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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2006-24497]
RIN 2127-AI93

Federal Motor Vehicle Safety Standards; Occupant Protection in Interior Impact

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

ACTION: Response to petitions for rulemaking; notice of proposed rulemaking.

SUMMARY: Our safety standard on occupant protection in interior impact requires, in part, that light vehicles provide head protection when an occupant's head strikes upper interior components, such as pillars, side rails, headers, and the roof during a crash. For altered vehicles and vehicles built in two or more stages, these requirements become effective September 1, 2006. The Recreation Vehicle Industry Association and the National Truck Equipment Association petitioned the agency to permanently exclude certain types of altered vehicles and vehicles manufactured in two or more stages from these requirements. This document responds to these petitions for rulemaking and proposes certain amendments to the standard.

Based on a careful consideration of both the safety benefits of the upper interior protection requirements, and practicability concerns relating to vehicles built in two or more stages and certain altered vehicles, we are proposing to limit these requirements to only the front seating positions of those vehicles. Further, we tentatively conclude that it is appropriate to exclude a narrow group of multi-

stage vehicles delivered to the final stage manufacturer without an occupant compartment, because of impracticability concerns.

We are also proposing to delay the effective date of the head impact protection requirements as they apply to final stage manufacturers and alterers until September 1, 2008.

DATES: You should submit your comments early enough to ensure that Docket Management System receives them not later than June 23, 2006.

ADDRESSES: You may submit comments [identified by DOT Docket Number at the beginning of this document] by any of the following methods:

Web site: http://dms.dot.gov. Follow the instructions for

submitting comments on the DOT electronic docket site.

Fax: 1-202-493-2251.

Mail: Docket Management System; U.S. Department of Transportation, 400 7th Street, SW., Room PL-401, Washington, DC 20590.

Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 7th Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Federal eRulemaking Portal: Go to http://www.regulations.gov. Follow the online instructions for submitting

comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the SUPPLEMENTARY INFORMATION section of this document. Note that all comments received will be posted without change to http://dms.dot.gov, including any personal information provided.

Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to http://dms.dot.gov at any time or to Room PL-

01 on the plaza level of the Nassif Building, 400 7th Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590:

For technical and policy issues: Lori Summers, Office of Crashworthiness Standards, telephone: (202) 366-4917, facsimile: (202) 366-4329, E-mail: Lori.Summers@dot.gov.

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SUPPLEMENTARY INFORMATION:

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I. Background

A. 1995 Final Rule Upgrading FMVSS No. 201

On August 18, 1995, the National Highway Traffic Safety Administration (NHTSA) issued a final rule (August 1995 final rule) amending Federal Motor Vehicle Safety Standard (FMVSS) No. 201, ``Occupant Protection in Interior Impact,'' to provide enhanced head impact protection.\1\ The August 1995 final rule required passenger

cars, and trucks, buses and multipurpose passenger vehicles (MPVs) with a gross vehicle weight rating (GVWR) of 4,536 kilograms (10,000 pounds) or less, to provide protection when an occupant's head strikes upper interior components, including pillars, side rails, headers, and the roof, during a crash. The new head protection requirements were necessary because even in vehicles equipped with air bags, head impacts with upper interior components resulted in a significant number of occupant injuries and fatalities.

\1\ See 60 FR 43031, Aug. 18, 1995; Docket No. NHTSA-1996-1762-1.

The August 1995 final rule significantly expanded the scope of FMVSS No. 201. Previously, the

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standard applied to the instrument panel, seat backs, interior compartment doors, arm rests and sun visors, but not to interior components such as pillars and headers. The final rule set minimum performance requirements for these upper interior components by establishing target areas that must be padded or otherwise have energy absorbing properties to minimize head injury in the event of a crash. The final rule added procedures for a new in-vehicle component test in which a free-motion head form (FMH) is fired at certain target locations on the upper interior of a vehicle at an impact speed of 24 km/h (15 mph). Targets that are located on or within 50 mm (2 inches) of dynamically deployable upper interior head protection systems (air bags systems) can, at the option of the manufacturer, be impacted at the reduced speed of 19 km/h (12 mph). Data collected from an FMH impact are translated into a Head Injury Criterion (HIC(d)) score. The resultant HIC(d) must not exceed 1000.

