FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–25; FCC 07–204]

Creation of a Low Power Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the revised information collections associated with the *Creation of a Low Power Radio Service*. This notice is consistent with the Ordering Clause of the Report and Order published on January 17, 2008, which stated that changes to FCC Form 316, OMB Control Number 3060–0009, Application for Consent to Assignment of Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit and FCC Form 318, OMB Control Number 3060–0920, Application for Construction Permit for a Low Power FM Broadcast Station will become effective 60 days after a notice is published in the **Federal Register** announcing OMB approval of the forms.

DATES: FCC Forms 316 and 318 are effective September 5, 2008.

FOR FURTHER INFORMATION CONTACT: Peter Doyle or Kelly Donohue, Audio Division, Media Bureau at (202) 418–2700.

SUPPLEMENTARY INFORMATION: This document announces that, on June 23, 2008, OMB approved, for a period of three years, the revised information collection requirements resulting in changes to FCC Forms 316 and 318 contained in the Commission's Report and Order concerning the Creation of a Low Power Radio Service, FCC 07–204, published at 73 FR 3202, January 17, 2008. The OMB Control Numbers are 3060–0009 (FCC Form 316) and 3060–0920 (FCC Form 318), respectively. The Commission publishes this notice as an announcement of the effective date of the forms and announcement of OMB approval for the information collections. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please write to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Numbers 3060–0009 and 3060–0920 in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov*.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on June 23, 2008, for the revised information collection requirements resulting in changes to FCC Forms 316 and 318. The OMB Control Numbers assigned to the information collections are 3060–0009 and 3060–0920, respectively. For revisions to Form 316 (3060–0009), the total annual reporting burden for respondents for these collections of information, including the time for gathering and maintaining the collection of information, is estimated to be: 750 respondents, a total annual burden hours of 855 hours, and $425,150 in total annual costs. For revisions to Form 318 (3060–0920), the total annual reporting burden for respondents for these collections of information, including the time for gathering and maintaining the collection of information, is estimated to be: 16,659 respondents, a total annual burden hours of 34,396 hours, and $23,850 in total annual costs.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB Control Number. The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E8–15307 Filed 7–3–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2008–0125]

RIN 2127–AK14

Federal Motor Vehicle Safety Standards; Power-Operated Window, Partition, and Roof Panel Systems

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

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to two petitions for reconsideration of a final rule amending the Federal motor vehicle safety standard for power-operated window, partition, and roof panel systems. The subject final rule, statutorily mandated and published in April 2006, established a new safety requirement for vehicle power window switches, specifically that such switches have a ''pull-to-close'' design. That final rule set a compliance date of October 1, 2008, which was the same as the compliance date for a rule published in September 2004 that amended the standard to include a performance test to prevent inadvertent actuation of power window switches, particularly by children. Petitions for reconsideration were submitted by the Alliance of Automobile Manufacturers (Alliance) and DaimlerChrysler Corporation. The petitioners requested an extension of the compliance date by two years, as well as additional amendments to the standard.

This document grants the requests common to both petitions for an additional two years to comply with the pull-to-close operability requirements of the April 2006 rule. It denies petitioners' other requests. Specifically, we are denying the request that power window switches be excluded from the ''pull-to-close'' design requirement if the power window systems are equipped with an automatic reversal feature. We are also denying a request for exclusion from the pull-to-close requirement for switches mounted in overhead locations and switches that operate vent-type power windows.

DATES: *Effective Date:* The amendments made in this final rule are effective September 5, 2008.

Compliance Date: The requirements of the April 2006 final rule pertaining to ''pull-to-close'' operation of power window switches, as amended by today's rule, become mandatory for all

vehicles subject to the standard manufactured on or after October 1, 2010. All other requirements, including the performance test for inadvertent actuation, continue to become mandatory for all vehicles subject to the standard that are manufactured on or after October 1, 2008. Voluntary early compliance is permitted.

Petitions for Reconsideration: If you wish to submit a petition for reconsideration for this rule, your petition must be received by August 21, 2008.

ADDRESSES: Petitions for reconsideration should refer to the docket number above and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

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

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Michael Pyne, Office of Crash Avoidance Standards (Phone: 202–366–4931; Fax: 202–366–7002).

For legal issues, you may call Mr. Ari Scott, Office of the Chief Counsel (Phone: 202–366–2992; Fax: 202–366–3820).

You may send mail to these officials at: National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

This document responds to two petitions for reconsideration of our April 12, 2006 final rule [1] amending Federal Motor Vehicle Safety Standard (FMVSS) No. 118, *Power-Operated Window, Partition, and Roof Panel Systems*. That final rule responded to an earlier round of petitions for reconsideration of our September 15, 2004 final rule amending FMVSS No. 118.[2] That rule amended the standard to require that switches for power windows and other power-operated items in new motor vehicles be resistant to accidental actuation that causes those items to begin to close. The amendment consisted of adding a new performance test for that purpose.

While the April 2006 final rule made a number of technical amendments to Standard No. 118, the primary change effected by the April 2006 final rule was to implement a Congressional mandate in section 10308 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU).[3] The mandate was to require power windows in vehicles not in excess of 10,000 pounds to have switches that close a window only when the switch is pulled up or out (''pull-to-close'' switches), and it was identical to an issue raised in a petition for reconsideration of the September 2004 rule. Therefore, our implementation of the SAFETEA–LU mandate also addressed that petition.

Petitions for reconsideration of the April 2006 final rule were submitted by the Alliance of Automobile Manufacturers [4] and DaimlerChrysler Corporation.[5] The petitions requested additional amendments to Standard No. 118, as well as additional lead time for implementing the standard's pull-to-close power window switch requirements.

