TABLE 1436–1—UNIFORM CONTRACT FORMAT—Continued

Section	Title
C	Specifications/Drawings.
D	Packaging and marking.
E	Inspection and acceptance.
F	Deliveries or performance.
G	Contract administration data.
H	Special contract requirements.
Part II—Contract Clauses	
I	Contract clauses.
Part III—List of Documents, Exhibits, and Other Attachments	
J	List of attachments.
Part IV—Representations and Instructions	
K	Representations, certifications, and other statements of offerors.
L	Instructions, conditions, and notices to offerors.
M	Evaluation factors for award.

PART 1452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. Add new § 1452.201–70 to read as follows:

§ 1452.201–70 Authorities and delegations.

As prescribed in § 1401.670–1, insert the following clause:

AUTHORITIES AND DELEGATIONS (XXX 2011)

(a) The Contracting Officer is the only individual authorized to enter into or terminate this contract, modify any term or condition of this contract, waive any requirement of this contract, or accept nonconforming work.

(b) The Contracting Officer will designate a Contracting Officer's Representative (COR) at time of award. The COR will be responsible for technical monitoring of the contractor's performance and deliveries. The COR will be appointed in writing, and a copy of the appointment will be furnished to the Contractor. Changes to this delegation will be made by written changes to the existing appointment or by issuance of a new appointment.

(c) The COR is not authorized to perform, formally or informally, any of the following actions:

(1) Promise, award, agree to award, or execute any contract, contract modification, or notice of intent that changes or may change this contract;

(2) Waive or agree to modification of the delivery schedule;

(3) Make any final decision on any contract matter subject to the Disputes Clause;

(4) Terminate, for any reason, the Contractor's right to proceed;

(5) Obligate in any way, the payment of money by the Government.

(d) The Contractor shall comply with the written or oral direction of the Contracting Officer or authorized representative(s) acting within the scope and authority of the appointment memorandum. The Contractor need not proceed with direction that it considers to have been issued without proper authority. The Contractor shall notify the Contracting Officer in writing, with as much detail as possible, when the COR has taken an action or has issued direction (written or oral) that the Contractor considers to exceed the COR's appointment, within 3 days of the occurrence. Unless otherwise provided in this contract, the Contractor assumes all costs, risks, liabilities, and consequences of performing any work it is directed to perform that falls within any of the categories defined in paragraph (c) prior to receipt of the Contracting Officer's response issued under paragraph (e) of this clause.

(e) The Contracting Officer shall respond in writing within 30 days to any notice made under paragraph (d) of this clause. A failure of the parties to agree upon the nature of a direction, or upon the contract action to be taken with respect thereto, shall be subject to the provisions of the Disputes clause of this contract.

(f) The Contractor shall provide copies of all correspondence to the Contracting Officer and the COR.

(g) Any action(s) taken by the Contractor, in response to any direction given by any person acting on behalf of the Government or any Government official other than the Contracting Officer or the COR acting within his or her appointment, shall be at the Contractor's risk.

(End of clause)

10. In § 1452.228–7, in paragraph (a), remove the reference "1428.311–2" and add in its place "1428.311–1."

[FR Doc. 2011–6646 Filed 3–21–11; 8:45 am]

BILLING CODE 4310–RF–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2009–0093]

Federal Motor Vehicle Safety Standards; Roof Crush Resistance

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

ACTION: Response to petition for reconsideration.

SUMMARY: This document responds to a petition for reconsideration of a final rule that upgraded the agency's safety standard on roof crush resistance. The petition was submitted by the National Truck Equipment Association (NTEA). After carefully considering the petition, we are denying it.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Christopher J. Wiacek, NHTSA Office of Crashworthiness Standards, telephone 202–366–4801. For legal issues, you may call J. Edward Glancy, NHTSA Office of Chief Counsel, telephone 202–366–2992. You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Multi-Stage Vehicles and the Multi-Stage Certification Scheme

1. Multi-Stage Vehicles

Multi-stage vehicles are motor vehicles that are produced in two or more stages. These vehicles are not produced by a single manufacturer on an assembly line as is the typical passenger car or sport utility vehicle. Instead, one manufacturer produces an "incomplete vehicle" which requires further manufacturing operations to become a completed vehicle. As defined in 49 CFR 567.3, an incomplete vehicle is an assemblage consisting, at a minimum, of chassis (including the frame) structure, power train, steering system, suspension system, and braking system, in the state that those systems are to be part of the completed vehicle, but requires further manufacturing operations to become a completed vehicle.[1]

Most incomplete vehicles are manufactured by large or substantial manufacturers, such as General Motors Company ("GM"), Ford Motor Company ("Ford"), Chrysler Group LLC ("Chrysler"), Navistar International Corporation, and Freightliner. Most final-stage manufacturers are small businesses.[2] Multi-stage vehicles are aimed at a variety of niche markets, most of which are too small to be serviced economically by single-stage manufacturers, which tend to have large assembly facilities in a small number of locations.

In terms of degree of completeness, the spectrum of incomplete vehicles ranges from a stripped chassis to a chassis-cab. A stripped chassis is an incomplete vehicle without an occupant compartment. A chassis-cab is an incomplete vehicle, with a completed occupant compartment, that requires only the addition of cargo-carrying, work-performing, or load-bearing components to perform its intended functions. *See* 49 CFR 567.3. In appearance, a chassis-cab looks like a pickup truck without a box or truck bed behind the cab. A type of incomplete vehicle that falls between stripped chassis and chassis-cabs on this spectrum is a chassis cutaway, which is an incomplete vehicle delivered with a partial occupant compartment that does not have a rear wall. A chassis cutaway may be visualized as a pickup truck or van without a rear wall behind the driver and without a box or truck bed behind the cab.

In a typical situation, the incomplete vehicle is delivered to the final-stage manufacturer which adds work-performing or cargo-carrying components to complete the vehicle. For example, the incomplete vehicle may be a chassis-cab, *i.e.,* have a cab, but nothing built on the frame behind the cab. As completed, it may be a dry freight van (box truck), dump truck, tow truck, or plumber's truck. A cutaway may be completed into a vehicle in which the driver can enter the rear area without leaving the vehicle, such as a small airport shuttle, a small recreation vehicle, or some service trucks used by tradesmen. A stripped chassis may be completed into a bus or large recreation vehicle.

In some cases, there may also be intermediate-stage manufacturers involved in the production of a multi-stage motor vehicle.

2. Safety Standards and Certification

NHTSA issues Federal motor vehicle safety standards (FMVSS) applicable to new motor vehicles and certain items of motor vehicle equipment under the authority of the National Traffic and Motor Vehicle Safety Act, as amended and codified as Chapter 301 of Title 49 of the United States Code, "Motor Vehicle Safety" (Vehicle Safety Act).[3] Manufacturers are prohibited from manufacturing for sale, selling or importing into the United States motor vehicles and equipment subject to an applicable FMVSS unless the vehicle or equipment complies with the standard and is covered by a certification issued pursuant to 49 U.S.C. 30115.[4] This prohibition is not absolute. The prohibition on selling non-compliant vehicles does not apply to a person who establishes that the person had no reason to know, despite exercising reasonable care, that a motor vehicle or equipment does not comply with applicable FMVSSs. *See United States* v. *Chrysler Corp.,* 158 F.3d 1350, 1355 (DC Cir. 1998).

Under the certification provision of the Vehicle Safety Act, a manufacturer is required to certify that the vehicle or equipment complies with applicable FMVSSs. A person may not issue the certificate, if in exercising reasonable care, the person has reason to know that the certificate is false or misleading in a material respect. The certification provision recognizes distributions of certification responsibilities for multi-stage vehicles between final-stage and incomplete motor vehicle manufacturers.[5]

The Vehicle Safety Act employs a self-certification process, which imposes responsibility on the manufacturer(s) to certify the vehicle or equipment item as complying with the applicable FMVSS. In this process, the manufacturer(s) do not submit information for certification to NHTSA and NHTSA does not certify any motor vehicles or motor vehicle equipment as complying with applicable FMVSS. *See* 73 FR 79207, 79212 (Dec 24, 2008).

Many of NHTSA's most important safety standards specify performance requirements in the context of a crash test or some other kind of test that may

[1] The definition of "incomplete vehicle" also includes incomplete trailers, and many manufacturers of incomplete trailers are not large businesses.

[2] As defined by The Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601(3) (2011).

[3] 49 U.S.C. 30101 *et seq.*

[4] 49 U.S.C. 30112(a).

[5] The statute provides in pertinent part: If the intermediate or final-stage manufacturer elects to assume responsibility for compliance with the standard covered by the documentation provided by an incomplete motor vehicle manufacturer, the intermediate or final-stage manufacturer shall notify the incomplete motor vehicle manufacturer in writing within a reasonable time of affixing the certification label. 49 U.S.C. 30115(b).

significantly damage the tested vehicle. The specific tests specified in the agency's crashworthiness standards are carefully developed to simulate real world crashes, thereby assuring that vehicle occupants are provided protection in actual driving situations.

NHTSA's motor vehicle safety standards contain the test conditions and procedures that the agency will use to evaluate the performance of the vehicle or equipment being tested for compliance with the particular safety standard. NHTSA follows these specified test procedures and conditions when conducting its compliance testing. However, manufacturers are not required to test their products in the manner specified in the relevant safety standard, or even to test the product at all, as their basis for certifying that the product complies with all relevant standards.

A manufacturer may evaluate its products in various ways to determine whether the vehicle or equipment will comply with the safety standards and to provide a basis for its certification of compliance. Depending on the circumstances, the manufacturer may be able to base its certification on actual testing (according to the procedure specified in the standard or some other procedure), computer simulation, engineering analysis, technical judgment or other means.[6]

NHTSA has developed regulations for certification and specific certification regulations for multi-stage vehicles. The certification process is governed by 49 CFR part 567 *Certification.* 49 CFR 567.5 sets forth the certification requirements for manufacturers of vehicles manufactured in two or more stages. Certification responsibilities for the applicable FMVSSs are communicated between incomplete vehicle manufacturers and final-stage manufacturers with the use of an incomplete vehicle document (IVD). Each manufacturer of an incomplete vehicle, with limited exceptions,[7] assumes responsibility for certification-related duties under the Vehicle Safety Act with respect to the vehicle as further manufactured or completed by the final-stage manufacturer, to the extent that the vehicle is completed in accordance with the IVD.[8]

Final-stage manufacturers have complementary duties. Pursuant to 49 CFR 567.5(d), final-stage manufacturers assume responsibility for certification-related matters under the Vehicle Safety Act, except to the extent that the incomplete vehicle manufacturer has expressly assumed responsibility for standards related to systems and components it supplied and except to the extent that the final-stage manufacturer completed the vehicle in accordance with the prior manufacturers' IVD or any addendum furnished pursuant to 49 CFR part 568, as to the FMVSSs fully addressed therein.[9]

The incomplete vehicle manufacturer furnishes an IVD for incomplete vehicles pursuant to 49 CFR 568.4. For each applicable FMVSS, the incomplete vehicle manufacturer makes one of three affirmative statements in the IVD: (1) A Type 1 statement that the vehicle when completed will conform to the standard if no alterations are made in identified components; (2) a Type 2 statement that sets forth the specific conditions of final manufacture under which the incomplete vehicle manufacturer specifies that the completed vehicle will conform to the standard; or (3) a Type 3 statement that conformity to the standard cannot be determined based on the incomplete vehicle as supplied, and the incomplete vehicle manufacturer makes no representation as to conformity with the standard.

When the IVD makes a Type 1 or Type 2 statement, there is "pass-through" certification unless a subsequent manufacturer manufactures the vehicle in a way as to violate the language in the IVD. The final-stage manufacturer can rely on the IVD to certify the vehicle to a particular standard.

If a vehicle that is completed and certified in accordance with the agency's regulations is altered by an individual or manufacturer before the first retail sale, that individual or manufacturer is known as a vehicle "alterer."[10] An alterer has different requirements detailed in 49 CFR 567.7. In essence, an alterer must certify and affix a label stating that the vehicle was altered and remains in compliance with all applicable FMVSS affected by the alteration.[11]

3. 2005 and 2006 Rules on Certification of Vehicles Built in Two or More Stages

On February 14, 2005, NHTSA published in the **Federal Register** (70 FR 7414) a final rule amending four different parts of Title 49 Code of Federal Regulations to address various certification issues related to vehicles built in two or more stages. Among other things, the rule expanded the application of pass-through certification, which, as adopted in the 1970s applied only to chassis-cabs, so that pass-through certification can be used for multi-stage vehicles based on other types of incomplete vehicles.[12]

In the preamble to the February 2005 final rule, and in other documents in that rulemaking, NHTSA discussed the history of issues related to the certification of vehicles built in two or more stages, which have long been sources of contention to many, including between incomplete vehicle manufacturers and final-stage manufacturers.

NTEA petitioned for reconsideration of the February 2005 multi-stage certification final rule. On May 15, 2006, NHTSA responded to that organization's petition in a final rule; response to petition for reconsideration published in the **Federal Register** (71 FR 28168). While the agency made some changes in the February 2005 final rule in response to the petition, it denied the remainder of the petition for reconsideration that addressed issues regarding certification of multi-stage vehicles and responsibility for recalls of multi-stage vehicles.