The FMH impact requirements excluded targets located on convertible roof frames or roof linkage mechanisms, targets located at least 24 inches rearward of the rearmost designated seating position, and targets located at least 24 inches rearward of the driver's seating position in an ambulance or a motor home. Walk-in van-type vehicles were also excluded from the new requirements because upper interior components on those vehicles are located much higher compared to other vehicles, and head impacts against these components are unlikely for belted occupants.\2\

\2\ The current exclusions are specified in S6.3 of 49 CFR 571.201.

The 1995 final rule provided manufacturers with three alternate phase-in schedules for complying with the FMH impact requirements. At this time, all vehicles except altered vehicles and vehicles manufactured in two-or-more stages are required to comply with the FMH impact requirements.\3\ As discussed below, the effective date for altered vehicles and vehicles manufactured in two or more stages to comply with these requirements is presently September 1, 2006.\4\

\3\ We note that under S6.3(d), walk-in van-type vehicles are permanently excluded from the FMH impact requirements.

\4\ See S6.1.4 of 49 CFR 571.201.

B. Subsequent Amendments to FMVSS No. 201

On April 8, 1997, the agency responded to petitions for reconsideration of the 1995 final rule.\5\ Among other things, the agency delayed the effective date of the FMH impact requirements for vehicles manufactured in two or more stages until September 1, 2002. The agency also excluded buses with a GVWR of more than 3,856 kg (8,500 pounds) from the FMH impact requirements because we were concerned that these requirements were prohibitively costly for that class of vehicles.\6\ Finally, the agency denied a petition to exclude police vehicles from the FMH impact requirements because the petitioner did not present evidence to indicate that police equipment required different treatment from interior attachments present in other vehicles subjected to testing.

\5\ See 62 FR 16718, April 8, 1997.

\6\ See id at 16720.

In 2002, in response to petitions (described in detail in the next section) to permanently exclude altered vehicles and vehicles manufactured in two or more stages from the FMH impact requirements, the agency issued an interim final rule, delaying the effective date of these requirements as they apply to altered vehicles and vehicles manufactured in two or more stages until September 1, 2003.\7\ On August 28, 2003, the agency further delayed the effective date of the FMH impact requirements for altered vehicles and vehicles manufactured in two or more stages until September 1, 2006.\8\ The issue of permanent exclusion of these types of vehicles is being addressed in the subsequent sections of this notice.\9\

\7\ See 67 FR 41348, June 18, 2002.
\8\ See 68 FR 51706, August 28, 2003.
\9\ We note that there have been other, more recent amendments to the requirements of FMVSS No. 201. However, their content had no relevance to this NPRM.

II. Petitions for Rulemaking

This document addresses petitions for rulemaking submitted by the Recreation Vehicle Industry Association (RVIA) and the National Truck Equipment Association (NTEA). The member companies of RVIA and NTEA are generally considered final-stage manufacturers and alterers. That is, they purchase incomplete vehicles from major manufacturers to serve as the basis for specialty vehicles (manufactured in two or more stages) for certain uses and markets, or alter completed vehicles prior to first retail sale. As such, the petitioners' members face a variety of challenges in certifying that their vehicles meet applicable safety standards. We note that with respect to vehicles manufactured in two or more stages, some multi-stage vehicles are built from chassis-cabs with a completed occupant compartment. Others are built from less complete vehicles, often necessitating the addition by the final-stage manufacturer of its own occupant compartment. The final stage manufacturer is responsible for certification of the completed vehicle, although, as discussed below, it can often ``pass-through'' by incomplete vehicle manufacturer.

A. Recreation Vehicle Industry Association Petition for Rulemaking

On October 4, 2001, the RVIA submitted a petition for rulemaking requesting that ``van conversions, altered vehicles, and motor homes'' with a GVWR of 10,000 pounds or less be excluded from the requirements of the August 1995 final rule.\10\

\10\ To examine the petition, please go to http://dms.dot.gov/

and enter Docket No. NHTSA-2000-7145-6.

The RVIA is a national trade association representing final stage manufacturers and alterers. These entities alter vans, pickup trucks, and sport utility vehicles prior to first retail sale (RVIA refers to these vehicles collectively as conversion vehicles or ``CVs''), and also manufacture motor homes. The RVIA petition requested that CVs and

motor homes be excluded from the FMH impact requirements for the following reasons:

1. RVIA argues that in the statutory enactment directing NHTSA to improve head impact protection, Congress specifically limited its mandate to passenger cars. RVIA stated that a proposed Senate amendment to include multipurpose passenger vehicles (MPVs) and light duty trucks (LDTs) was expressly rejected.\11\ Because the agency chose to proceed beyond the congressional mandate, RVIA argues that NHTSA has the discretion to exclude vehicles, other than passenger cars, from the FMH impact requirements.