The petitioners sought amendments to FMVSS No. 118 regarding certain issues either addressed in our April 2006 rulemaking or newly arising therefrom. Both petitioners requested an additional two years of lead time to comply with the final rule's requirement for power window switches to have pull-to-close operability. The petitioners argued that a substantial amount of time had elapsed between the September 2004 rule and the April 2006 amendment and that some manufacturers had initiated new switch designs on certain vehicle models that, although they would comply with the performance test in the 2004 rule, they might not comply with the newer pull-to-close requirement. The petitioners argued that manufacturers would have to start over on those redesigns, and would have insufficient time to achieve compliance for those models unless the compliance date was extended. The additional two years (*i.e.*, until October 1, 2010) would provide approximately four years to comply with the pull-to-close requirement so that the total lead-time would be about equal to that originally provided for compliance with the September 2004 rule.

The Alliance's petition also requested amendments concerning exclusion from the pull-to-close requirement for: (1) Power window switches mounted on an overhead console, roof, or headliner; (2) power window switches for side-hinged vent windows; and (3) power windows equipped with automatic reversal capability complying with paragraph S5 of FMVSS No. 118.

In its petition, DaimlerChrysler stated that it joined in the Alliance's petition and supports its requests, but the company made the following additional request. DaimlerChrysler asked that if the agency decides to grant the Alliance request for an exclusion from the pull-to-close requirement for power window systems equipped with S5-compliant automatic reversal capability, a similar exclusion should be extended to power windows with an automatic reversal feature meeting ECE R21,[6] ''Uniform provisions concerning the approval of vehicles with regard to their interior fittings,'' the standard commonly employed in Europe, specifically S5.8.3 of that standard. The petitioner reasoned that such an exclusion would be appropriate because the U.S. and European automatic reversal requirements are very similar and provide identical safety protection from window entrapment.

In this document, we are granting in part and denying in part the Alliance and DaimlerChrysler petitions for reconsideration. The amendments we are adopting in response to the petitions for reconsideration of the April 12, 2006 final rule are as follows (additional detail and explanation are provided later in this document):

- The agency is amending paragraph S2, *Application*, of Standard No. 118 to specify that vehicles subject to the requirements of the standard must comply with the pull-to-close switch operability requirement by October 1, 2010. This amendment will provide manufacturers with an additional two years of lead time, thereby providing relief for those manufacturers that had sought to meet the requirement of the

[1] 70 FR 18673 (Docket No. NHTSA–2006–24455–1).

[2] 69 FR 55517 (Docket No. NHTSA–2004–19032–1).

[3] Public Law 109–59, 119 Stat. 1144 (2005).

[4] The May 30, 2006 petition for reconsideration was submitted by the Alliance of Automobile Manufacturers, an industry trade organization whose members include BMW Group, DaimlerChrysler, Ford Motor Company, General Motors, Mazda, Mitsubishi Motors, Porsche, Toyota, and Volkswagen. (Docket No. NHTSA–2006–24455–5.)

[5] Docket No. NHTSA–2006–24455–4.

[6] ECE R21 is a European safety standard that has automatic reversal specifications similar to, but not identical to, those contained in paragraph S5 of FMVSS No. 118. *See http://www.unece.org/trans/main/wp29/wp29regs/21rv2am2e.pdf.*

September 2004 final rule by a means other than pull-to-close switches. It will also generally allow those manufacturers to comply with this additional requirement in the course of their normal vehicle redesign process, thereby keeping the costs associated with this rulemaking close to zero.

However, we note that vehicle manufacturers must comply with all other requirements of the September 2004 and April 2006 final rules, including the inadvertent actuation performance test (''ball test''), by the original compliance date of October 1, 2008.

• The agency is denying the requests for exclusions from the pull-to-close switch operability requirement for switches mounted overhead, switches for side-hinged vent windows, and switches for windows with automatic reversal capability.

We note here that on February 28, 2008, the President signed a law that requires NHTSA to determine whether automatic reversal capability should be required for power windows. Thus, as part of that rulemaking activity, we will reexamine the safety implications of power windows with automatic reversal capability. However, the prospect of future rulemaking on automatic reversal has no impact on the decisions set forth in this notice regarding petitions for reconsideration of power window switch requirements. See section IV–D of this notice for further explanation.

II. Background

A. FMVSS No. 118 Requirements

Federal Motor Vehicle Safety Standard (FMVSS) No. 118 specifies requirements for power-operated window, partition, and roof panel systems [7] in motor vehicles to minimize the risk of injury or death from their accidental operation. The standard applies to passenger cars, multipurpose passenger vehicles, and trucks with a gross vehicle weight rating of 4,536 kilograms (10,000 lbs.) or less.

The basic requirements of FMVSS No. 118 are enumerated in paragraph S4 of the standard. They include the fundamental requirement that power windows must not be operable unless the vehicle's ignition switch is in the ''On,'' ''Start,'' or ''Accessory'' position. In this way, the standard provides a simple means (*i.e.*, ignition key removal) by which a vehicle's windows can be disabled and thus safeguarded from accidental closure. Paragraph S4 does specify a few exceptions where power windows may close without the vehicle's ignition being turned on (e.g., by use of a limited-range remote control), but each exception is specified in such a way that safety can still be assured.

Paragraph S5 of FMVSS No. 118 allows an alternative means of compliance through the use of power window automatic reversal systems. If such a system is used in a vehicle and it meets the specified performance requirements of the standard, then the vehicle is not required to meet the window operating restrictions of paragraph S4. These systems prevent high closing forces which might injure or entrap a person caught in a closing window.

Although a variety of current vehicles are equipped with automatic reversal capability on one or more of their windows, we are not aware of any systems that are certified as complying with paragraph S5 of FMVSS No. 118. Instead, all current vehicles are certified to paragraph S4, even if they are equipped with automatic reversal.

B. Recent Rulemaking Actions on Power Window Switches

NHTSA published a final rule on September 15, 2004, amending Standard No. 118 to add new safety requirements for switches used to operate power windows and sunroofs in vehicles covered by the standard. The following discussion summarizes the safety considerations which the agency sought to address. (For a more complete discussion, please consult the September 2004 final rule.)