In its petition for reconsideration of the February 2005 certification final rule, NTEA challenged the regulatory scheme of certifying multi-stage vehicles.[13] It repeated its historical mantra that the provided IVDs are unworkable, insufficient, and that it is not possible for a final-stage manufacturer to comply with the agency's multi-stage certification regulations. Furthermore, NTEA argued that even if compliance were possible, it would be economically ruinous to NTEA's members.

In denying most aspects of NTEA's petition for reconsideration, NHTSA provided detailed responses to these and other arguments. We explained that certification is important for safety and that the certification scheme is "workable."

[6] 71 FR 28168, 28183–28184 (May 15, 2006).

[7] *See* 70 FR 7414, 7432–33 (February 14, 2005); 49 CFR 567.5(b) and (c).

[8] 49 CFR 567.5(b)(1).

[9] 49 CFR 567.5(d)(1).

[10] 49 CFR 567.3

[11] While NTEA's petition for reconsideration combines alterers and final-stage manufacturers into one definition, NHTSA notes that the two types are different and subject to different regulations. Namely, an alterer will not usually receive an IVD or have the potential for pass-through certification. As such, NHTSA will refer to these two entities separately in this document.

[12] *See* 49 CFR 567.5 (1977 and 1978); 42 FR 37814 (July 25, 1977).

[13] We note that NTEA submitted its comments on NHTSA's notice of proposed rulemaking ("NPRM") to upgrade the roof crush resistance standard in November 2005. Those comments, which addressed a number of multi-stage issues, were thus submitted after the agency had published its February 2005 final rule on certification of multi-stage vehicles but before NHTSA responded to NTEA's petition for reconsideration of the certification rule on May 15, 2006.

As part of responding to NTEA's claim in its petition to the 2005 Rule that the existing IVD's are not workable, we carefully examined the certification statements included in an IVD that NTEA appended to its petition.[14] The IVD was for the General Motors (GM) C/K chassis-cab (this is comparable to the full size GM pickup trucks). We analyzed certification statements for FMVSS Nos. 105, *Hydraulic and Electric Brake Systems;* 135, *Light Vehicle Brake Systems;* 204, *Steering Control Rearward Displacement;* 201, *Occupant Protection in Interior Impact;* 212, *Windshield Mounting;* 219, *Windshield Zone Intrusion;* 214, *Side Impact Protection;* 208, *Occupant Crash Protection;* 216, *Roof Crush Resistance;* and 301, *Fuel System Integrity.* In each instance, we showed why the IVD was workable and why various limitations were reasonable. We also explained that issues regarding impracticability should be decided in the context of rulemaking for each FMVSS.[15]

As we further explained, in recognition of the fact that incomplete vehicle manufacturers do not control work performed by final-stage manufacturers and can fairly anticipate only some things but not everything done to the incomplete vehicle by final-stage manufacturers, the regulatory system of "pass-through" certification in which the final-stage manufacturers have responsibility for certification of the vehicle[16] but may rely on IVDs is reasonable. The IVD commonly provides the basis for the final-stage manufacturer's certification with enumerated FMVSS. The IVD is a general document that accompanies the incomplete vehicle, and typically is not limited to one application (addition of one type of body or one type of equipment), but contains limits and conditions in light of the nature and capacity of the chassis and potential problems resulting from completion of an incomplete vehicle.

We stated that NTEA sought to remove the certification responsibility from final-stage manufacturers and impose much of that responsibility on incomplete vehicle manufacturers. Also, we explained that NTEA's petition ignored the fact that incomplete vehicle manufacturers do not control what final-stage manufacturers do with the incomplete vehicles.

As we noted, a system of pass-through certification has existed for more than 25 years, and in that time many multi-stage vehicles have been built and certified by final-stage manufacturers. This fact alone indicates that the system is workable and operates as intended. Moreover, as we pointed out, the availability of multi-stage vehicles belies NTEA's position.[17] And, contrary to that petitioner's position, market forces create business reasons for incomplete vehicle manufacturers to provide workable IVDs. We noted that NTEA's argument ignores the fact that the system is not broken, as evidenced by the many types of multi-stage vehicles that are being manufactured and offered for sale, including those manufactured by NTEA members. These include ambulances, service trucks, small school buses, mid-size buses, tow trucks and vans.[18] The fact that vehicles such as these are being made indicates that the IVDs are workable. We also noted that NTEA ignored the cooperative relationships between incomplete and final-stage manufacturers.[19]

We also explained that many resources are available to final-stage manufacturers.[20] As a group, final-stage manufacturers do not operate in an informational vacuum. In addition to the IVDs, these resources include upfitter[21] guides from incomplete vehicle manufacturers, incomplete vehicle manufacturer help lines, the final-stage manufacturers' own experience and judgment, and commercially available software.

In our May 15, 2006 response to petitions for reconsideration of the February 2005 rule, we explained that certification serves an important safety function in the multi-stage vehicle business. Many multi-stage vehicles carry people and important cargo—from school children on school buses to liquid fuel on propane and gasoline trucks. The safety need for certification of compliance with FMVSS in these types of vehicles is uncontroverted.[22]

B. May 2009 Final Rule Upgrading FMVSS No. 216, Roof Crush Resistance

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, added a section to the Vehicle Safety Act titled Vehicle rollover prevention and crash mitigation, codified at 49 U.S.C. 30128. Subsection (a) required the Secretary to initiate rulemaking proceedings, for the purpose of establishing rules or standards that will reduce vehicle rollover crashes and mitigate deaths and injuries associated with such crashes for motor vehicles with a gross vehicle weight rating (GVWR) of not more than 4,536 kilograms (10,000 pounds). Subsection (d) required that one of the rulemaking proceedings initiated under subsection (a) was to establish performance criteria to upgrade FMVSS No. 216 relating to roof strength for driver and passenger sides, and expressly required issuance of a final rule.

On May 12, 2009, as part of a comprehensive plan for reducing the serious risk of rollover crashes and the risk of death and serious injury in those crashes, NHTSA published in the **Federal Register** (74 FR 22348) a final rule substantially upgrading FMVSS No. 216, *Roof Crush Resistance.* The upgraded standard is designated FMVSS No. 216a, *Roof Crush Resistance; Upgraded Standard.*

First, for the vehicles previously subject to the standard, *i.e.,* passenger cars and multipurpose passenger vehicles, trucks and buses with a Gross Vehicle Weight Rating (GVWR) of 2,722 kilograms (6,000 pounds)[23] or less, the rule doubled the amount of force the vehicle's roof structure must withstand in the specified test, from 1.5 times the vehicle's unloaded weight to 3.0 times the vehicle's unloaded weight. We note that this value is sometimes referred to as the strength-to-weight ratio (SWR), *e.g.,* a SWR of 1.5, 2.0, 2.5, and so forth.

Second, the rule extended the applicability of the standard so that it will also apply to vehicles with a GVWR greater than 6,000 pounds, but not greater than 10,000 pounds. The rule established a force requirement of 1.5 times the vehicle's unloaded weight for these newly included vehicles.

Third, the rule required all of the above vehicles to meet the specified force requirements in a two-sided test, instead of a single-sided test. For the two-sided test, the same vehicle must meet the force requirements when tested

[14] 71 FR at 28177–28183 (section titled "The Existing IVDs Are Workable").

[15] 71 FR at 28186.

[16] Incomplete vehicles are classified as original equipment items. 70 FR 7414, 7418 (Feb. 14, 2005). *See* 49 U.S.C. § 30102(a) (definitions of motor vehicle and motor vehicle equipment).

[17] 71 FR at 28176 (section titled "The Availability of Multistage Vehicles Belies NTEA's Position") and at 28184–85 (section titled "NHTSA's Market Forces Argument Is Justified and Consistent with the Multistage Vehicle Market").

[18] *See, e.g.,* NTEA comments, NHTSA–2005–22143–0108, p.1.

[19] We cited the example of General Motors' relationships with final-stage manufacturers it refers to as "Special Vehicle Manufacturers." 71 FR at 28185.

[20] 71 FR at 28183–28184 (section titled "Additional Resources Available to Final-Stage Manufacturers").

[21] Final-stage manufacturers are sometimes referred to as "upfitters" in the trade. *See generally* 71 FR at 28174.

[22] *See* 71 FR at 28175–28176.

[23] FMVSS No. 216(a) references both kilograms and pounds. For ease of reading, we will refer to the pound measurement in this document.

first on one side and then on the other side of the vehicle.

Fourth, the rule established a new requirement for maintenance of headroom, *i.e.,* survival space, during testing in addition to the existing limit on the amount of roof crush.

NHTSA included a number of special provisions to address the concerns of multi-stage manufacturers, alterers, and small volume manufacturers. The rule excluded from FMVSS No. 216a multi-stage trucks with a GVWR greater than 6,000 pounds not built using a chassis-cab or using an incomplete vehicle with a full exterior van body, *i.e.,* NHTSA extended standard No. 216a to only multi-stage trucks in this weight range for which the incomplete vehicle manufacturer provided a completed roof structure.

The rule permitted vehicles manufactured in two or more stages, other than chassis-cabs, and vehicles that are changed in certain ways to raise the height of the roof, to be certified to the roof crush requirements of FMVSS No. 220, *School Bus Rollover Protection,* instead of FMVSS No. 216a.

The regulation added a test specification that provided for the removal of added structures prior to testing on vehicles built on a chassis-cab incomplete vehicle if some portion of the added body structure is above the height of the incomplete vehicle. It also provided additional leadtime for vehicles produced in two or more stages and altered vehicles.[24]

C. Challenge by NTEA

NTEA filed a petition for review of the May 2009 final rule in the United States Court of Appeals for the Sixth Circuit. That organization had submitted comments during the rulemaking opposing the agency's proposed revisions with respect to multi-stage vehicles.

D. Consent Motion To Stay Briefing Schedule

NHTSA filed with the Court a motion for a stay of the briefing schedule. The agency stated that it believed the Court's consideration of the challenge by NTEA would be facilitated by a fuller response to the comments that organization had submitted during the rulemaking, which would permit both NTEA and the Court to more fully address the agency's rationale. NHTSA also noted that petitions for reconsideration of the rule were pending before the agency. NTEA consented to the motion and the Court granted a six-month stay of the briefing schedule on October 2, 2009.

E. April 2010 Further Response to NTEA Comments

On April 7, 2010, NHTSA published in the **Federal Register** (75 FR 17590) a document providing a further response to the comments submitted by NTEA in the roof crush resistance rulemaking (hereinafter referred to as the "Further Response"). The agency also published two other documents related to the May 2009 final rule. One of those documents denied two petitions for reconsideration of that rule.[25] Those petitions requested, among other things, that the agency apply the same, more stringent strength-to-weight ratio requirement to heavier light vehicles, *i.e.,* ones with a GVWR greater than 6,000 pounds as it had applied to other light vehicles. The other document was a correcting rule.[26]

In the Further Response, we provided a detailed discussion of the multi-stage issues in the rulemaking to upgrade FMVSS No. 216. Among other things, we discussed a section included in the NPRM concerning multi-stage issues, provided an overview of the comments we received on multi-stage issues, including comments submitted by NTEA, the Advocates for Highway Safety ("Advocates"), National Mobility Equipment Dealers Association ("NMEDA") and Recreational Vehicle Industry Association ("RVIA"). We also discussed our response to the comments about multi-stage issues included in the preamble to our May 2009 final rule.

In the Further Response, we provided a detailed further response to NTEA's comments. We explained that, as a general matter, NTEA's comments on the agency's proposal to upgrade FMVSS No. 216 centered on two premises: (1) NHTSA's assumption that pass-through certification is available is invalid; and (2) because NHTSA's pass-through certification scheme is invalid, NHTSA's analysis of the rule's impact and costs are flawed. The end result, according to NTEA, was that NHTSA's regulation on roof crush is impracticable for multi-stage vehicles, and, therefore, NHTSA's roof crush regulations should not include any requirements for multi-stage vehicles.

We noted that to reach NTEA's conclusion—FMVSS No. 216a should not apply to multi-stage vehicles—one has to be of the view that the certification scheme for multi-stage vehicles, which has been in place for several decades, is unworkable and invalid, as applied to requirements for chassis-cabs under FMVSS No. 216a.[27]

We rejected NTEA's arguments as to multi-stage vehicles covered by the regulation. We noted that while NTEA has repeatedly provided pessimistic claims that the present certification scheme for multi-stage vehicles is invalid and unworkable, the availability of multi-stage vehicles belies that claim. There are many multi-stage vehicles on the road that have been certified to a number of standards, and the final-stage manufacturers are still in business. There are large numbers of multi-stage vehicles, such as school buses, box trucks, work trucks, flatbed and stake trucks, tow trucks, dump trucks, and gasoline tank trucks on the road.

We also noted that final-stage manufacturers have certified multi-stage vehicles with a GVWR of 6,000 pounds or less to the FMVSS No. 216 as it existed before the May 2009 upgrade of that rule. FMVSS No. 216 was extended to trucks, buses, and multipurpose vehicles (MPVs) with a GVWR of 6,000 pounds or less in a final rule published in 1991. A GVWR of 6,000 pounds or less is relatively low for commercial vehicles,[28] which results in limited offerings in this category. But, significantly, GM has sold an incomplete vehicle chassis-cab, the GMT–355,[29] that has a GVWR of 6,000 pounds or less and is therefore subject to FMVSS No. 216. GM would not have offered and sold the vehicle for years if there was not a market for them, as completed by final-stage manufacturers.