\11\ See H.R. Conf. Rep. No. 102-404, at 395-396 (1991).

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2. With the exception of a single entity, all RVIA members fall under the ``small business'' definition for the purposes of Small Business Administration regulations.\12\ RVIA states that its members have been operating in a declining market where production of CVs and motor homes has been declining sharply. For example, in 1999, RVIA members produced 104,100 CVs and 4,634 motor homes. By contrast, 2001 shipments were projected at 38,000 CVs and 3,629 motor homes. In light of their member's ``small business'' status and declining sales, RVIA argues that the member companies do not have the financial

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resources and technical expertise to comply with FMH impact requirements.

\12\ See 13 CFR 121.201.

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3. RVIA estimates the cost of compliance (including development and tooling) to average $2,401 to $4,850 per each CV and $4,748 to $5,747 per each motor home, respectively.\13\ RVIA estimates that the costs associated with certification testing to be as high as $46,000 for each vehicle configuration.

\13\ RVIA's detailed certification testing and tooling cost estimates are on page 7 and in Exhibit D of the petition (Docket No. NHTSA-2002-7145-6).

RVIA argues that most CVs and motor homes feature unique interior

designs. Specifically, these vehicles include overhead cabinets, side valances, raised roof structures, and other unusual interior components. RVIA members offer an average of 18 different CV configurations each, all of which would require separate certification testing. Some offer as many as 38 different CV variations. Motor home manufacturers offer as many as 14 motor home variations. However, at least one motor home manufacturer offers at least 73 different ``floor plans.'' RVIA states that this product variation necessitates conducting FMH impact testing on each vehicle configuration and may even require multiple identical vehicles to test each configuration.

Because of the differences in the customized interiors, RVIA argues that the manufacturers have been unable to arrive at practicable and cost-effective ``countermeasures;'' i.e., additional padding designed to bring these vehicles into compliance with FMH impact requirements.

4. RVIA states that cooperative testing, suggested by NHTSA as a way to lessen compliance costs associated with FMH requirements, is not practicable because each RVIA member manufactures unique vehicles, each substantially different from its competitors. Because these vehicles are different, cooperative testing is impossible unless interiors for all vehicles manufactured by RVIA members are made uniform. Accordingly, RVIA argues that cooperative testing would eliminate interior customization, which would in turn result in a loss of market for CVs and motor homes.

5. RVIA argues that the safety benefits of FMH impact requirements as applied to CVs and motor homes are marginal. RVIA conducted a survey of CV and motor home manufacturers which showed no crashes in which an occupant injury or death had occurred due to head impacts with upper interior components covered by FMH impact requirements.

RVIA cites Fatal Analysis Reporting System (FARS) data in arguing that van-based motor homes are safe. Specifically, between 1996 and 1999, there was an average of 14 fatalities per year in all van-based motor homes regardless of the GVWR, which translates to 0.0039 fatalities per 1,000,000 annual vehicle miles (compared to 0.0143 fatalities per 1,000,000 miles for passenger cars). Based on these data, RVIA estimates that the safety benefit reduction from excluding small, van-based motor homes from the FMH impact requirements would be extremely low. Since FARS does not track crash data for all CVs, RVIA was not able to make a similar estimate for CVs. However, RVIA argues that CVs are safer than an average passenger car, and that the safety benefit reduction in the case of CVs would also be quite low.\14\

\14\ Petitioners support this assertion by a letter from RV Alliance America. The letter is found in Exhibit E (Docket No. NHTSA-2002-7145-6).

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6. RVIA members produce vehicles to the consumer's specifications and many special components and designs are installed in response to consumer requests. RVIA argues that in granting a previous (unrelated) temporary exemption from the requirements of FMVSS No. 201, the agency acknowledged public benefit in affording consumers a wide choice of motor vehicles.\15\ Petitioners asked that the agency adhere to this policy by allowing RVIA members to continue manufacturing CVs and motor homes built to customer specifications.