The September 2004 final rule responded to various petitions for rulemaking and addressed a small number of serious injuries and fatalities that had occurred involving power windows and sunroofs (this number varied from one to five per year, according to data at the time). It was apparent in most of those cases that an occupant, usually a child, became entrapped in a power window as a result of inadvertently pressing on a window switch while leaning out of a window opening. (As noted previously, FMVSS No. 118 requires that power windows must be disabled upon ignition key removal; thus, it is apparent that the key was in the ignition in each of those cases.)

The power windows in those cases where serious injuries and fatalities occurred used switches of a ''rocker'' or ''toggle'' design [8] that lack protection from casual contact and thus are susceptible to inadvertent actuation. We concluded that such injuries could be prevented if power window switches were recessed or shrouded, or if a type of switch design referred to as a ''pull-to-close'' switch was used.

Instead of specifying particular design characteristics that would address the hazard, the September 2004 final rule instead established a performance test to be applied to power window switches in order to assure adequate protection from inadvertent actuation. In the specified performance test, a rigid spherical test device in the form of a metal ball is pressed against each power window switch with a certain amount of force to simulate a child kneeling on the switch. (This is commonly referred to as the ''ball test''). A switch could pass the test only if applying the test device in this manner did not cause the power window controlled by the switch to begin to close. Power windows and sunroofs in vehicles meeting the ball test performance requirement would be able to resist inadvertent actuation of their power windows and sunroofs and would provide a measure of protection in the event children were left in a vehicle with the ignition turned on.

Compliance with the September 2004 amendments to Standard No. 118 was required no later than October 1, 2008, generally coinciding with the start of the 2009 model year. This provided manufacturers approximately four years of lead-time to meet the new power window switch requirement.

However, in April 2006, about 19 months after publishing that rule, in response to legislation enacted by Congress in August 2005, NHTSA again amended the standard, adding another new power window switch requirement in addition to the performance test established in the September 2004 rule.

Section 10308 of the August 2005 congressional legislation, called SAFETEA–LU, contained the following mandate:

> The Secretary [of Transportation] shall upgrade Federal Motor Vehicle Safety

[7] The term ''power window'' is used in the preamble of this final rule to refer to power-operated windows, interior partitions, and roof panels, all of which are covered by FMVSS No. 118. Power roof panels and partitions are similar to power windows in their operation. However, any distinctions in applicability among the three types of systems will be delineated clearly in both the preamble and the amended regulatory text.

[8] ''Rocker'' switches are designed to pivot on a center hinge, effectively operating like a ''see-saw.'' ''Toggle'' switches operate using small levers that push back and forth to open and close a window. As a result of their design, downward pressure (e.g., caused by a child kneeling or leaning) on a rocker or toggle switch could result in a window's either opening or closing, depending upon how such force is applied. In contrast, ''pull-to-close'' switches function such that pressing down on the switch will only cause the window to open, but the switch must be actively pulled up in order to close the window. Thus, accidental pressing with a hand, knee, or foot on a pull-to-close switch could not cause a window to close, although it might cause it to open.

Standard 118 to require that power windows in motor vehicles not in excess of 10,000 pounds have switches that raise the window only when the switch is pulled up or out. The Secretary shall issue a final rule implementing this section by April 1, 2007.

This legislation required that all power window switches be of the pull-to-close variety, regardless of whether they met any performance test.

At that time, the agency also had before it a petition for reconsideration of the September 2004 final rule submitted by a variety of organizations that advocate highway safety.[9] The petition included a request for a new power window switch requirement the same as the one contained in the legislative mandate. To implement section 10308 of SAFETEA–LU as quickly as possible, the agency decided to grant that aspect of the advocacy groups' petition for reconsideration, publishing a final rule to this effect on April 12, 2006. That final rule amended FMVSS No. 118 by adding section S6(c), implementing the restriction stipulated in SAFETEA–LU to allow only switches that operate by being ''pulled up or out'' for closing of power windows. It also maintained the ball test of the 2004 rule because we determined that the performance test was still relevant to ensure that all pull-to-close switches are resistant to inadvertent actuation.

The April 2006 rule did not modify the deadline for compliance with the amended switch requirements, so the compliance date for both the ''ball test'' of the 2004 rule as well as the ''pull-to-close'' requirement was October 1, 2008.

III. Petitions for Reconsideration

NHTSA received two petitions for reconsideration submitted in response to our April 2006 final rule amending the switch-related provisions of FMVSS No. 118. One petition was submitted by the Alliance of Automobile Manufacturers, and the other was submitted by DaimlerChrysler Corporation. These petitions may be found in Docket No. NHTSA–2006–24455.

As noted above, the petitioners requested further amendments to FMVSS No. 118 regarding certain issues either addressed in our April 2006 rulemaking or newly arising therefrom, including adequacy of the lead time for achieving compliance with the new requirements. Specifically, both petitioners requested additional time to comply with the final rule, citing the substantial amount of time that had elapsed between the September 2004 rule and the April 2006 amendment and the decision by at least some vehicle manufacturers to achieve compliance with the September 2004 final rule using shielded or recessed toggle switches instead of pull-to-close switch designs.

The Alliance's petition also requested a number of additional amendments to the standard, including exclusion from the new pull-to-close operability requirements for the following: (1) Switches mounted on an overhead console, roof, or headliner; (2) switches for vent-type windows, and (3) switches on systems which incorporate an automatic reversal feature that complies with the requirements of FMVSS No. 118.

DaimlerChrysler's petition expressed support for the requests made in the Alliance's petition, but it further suggested that if an exclusion from the pull-to-close requirement was granted for switches incorporating an FMVSS No.118 type of automatic reversal feature, that exclusion should be extended to ECE R21-compliant automatic reversal systems as well.

Further analysis of the issues raised in these petitions for reconsideration is provided in the following section of this document.