We explained that under the May 2009 roof crush resistance rule, FMVSS No. 216a will not be applicable to vehicles with a GVWR greater than 10,000 pounds. Incomplete vehicle manufacturers will not need to provide an IVD regarding FMVSS No. 216a for these heavier vehicles. We explained that, in our estimation, the largest numbers of multi-stage vehicles are in this category.

We observed that NTEA's comments contemplated no assistance from the incomplete vehicle manufacturer. We explained, however, that NHTSA has seen the converse to be true—there are IVDs, upfitter guides, best practices manuals and help lines provided by incomplete vehicle manufacturers.

[24] The foregoing presents some highlights. The reader is referred to the entire document and subsequent documents, including a further response to NTEA's comment and a response to petitions for reconsideration.

[25] 75 FR 17605 (April 7, 2010).

[26] 75 FR 17604 (April 7, 2010).

[27] *See* 71 FR at 28169–28171.

[28] For example, most full size pickup trucks have a GVWR well above 6,000 pounds. *See* Ford, 2011 Truck Payload Workbook, p. 7, *available at https://www.fleet.ford.com/truckbbas/topics/2011/2011_Truck_Payload_Workbook.pdf* (last accessed Feb. 14, 2011).

[29] This platform has been used for the Chevrolet Colorado and GMC Canyon pickup trucks, which are small or compact pickup trucks. *See generally* 75 FR at 17593.

Final-stage manufacturers also have their own technical expertise.

We explained that final-stage manufacturers can use their judgment, including engineering or technical judgment, to certify vehicles. Testing, as provided in the FMVSS, is not required as a matter of law to certify a vehicle.[30] Instead, sound judgment may be used. Many final-stage manufacturers bring considerable judgment to bear. They have been building and certifying vehicles for years. Final-stage manufacturers can and do use their base of experience in certifying vehicles as complying with the FMVSS.

We also stated that NHTSA provided substantial leadtime. The rule becomes effective for multi-stage vehicles with a GVWR of 6,000 pounds or less, *i.e.,* the vehicles already covered by FMVSS No. 216, on September 1, 2016, and for the other multi-stage vehicles with a GVWR of 10,000 pounds or less on September 1, 2017. These dates are one year after the requirements are fully effective for manufacturers of single-stage vehicles, the same entities that supply an incomplete chassis-cab to a final-stage manufacturer.

In the Further Response, we made a number of points for which we provided detailed discussion and explanation. We discussed how the current certification scheme is not an unlawful delegation of agency authority and that IVDs concerning FMVSS No. 216 are workable. We also discussed the FMVSS No. 220 testing alternative that was incorporated into the rule after being suggested by the RVIA. We also explained why we believed that there were little if no costs for multi-stage manufacturers to comply with FMVSS No. 216a.

II. NTEA Petition for Reconsideration

After we published our Further Response, on May 24, 2010, NTEA submitted a petition for reconsideration to NHTSA. NTEA's petition requested that we either exclude multi-stage vehicles from the coverage of FMVSS No. 216a or amend the final rule in a manner that would ensure more readily available compliance alternatives for final-stage manufacturers.

In summary, NTEA's petition made five points. First, NTEA stated that unreasonably restrictive conformity statements in IVDs put final-stage manufacturers in the position of either taking "undue" risk of certification or exiting the business. The petitioner stated that the fact that final-stage manufacturers certify vehicles does not suggest that pass-through certification under NHTSA's regulations is workable or valid or practicable for purposes of Section 30111(a) of the Vehicle Safety Act. NTEA claimed that this certification risk was a basis for the court of appeals decision in *National Truck Equipment Association* v. *National Highway Traffic Safety Administration,* 919 F.2d 1148 (6th Cir. 1990) (1990 *NTEA* decision).

NTEA presented its arguments on the 1990 *NTEA* decision for the proposition that the agency must offer the regulated party a chance to demonstrate compliance in order for a standard to meet the practicability requirement of the Vehicle Safety Act. NTEA stated that the court ruled that where final-stage manufacturers could not afford to conduct the test in the subject safety standards, NHTSA had to put the alternatives in the standard itself.

NTEA argued that the court in the 1990 *NTEA* decision identified problems insofar as pass-through certification was concerned: (1) NHTSA's regulations at the time did not provide for pass-through certification for vehicles completed on chassis other than chassis-cabs; and (2) pass-through certification would not be an adequate compliance alternative to costly testing to the extent incomplete vehicle manufacturers provided unduly restrictive conformity statements in their IVDs.

NTEA focused on the conformity language for FMVSS No. 216 in GM's IVD for the GMT–355 (2006 Model Year) and assumed that other incomplete vehicle manufacturers would provide similar conformity statements for the new version of FMVSS No. 216.[31] NTEA took issue with NHTSA's interpretation that the conformity language for FMVSS No. 216 in the IVD for the GMT–355 (2006 Model Year) provides a meaningful pass-through opportunity. NTEA believes that NHTSA's analysis "completely ignores the actual language of GM's conformity statement." It claimed that the language of GM's conformity statement is restrictive. It also stated that the legal liability of a final-stage manufacturer for conformity with FMVSS No. 216, as allocated pursuant to 49 CFR 567.5, cannot depend on a "conjuring exercise" of what is, at minimum, a "hopelessly ambiguous" IVD statement drafted by GM, an incomplete vehicle manufacturer.

NTEA argued that there is no meaningful distinction between receiving a Type 3 conformity statement for a cutaway chassis, on the one hand, and receiving some version of the Type 1 conformity statement for FMVSS No. 216 that GM provides for the GMT–355 chassis, on the other. In both cases, according to NTEA, the final-stage manufacturer cannot use pass-through certification with respect to FMVSS No. 216 and legal responsibility for compliance with that standard is automatically assigned to the final-stage manufacturer.

NTEA concluded its first argument by urging NHTSA to amend FMVSS No. 216a and/or 49 CFR 567.5 to ensure that IVDs contain conformity statements that provide final-stage manufacturers with a reasonable opportunity to use pass-through certification. In the absence of such amendments, NTEA urged NHTSA to exclude multi-stage vehicles from the population of vehicles subject to FMVSS No. 216a.

Second, NTEA stated that it does not advocate shifting certification responsibility from final-stage manufacturers to incomplete vehicle manufacturers. Instead, NTEA argued that all multi-stage vehicles should be excluded from this safety standard, because it believes the safety standard is not practicable.

NTEA claimed that NHTSA, in its Further Response, misconstrued NTEA's position regarding multi-stage vehicle certification. In that response, NHTSA stated that NTEA sought to remove the certification responsibility from final-stage manufacturers and impose much of that responsibility on incomplete vehicle manufacturers. NHTSA also stated that NTEA's petition ignored the fact that incomplete vehicle manufacturers do not control what final-stage manufacturers do with the incomplete vehicles.

NTEA countered that it has not suggested in this proceeding that certification responsibility for multi-stage vehicles be shifted from final-stage manufacturers to incomplete vehicle manufacturers. Rather, with respect to FMVSS No. 216a, it stated that multi-stage vehicles should be excluded from the rule's coverage because in its view there is an absence of practicable compliance alternatives for final-stage manufacturers.

NTEA offered three reasons for its position, two of which, consistent with prior assertions, placed blame on other

[30] This has long been recognized in interpretations by NHTSA's Chief Counsel. *E.g.,* Letter from Jacqueline Glassman, Chief Counsel, NHTSA, to Ms. S. Trinkl, Quality Management, DEKRA Automobil GmbH (December 30, 2004), *available at http://isearch.nhtsa.gov/files/Trinkl.1.html* (last accessed February 14, 2011).

[31] NTEA's initial comments were based on GM's 2006 IVD; however, attached to the petition for reconsideration was GM's 2010 IVD. As the two documents are materially similar, we will refer to them collectively. *See* Appendix A of NTEA's Petition for Reconsideration, May 24, 2010, Docket No. NHTSA–2009–0093–0022.

entities: (1) Final-stage manufacturers cannot afford to conduct tests described in FMVSS No. 216a, or perform computer simulations (or other engineering analyses) that replicate the performance of vehicles in the test contained in that standard; (2) pass-through certification is not available to final-stage manufacturers because incomplete vehicle manufacturers are often unwilling or unable to provide conformity statements that permit final-stage manufacturers to build even the most common configurations of multi-stage vehicles within such conformity statements; and (3) NHTSA has not included in FMVSS No. 216a an affordable and objective alternative means (*i.e.,* an alternative to testing or pass-through certification) by which a final-stage manufacturer can certify conformity of a vehicle to the standard. NTEA concluded that final-stage manufacturers do not have a meaningful chance to demonstrate compliance with FMVSS No. 216a. Therefore, it stated that NHTSA should exclude all multi-stage vehicles from this safety standard.

Third, NTEA argued that excluding all multi-stage vehicles would not unacceptably deprive those users of the safety benefits provided by the roof crush standard. While essentially ignoring the vehicles that are under the umbrella of the safety provision of the rule, NTEA stated that its statistics show that the vast majority of multi-stage vehicles rated above 6,000 lbs. GVWR are outside the scope of FMVSS No. 216a, and their users would not benefit from the standard's safety benefits. NTEA noted that in extending the standard from vehicles with a GVWR greater than 6,000 pounds to include those with a GVWR of 10,000 pounds or less, NHTSA excluded trucks other than ones built on chassis-cabs (and incomplete vehicles with a full exterior van body) and this means that the agency excluded approximately one-third of multi-stage vehicles with a GVWR of 6,001 pounds to 10,000 pounds. NTEA also said that chassis with a GVWR of over 10,000 pounds constitute 94.5 percent of the entire market of chassis rated above 6,000 pounds. Thus, the vast majority of multi-stage vehicles above 6,000 pounds GVWR are already excluded from FMVSS No. 216a, and its position would not have any appreciable effect on the multi-stage vehicle population that will be subject to the rule.

Fourth, NTEA took issue with NHTSA's Regulatory Impact Analysis done for the final rule. NTEA stated that a review of the agency's final rule and its Regulatory Impact Analysis indicated that NHTSA tested numerous vehicles but did not include any completed multi-stage vehicles in the testing it performed to support its amendments to FMVSS No. 216a. In NTEA's view, NHTSA has no test data to support a conclusion that the revised test in the final rule is workable and reasonable with respect to multi-stage vehicles. The petitioner also stated that the pass/fail rates computed by NHTSA and the agency's study of the appropriate roof crush resistance requirements in its assessment of the new testing procedure were conducted without considering a single multi-stage vehicle.

NTEA argued that in the absence of testing any multi-stage vehicles in support of its amendments to FMVSS No. 216a, the rule cannot be justified in light of the difficulties final-stage manufacturers have with certifying. The petitioner added that in the agency's regulatory analysis of the cost effectiveness and net benefits of the final rule, NHTSA stated that the cost/benefit impacts are disproportionately influenced by relatively large contributions to costs and small contributions to benefits from vehicles over 6,000 pounds GVWR. NTEA also stated that the agency concluded that the benefits of the standard will be limited, particularly for vehicles in this higher weight range.

NTEA also claimed that, in its analysis of the costs of compliance, the Regulatory Impact Analysis is silent insofar as multi-stage vehicles are concerned. It argued that the agency's cost analysis was based upon costs incurred for mass-produced single-stage vehicles, and do not reflect the fact that final-stage manufacturers produce countless configurations of custom-designed vehicles, many of which are "one off." NTEA stated that NHTSA made no attempt separately to determine the cost of compliance for final-stage manufacturers, even for those who cannot pass-through the incomplete vehicle manufacturer's certification and who therefore have no compliance alternative other than performing the test in FMVSS No. 216a.

The petitioner stated that NHTSA's position regarding the costs to final-stage manufacturers to comply with FMVSS No. 216a is summarized in NHTSA's Regulatory Flexibility Act analysis, which states that small businesses using chassis-cabs will be in a position to take advantage of "pass-through certification," and therefore are not expected to incur any additional expenditures. NTEA repeated its disagreement with the assessment that pass-through certification will be available for all multi-stage vehicles built on chassis-cabs. According to NTEA, even if incomplete vehicle manufacturers provided reasonable conformity statements, those statements would not cover all multi-stage vehicles produced by final-stage manufacturers. NTEA stated that, as NHTSA has observed, incomplete vehicle manufacturers do not control work performed by final-stage manufacturers and can fairly anticipate only some things, but not everything done by final-stage manufacturers. Accordingly, NTEA stated that some number of multi-stage vehicles will not be able to use pass-through certification.

Finally, NTEA concluded its petition with a recommendation that NHTSA should amend the final rule in a way that would, in the petitioner's view, make it practicable as applied to multi-stage vehicles. NTEA repeated that most final-stage manufacturers cannot perform or simulate the tests for FMVSS No. 216a and other more complex and expensive standards that include tests. Due to the number of types and configurations of final-stage manufacturing, NTEA believes that all the safety standards that include tests are inherently impracticable.

