release system until some of the difficulties associated with automatic trunk release systems can be worked out. NHTSA will work with GM and other manufacturers to understand the capabilities and limitations of current automatic trunk release systems and attempt to develop performance criteria that would ensure that those systems effectively accomplish the safety purpose of the standard and would be feasible for current automatic systems.

4. Temporarily Disabling the System

GM also stated that drivers may occasionally want to disable the automatic trunk release system so that the motion of the passenger car or items in the trunk will not cause the trunk to open. GM would like to provide a means of temporarily disabling the system without affecting the safety benefits of the system. Accordingly, GM requested that the agency add an additional paragraph to Standard No. 401 as follows:

S4.2(c) An automatic release mechanism may be capable of being deactivated only if all of the following conditions are met:

- (1) the key that controls activation of the vehicle's engine is in the "on" position;
- (2) the deactivation switch is located away from the driver's position or the deactivation process requires multiple deliberate actions;
- (3) the system is automatically reactivated when the trunk is opened; and
- (4) the system can manually be reactivated from inside the trunk or otherwise can unlatch the trunk.

NHTSA is denying GM's request to amend the standard to allow for temporary disabling of automatic trunk

release systems. As a general rule, NHTSA does not permit the overriding of a safety device required by a Federal motor vehicle safety standard unless there are significant safety issues involving potential risks to individuals if the safety device is not disabled. For example, the agency permits the disabling or deactivation of passenger side air bags only under certain limited circumstances. The agency does not believe that safety devices should be disabled simply for purposes of operational convenience. GM has not cited any significant safety issues involving potential risks to individuals if the automatic trunk release system is not disabled.

C. Test Conditions for Trunk Size Determination

The Alliance noted that in the preamble to the Standard No. 401 final rule, NHTSA stated its intention to require manufacturers to conduct the evaluation to determine whether the three-year-old child dummy can fit inside the trunk compartment with all standard equipment in the trunk compartment (e.g., spare tire, wheel jack, tools, etc.). In fact, the agency stated in the preamble that "[s]uch an evaluation must be conducted with all standard equipment in the trunk (i.e., spare tire, wheel jack, tools, etc.)." (65 FR 63018). However, this test specification was inadvertently omitted from the regulatory text. The Alliance petitioned NHTSA to revise the regulatory text to include this specification.

The agency is granting this request. The agency is revising paragraph (d) in the definition of "trunk compartment" to read as follows:

(d) Is large enough so that the three-year-old child dummy described in Subpart C of Part 572 can be placed inside the trunk compartment, and the trunk lid can be closed and latched, with all removable equipment furnished by the passenger car manufacturer stowed in the trunk compartment in accordance with label(s) on the passenger car or information in the passenger car owner's manual, or, if no information is provided, as located when the passenger car is delivered. (Note: For purposes of this standard, the Part 572 Subpart C test dummy need not be equipped with the accelerometers specified in Part 572.21.)

D. Irrevocable Election

Standard No. 401 allows manufacturers the option of installing a manual or automatic trunk release. Over the past five years, when NHTSA has allowed such a compliance option in a Federal motor vehicle safety standard, the agency has required that manufacturers irrevocably elect which

option they will use to comply with the standard. Thus, when NHTSA officials conduct compliance testing of vehicles, they will know which requirements the vehicle must meet. For example, S6.1 of Standard No. 201, "Occupant Protection in Interior Impact," allows manufacturers different compliance options. It also requires manufacturers to irrevocably select which compliance option they will employ at the time they certify their vehicles.

This requirement was inadvertently omitted from the final rule establishing Standard No. 401. Accordingly, the agency is revising S4.1 to read as follows:

S4.1 Each passenger car with a trunk compartment must have an automatic or manual release mechanism inside the trunk compartment that unlatches the trunk lid. Each trunk release shall conform, at the manufacturer's option, to either S4.2(a) and S4.3, or S4.2(b) and S4.3. The manufacturer shall select the option by the time it certifies the vehicle and may not thereafter select a different option for the vehicle.