IV. Discussion and Analysis

A. Lead Time

In adopting a performance test as part of FMVSS No. 118 to ensure resistance to inadvertent actuation of power window switches, our September 2004 final rule also amended paragraph S2, *Application,* providing that, ''[t]his standard's requirements for actuation devices, as provided in S6, need not be met for vehicles manufactured before October 1, 2008.'' Thus, that final rule accorded manufacturers slightly more than four years of lead time for compliance with the new ''ball test'' requirement.

Subsequently, our April 2006 final rule responding to petitions for reconsideration of the September 2004 final rule further amended FMVSS No. 118 to implement the mandate in section 10308 of SAFETEA–LU, which directed NHTSA to require that power window switches have pull-to-close operability (*see* S6(c)). In the preamble for the April 2006 final rule, we stated our belief that sufficient lead time still remained for manufacturers to meet this new requirement as part of their normal production processes. As a result, the agency did not change the mandatory compliance date of October 1, 2008. Our assumption that there still remained adequate lead time was supported by the fact that many vehicle makes and models at that time already had switches that were of the pull-to-close variety. Also, we thought it likely that manufacturers would choose a pull-to-close type of switch to meet the ball test requirement of the 2004 rule, and they would thus meet the 2006 requirement as well without the need for more lead time.

The Alliance's petition confirmed that vehicle manufacturers had promptly commenced efforts to redesign power window switches to meet the September 2004 final rule, and that they were working to achieve compliance by the October 1, 2008 deadline. However, contrary to our assumption, it was apparent that some of these switch designs, on vehicles either in production or nearing production, utilized recessed or shielded toggle type switches, which were still a permissible option under the September 2004 final rule. In other words, as described by the petitioner, some companies had initiated new switch designs on certain vehicle models that would comply with the ball test of the 2004 rule, but the new designs were not of the pull-to-close variety, so they would not meet the pull-to-close requirement in the 2006 rule.

Thus, according to the Alliance, those manufacturers would be compelled to ''start over'' on their designs, but would be left with insufficient time to undertake the necessary redesign and retooling unless the compliance date was extended. Accordingly, the Alliance's petition requested two additional years to comply with the April 2006 requirement (*i.e.*, until October 1, 2010) so that the total lead time would be about equal to that originally provided for compliance with the 2004 rule.

The DaimlerChrysler petition made similar arguments regarding the perceived inadequacy of the lead time for implementing the pull-to-close switch operability requirements for companies which had intended to comply with the September 2004 rule through some means other than pull-to-close switches. For example, DaimlerChrysler's petition stated that for about 20 percent of its fleet, the company intended to meet the requirements of the September 2004 final rule by equipping those vehicles with recessed switches in combination with ECE R21-compliant automatic reversal technology (*e.g.,* the Maybach,

[9] This October 21, 2004 petition for reconsideration was filed by the following advocacy organizations: Advocates for Highway and Auto Safety (Advocates), KIDS AND CARS, The Zoie Foundation, the Trauma Foundation, Consumers for Auto Reliability and Safety, Consumer Federation of America, Consumers Union, Public Citizen, Kids In Cars, 4RKidsSake, and the Center for Auto Safety. (Docket No. NHTSA–2004–19032–3 and 4.)

certain Mercedes-Benz and Chrysler convertibles). Thus, the petitioner argued that the condensed timeframe for compliance with S6(c) represented a significant economic hardship and would result in compliance costs significantly higher than the de minimis costs estimated by the agency when there were four years of lead time to incorporate design changes as part of the manufacturers' routine production cycles.

According to DaimlerChrysler, if the agency were to grant its request for an exclusion for vehicles equipped with ECE R21-compliant automatic reversal systems, no additional lead time would be required. Otherwise, DaimlerChrysler requested an additional two years of lead time for either: (1) 20 percent of its entire fleet, or (2) specifically for the Maybach, three Mercedes-Benz convertible carlines, and one Chrysler Group convertible carline, specifically.

The agency has carefully considered the arguments related to lead time raised by the petitioners. Because the October 1, 2008 compliance date in the September 2004 rule allowed manufacturers substantial time to comply (*i.e.,* four years), and because the SAFETEA–LU legislation was enacted less than one year after the September 2004 rule was issued, the agency decided in the April 2006 final rule to retain that compliance date for the new requirement. Moreover, we noted that many popular vehicle models already were equipped with pull-to-close switches, and major vehicle manufacturers including Ford Motor Company (Ford) and General Motors Corporation (General Motors) had informed NHTSA even prior to the September 2004 final rule that they were planning to install pull-to-close switches in most of their vehicles by the 2009 model year.

Nevertheless, based on the information provided in the present Alliance and DaimlerChrysler petitions for reconsideration, it is evident that some manufacturers have been burdened by the shorter lead time allowed to meet the standard's new pull-to-close switch requirement. Since it was not the agency's intention to unduly restrict lead time (and thereby increase the cost of compliance), we have decided to grant the requested two-year extension of the compliance deadline for the pull-to-close switch requirement contained in section S6(c) of the safety standard. Therefore, we are amending S2, *Application,* to specify that manufacturers must meet the requirements of paragraph S6(c) of the standard for vehicles manufactured on or after October 1, 2010.

In granting this request for additional lead time to meet the new pull-to-close switch operability requirement, we note that we are not extending the compliance date of the other aspects of either the September 2004 final rule or the April 2006 final rule; compliance with other provisions, particularly the ''ball test,'' is still required by no later than October 1, 2008. To further clarify, by that date, new vehicles will be required to meet the ball test unless they come within a specified exclusion (*i.e.*, for overhead switches or switches with a S5-compliant automatic reversal system).

In this way, manufacturers that had already begun a switch redesign process to meet the September 2004 rule, but pursued designs that would not meet the subsequent pull-up-to-close requirement, will be granted relief. We believe that those manufacturers legitimately need more time to undertake a second design iteration to meet the pull-to-close switch requirement of the April 2006 rule, particularly since their design efforts are likely to be focused on completing their ball test-compliant designs before the October 1, 2008 deadline.