The petitioner stated that in order to make FMVSS No. 216a practicable for final-stage manufacturers, NHTSA should amend its regulations to (1) ensure that the conformity statements provided by incomplete vehicle manufacturers are reasonable in light of the known types and sizes of multi-stage vehicles built on the chassis that are subject to those conformity statements, (2) provide final-stage manufacturers with an efficient way to challenge unduly restrictive conformity statements, and (3) identify specific steps that can be taken by a final-stage manufacturer that will constitute "reasonable care," for purposes of 49 U.S.C. 30115(a), in certifying a vehicle as complying with FMVSS No. 216a, when the vehicle must be completed outside the parameters of a reasonable conformity statement. These generalized views were not accompanied by concrete suggestions for regulatory language. NTEA went on to state that in the event NHTSA does not amend FMVSS No. 216a and/or its multi-stage vehicle certifications to, in its view, make pass-through certification a practicable compliance option, or exclude multi-stage vehicles from the coverage of FMVSS No. 216a, then the agency must incorporate into its regulations another means for final-stage manufacturers to prove compliance.

NTEA noted that NHTSA stated that final-stage manufacturers need not conduct the tests set forth in the FMVSSs such as FMVSS No. 216a, and

that they may be able to base their certifications to that standard on "computer simulation, engineering analysis, engineering judgment or other means." It also noted that NHTSA further stated that there are many resources available to final-stage manufacturers with regard to certification: upfitter guides from incomplete vehicle manufacturers, incomplete vehicle manufacturer help lines, the final-stage manufacturers' own experience and judgment, and commercially available software, and that final-stage manufacturers can use their judgment, including engineering or technical judgment, to certify vehicles.

NTEA stated that, however, none of these suggestions are incorporated into NHTSA's regulations as a means of demonstrating conformity with FMVSS No. 216a, and therefore do not meet the requirements that the methods of proving compliance must be offered in the body of the standard itself. NTEA argued that in the event NHTSA does not amend its FMVSS certification regulations to make pass-through certification a practicable compliance option, NHTSA must exclude multi-stage vehicles from the population of vehicles subject to FMVSS No. 216a.

III. Response to NTEA's Petition

After carefully considering NTEA's petition, we have decided to deny it. The reasons for our denial are set forth below.

A. Introduction

As discussed earlier, our rulemaking to upgrade FMVSS No. 216 was required by Congress in SAFETEA–LU. That statute required the agency to issue a final rule establishing performance criteria to upgrade FMVSS No. 216 relating to roof strength for driver and passenger sides, for motor vehicles with a GVWR of not more than 10,000 pounds. An underlying safety concern was the crushing of the roof into the occupant compartment in rollover crashes.

Throughout the rulemaking, we carefully considered issues related to all types of vehicles, including multi-stage vehicle issues. In the NPRM, for example, the agency explained why we thought a proposed option for certain multi-stage vehicles to meet the requirements of FMVSS No. 220, *School Bus Rollover Protection,* instead of FMVSS No. 216a, *Roof Crush Resistance; Upgraded Standard,* appeared to offer a reasonable approach that increased safety in rollovers and at the same time provided a mechanism for compliance. NHTSA included in the final rule a number of other provisions to address the legitimate concerns of multi-stage manufacturers.

First, in the upgraded FMVSS No. 216a rule, after considering NTEA's comments, we only extended it to those multi-stage trucks that arrive from the incomplete vehicle manufacturer with a completed roof structure. We excluded those trucks where the final-stage manufacturer would need to complete the roof structure. Specifically, we excluded from FMVSS No. 216a multi-stage trucks with a GVWR greater than 6,000 pounds not built using a chassis-cab and those not built using an incomplete vehicle with a full exterior van body. Thus, as relevant to the petition now before the agency, the main thrust of the amended rule is that multi-stage trucks based on chassis-cabs, whose roof structures, by definition, are manufactured by an incomplete vehicle manufacturer, have the same roof strength requirements as a completed pickup truck produced by the same manufacturer.

Second, we provided an alternative testing option for certain multi-stage manufacturers. Vehicles manufactured in two or more stages, other than chassis-cabs, and vehicles which are changed in certain ways to raise the height of the roof, can be certified to the roof crush requirements of FMVSS No. 220, *School Bus Rollover Protection,* instead of FMVSS No. 216a. We note that the Recreation Vehicle Industry Association (RVIA) had supported our proposal to permit FMVSS No. 220 as an option for small motor homes allowing manufacturers of them to address issues concerning such specialized vehicles built in two or more stages.

Third, we added a test specification into the final rule so that the roof structure is the only part of the vehicle that is tested. NHTSA's test procedures specify that the vehicle's sills and chassis will be secured to a rigid horizontal surface. *See* FMVSS No. 216a S 7.1. According to the test's procedure, the chassis-cab is supported by a horizontal surface at the sills, not the vehicle's frame, and only the cab is compressed downward onto that horizontal surface. This ensures that the vehicle's roof is tested, independent of the vehicle's frame.[32] Also, if a final-stage manufacturer adds a box onto a chassis-cab, and that box is taller than the roof, the box will be removed prior to testing the chassis-cab's roof strength. This will ensure that only the vehicle's roof structure is tested.

Fourth, we provided additional leadtime for multi-stage manufacturers. This means that the vehicle manufacturers will build their pickup trucks, which are the basis for chassis-cab incomplete vehicles, as having the requisite roof strength one year prior to incomplete and multi-stage vehicles built on chassis-cabs. The extra year will provide additional time in which final-stage manufacturers may consider the fully-certified pickup trucks.

Despite these tailored provisions that, in relevant part, regulated only final-stage trucks built on chassis-cabs and excluded those built on cutaways and stripped chassis, NTEA petitioned the agency for exclusion of all multi-stage vehicles from FMVSS No. 216a. In its petition for reconsideration NTEA alleged that the upgraded FMVSS No. 216a is not practicable for final-stage manufacturers. The end result of NTEA's petition is for no regulation of its members. NTEA reaches this conclusion without addressing the safety of the occupants in a chassis cab, who, if they were in a comparable pickup truck, would have the benefits and protections of FMVSS No. 216a. NTEA offered as grounds for this position that the costs of compliance are too high, conformity statements in IVDs are too restrictive, and the text of FMVSS No. 216a does not include an alternative to testing or pass-through certification [33] by which a final-stage manufacturer can confirm conformity of a vehicle to the standard. NTEA concluded by adopting the language from a case involving stripped chassis vehicles where the vehicle manufacturers would have to design and assemble parts and the standard included a dynamic crash test—actually crashing the trucks into a wall—that its members are denied a chance to demonstrate compliance with FMVSS No. 216a.[34]

We disagree with NTEA's request to exclude all multi-stage vehicles from FMVSS No. 216a. Such action would deprive occupants of multi-stage vehicles built on chassis-cabs of the regulatory safety protections of roof crush resistance that occupants of comparable pickup trucks have under FMVSS No. 216a.

The assessment for whether a FMVSS is practicable depends, of course, on the

[32] For a visual reference, please *see* the photos of tested vehicles in NHTSA's test reports on roof crush resistance. *E.g.* NHTSA Test Report No. 571, Ford F–250, *available at http://www-nrd.nhtsa.dot.gov/database/aspx/comdb/querytesttable.aspx* (last accessed on February 14, 2011) and available at Docket No. NHTSA–2009–0093–0020 at pp. 292–299.

[33] NTEA did not spell out alternatives in its comments.

[34] *National Truck Equipment Association* v. *National Highway Traffic Safety Administration,* 919 F.2d 1148, 1153, 1155 (6th Cir. 1990).

vehicles and standard at issue. Here, we will focus on chassis-cabs—multi-stage trucks that arrive at the final-stage manufacturer as incomplete vehicles with an intact roof structure—since that is the type of vehicle NTEA discusses in its petition. FMVSS No. 216a is an upgrade of an existing regulation that was well understood, as distinguished from an entirely new regulation. Before FMVSS No. 216a was adopted, FMVSS No. 216 had covered roof crush in multi-stage vehicles up to and including 6,000 pounds GVWR. NHTSA continues to believe that regulation of chassis-cabs under FMVSS No. 216a is practicable. NTEA has not justified its position that all multi-stage vehicles should be excluded from regulation under FMVSS No. 216a.

B. NTEA's Petition Is Unsupported by Evidence of an Actual Problem

NHTSA views the matter before the final-stage manufacturer from the perspective of starting with an incomplete chassis-cab truck and completing it by adding a truck body. In so doing, given that FMVSS No. 216a is an upgraded rule, as distinguished from an entirely new rule, NHTSA may take into account fact that the roof crush regulation has been in effect for years for vehicles with a GVWR of 6,000 pounds or under.

NHTSA pointed out that final-stage manufacturers have been certifying to FMVSS No. 216 for years. NTEA does not deny this. Instead, NTEA's comments say that most final-stage manufacturers took "undue" certification risk. NTEA goes on to say that "[t]hose manufacturers used their best judgment in certifying the vehicles they produced based on their experience and the information available to them." But NTEA expressed concern that they had no way of determining whether such efforts would constitute reasonable care for purposes of the Vehicle Safety Act.

NTEA has not cited one example of an enforcement case against a NTEA member based on improper certification. Nor has NTEA cited one business injury by an NTEA member related to certification to FMVSS No. 216. There have not been any enforcement cases and there have been no recalls performed for noncompliances with FMVSS No. 216 or 220 by any manufacturer, including final-stage manufacturers. NTEA's inability to provide tangible information of actual injury has been long-running. In April 2010 and May 2006, NHTSA noted that NTEA had not identified any final-stage manufacturer that has been unable to certify a vehicle under the existing certification framework. Specific to the roof crush standard, in the agency's Further Response, NHTSA pointed out that not one final-stage manufacturer identified a problem certifying a vehicle built on a 2006 GMT–355 chassis-cab. In its May 2010 petition, NTEA does not provide any examples of how a final-stage manufacturer has actually been prevented from certifying its vehicle. More generally, in the May 2006 multi-stage vehicle rulemaking, in response to NTEA's petition we stated that we would address issues of impracticability in the context of an individual FMVSS or on a petition for temporary exemption, indicating that we sought information for each rulemaking as to how the rule was impractical.[35] NTEA did not provide this information in the FMVSS No. 216a rulemaking, although NTEA does provide a textual objection to the GMT–355 IVD (2006) provisions on FMVSS No 216a. In NTEA's view NHTSA's analysis of GM's IVDs in the agency's Further Response ignores the actual language of GM's conformity statement.

NTEA is effectively asking to make vehicles based on chassis-cabs less safe than pickup trucks because of a hypothetical argument. Without evidence in the record of final-stage manufacturers legitimately not being able to certify these vehicles to FMVSS No. 216 or incurring significant and very costly technical problems in certifying vehicles, we are loathe to roll back these important safety benefits. NHTSA does not believe FMVSS No. 216a is impracticable as applied to final-stage manufacturers. In fact, the agency believes that it has removed from the proposed rule provisions that could make it impracticable as applied to final-stage manufacturers.

C. In Extending FMVSS No. 216 to Heavier Vehicles, NHTSA Only Included Those Multi-Stage Vehicles for Which the Incomplete Vehicle Manufacturer Provides an Intact Roof

In extending FMVSS No. 216 to heavier vehicles, we specifically included the types of multi-stage vehicles as to which the standard is practicable and excluded the types of multi-stage vehicles as to which the standard could have been impracticable, consistent with the 1990 *NTEA* decision. The upgraded standard applies to chassis-cabs [36] and certain vans, vehicles that are equipped by the incomplete vehicle manufacturer with a completed roof and structure. Compliance and certification will not be difficult for final-stage manufacturers of these included vehicles, as the final-stage manufacturer will receive these incomplete vehicles from the incomplete vehicle manufacturer with a compliant, intact roof. Given that the final-stage manufacturing done on the included vehicles would not affect the vehicle's roof strength, final-stage manufacturers will not need to do more than ensure that their modifications do not take the vehicle out of compliance with FMVSS No. 216a. On the other hand, we excluded those trucks for which the final-stage manufacturer would design and build the vehicle's roof or its supporting structure.

More particularly, as described above, a chassis-cab from an incomplete vehicle manufacturer is essentially a pickup truck without the cargo bed. The pickup truck and chassis-cab employ a body-on-frame structure. In a body-on-frame vehicle, as used here, the frame includes the chassis structure, power train, and suspension, steering and braking systems. The cab and body are mounted to the frame. When the chassis-cab leaves the incomplete vehicle manufacturer, it will have a completed cab, and will have two steel frame rails running longitudinally behind the cab. Final-stage manufacturers typically add a body onto the frame rails behind the cab; the body stores work-related materials or cargo. As we explained in our Further Response, an illustrative example of a chassis-cab vehicle is a delivery truck. The final-stage manufacturer adds a cargo box to the back of the incomplete vehicle, and a door is provided at the rear of the cargo box for access to its contents.

In the next several years, Ford, GM, Chrysler and other manufacturers of incomplete vehicles with a GVWR of 10,000 pounds or less will be required to upgrade their pickup trucks, as necessary, to meet the upgraded FMVSS No. 216a published in 2009. These pickup trucks will have an intact roof that will meet FMVSS No. 216a.