E. Lead-Time

Standard No. 401 applies to new passenger cars manufactured on or after September 1, 2001. In its letter, the Alliance requested an additional year (until September 1, 2002) of lead-time if NHTSA interprets the standard as applying to hatchback or station wagon models, interior storage compartments, sub-compartments within the trunk compartment, or vehicles with trunk lids that contact the three-year-old child dummy before latching. As a result of the amendments discussed above, the standard does not apply to hatchback or station wagon models, interior storage compartments, or sub-compartments within the trunk compartment. Thus, the agency need not address the issue of additional lead-time for these vehicles.

The standard does apply to passenger cars with trunk lids that can be closed despite contacting the dummy before latching. The agency notes that the NPRM and final rule preambles did not state or imply that trunk compartments with trunk lids that contact the dummy before latching would be excluded from the standard. Nor was this issue addressed in any comments to the NPRM. The agency is unaware of any technical challenges that such trunk compartments pose to the development and manufacture of interior trunk release mechanisms. Therefore, the Alliance's request for additional lead-time beyond the September 1, 2001 effective date of the standard is denied.

Porsche requested that the agency grant additional lead-time of at least one year from the date the agency grants or

denies its recommended changes with regard to passenger cars with front opening trunk lids.

In response to the Porsche petition, NHTSA is amending the standard to allow passenger cars with front opening trunk lids to unlatch only the primary latch position when the passenger car is in motion. The agency notes that this amendment adds some complexity to the design of trunk release systems for passenger cars with trunk compartments located in the front. It also imposes an additional performance requirement associated with the speed of the passenger car. Because this amendment represents an increase in burden to manufacturers of passenger cars with trunk compartments located in the front, NHTSA has decided to extend the effective date for these passenger cars by one year. Thus, the effective date for passenger cars with trunk compartments which are located at the front and have a front opening hood required to have a secondary latch position is September 1, 2002.

GM stated that if NHTSA adopted GM's requested changes, GM would be able to meet Standard No. 401's current effective date of September 1, 2001. However, GM said that if the agency did not adopt GM's requested changes, it would need additional development, tooling, and validation time to incorporate complying systems. Thus, GM requested that the agency grant an additional year of lead-time for passenger cars equipped with automatic trunk release systems. In subsequent communications with the agency, GM withdrew that request.

The agency realizes that manufacturers may have experienced some difficulties in designing an automatic trunk release system that complies with the standard. As noted above, NHTSA will work with GM and other manufacturers to understand the capabilities and limitations of current automatic trunk release systems and attempt to develop performance criteria that would ensure that those systems effectively accomplish the safety purpose of the standard and would be feasible for current automatic systems. NHTSA does not wish to discourage the use of automatic systems because the agency believes that automatic systems may have some advantages over manual systems in certain situations. For example, young children may have some trouble operating a manual release, especially if they are frightened and disoriented, as one would expect a young child trapped in a trunk to be. Also, as stated above, many children who become trapped in trunk compartments simply "shut down" and

passively wait for rescue. Finally, a person who is intentionally placed in a trunk, i.e., by a criminal, may be unconscious or physically restrained, and thus unable to operate a manual release. Since an automatic trunk release system opens the trunk lid without requiring a trapped person to take any action, it may provide a better chance of escape than a manual trunk release system in these types of situations.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking document was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. The only additional burden it imposes is on manufacturers of vehicles with trunk compartments located at the front of the vehicle. These vehicles must release only the primary latch when the interior trunk release mechanism is actuated while the vehicle is in motion.

The agency has no evidence that this requirement will significantly increase the costs of complying with Standard No. 401 for such vehicles. Further, the agency believes that very few vehicles have trunk compartments located at the front of the vehicle. Moreover, the agency notes that Porsche, in its petition for reconsideration, stated that it currently deactivates the standard

electro-mechanical hood release on its vehicles when the vehicle has obtained a speed of 5 km/h \pm 2 km/h. Thus, the requirement that the front hood lid only release the primary latch when the vehicle has obtained a speed of 3 km/h should not be a substantial burden. The agency believes that this impact is so minimal as to not warrant the preparation of a full regulatory evaluation.

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.