Manufacturers that have been or are now in the process of implementing pull-up switch designs to meet the September 2004 requirement (as well as manufacturers that already have pull-to-close switches in place) should not have difficulty meeting the October 1, 2008 compliance deadline. Furthermore, they will not have to be concerned with the October 1, 2010 compliance date for the new pull-to-close requirement since their switches will already meet it. Voluntary compliance is permitted immediately.

In granting the petitioners' request for additional lead time but maintaining the original deadline for compliance with the ball test, NHTSA can continue to ensure that by October 1, 2008, all vehicles covered by Standard No. 118 will have power window switches safeguarded against inadvertent actuation at least to the level required under the September 2004 final rule, while providing manufacturers reasonable lead time to comply with the pull-to-close switch requirement.

B. Overhead Power Window Switches

Paragraph S6(c) of FMVSS No. 118 implemented the Congressional mandate for pull-to-close power window switches (which requires ''switches that raise the window only when the switch is pulled up or out'') through the following requirement:

> Any actuation device for closing a power-operated window must operate by pulling away from the surface in the vehicle on which the device is mounted. An actuation device must operate only when pulled vertically up (if horizontally mounted), or out (if vertically mounted), or in a direction perpendicular to the surrounding surface if mounted in a sloped orientation, in order to cause the window to move in the closing direction.''

Although S6(b) provided exclusion from the ''ball test'' for actuation devices mounted in a vehicle's roof, headliner, or overhead console, as well as switches linked to an automatic reversal system meeting the requirements of S5, the rule adopted in April 2006 did not contain any similar exclusion from the pull-to-close switch operability requirement.

In its petition, the Alliance stated that S6(c) does not adequately address power-operated window switches that are mounted on an overhead console, vehicle roof, or headliner. It its petition, the Alliance stated:

> The one scenario the final rule does not provide clear design criteria for are power-operated window switches that are mounted on an overhead console, vehicle roof, or headliner. These switches are mounted on a horizontal surface, but on the bottom, not the top, of that surface.

Because such switches are mounted on the *bottom* of a horizontal surface, rather than the top, the Alliance argued that it would be impractical to install pull-to-close switches in those locations. Accordingly, the Alliance requested that the standard be amended to exclude power window switches mounted in an overhead location, such as a console in the roof or headliner, from the pull-to-close requirements of S6(c). The petitioner also argued that overhead switches pose little accidental closure risk because of their location and orientation in the vehicle, and that overhead switches would be subject to the ball test if they permit closing through momentary or non-continuous switch actuation.

DaimlerChrysler's petition agreed with these arguments in that it incorporated the Alliance's petition by reference, including its requested exclusion from the pull-to-close operability requirements for switches that are mounted on an overhead console, vehicle roof, or headliner.

We generally agree that overhead switches are much less susceptible to being inadvertently operated because it would be difficult for occupants to lean on them and, consequently, the safety benefit that will accrues from requiring pull-to-close operability for window switches mounted in armrests, door panels, and other locations may or may not apply to switches mounted in overhead locations. This is why NHTSA

chose to exclude most overhead switches from the ball test in the September 2004 final rule.

However, we believe our discretion under section 10308 of SAFETEA–LU is very limited, and it does not provide for exclusions of overhead mounted switches from the pull-to-close design requirement. Therefore, we are denying the petitioner's request for exclusion of power window switches mounted on an overhead console, vehicle roof, or headliner from section S6(c) of FMVSS No. 118.

Regarding the Alliance's concern relating to ambiguity in how overhead window switches are required to operate, we agree that the concept of an overhead switch that operates by pulling ''up'' does not make sense. But we do not agree that the Alliance's interpretation is necessarily correct. The April 2006 final rule states, ''*Any actuation device * * * must operate by pulling away from the surface in the vehicle on which the device is mounted * * *.*'' By itself, this text makes it reasonably unambiguous that an overhead switch must operate by being pulled *downward* since that is the only direction that could practically be considered ''away from'' the roof on the inside of a vehicle. (Of course, this discussion is limited to window *closing* mode). In our opinion, there is not much ambiguity in this.

However, the rule goes on to specify that a horizontally mounted switch ''must operate only when pulled vertically up.'' This appears to be the source of the ambiguity cited by the Alliance because overhead switches can be considered ''horizontally mounted'' even though they are actually upside-down relative to switches mounted on an armrest in a vehicle door.

In order to resolve the ambiguity cited by the Alliance, we are amending the regulatory text of section S6(c) established in the April 2006 final rule to read as follows (added text highlighted in bold print):

> Any actuation device for closing a power-operated window must operate by pulling away from the surface in the vehicle on which the device is mounted. An actuation device for closing a power-operated window must operate when pulled vertically up **(if mounted on the top of a horizontal surface),** or out **(if mounted on a vertical surface), or down (if mounted on the underside of an overhead surface),** or in a direction perpendicular to the surrounding surface if mounted in a sloped orientation, in order to cause the window to move in the closing direction.

In addition to removing the ambiguity with respect to operating characteristics of overhead power window switches, this amended text also further clarifies switch operability for horizontal and vertical mounting locations as well.

This amendment, in specifying more clearly that overhead locations must use ''pull-down'' switches, continues to satisfy the statutory requirement of section 10308 of SAFETEA–LU, which specifies that switches must ''pull up *or out*'' [emphasis added].

Because this modification of the regulatory text is relatively minor and does not change the requirements of the safety standard in any substantive manner, nor expands any costs or burdens associated with the safety standard, we believe that further notice and opportunity for comment regarding the above amended regulatory text is unnecessary.

C. Power Vent Windows

As discussed in section IV.B, above, the September 2004 and April 2006 final rules provided broad applicability for the standard's requirement for pull-to-close power window switch operability. There is currently no exclusion for side-hinged or ''pop-out'' style power vent windows, such as those used in the rear side windows of some minivans and SUVs.