NHTSA's approach is confirmed by its exclusion from FMVSS No. 216a of multi-stage trucks not built on a chassis-cab. Typically, these excluded vehicles would be built on cutaways or on a stripped chassis. In a cutaway chassis, the back wall of the occupant

[35] 71 FR 28186.

[36] Some manufacturers may use the term "pick-up box delete" instead of "chassis-cab" in marketing materials for those instances where the incomplete vehicle manufacturer completes a pickup truck, but "deletes" the pickup box. These vehicles are sold as an incomplete vehicle. *See* Ford, 2010 Body Application Guide, *available at https://www.fleet.ford.com/truckbbas/topics/bodyappguide.html* (last accessed February 14, 2010).

compartment is missing, or cutaway, *i.e.* there is no wall behind the front seats. A stripped chassis, which is less complete than a cutaway, would ordinarily not have a roof structure at all. These types of multi-stage vehicles were addressed in the 1990 *NTEA* case. Because these trucks would arrive without an intact roof, there could be some of the problems described in the 1990 *NTEA* case.

Also excluded from FMVSS No. 216a are vehicles with a GVWR greater than 10,000 pounds. The vast majority of the multi-stage trucks have a GVWR in excess of 10,000 pounds,[37] as NTEA noted.

D. The Typical Modifications Made by Final-Stage Manufacturers Do Not Affect Roof Strength

The addition by a final-stage manufacturer of a body such as a cargo box behind the cab, where the pickup bed is located on a pickup truck, would not affect the strength of the roof. There is therefore no reason to expect that the final-stage manufacturer will have difficulty complying with FMVSS No. 216a in making this or similar kinds of additions/modifications, *e.g.,* attaching various types of cargo or equipment-carrying compartments to the truck frame behind the cab.

NTEA describes itself as "the nation's only trade association representing distributors and manufacturers of multi-stage produced, work-related trucks, truck bodies, and equipment," and states that it has over 1,600 member companies.[38] While NTEA members are undoubtedly familiar with incomplete vehicles and bodies and equipment that are added to them,[39] NTEA did not provide any real world examples demonstrating that the modifications made by final-stage manufacturers will affect the strength of a roof of a chassis-cab. Instead, it stated that the attachment of a truck body onto the frame presents pass-through certification problems with GM's IVD for a Model Year 2006 GMT–355 chassis, which has a GVWR of 6,000 pounds or less. These concerns were hypothetical and not supported by the NTEA members' real world experience of completing and certifying vehicles.

The market for incomplete vehicles with a GVWR of 6,000 pounds or less is limited. GM offered the incomplete version of the small pickup truck built on the GMT–355 chassis, known as the Canyon or Colorado. Other vehicle manufacturers did not offer incomplete vehicles in this category. Some light duty truck bodies from equipment suppliers have been available for the small GM incomplete vehicle.

We expect that incomplete vehicles within the newly regulated weight class from over 6,000 pounds to 10,000 pounds GVWR will be available. For final-stage manufacturers using chassis-cabs with a GVWR of 10,000 pounds or less, the additions to complete the vehicles appear to be routine and involve the attachment of a truck body manufactured by an equipment manufacturer onto a chassis-cab manufactured by an incomplete vehicle manufacturer.

In its Body Application Guide, Ford lists the typical applications for multi stage vehicles built on chassis-cabs.[40] For chassis-cabs with a GVWR of 10,000 pounds or less, the typical installations appear to be for service providers, including contractors, caterers, painters, and electricians, and typically use a "service body." These service bodies are typically not fabricated from scratch; instead, they are ordered from an equipment manufacturer, such as an NTEA equipment supplier member, and the final-stage manufacturer would install it on the chassis-cab. The service bodies can be as simple as a platform bed, to an electrician's truck that contains "toolboxes" and shelves on the side.

As an example of a service body, the KSS, is sold by the Knapheide Manufacturing Company ("Knapheide"). The KSS is a service body that looks similar to a pickup bed, except that the sides above the fender wells contain cabinets.[41] A smaller truck bed remains in between the cabinets. The KSS is a box that attaches to the frame behind the cab, and is not incorporated into the cab itself. As such, the KSS would not affect the vehicle's roof strength in a FMVSS No. 216a test.

The Knapheide KSS bodies can be customized further from the base truck body. These customizations do not affect the roof or its support structure. This is true even for ladder racks. According to the design drawings, the ladder racks mount to the KSS body, and hang over the vehicle's roof. The ladder racks do not attach to the chassis-cab itself. Instead, the racks remain suspended over the top of the cab.[42] Furthermore, in a test by NHTSA under FMVSS No. 216a, the ladder racks would be removed before testing the vehicle's roof strength.

Knapheide also advertises its installation methods, and sells a "Spring Mounting Kit" that "provides flexible attachment of the front of the body to the chassis and minimizes the risk of torsional fatigue cracking."[43] The spring mounting kit's hardware "utilizes the existing holes in the chassis and body end rail." For certain Ford vehicles, which, according to this document, do not have holes on the top of the frame, adapter plates are U-bolted to the top of the frame to facilitate spring mounting. This document indicates that there are mounting options that do not require final-stage manufacturers to alter a vehicle's frame rail.

Other equipment manufacturers' service bodies indicate an easy installation. Hillsboro Industries, Inc.

[37] Ford publishes a "Body Application Guide" on its Web site that provides a description of the types of incomplete vehicles that it sells. *See* Ford, 2010 Body Application Guide, *available at https://www.fleet.ford.com/truckbbas/topics/bodyappguide.html* (last accessed February 14, 2010). This document assists in "matching the truck customer's length and load carrying requirements with the appropriate" Ford incomplete vehicle. According to this document, FMVSS No. 216a would likely apply to Ford's F–250 truck and certain F–350 trucks with a pick-up box delete option, as these trucks have a GVWR of 10,000 pounds or less. As mentioned previously, Ford does not market these vehicles as chassis-cabs; instead, Ford uses the term "pick-up box delete option" for these incomplete vehicles. FMVSS No. 216a would not apply to the majority of F–350, and all F–450, F–550, F–650, and F–750 vehicles. Likewise, it would not apply to Ford's cutaways or stripped chassis vehicles. Apparent from this document is the limited number of incomplete vehicles to which FMVSS No. 216a likely will apply.

[38] NTEA comments, NHTSA–2005–22143–0108, p.1.

[39] NTEA has annual Work Truck Shows that are large events that NTEA bills as North America's largest vocational truck event. In 2011 and 2012, it will be in the Indiana Convention Center in Indianapolis. As explained by NTEA, the Work Truck Show brings together thousands of industry professionals including vocational, governmental and private truck fleet managers and truck buyers from the range of weight markets, as well as hundreds of truck and equipment manufacturers, distributors and dealers. According to promotional materials, the event gives attendees the opportunity to check out the latest full-size work trucks, vocational equipment, and vehicle components. It also features industry-specific technical and business management training sessions. The Association represents nearly 1,600 companies that manufacture, distribute, install, sell and repair commercial trucks, truck bodies, truck equipment, trailers and accessories. *See http://www.ntea.com/worktruckshow/about/* (last accessed February 14, 2011).

[40] *See* Ford, 2010 Body Application Guide, *available at https://www.fleet.ford.com/truckbbas/topics/bodyappguide.html* (last accessed February 14, 2010).

[41] Brochure from the Knapheide Manufacturing Company, The All New KSS, *available at http://www.knapheide.com/literature/gmc_kss.pdf* (last accessed February 14, 2011).

[42] Brochure from the Knapheide Manufacturing Company, KSS Body Option, *available at http://www.knapheide.com/pdfpages/optionfitpages/kssoptions/KSOPG18.pdf* (last accessed February 14, 2011).

[43] Brochure from the Knapheide Manufacturing Company, Service Body Option, *available at http://www.knapheide.com/pdfpages/optionfitpages/servicebodyoptions/PG47.pdf* (last accessed on February 14, 2011).

sells an aluminum light truck bed.[44] This type of product would typically be installed on a truck under 10,000 pounds GVWR, and the completed vehicle would therefore need to comply with the FMVSS No. 216a requirements. According to the owner's manual, the aluminum truck bed arrives equipped with bed sills that attach to the chassis-cab's frame rail in three places. The bed sills can be bolted or welded to the chassis-cab frame. The front of the bed sills must be at least 4⅛″ inches from the vehicle's cab, and, therefore, do not attach to the vehicle's chassis-cab. After the sills are attached to the frame, the aluminum light truck bed is then mounted with bolts on top of the bed sills. In summary, this truck body attaches sills to the vehicle's frame in only three places, and the cab is not modified.[45]

Another manufacturer of service bodies, RKI, furnishes mounting kits standard with its service bodies.[46] While RKI offers a large number of customizable options for its service bodies, the bodies all mount to a 12 gauge metal treadplate that is installed on top of the vehicle's frame and added steel cross members. Here, the service body does not mount directly to the frame itself, but to a treadplate attached on top of the frame. This approach standardizes the mounting to the treadplate and there would not be problematic modifications to the vehicle's frame.

As indicated by the above, the mounting of the body on a truck does not affect the strength of the roof.

GM Upfitter's Best Practices Manual "provide[s] engineering recommendations and guidelines to assist the Special Vehicle Manufacturer (SVM) for all areas in the conversion process" (An upfitter is a final-stage manufacturer and SVMs are upfitters recognized by GM). According to GM, these guidelines "generally reflect industry recognized processes and procedures" that are intended to help the upfitter "maintain the safety, reliability, and integrity of the vehicle's original design, as well as comply with any state, Federal, or industry requirement."[47]

GM Upfitter's Best Practices Manual provides eight pages on the preferred way to mount a box to a truck frame.[48] These recommendations are detailed and include illustrated diagrams. In fact, GM Upfitter's Best Practices Manual states that "NTEA advises that proper body mounting practices and materials are necessary in order to avoid damaging the frame side rail and body."[49] The recommended approaches include: (1) U-Bolt/Threaded Rod and End Plate Technique to secure the truck body's longitudinal mounting rails to the chassis frame; (2) Brackets and Pinch Bolts Techniques where fabricated and formed brackets of angles are welded and/or bolted to the longitudinal mounting rails of the body and bolted to the chassis frame; (3) the Rigid Mounting Technique where the service/utility body is attached directly to existing holes, such as the OEM pickup box attachment points; and (4) the Shear Plate Approach, where a shear plate and bolts are used to attach the non-rigid body to the frame rails.[50] The GM Upfitters' guide provides direction on the various types of bodies and the rigidity of the selected body types.[51]

In the Further Response, we noted that these four mounting types in the GM Upfitter's Best Practices Manual were approved by NTEA, all four mounting techniques mount to the frame and are permissible under the GM IVD for the GMT–355, and none of the mounting methods involve attachments to the roof-supporting members, including the A- and B-pillars (the A-pillar is the roof support just behind the windshield; the B-pillar is the roof support behind the front door). In a footnote response, NTEA stated that these four mounting techniques are draft recommendations and only address some of "hundreds of vehicle configurations that are built by final-stage manufacturers."[52] However, NTEA does not contradict that these four mounting techniques do not involve attachments to the A- and B-pillar, nor do they address NHTSA's contention that they are permissible under the GM IVD.

Similarly, GM's Upfitter Guide states that final-stage manufacturers should design their body-mounting schemes to comply with either the GM Guidelines in the GM Body Builders Manual, NTEA Industry Standards, and Federal Government Mil-Std Specifications.[53] Noticeably absent from NTEA's petition is any reference to the NTEA Industry Standards.

E. Final-Stage Truck Manufacturers Have Opportunities That Permit Them To Certify Their Vehicles to FMVSS No. 216a Without Testing

Consistent with its longstanding position on NHTSA's safety standards that include tests, NTEA argued that FMVSS No. 216a is impracticable for its members. In its view, pass-through certification is not available. Therefore, its members are unable to certify their vehicles to FMVSS No. 216a without "undue" certification risk, since they cannot afford to conduct expensive vehicle tests to demonstrate compliance for small production runs.

1. Pass-Through Certification Is Available on the GMT–355 IVD

The opening and central thrust of NTEA's petition is its disagreement with NHTSA's assessment that pass-through certification is available for vehicles built on chassis-cabs. In its petition, NTEA focused on the wording of the General Motors GMT–355 (small pickup truck) 2006 chassis IVD provision for FMVSS No. 216. NTEA stated that the simple mounting of a box to a chassis-cab's frame rail invalidates GM's IVD for FMVSS No. 216 because it affects the properties of the frame rail, and prevents final-stage manufacturers from utilizing pass-through certifications. NTEA argued that, in general, an IVDs' restrictiveness prevents pass-through opportunities for final-stage manufacturers, forcing final-stage manufacturers to conduct expensive testing or cost-prohibitive computer simulations. This alleged burden goes beyond the real world burden in which, as NTEA recognizes, final-stage manufacturers have used their best judgment in certifying the vehicles they produced based on their experience and the information available to them, albeit with what NTEA refers to as certification risk.

In our Further Response, NHTSA explained that it reviewed the IVDs identified by NTEA as being too restrictive and found them to be

[44] *See generally,* Brochure from Hillsboro Industries, Inc., Aluminum Truck beds, *available at http://hillsboroindustries.com/Products/Brochures/AluminumTruckBedBrochure.pdf* (last accessed February 14, 2011).