As noted above, the agency has not estimated the costs associated with this rulemaking. The sole additional requirement imposed by this rulemaking is on vehicles with trunk compartments located at the front. The agency believes that very few such vehicles are manufactured. Moreover, the only manufacturer of such vehicles that the agency is aware of is Porsche, which does not qualify as a small entity. Based on this analysis, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

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

D. Executive Order 13132 (Federalism)

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

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132. NHTSA has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Accordingly, a Federalism Assessment has not been prepared.

E. Civil Justice Reform

This final rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Paperwork Reduction Act

This rule does not have any requirements that are considered to be information collection requirements as defined by the Office of Management and Budget (OMB) in 5 CFR part 1320.

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 our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

There are no voluntary consensus standards available at this time. NHTSA will consider any such SAE recommended practices if they become available.

H. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. This final rule will not have any such impacts on those parties. As noted above, the agency has not estimated expects the costs associated with this rule. However, the agency believes that they will be minimal, as the only additional burden imposed by this final rule will affect very few vehicles. Consequently, no Unfunded Mandates assessment has been prepared.

I. Regulation Identifier Number (RIN)

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

document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber products, tires.

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

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 21411, 21415, 21417, and 21466; delegation of authority at 49 CFR 1.50.

2. Section 571.401 is revised to read as follows:

§ 571.401 Standard No. 401; Interior trunk release.

S1. Purpose and scope. This standard establishes the requirement for providing a trunk release mechanism that makes it possible for a person trapped inside the trunk compartment of a passenger car to escape from the compartment.

S2. Application. This standard applies to passenger cars that have a trunk compartment. This standard does not apply to passenger cars with a back door.

S3. Definitions.

Back door means a door or door system on the back end of a passenger car through which cargo can be loaded or unloaded. The term includes the hinged back door on a hatchback or a station wagon.

Trunk compartment. (a) Means a space that:

(1) Is intended to be used for carrying luggage or cargo,

(2) Is wholly separated from the occupant compartment of a passenger car by a permanently attached partition or by a fixed or fold-down seat back and/or partition,

(3) Has a trunk lid, and

(4) Is large enough so that the three-year-old child dummy described in Subpart C of Part 572 can be placed inside the trunk compartment, and the trunk lid can be closed and latched with all removable equipment furnished by the passenger car manufacturer stowed in accordance with label(s) on the passenger car or information in the passenger car owner's manual, or, if no information is provided, as located when the passenger car is delivered. (Note: For purposes of this standard, the Part 572 Subpart C test dummy need not be equipped with the accelerometers specified in § 572.21.)

(b) Does not include a sub-compartment within the trunk compartment.

Trunk lid means a moveable body panel that is not designed or intended as a passenger car entry point for passengers and that provides access from outside a passenger car to a trunk compartment. The term does not include a back door or the lid of a storage compartment located inside the passenger compartment of a passenger car.

S4. Requirements.

S4.1 Each passenger car with a trunk compartment must have an automatic or manual release mechanism inside the trunk compartment that unlatches the trunk lid. Each trunk release shall conform, at the manufacturer's option, to either S4.2(a) and S4.3, or S4.2(b) and S4.3. The manufacturer shall select the option by the time it certifies the vehicle and may not thereafter select a different option for the vehicle.

S4.2(a) Each manual release mechanism installed pursuant to S4.1 of this standard must include a feature, like lighting or phosphorescence, that allows the release mechanism to be easily seen inside the closed trunk compartment.

(b) Each automatic release mechanism installed pursuant to S4.1 of this section must unlatch the trunk lid within 5 minutes of when the trunk lid is closed with a person inside the trunk compartment.

S4.3(a) Except as provided in paragraph S4.3(b), actuation of the release mechanism required by S4.1 of this standard must completely release the trunk lid from all latching positions of the trunk lid latch.

(b) For passenger cars with a front trunk compartment that has a front opening hood required to have a secondary latch position, actuation of the release mechanism required by paragraph S4.1 of this standard when the passenger car is in motion (at a speed of 3 km/h or more) must release the primary latch position, but not the secondary latch position. At all other times, actuation of the release mechanism required by paragraph S4.1 of this standard must completely release the trunk lid from all latching positions of the trunk lid latch. The passenger cars described in this paragraph are excluded from the requirements of this standard until September 1, 2002.

Issued: August 7, 2001.

L. Robert Shelton,
Executive Director.

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