In its petition, the Alliance suggested that in passing section 10308 of SAFETEA–LU, Congress may not have intended for side-hinged power vent windows to be subject to the pull-to-close switch operability requirement. The Alliance reasoned that since Congress, in crafting the statutory language, expressly specified switches that ''raise'' power windows, it intended to cover only those windows that move up and down like conventional side-door windows. The petitioner argued that power vent windows are very different in that they hinge along one edge and open and close by swinging in and out by only a small distance (less than two inches) in order to provide ventilation, and they operate with less force, thereby making a severe injury or fatality due to inadvertent actuation of these windows unlikely. Accordingly, the Alliance requested that the agency amend Standard No. 118 to exclude side-hinged or pop-out vent windows from the pull-to-close operability requirement of S6(c). (As noted above, DaimlerChrysler's petition incorporated the Alliance's petition by reference, including the requested exclusion from the pull-to-close operability requirements for pop-out vent window switches.)

We note that power vent windows were the subject of an earlier comment by the Alliance, as discussed in the preamble to the September 2004 final rule. Specifically, the Alliance had commented that there should be an exclusion from the ''ball test'' for certain switches, based upon the separation distance between the window and the window switch (making it impossible for a child to simultaneously lean on the switch and be in the path of the window). The preamble to the September 2004 final rule acknowledged vent windows as ones where there may be considerable distance separating the window and its control switch.[10] However, the agency declined to adopt the exclusion recommended by the Alliance, and the preamble does not discuss the different operating characteristics of vent windows, which is the particular issue raised by the Alliance in its current petition.

Although, as the Alliance points out, the mandate in section 10308 of SAFETEA–LU (quoted previously) states that it applies to window switches that ''raise'' a window, we interpret ''raise'' to generally mean the same thing as ''close'' when referring to windows in motor vehicles. For example, we note that expression ''put the windows up'' is commonly used to mean ''close the windows,'' even if the windows don't actually move ''up'' in order to close. We believe that the SAFETEA–LU mandate uses ''raise'' in this broader sense and merely reflects the most common type of window-closing motion.

Moreover, the Alliance did not present any reason why it would be difficult (either technologically or economically) to provide pull-to-close switches for power vent windows.

In addition, the Alliance petition assumes that vent windows have inherently less potential for inflicting injury because they hinge on one edge and the amount by which they can open is small compared to conventional side-door windows. The Alliance did not provide any further supporting information, such as measurements comparing the size of vent window openings to the size of a child's head or arm (children's fingers and hands undoubtedly could fit within the opening), or data on the closing force at points along the perimeter of vent windows compared to that of conventional side-door windows. As a result, we have no basis for determining whether vent windows do in fact have negligible injury potential.

We are denying the petitioners' request for an exclusion for side-hinged or pop-out vent windows because: (1)

[10] *See* 69 FR 55517, 55527 (Sept. 15, 2004) (Docket No. NHTSA–2004–19032–1).

We believe the agency's mandate does not provide discretion to exclude any power window switches from the requirements of the statute; (2) it is not clear that any safety risk associated with those windows is negligible, and (3) the safety risk that does exist will be effectively addressed by the requirement for pull-to-close switch operability at minimal cost to manufacturers if given adequate lead time. Since manufacturers can apply the additional lead time granted by this notice (see IV.A, above) to making power vent window switches that are pull-to-close compliant, costs will be minimal.

D. Automatic Reversal-Equipped Windows

In its petition, the Alliance requested an exclusion from the standard's pull-to-close switch operability requirement for power windows equipped with an automatic reversal system meeting section S5 of FMVSS No. 118. That section of the standard contains a performance specification designed to minimize the squeezing force that a power window can exert on a person's body in the event someone becomes entrapped by a closing window. According to the Alliance, the pull-to-close switch requirement provides no additional safety benefit for vehicles equipped with this type of power window automatic reversal safety system, and it is therefore redundant and unnecessary.

DaimlerChrysler's petition went somewhat further, stating that if NHTSA were to grant an exclusion for power windows having S5-compliant automatic reversal capability as the Alliance requested, the agency should extend that exclusion to power windows complying with a similar automatic reversal specification contained in a European safety standard. The petitioner stated that this European specification, specifically S5.8.3 of the ECE R21, provides an equivalent level of safety as compared to S5 of FMVSS No. 118. DaimlerChrysler acknowledged that there are slight differences between the two sets of automatic reversal requirements, but it argued that, fundamentally, they provide the same level of protection, as the maximum allowable squeezing force of 100 Newtons (about 22.5 lbs.) is identical under both standards.

DaimlerChrysler stated that its Mercedes-Benz unit began production of vehicles equipped with ECE R21-compliant automatic power window reversal systems around 1990, and the feature has been standard on Mercedes-Benz vehicles sold in the U.S. since 1997. According to the petitioner, there have been over 1.8 million vehicles sold in the U.S. equipped with ECE-type automatic reversal, and that company stated that it has never been informed of an injury associated with the reaction time of those ECE-type systems. Accordingly, DaimlerChrysler argued that a requirement for pull-to-close switch operability for vehicles equipped with ECE R21-compliant automatic reversal capability would be redundant and unnecessary.

As noted in section IV.B above, vehicle windows are broadly covered by the requirement for pull-to-close power window switches of the April 2006 final rule. There are currently no exclusions; all switches controlling power windows in vehicles covered by the standard must meet the ''pull up or out'' operability requirement. This is consistent with the fact that the SAFETEA–LU legislation broadly requires power windows to have pull-up or pull-out switches and does not stipulate any authority for NHTSA to make exclusions.

We generally agree that switch design has less safety importance for power window systems incorporating automatic reversal capability because that feature accomplishes the desired safety purpose of protecting occupants from injury or entrapment and can safeguard occupants in a variety of situations, not just those involving inadvertent switch actuation. We used these rationales in excluding those switches from the ball test in the September 2004 final rule.