[45] Hillsboro Industries, Inc., Aluminum Light Truck Bed Owner's Manual, *available at http://www.hillsboroindustries.com/Support/AluminumTruckBedsManual.pdf* (last accessed February 14, 2011).

[46] RKI, Inc., Service Body Specification L, S and T 40" & 42" CA, *available at http://www.rki-us.com/images/uploads/Service%20Body%20Specifications.pdf* (last accessed February 14, 2011).

[47] "GM Upfitter—Best Practices Manual," *http://www.gmupfitter.com/best_practice_manuals.html* (last accessed February 14, 2011).

[48] GM, GM Upfitter—Chassis Best Practices," 2010, *available at http://www.gmupfitter.com/publicat/REV_FF–3_BstPrac_Chss_Indx_0810.pdf* (last accessed February 14, 2011); *see also* GM, GM Upfitter—Chassis Best Practices, 2009, NHTSA–2009–0093–0020, pp. 87–96.

[49] GM, GM Upfitter—Chassis Best Practices," 2010, at 23.

[50] *Id. at* 23.

[51] *Id. at* 24.

[52] NTEA Petition for Reconsideration, Docket No. NHTSA–2009–0093–0022, page 13, fn. 18.

[53] GM, GM Upfitter—Chassis Best Practices," 2010, at p. 21.

workable. NHTSA reviewed the statements in the provided IVDs as to FMVSS No. 216. Specifically, the agency reviewed the Type 1 conformity statements for the GM 2006 GMT–355 incomplete truck and the GM 2006 C/K full size incomplete truck.[54] The agency stated that pass-through certification is available for the GMT–355, as the "conformity statement in the IVD is written to allow modifications to the incomplete vehicle, but not to the components that affect the vehicle's roof strength." The agency further noted that pass-through certification would not be provided if vehicle components related to roof strength are modified. As we explained, NTEA had not provided any examples of modification necessary to the roof structure or the A- and B-pillars. As described previously, the A-pillar is the roof support just behind the windshield; the B-pillar is the roof support behind the front door.

NTEA read the 2006 and 2010 IVD as preventing the simple addition of an aftermarket body, because, it argues GM's conformity statement is invalidated by alterations that affects the function, physical, chemical, or mechanical properties of any component, assembly or system, "including, but not limited to" various systems. NTEA argued that this goes beyond the chassis-cab and as a result, there is no difference between a Type 1 and a Type 3 statement.

NTEA stated that NHTSA's interpretation, above, is not on the spectrum of plausibility and later refers to GM's provision, in the alternative, as "hopelessly ambiguous." However, as GM noted in its comments to NTEA's Petition for Reconsideration to the multi-stage vehicle certification rule, NTEA's claim that any body or equipment mounting invalidates the IVD is overreaching.[55] NTEA made almost identical claims about GM's IVDs in that rulemaking that they make in this rulemaking.

As we have stated previously, pass-through certification is and we believe will be available for chassis-cabs. We believe that pass-through certification on the 2006 GMT–355 IVD is available even using NTEA's limited reading of that IVD. As discussed above, there are body mounting techniques that do not "affect" the properties of the frame rail. For example, in the Rigid Mounting Technique and in the Shear Plate Approach, it is recommended by GM and NTEA's Subcommittee on Body Mounting Practices that the final-stage manufacturer utilizes existing holes on the chassis-cab's frame to attach an aftermarket truck body. A truck body, which is comparable to the original pickup truck box in that it is attached to the frame behind the cab, attached with bolts to existing holes in the chassis-cab's frame would not "affect" the vehicle's properties. No additions are made to chassis-cab's roof, its support pillars, or other supporting structures. No alterations are made to the vehicle's frame rail.

Furthermore, the concern is certifying compliance with FMVSS No. 216a. Repeating what we stated before, we added a test specification into the final rule so that the roof structure is the only part of the vehicle that is tested. Under the test procedure for roof strength in FMVSS No. 216a, the chassis-cab is supported by a horizontal surface under the cab along the sills, and not the vehicle's frame. Only the vehicle's cab is compressed into that structure. The frame generally and other parts of the vehicle are not tested in this test. Modifications to the frame rail in attaching a body to the incomplete vehicle would not be tested or affect the FMVSS No. 216a test. Assuming that the FMVSS No. 216a test applied, a final-stage manufacturer that installed a service body onto a GMT–355 utilizing existing holes could certify based on GM's Type 1 statement. We believe this would qualify as pass-through,[56] and a final-stage manufacturer could certify without the need for testing.

We note that GM uses language regarding no alterations being made which affect the properties of "the components, assemblies or systems including but not limited to those listed below" elsewhere, including in its certification for FMVSS No. 118, *Power-Operated Window, Partition, and Roof-Panel Systems,* 49 CFR 571.118. This is instructive. We do not view that IVD language for power windows as referring to components, assemblies or systems unless they are related to the standard for which the certification applies, namely power window system performance. Similarly, we view the language regarding roof crush as pertaining to components, assemblies, or systems affecting roof crush.

2. Certification Alternatives Are Available to Final-Stage Manufacturers

NTEA's argument concerning certification relies on a self-generated and false dichotomy about certification opportunities, either: (1) Pass-through certification or (2) testing in accordance with the test in the FMVSS. As has been made clear by the agency in the multi-stage certification rulemaking and this FMVSS No. 216a rulemaking, and recognized by others, final-stage manufacturers may certify on other bases. With respect to this rule, NTEA ignores the obvious alternatives available to final-stage manufacturers.

Before turning to the specifics, we recognize that FMVSS No. 216a does not apply until September 1, 2016, which is five-and-a-half years away. We do not know with certainty what statements the IVDs will contain, but we can look at current IVDs and make reasonable assumptions.

First, the GM IVD is not the only relevant IVD, as other manufacturers sell incomplete vehicles. The IVD for Model Year 2011 Chrysler incomplete vehicles, dated April 5, 2010, contains the following statement: "[t]his vehicle, when completed, will conform to [F]MVSS 216—Roof Crush Resistance if no alterations are made to the roof panel or its support structure, including the roof rails, front header, roof pillars, the door window frames, the windshield and the windshield mounting system."[57] This provides an opportunity for final-stage manufacturers to achieve pass-through certification so long as they do not alter the roof or its supporting structure.

Ford does not have a statement in its IVD on FMVSS No. 216, which only

[54] As we noted in our Further Response, NTEA stated that GM included an identical conformity statement for FMVSS No. 216 in its IVD for the GM 2006 C/K full size incomplete truck, although, to NTEA's knowledge, GM did not produce a C/K chassis rated 6,000 pounds GVWR or below. FMVSS No. 216 would have applied to the vehicle only if it were rated with a GVWR of 6,000 pounds or less.

[55] GM's May 13, 2005 comment on NTEA's petition for reconsideration of the multi-stage certification rule, Docket No. NHTSA–99–5673–0056.

[56] In the Further Response, NHTSA stated in a footnote that alterers removing a pickup truck bed and replacing it with a different body could affect the unloaded vehicle weight of the vehicle. In its petition, NTEA stated that the footnote suggests that body weight (and presumably body weight distribution), by itself, affects testing and compliance with FMVSS No. 216. The unloaded vehicle weight is a factor in the calculation of the SWR. *See* 49 CFR 571.216a S5.2(b). Incomplete vehicle manufacturers' IVDs contain a maximum unloaded vehicle weight that must not be exceeded. *See* Ford's Incomplete Vehicle Manual, p. 5*, infra* note 58. In this rulemaking, vehicle manufacturers noted that to minimize their manufacturing tooling costs, they would need to design their roof strength performance to the worst case weight for a given model line. *See* 75 FR 17605, 17608 (April 7, 2010). In view of this design approach, we do not anticipate an issue with unloaded vehicle weight and compliance with FMVSS No. 216a. Of course, alterers should consider the effect of their additions. Alterers should consult with the manufacturer providing the complete vehicle that is altered.

[57] Chrysler Group LLC, Incomplete Vehicle Document 2011 Model Year, April 5, 2010, *available at http://www.dodge.com/bodybuilder/2011/docs/cc/dddpivd.pdf* (last accessed on February 14, 2011).

applies to vehicles with a GVWR under 6,000 pounds or less until September 1, 2016. However, the general language used throughout Ford's IVD does not appear to be restrictive. For example, for FMVSS No. 118, *Power-Operated Window, Partition, and Roof-Panel Systems,* Ford stated that the completed vehicle will comply to this standard if the "power operated windows, motors, wiring, and key and switch activation systems, where provided by Ford Motor Company, are not removed, relocated, altered or modified in any way." [58] Similarly, Chrysler's IVD statement on FMVSS No. 118 stated that its incomplete vehicle, when completed, will conform to FMVSS No. 118 if "no alterations are made to the power window and related electrical systems." [59] Based on these statements, and others, it does not appear that these IVDs are "unduly restrictive" for final-stage manufacturers.

As we have explained, we do not read GM's IVD as restrictively as NTEA reads it. However, if final-stage manufacturers feel unduly restricted by the language in GM's IVD, a different manufacturer's chassis-cab could be used.

Second, in certain instances, final-stage manufacturers may be able to use information obtained from equipment manufacturers in making certifications. We note, for example, that Knapheide advertises that its KC series bodies for conventional cab chassis, which are designed for specific Ford, Dodge, and GM chassis, have a mounting kit, Knapheide Quick Mount brackets and hardware, "designed to comply with FMVSS–301." [60]

The final-stage manufacturer, rather than the equipment manufacturer, will be certifying compliance of a vehicle with applicable FMVSS. Thus, as part of exercising reasonable care in considering information provided by an equipment manufacturer, the final-stage manufacturer needs to consider whether it is reasonable to rely on the information. For example, the final-stage manufacturer can ask the equipment manufacturer about the basis of any representation it makes related to compliance with FMVSS. It can also consider whether there is reason to consider the equipment company a reliable company and the amount of experience and expertise it may have related to the manufacture of vehicles that meet applicable FMVSSs.

Third, an IVD provides the basis on which a final-stage manufacturer could certify, without literal pass-through certification. This statement was made in our Further Response, and is not addressed in NTEA's petition for reconsideration. If an IVD is read as not providing actual pass-through, it will still provide a basis for the final-stage manufacturer to certify its vehicles as complying with FMVSS No. 216a. Using the example of the GMT–355 IVD, the IVD states that the incomplete vehicle conforms to FMVSS No. 216 unless certain kinds of alterations are made. Thus, according to GM, the GMT–355, albeit an incomplete vehicle, complies with FMVSS No. 216 at the time it leaves the incomplete vehicle manufacturer.

For example, if a final-stage manufacturer installs a Knapheide service body on the back of a GM C/K chassis-cab by drilling holes into the frame and installing fabricated brackets, the final-stage manufacturer could still certify without conducting testing. The final-stage manufacturer can use the IVD, coupled with its knowledge that the work it does in mounting a truck body to the rear of the incomplete vehicle does not modify the roof supports (A- or B-pillars) or roof itself, to come to the conclusion that it will not take the vehicle out of compliance with FMVSS No. 216a. It could rely on its own technical judgment, calculations, information obtained by calling the manufacturer, reviewing body-building manuals, or looking at a host of other resources available. Regardless, it knows it was given an incomplete vehicle with a compliant roof, and will only need to certify based on that fact and its own work. This is not a complex or difficult task, as the addition of a truck body such as bins or a box attached directly to the frame would not affect roof strength.

Fourth, NHTSA makes available its data and reports from its testing of various makes and models of vehicles to various FMVSSs. NHTSA's Office of Vehicle Safety Compliance tests vehicles, including pickup trucks. Before testing, NHTSA commonly asks a manufacturer for its certification data. For those safety standards that include tests, the agency will perform a test as specified in the FMVSS. The results of these tests are publicly available. In the past, these tests included FMVSS No. 216. NHTSA's testing under FMVSS No. 216a is currently planned to begin later this year, as vehicles are certified to this standard. *See* 49 CFR 571.216a S8. If NHTSA tests a pickup truck and a final-stage manufacturer is considering using it as a chassis-cab, the final stage-manufacturer can consult the testing results and underlying data.

Fifth, many resources exist to assist the final-stage manufacturers in certification. We stated this fact in our May 2006 response and in the April 2010 Further Response. NTEA does not address the prevalence of these resources. These resources, most of which are detailed manuals and instructions from the incomplete vehicle manufacturer, are relevant both to situations where there is pass-through certification and also where a final-stage manufacturer may base its certification on an IVD coupled with its evaluation.

As to pass-through, we note that in some instances, the body builder manuals may be incorporated into the IVD. NHTSA's multi-stage regulation, 49 CFR 568.4(9)(b), contains the following statement: "[t]o the extent the IVD expressly incorporates by reference body builder or other design and engineering guidance (Reference Material), the incomplete vehicle manufacturer shall make such Reference Material readily available to subsequent manufacturers. Reference Materials incorporated by reference in the IVD shall be deemed to be part of the IVD."

The GM Upfitter Web site includes the statement that "The Body Builders Manual contains information that may be used in addition to the Incomplete Vehicle Document (IVD) for any manufacturer making alterations to a GM complete/incomplete vehicle. No alteration should be made to the incomplete vehicle which either directly or indirectly results in any component, assembly or system being in nonconformance with any Federal Motor Vehicle Safety Standard or Emission Regulation." [61]

GM's IVD (Attachment A of NTEA's petition) states, "[i]f supplemental technical information is required to support this document, go to the body builder Web site located at *http://www.gmupfitter.com* or contact the Upfitter Integration Hotline at 1–800–875–4742."

Ford's Incomplete Vehicle Manual for the 2010 Super Duty F-Series contains the following statement: "[t]hroughout this manual you will find references to information found in the *Ford Truck*

[58] Ford, 2008 Super Duty F–Series Incomplete Vehicle Manual, March, 2007, p. 15, *available at https://www.fleet.ford.com/truckbbas/non-html/2008/08ivm_%20fseriesmar.pdf* (last accessed on February 14, 2011); Ford, 2011 Super Duty F–Series Incomplete Vehicle Manual, March 2010, *available at https://www.fleet.ford.com/truckbbas/topics/2011/2011_SD-F_IVM_BC34-19A268-AB.pdf* (last accessed on February 14, 2011).

[59] Chrysler Group, LLC, Incomplete Vehicle Document 2011 Model Year, page 2.

[60] Knapheide Manufacturing Company, Standard Service Bodies Specifications, *available at http://www.knapheide.com/pdfpages/pricepages/servicebody/UBPP2-3.pdf* (last accessed on February 14, 2011).

[61] GM Upfitter Body Builder manuals, *http://www.gmupfitter.com/body_builder_manuals.html* (last accessed on February 14, 2011).

Body Builders Layout Book. Additional Design Recommendations and specifications are also provided to assist subsequent stage manufacturers in completing chassis-cab and incomplete vehicles. The *Ford Truck Body Builders Layout Book* can be accessed via the Web at *http://www.fleet.ford.com/truckbbas* under the "Publications" tab; a CD–ROM copy may be ordered under the same tab."[62]

These resources can help the final-stage manufacturer in determining whether a vehicle complies with a certain standard. These resources, whether they are printed instructions, or a telephone call to the incomplete vehicle manufacturer, may provide the basis of the judgment needed to certify.

F. FMVSS No. 216a Does Not Place "Undue" Certification Risk on Final-Stage Manufacturers

Despite the limited assessment required of a final-stage manufacturer in certifying a completed chassis-cab vehicle to FMVSS No. 216a with the options described above, and the fact that multi-stage vehicles have been certified to FMVSS No. 216 for many years, NTEA argued that the self-certification scheme enacted by Congress forces its members to undertake "undue" certification risk. While NTEA acknowledged that multi-stage vehicles have been and are being built and certified to FMVSS No. 216, NTEA presented the issues as whether NHTSA's regulations "can permissibly allocate to final-stage manufacturers full legal responsibility for compliance with a safety standard when those manufacturers have no reasonable means of demonstrating conformity to that standard." Elsewhere in its petition, NTEA stated that it "has never suggested that incomplete vehicle manufacturers take all certification responsibility for multi-stage vehicles." As we understand these two statements, even though final-stage manufacturers are selling and certifying vehicles, FMVSS No. 216a is impractical because it forces final-stage manufacturers to take legal responsibility under the Vehicle Safety Act for their work. NTEA's solution is to have single-stage manufacturers certify those vehicles as being compliant with FMVSS No. 216a, but exclude final-stage manufacturers from certification.

First, in general, final-stage manufacturers do not have full legal responsibility—each manufacturer in the manufacturing chain is responsible for affixing its own certification label. *See* 49 CFR 567.4(a) and 567.5. As NTEA noted in its Vehicle Certification Guide, final-stage manufacturers assumed full legal responsibility prior to the 2005 amendments to the certification rule, but now "each company in the manufacturing chain will be legally responsible for its own work."[63] As we have described, for FMVSS No. 216a, the incomplete vehicle manufacturer will deliver to the final-stage manufacturer a chassis-cab with a FMVSS No. 216a compliant, intact roof structure.

Second, although NTEA stated that unreasonably restrictive conformity statements put final-stage manufacturers in the position of either taking "undue" risk of certification or exiting the business, we note that NTEA has not provided any evidence of a single final-stage manufacturer forced to "exit the business" or harmed by the "undue" certification risk.[64]

Third, NTEA generally believes that its members do not have the "reasonable means" to "demonstrate conformity" with any safety standard that includes tests. Therefore, NTEA requested that the agency identify specific steps that can be taken by a final-stage manufacturer that will constitute "reasonable care," for purposes of 49 U.S.C. 30115(a), in certifying a vehicle as complying with FMVSS No. 216a. NTEA cited language from the 1990 *NTEA* decision for the proposition that "[i]n order for a standard to meet the practicability requirement, it must offer the regulated party a chance to demonstrate compliance," and "in order for a standard to be practicable, it must offer in the body of the standard itself, a means for all subjected to the standard to prove compliance." *NTEA, 919 F.2d.* at 1153.

We note that the factual predicate in the 1990 *NTEA* decision was different than the situation at issue here. The 1990 *NTEA* court had before it a safety standard on steering wheel rearward displacement in crashes that applied to both chassis-cab and non-chassis-cab final-stage manufacturers. The final-stage manufacturers faced dynamic testing (crashing a vehicle into a wall) or studies they could not afford. The court noted that, at that time, pass-through regulations only applied to chassis-cabs, and final-stage manufacturers that manufactured on a cutaway chassis or stripped chassis could not pass-through the certification provided by the chassis-cab manufacturer. *NTEA,* 919 F.2d. at 1152. The court order from the 1990 *NTEA* case remanded the standard to the "extent that it applies to vehicles completed by final-stage manufacturers that cannot pass-through the certification of the initial manufacturer." *NTEA,* 919 F.2d. at 1158.

For FMVSS No. 216a, we have specifically excluded those multi-stage trucks for which the final-stage manufacturer would be responsible for manufacturing the roof and/or its support structure and certifying it, as was the case with cutaways and stripped chassis. As relevant here, FMVSS No. 216a applies only to final-stage manufacturers that build trucks on a chassis-cab.

Chassis-cabs will depart from the incomplete vehicle manufacturer's facility with an IVD and a compliant roof. In NTEA's view, they cannot be relied upon, because final-stage manufacturers are only provided with "overly-restrictive" IVDs that limit pass-through opportunities. Therefore, NTEA argued, because final-stage manufacturers are presented with a document that they read, to be applicable, limits later-stage manufacturing, they must conduct expensive tests or computer simulations, the cost of which, is prohibitive or take "undue" certification risk. Furthermore, NTEA argued that since NHTSA has not described in the standard, in advance, each and every way that a final-stage manufacturer can demonstrate "reasonable care," FMVSS No. 216a is impracticable.

We disagree. We have explained in the multi-stage vehicle rulemaking why we reject NTEA's broad claims about the current multi-stage certification scheme not providing final-stage manufacturers a reasonable way to ensure compliance and certify their vehicles. *See* 71 FR 28168; 70 FR 7414. Likewise, we explained above that pass-through certification is available, and that other methods, short of testing, are available if pass-through certification is not.[65]

There appears to be a fundamental misunderstanding about the applicability of the tests described in FMVSS No. 216a and other standards' "crash tests." Simply put, "reasonable care" does not require a manufacturer to test its vehicles in the manner specified

[62] Ford, 2011 Super Duty F-Series Incomplete Vehicle Manual, March 2010, p.35, *supra* note 58.

[63] National Truck Equipment Association, Certification Guide, Appendix 5l (2007).

[64] NTEA does state in a footnote in its petition that its members "report that incomplete vehicle manufacturers refrain from providing any such guidance on certification issues." NTEA Petition for Reconsideration, Docket No. NHTSA–2009–0093–022, p. 6, fn 10.

[65] NTEA's petition for reconsideration of FMVSS No. 216a is not appropriate mechanism to address multi-stage certification issues, such as requesting a mechanism to challenge conformity statements. These issues were resolved in the multi-stage certification rulemaking in 2006.

by the relevant safety standard, or even to test the vehicles at all. A manufacturer may choose any means of evaluating its products to determine whether the vehicle complies with the requirements of the safety standards, provided, however, that the manufacturer certifies that the vehicle will comply with the safety standards when tested by the agency according to the procedures described in the standard. *See* 49 U.S.C. 30115.[66]

To put this into context, it is helpful to consider the way that single-stage manufacturers typically certify vehicles. Each manufacturer assembles a vehicle for testing that it decides is representative of a model. It then certifies other variations of the model based upon the test results and engineering design of the vehicles within that model. In essence, the single-stage manufacturers certify based upon testing and evaluation, and do so even though the word "evaluation" does not appear in the safety standards. That is so because single-stage manufacturers, such as GM, Ford, or Honda, do not "demonstrate conformity" by testing each and every vehicle that they sell—to do so would mean that all consumers would buy crash-tested vehicles. Instead, single-stage vehicle manufacturers will ordinarily conduct, or sponsor, vehicle testing to support their certifications with a FMVSS. For the vehicles that they sell, as we have stated, and as GM stated in 2005 in comments to NTEA's petition for reconsideration of the multi-stage vehicle certification rule, certification is based on testing and evaluation."[67]

We recognize, of course, that small final-stage manufacturers may not have the resources of large, single-stage manufacturers to conduct "testing and/or evaluation." For that reason, we excluded from FMVSS No. 216a those multi-stage trucks for which the final-stage manufacturer would be responsible for designing and manufacturing the roof structure. However, for chassis- cabs, which arrive from the incomplete vehicle manufacturer with a compliant, intact roof structure certified by a reputable manufacturer on the basis of testing and/or evaluation, we do not see how the final-stage manufacturer's additions will affect the vehicle's roof strength that would require more testing. Nor has NTEA provided any examples. As we have explained repeatedly, and discussed above, these final-stage manufacturers can use pass-through certification. If they cannot, they can use the IVD as the foundation on which they can certify, as they will receive a vehicle certified as compliant with FMVSS No. 216a, or they can rely on a comparable pickup truck that has been certified by the manufacturer. Certifications can and will occur without testing or computer simulations, as the final-stage manufacturer can evaluate the vehicle in light of the available information provided by the incomplete vehicle manufacturers in IVDs and other resources familiar to final-stage manufacturers, and its addition(s) or alteration(s).

Despite this practical understanding, NTEA demands that the agency place the instances that will constitute reasonable care in FMVSS No. 216a. In short, NTEA is seeking a kind of assurance of compliance that is inconsistent with that of self-certification under 49 U.S.C. 30115, and fundamentally different from that of manufacturers generally, including single-stage manufacturers.

The agency has long said that it is unable to judge what efforts would constitute "reasonable care" in advance of the actual circumstances. This answer has been provided by multiple administrations over the decades in response to requests to provide interpretations of the Vehicle Safety Act.[68] Moreover, NHTSA does not delineate "reasonable care" in the Federal motor vehicle safety standards.[69] This is due to the fact that the exercise of reasonable care is different from and broader than demonstrating conformity with a safety standard by the test method described in the standard.[70]

We note that the term "reasonable care" is similar to the term "reasonable person," which is a widely understood term used in tort law. *Black's Law Dictionary* defines "reasonable care" as being "the degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances."[71]

While testing in accordance with the test procedures described in NHTSA's standards may be the best approach, it is not the only way to certify. As we have indicated before, the United States self-certification system leaves it up to the vehicle manufacturer as to the bases it uses to certify its vehicles. This provides reasonable flexibility that may take into account new approaches and technologies without the time consuming process of adopting detailed regulations; in fact, at least major manufacturers have not advocated burdening certification with detailed, technical regulations. The providing of a step-by-step method of how a vehicle manufacturer should certify its product is something that was not called for or contemplated by Congress when it enacted the broad self-certification system, rather than a system of governmental approval in advance of the sale of the product,[72] as in the case with certain drugs.

NTEA, which has noted that thousands of items are produced for work truck applications, has not suggested how the instances that constitute reasonable care should or could be included in an objective Federal motor vehicle safety standard. If there is a way around this dilemma, NTEA has not provided an answer,

[66] Congress used different terms in its requirements for Federal motor vehicle safety standards and for certification. The differences are meaningful. The authorization for standards provides, among other things, that the standards be "stated in objective terms." 49 U.S.C 30111(a). In contrast, reasonable care, which is used in 49 U.S.C. 30112(b)(2) [prohibitions on manufacture and sale of noncomplying motor vehicles] and 49 U.S.C. 30115 [certification of compliance] looks more broadly to care exercised by a prudent and competent person under similar circumstances. *See* definition from Black's Law Dictionary, below.

[67] *See* GM's May 13, 2005 comment on NTEA's petition for reconsideration of the multi-stage certification rule, Docket No. NHTSA–99–5673–0056.

[68] *See e.g.,* Letter from Philip R. Recht, Chief Counsel, NHTSA, to Mr. Mark Warlick, Four Winds International Corporation (February 27, 1995), *available at http://isearch.nhtsa.gov/files/10595.html* (last accessed February 14, 2011).; Letter from Paul Jackson Rice, Chief Counsel, NHTSA, to Mr. Vaughn Crawley, Vice President, Monitor Manufacturing Co. (August 15, 1990), *available at http://isearch.nhtsa.gov/files/2625y.html* (last accessed February 14, 2011); and Letter from Jacqueline Glassman, Chief Counsel, NHTSA, to Ms. S. Trinkl, Quality Management, DEKRA Automobil GmbH (December 30, 2004), *available at http://isearch.nhtsa.gov/files/Trinkl.1.html* (last accessed February 14, 2011).