However, when establishing the ball test in 2004, NHTSA was working under its usual Safety Act authority in rulemaking, and we chose to exercise discretion in allowing an exclusion from the ball test for windows having S5-compliant automatic reversal capability, as well as an exclusion for switches mounted in overhead locations.

In the current situation, NHTSA acted in response to explicit direction from Congress. The statute does not provide specific authority for the agency to establish exclusions, and furthermore, there is no legislative history associated with SAFETEA–LU to suggest that NHTSA has discretion in implementing that legislation. We also note that the costs associated with the pull-to-close operability requirement are minimal, and such switches may provide a margin of safety by limiting the circumstances under which there would be a need to rely on automatic reversal capability.

For these reasons, we have decided to deny both the Alliance's and DaimlerChrysler's requests for an exclusion from the pull-to-close switch operability requirement of S6(c) of the safety standard. Power windows equipped with automatic reversal capability are not excluded from the requirement to have pull-up-or pull-out window switches regardless of whether that capability complies with section S5 of FMVSS No. 118 or relevant sections of ECE–R21.

On February 28, 2008, the President signed the Cameron Gulbransen Kids Transportation Safety Act of 2007. Section 2(a) of this law requires that within 18 months of enactment, NHTSA must ''initiate a rulemaking to consider prescribing or amending Federal motor vehicle safety standards to require power windows and panels on motor vehicles to automatically reverse direction when such power windows and panels detect an obstruction to prevent children and others from being trapped, injured, or killed.''

The new law does not influence our decision to deny petitioner's request for an exclusion from the pull-to-close requirement for switches used in automatic reversal-equipped power window systems. As we have already explained, the SAFETEA–LU statute did not allow for such an exclusion. The fact that the new Cameron Gulbransen Kids Transportation Safety Act of 2007 could result in an automatic reversal mandate does not affect the pull-to-close switch mandate.

The new law might have an impact on applicability of the ball test because the 2004 rule which established that test specified that vehicles with Standard No. 118-compliant automatic reversal capability are excluded from it. However, this is not directly relevant to the current petitions for reconsideration, which are concerned only with the pull-to-close requirement, not the ball test, and our decision set forth in this notice to deny the requests related to automatic reversal is unaffected.

V. Benefits and Costs

Section XI of the September 2004 final rule summarized the benefits associated with our amendments to FMVSS No. 118 to require safer power window switches, and Section XII of that final rule described the associated costs. In summary, those sections of the final rule stated that based upon all available evidence, the agency expects that, on average, at least one child fatality and at least one serious injury (*e.g.,* amputation, brain damage from near suffocation) per year could be prevented by the requirements of the final rule. As discussed in that final rule, we believe that this is a conservative estimate and that actual benefits are likely to be higher. In terms

of costs, we stated in the September 2004 final rule that we expect that the new requirements will impose very little cost burden on vehicle manufacturers, particularly given the lead time provided (*i.e.,* compliance date of October 1, 2008).

In the April 12, 2006 final rule responding to petitions for reconsideration, we stated in Section VII that the technical changes arising from that rule (primarily changes in the mode of switch operation and/or in the shape of surrounding trim pieces) would not significantly affect the operation of power windows. We stated our expectation that the cost to manufacturers, was expected to be negligible, given that any necessary switch modifications would presumably be incorporated during the course of normal product design cycles.

In terms of today's final rule responding to petitions for reconsideration, our decision to grant petitioners' requests for additional lead time to implement the standard's requirement for power window switches with pull-to-close operability again is intended to ensure that safer switch requirements are implemented as part of normal vehicle design cycles. The other change to the standard is for purposes of clarification and is not expected to have any measurable cost impact for manufacturers.

Thus, the agency has determined that the amendments resulting from this final rule responding to petitions for reconsideration will not appreciably change the costs and benefits reported in the September 2004 final rule. In light of today's amendments, we continue to believe that there is adequate lead time to allow manufacturers to comply with the amended standard without appreciable cost. Accordingly, the agency has decided that the estimates in that document remain valid and that additional analysis is not required.

VI. Rulemaking Analyses and Notice

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866.

Today's rule responding to petitions for reconsideration amends the agency's April 2006 final rule concerning switches for windows and other items, which itself amended the agency's September 2004 rule concerning these items. Today's rule provides two additional years of lead time for compliance with the April 2006 pull-to-close operability requirement for power window switches. It also makes a clarifying amendment. The rule does not impose new obligations on manufacturers.

As we stated in the preamble to the April 2006 final rule, on average, we expect that the September 2004 final rule for safer power window switches will result in annual benefits that are expected to be a savings of one child's life and the avoidance of at least one serious injury, and the April 2006 final rule responding to petitions for reconsideration maintained that anticipated level of benefits. Today's final rule will also maintain the anticipated benefits of those rules, particularly given that the additional lead time provided will be limited only to the pull-to-close operability requirement for power window switches and not the inadvertent actuation performance test. Therefore, the impacts of these amendments are so minor that a full regulatory evaluation is not required.

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 final rule under the Regulatory Flexibility Act. I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The rationale for this certification is that the present final rule responding to petitions for reconsideration only provides additional lead time for the pull-to-close operability requirement and makes a minor clarifying amendment.

D. Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have federalism implications because the rule does not 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.''

Further, no consultation is needed to discuss the preemptive effect of today's rule. NHTSA rules can have preemptive effect in at least two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemptive provision: ''When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.'' 49 U.S.C. 30103(b)(1). It is this statutory command that preempts State law, not today's rulemaking, so consultation would be inappropriate.

In addition to the express preemption noted above, the Supreme Court has also recognized that State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes their State requirements unenforceable. *See Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000). NHTSA has not outlined such potential State requirements in today's rulemaking, however, in part because such conflicts can arise in varied contexts, but it is conceivable that such a conflict may become clear through subsequent experience with today's requirements. NHTSA may opine on such conflicts in the future, if warranted. *See id.* at 883–86.

E. Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

F. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19855, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

Although this final rule responding to petitions for reconsideration is part of a rulemaking expected to have a positive safety impact on children, it is not an economically significant regulatory action under Executive Order 12866. Consequently, no further analysis is required under Executive Order 13045.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There is not any information collection requirement associated with this final rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, (15 U.S.C. 272) directs the agency to evaluate and use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or is 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. The NTTAA directs us to provide Congress (through OMB) with explanations when we decide not to use available and applicable voluntary consensus standards. The NTTAA does not apply to symbols.

Currently, there are no voluntary consensus standards directly related to power-operated window switch design. However, NHTSA will consider any such standards as they become available.

I. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

This final rule responding to petitions for reconsideration will not result in the expenditure by State, local, or tribal governments or the private sector, in the aggregate, of more than $100 million annually. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

J. 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.

K. Regulatory Identifier Number (RIN)

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

L. Privacy Act

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

List of Subjects in 49 CFR Parts 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

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

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

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

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

■ 2. Section 571.118 is amended by revising S2 and S6(c) to read as follows:

§ 571.118 Standard No. 118; Power-operated window, partition, and roof panel systems.

* * * * *

S2. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, and trucks with a gross vehicle weight rating of 4,536 kilograms or less. This standard's inadvertent actuation performance

requirements of S6(a) need not be met for vehicles manufactured before October 1, 2008. The standard's pull-to-close switch operability requirements of S6(c) need not be met for vehicles manufactured before October 1, 2010.

* * * * *

S6. * * *

* * * * *

(c) Any actuation device for closing a power-operated window must operate by pulling away from the surface in the vehicle on which the device is mounted. An actuation device for closing a power-operated window must operate only when pulled vertically up (if mounted on the top of a horizontal surface), or out (if mounted on a vertical surface), or down (if mounted on the underside of an overhead surface), or in a direction perpendicular to the surrounding surface if mounted in a sloped orientation, in order to cause the window to move in the closing direction.

* * * * *

Issued: July 1, 2008.

Nicole R. Nason,

Administrator.

[FR Doc. E8–15310 Filed 7–3–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No 080630803–8805–01]

RIN 0648–AW99

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Expansion of Emergency Fishery Closure Due to the Presence of the Toxin that Causes Paralytic Shellfish Poisoning

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

ACTION: Temporary rule; emergency action; expansion of effective area; request for comments.

SUMMARY: This action expands an area currently closed to the harvest of bivalve shellfish, except for sea scallop adductor muscles harvested and shucked at sea, identified in a temporary final rule initially published on October 18, 2005. The regulations contained in the temporary rule, emergency action, published on October 18, 2005, and subsequently extended several times at the request of the U.S. Food and Drug Administration (FDA), were effective through December 31, 2008. This temporary rule supersedes the previous rule. This rule will expire on December 29, 2008. This temporary rule expands the closure area of Federal waters previously closed since the original emergency closure. The FDA has determined that current oceanographic conditions and alga sampling data warrant expanding the Northern Temporary Paralytic Shellfish Poison (PSP) Closure Area to encompass the current closure area and an adjacent area in the Federal waters southeast of Massachusetts around Nantucket Island and eastward to the George's Bank PSP Closure Area. This expanded area is closed to the harvest of bivalve molluscan shellfish, except for sea scallop adductor muscles harvested and shucked at sea. The remaining segment of the Southern Temporary PSP Closure Area continues to be closed to the harvest of whole or roe-on scallops only.

DATES: Effective from July 2, 2008 to December 29, 2008. Comments must be received by August 6, 2008.

ADDRESSES: Copies of the Small Entity Compliance Guide, the emergency rule, the Environmental Assessment, and the Regulatory Impact Review prepared for the October 18, 2005, reinstatement of the September 9, 2005, emergency action and subsequent extensions of the emergency action, are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. These documents are also available via the internet at *http://www.nero.noaa.gov/nero/hotnews/redtide/index.html.*

You may submit comments, identified by RIN 0468–AW99, by any one of the following methods:

- Mail: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope, ''Comments on PSP Closure.''
- Fax: (978) 281–9135.
- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Edward Stern, Fishery Management Specialist, phone: (978) 281–9177, fax: (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

On June 10, 2005, the FDA requested that NMFS close an area of Federal waters off the coasts of New Hampshire and Massachusetts to fishing for bivalve shellfish intended for human consumption. On June 16, 2005, NMFS published an emergency rule (70 FR 35047) closing the area recommended by the FDA (i.e., the Temporary PSP Closure Area), through September 30, 2005. On July 7, 2005 (70 FR 39192), the emergency rule was modified to facilitate the testing of shellfish for the toxin that causes PSP by the FDA and/or FDA-approved laboratories by incorporating a provision that allowed for the issuance of a Letter of Authorization (LOA) from the NMFS Regional Administrator. On September 9, 2005 (70 FR 53580), the emergency regulation was once again modified by a provision that divided the Temporary PSP Closure Area into northern and southern components. The Northern Temporary PSP Closure Area remained closed to the harvest of all bivalve molluscan shellfish, while the Southern Temporary PSP Closure Area was reopened to the harvest of Atlantic surfclams, ocean quahogs, and sea scallop adductor muscles harvested and shucked at sea. The rule was extended as published on September 9, 2005, on October 3, 2005 (70 FR 57517); reinstated on October 18, 2005, (70 FR 60450) to correct a technical error; extended on December 28, 2005 (70 FR 76713); and subsequently on June 30, 2006 (71 FR 37505); January 4, 2007 (72 FR 291); June 27, 2007 (72 FR 35200); and December 31, 2007 (72 FR 74207). On May 18, 2007, the FDA indicated that it could not support the re-opening of the Northern Temporary PSP Closure Area due to insufficient analytical data from the area, and recommended the area remain closed indefinitely.

Provisions Implemented under this Emergency Rule

On June 25, 2008, NMFS received a request from the FDA to revise and expand the Northern Temporary PSP Closure Area after samples of shellfish