[69] In a final rule concerning advanced air bags issued in 2000, the agency removed the "due care provision" contained in FMVSS No. 208, *Occupant Crash Protection,* stating that it does not fit with the overall statutory scheme and "it introduces a measure of subjectivity into the issue of whether a vehicle complies with a standard." 65 FR 30680, 30725 (May 12, 2000).

[70] While NTEA objects to being subject to reasonable care standards, its members are otherwise subject to such standards. *See Croskey* v. *BMW of North America,* 532 F.3d 511 (6th Cir. 2008); *Morales* v. *American Honda Motor Co.,* 151 F.3d 500 (6th Cir. 1998); *see also Williamson* v. *Mazda Motor of America,* 131 S.Ct. 1131 (2011); *Fabian* v. *Fulmer Helmets, Inc.,* 628 F.3d. 278 (6th Cir. 2010); *Sours* v. *General Motors Corp.,* 717 F.2d 1511, 1517 (6th Cir. 1983); Restatement (Third) of Torts, Product Liability § 2, 4 (1998).

[71] Black's Law Dictionary, Eighth Edition, Thomson West.

[72] *See generally,* Letter from Jacqueline Glassman, Chief Counsel, NHTSA, to Ms. S. Trinkl, Quality Management, DEKRA Automobil GmbH (December 30, 2004), *available at http://isearch.nhtsa.gov/files/Trinkl.1.html* (last accessed February 14, 2011) (for brief comparison of the European approval process and the U.S. self-certification process).

despite repeated entreaties for it to do so.

As the industry and the agency understands, there can be many methods a manufacturer can use to form the basis of its certification other than conducting a test using the procedures contained in a particular Federal motor vehicle safety standard. This, apparently, is understood by NTEA. In its Truck Equipment Handbook,[73] it states that the principle of due care [74] allows one vehicle type to be certified on the basis of testing a similar vehicle type. It also states in that handbook that, in cases of modification and/or completion of vehicles outside of the chassis manufacturer's guidelines, the principle of due care allows the small manufacturer to employ one or a combination of alternative testing methods, such as engineering analysis and calculations, computer simulations, periodic testing, laboratory tests and inspection by an independent laboratory to certify the vehicle. NTEA also states in the handbook that while such tests, calculations and simulations need not be performed for each vehicle, "a manufacturer must be *reasonably* certain that a particular vehicle configuration will conform to all applicable standards." [75] (Emphasis added.)

As explained in this response, the demands placed on final-stage manufacturers by FMVSS No. 216a are minimal—all that is required is reasonableness. If the roof or its structure is not modified or altered, the final-stage manufacturer can rely on the IVD for pass-through certification or another basis on which it can certify. In instances of the latter, for purposes of FMVSS No. 216a, the agency believes that a final-stage manufacturer's reasonable reliance on the IVD or on a comparable pickup truck that has been certified by the manufacturer, coupled with sound technical judgment, would constitute the exercise of reasonable care should no modifications be made to the chassis-cab's roof or its A- or B-pillars. In our view, however, more robust means of analysis for completed chassis-cabs, including testing, may be appropriate in instances where the final-stage manufacturer alters or modifies the intact roof structure or its supporting structures. NTEA has not identified an instance when this has been a necessity.

G. NTEA's Claim That NHTSA Needs To Test Multi-Stage Vehicles in Support of Its Regulatory Analysis Ignores the Fact That We Excluded the Trucks That Could Cause Compliance or Certification Issues for Final-Stage Manufacturers

NTEA stated that a review of the agency's final rule and Regulatory Impact Analysis indicates that NHTSA did not include any completed multi-stage vehicles in connection with any of the testing it performed to support its amendments to FMVSS No. 216a. It said that it appears that NHTSA has no test data to support a conclusion that the revised test in the final rule is workable and reasonable with respect to multi-stage vehicles.

As discussed earlier, to address practicability concerns, we included chassis-cabs in FMVSS No. 216a, and excluded those trucks for which final-stage manufacturers would be completing or building the roof structure. These are the vehicles that could likely cause practicability problems for final-stage truck manufacturers.

The chassis-cabs will have intact, compliant roofs at the time they are delivered to the final-stage manufacturer. Moreover, these vehicles will be identical in material respects to vehicles that are sold by the same incomplete vehicle manufacturers as pickup trucks, and have the same roof structures. The incomplete vehicle manufacturers will be redesigning the roof structures of their pickup trucks, as necessary, to meet FMVSS No. 216a, and will then be providing incomplete versions of the same vehicles, with the same roof structures, to final-stage truck manufacturers. The final-stage truck manufacturers will be able to comply with FMVSS No. 216a by not taking these vehicles out of compliance with the standard. It is for this reason that NHTSA's technical analyses did not specifically test multi-stage vehicles. Furthermore, as the chassis-cabs are based on the incomplete vehicle manufacturer's pickup trucks, and the FMVSS No. 216a test only compresses the supported cab, it would be redundant to separately test multi-stage versions of these vehicles.

The 216a Test

Part of the rationale for not testing completed multi-stage vehicles is due to the nature of the FMVSS No. 216a test. Originally, in the NPRM, we proposed a test with a rigid support under the vehicle's frame. However, in the test procedure adopted in the May 2009 final rule, the agency will support the vehicle body off of its suspension and rigidly secure the vehicle's sill and chassis on a rigid horizontal surface.[76] An angled platen compresses the vehicle above its A- and B-pillars. The vehicle must meet the specified strength-to-weight (SWR) to be considered compliant.

As we stated in the final rule, the FMVSS No. 216a test was adopted and changed from the NPRM test procedure based on comments from the industry and because the test procedure was found to reduce unwanted deflection of the vehicle body when undergoing testing when the load is applied to the roof. This was done due to issues in conducting the test with body-on-frame vehicles, *e.g.* chassis-cabs.

We excluded those multi-stage trucks from FMVSS No. 216a where the final-stage manufacturer would design and fabricate the roof, its support structure, or a portion thereof. We included chassis-cabs in FMVSS No. 216a; only the vehicle's cab is tested, and not the frame. As we explained, incomplete vehicle manufacturers are responsible for the design and fabrication of these chassis-cabs, most of which are based off of pickup trucks sold directly to consumers in dealerships.

In its petition, NTEA argued that NHTSA failed to consider or test multi-stage vehicles in the final rule. Given the vehicles covered, the standard, and the test procedure, such testing is not necessary for our analysis.[77] First, as we stated previously, only the vehicle's chassis-cab is tested, and the chassis-cab is supported by a horizontal surface at the vehicle's sill. The cab is compressed from an angled platen above the A- and the B-pillars into this added, rigid support at the cab's sill. Therefore, modifications to the vehicle's frame would not affect the vehicle's compliance in the FMVSS No. 216a test. Second, if a final-stage manufacturer installs a box that is taller than the cab, the box will be removed. Similarly, any additions to the roof will be removed

[73] National Truck Equipment Association, Truck Equipment Handbook, Eighth edition, October 2010, p. 61.

[74] The National Traffic and Motor Vehicle Safety Act originally required the exercise of "due care." 80 Stat. 722 (1966), *see NTEA*, 919 F.2d. at 1151. The wording was changed to "reasonable care" in the recodification of the Federal transportation laws in 1994 to maintain consistency throughout the revised code. *See* H.R. Rep. 103–180, at 3, reprinted in 1994 U.S.C.C.A.N. 818. The recodification expressly provided that there is no substantive change in meaning. *See* Public Law 103–272, 108 Stat. 745.

[75] National Truck Equipment Association, Truck Equipment Handbook, Eighth edition, October 2010, p. 61.

[76] A detailed discussion is located at 74 FR at 22367 under the heading, "Tie Down Procedure."

[77] However, NHTSA did test a Ford F–250 chassis-cab on October 2, 2008. *See* Docket No. NHTSA–2009–0093–0019. Video files and test reports are available to the public through NHTSA's Internet vehicle crash test database: *http://www-nrd.nhtsa.dot.gov/database/veh/veh.htm.*

before the test, per the regulation. Furthermore, it is not apparent how the modifications generally made by a final-stage manufacturer will create compliance difficulties with FMVSS No. 216a. Moreover, as we explained in the multi-stage certification rulemaking, if final-stage manufacturers identify particular areas where compliance with FMVSS No. 216a is a problem, they, or NTEA on behalf of its members, can petition for a temporary exemption under 49 CFR part 555.[78]

In our Further Response, we stated that in analyzing the 2006 GMT–355 IVD, which is for a body-on-frame vehicle, pass-through certification would be available to final-stage manufacturers if no modifications were made to the roof or its structural support members. We still believe that to be true. NTEA has not presented NHTSA with descriptions or evidence of any modifications that are made to a chassis-cab or its support structure. If such modifications do occur, they could affect the vehicle's compliance with FMVSS No. 216a if the roof or its support structure is weakened. However, we have no evidence that such modifications occur. As we presented earlier in this document, NHTSA is unaware of equipment manufacturers that require modifications to the chassis-cab or its support structure.

The only modifications mentioned by NTEA in it comments or petition is where a final-stage manufacturer drills holes in the frame rails behind the chassis-cab and attaches a box onto those frame rails. FMVSS No. 216a will only test the roof strength of the chassis-cab independent of the vehicle's frame. The chassis-cab is manufactured by an incomplete vehicle manufacturer who will provide the final-stage manufacturer with a compliant roof. Therefore, provided modifications are not made to the vehicle's chassis-cab or its support structure, subsequent modifications to the vehicle's frame rails will not affect the vehicle's performance in the FMVSS No. 216a test. For those reasons, NHTSA believes there was no reason for the agency to specifically test a completed multi-stage truck in support of its evaluation.

H. All Multi-Stage Vehicles Should Not Be Excluded

NTEA argued that excluding all multi-stage vehicles would not unacceptably deprive those users of the safety benefits provided by the roof crush standard. NTEA stated that its statistics show that the vast majority of multi-stage vehicles are rated above 6,000 pounds. NTEA noted that FMVSS No. 216a excludes trucks other than ones built on chassis-cabs (and incomplete vehicles with a full exterior van body), meaning that the agency excluded approximately one-third of multi-stage vehicles with a GVWR of 6001 pounds to 10,000 pounds. NTEA also said that chassis with a GVWR of over 10,000 pounds constitute 94.5 percent of the entire market of chassis rated above 6,000 pounds. Thus, the vast majority of multi-stage vehicles above 6,000 pounds GVWR are already excluded from FMVSS No. 216a, and its position would not have any appreciable effect on the multi-stage vehicle population that will be subject to the rule.

NTEA's argument ignores the fact that Congress, in SAFETEA–LU, required NHTSA to establish rules or standards that will reduce vehicle rollover crashes and mitigate deaths and injuries associated with such crashes for motor vehicles with a GVWR of not more than 10,000 pounds. We recognized in the final rule that there are benefits for vehicles with a GVWR above 6,000 pounds up to 10,000 pounds, although they are relatively small compared to those associated with lighter vehicles. However, the benefits are not trivial. We noted that if a multi-stage vehicle is involved in a rollover, the vehicle's roof strength will be an important factor in providing occupant protection.

In the final rule, as discussed above, NHTSA included those multi-stage trucks that have an intact, compliant roof structure when it leaves the incomplete vehicle manufacturer and excluded those trucks for which the final-stage manufacturer would be responsible for designing and manufacturing the roof structure. While the number of included vehicles is a small number of the total multi-stage vehicles built and certified every day, adequate justification as to why the drivers of chassis-cabs should be less safe than the driver of a nearly identical pickup truck has not been provided. This is especially so when the later-stage manufacturing does not affect the strength of the chassis-cab's roof.

While there may not be an appreciable effect on the entire multi-stage population, as NTEA argues, that was not the intent. Instead, the intent was to implement the provisions of SAFETEA–LU and, where practicable, to give drivers of vehicles with a GVWR of 10,000 pounds or less increased safety in case of a rollover. We note that NTEA has not presented a persuasive safety argument. Instead, its arguments are based primarily on overstated certification risk. As such, we believe that this rule should continue to include those vehicles with an intact, compliant roof structure, whether they are delivered to the dealership or the final-stage manufacturer.

[78] NTEA stated to its members that it could submit a petition and individual companies would only need to submit limited information to opt-in. *See* National Truck Equipment Association, Certification Guide, Appendix 5l (2007).

IV. Conclusion

For the reasons discussed above, we deny the petition for reconsideration submitted by NTEA.

Authority: 49 U.S.C. 322, 30111, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

Issued: March 16, 2011.

Daniel C. Smith,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 2011–6595 Filed 3–21–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2010–0011; MO 92210–0–0008]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Berry Cave Salamander as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Berry Cave salamander (*Gyrinophilus gulolineatus*) as endangered under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that listing the Berry Cave salamander is warranted. Currently, however, listing is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, we will add the Berry Cave salamander to our candidate species list. We will develop a proposed rule to list the Berry Cave salamander as our priorities allow. We will make any determination on critical habitat during development of the proposed listing rule. During any interim period, we will address the status of the candidate taxon through our annual Candidate Notice of Review (CNOR).