\15\ See 64 FR 61379, November 10, 1999.

B. National Truck Equipment Association Petition for Rulemaking

On November 27, 2001, NTEA submitted a petition for rulemaking requesting that certain vehicles manufactured in two or more stages be excluded from FMH impact requirements arguing that the requirements are impracticable as they apply to these vehicles.\16\ These vehicles included ambulances, fire fighting, rescue, emergency, and law enforcement vehicles. Additionally, the NTEA requested exemption from FMH impact requirements for any target in a truck or multipurpose passenger vehicle located rearward of a vertical transverse plane through the foremost design H-point of the rear most forward facing designated seating position where the vehicle is equipped with a full or partial bulkhead or other similar device for the purpose of protecting or isolating the driver and passenger compartment from the cargo carrying, load bearing, or work performing area of the vehicle.

\16\ See NHTSA-2001-8876-10 at http://dms.dot.gov/. NTEA also filed subsequent petitions to delay the effective date of the August 1995 final rule as it applied to vehicles manufactured in two or more stages. These later petitions relied on the same arguments presented to the agency in the November 27, 2001 document (see NHTSA-2002-12480-2, NHTSA-2002-12480-3).

NTEA represents 1,500 distributors, final stage and intermediate manufacturers, and alterers of work-related trucks, truck bodies and equipment. More specifically, NTEA member companies produce ambulances, fire fighting, rescue, emergency or law enforcement vehicles, utility company vehicles, aerial bucket trucks, delivery trucks and a variety of other specialized vehicles for commercial or vocational use. These entities generally use incomplete vehicles provided by major

manufacturers and assemble a completed vehicle for a specified purpose using the chassis provided by another company. As discussed above, altered vehicles and vehicles manufactured in two or more stages must comply with FMH impact requirements beginning September 1, 2006. In 2001, NTEA estimated that 377,000 vehicles produced by its members annually would have to meet the FMH impact requirements.

NTEA asked for an exclusion of such vehicles because it believes that NTEA member manufacturers will not be able to demonstrate that these vehicles comply with FMH impact requirements without conducting individual full-scale dynamic testing on each vehicle model, which NTEA argues is not economically or technologically possible. Other options for demonstrating compliance, such as pass through certifications, engineering analysis, and computer modeling, are, according to NTEA, not available or economically feasible.

First, NTEA believes that FMH testing for the subject vehicles is not economically feasible because of the number of vehicle configurations produced by the multi-stage truck and specialty vehicle industry. NTEA estimates that in aggregate, compliance testing would cost its members $160,000,000. Specifically, NTEA states that there are over 1,200 identifiable vehicle configurations produced by its members. For each configuration, the cost of actual testing is approximately $14,000 to $17,000 (NTEA states that this cost estimate does not account for development costs, costs for re-testing after failures, transportation of the vehicle to the test facility, or countermeasures in production vehicles that would be necessary to produce a

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compliant vehicle).\17\ Besides costs, NTEA argues that it is not feasible to test each vehicle configuration produced by its member manufacturers because they are aware of only two testing facilities that provide dynamic testing, and each is only capable of testing 12 vehicles per month.

\17\ See Appendix A of the NTEA petition.

Second, NTEA stated that alternative options to demonstrate compliance such as pass-through certifications,\18\ test data from component vendors, engineering analysis, computer modeling, and consortium dynamic testing, are not available.

\18\ In a ``pass through'' of chassis manufacturer compliance, multi-stage manufacturers certify compliance by ``passing through'' the chassis manufacturer's certification.

Specifically, NTEA argued that pass-through is not an available option because the member manufacturers often complete the vehicle ``outside the parameters'' provided by the chassis manufacturer. For example, the installation of bulkheads or partitions usually invalidates the chassis manufacturer's compliance statement. In many work vans, emergency vehicles, or police vehicles, bulkheads or dividers are needed to ensure that objects or people that must remain in the rear of the vehicle actually do so. Installation of these bulkheads, according to NTEA, is likely to require relocation of target areas originally certified by the incomplete vehicle manufacturer, adding to the compliance burden of the NTEA member and frustrating the ability to take advantage of ``pass through'' certification. Furthermore, NTEA asserts that the chassis manufacturer's completion guidelines are too restrictive to allow for compliance.

Additionally, NTEA argued that other compliance options are also unavailable to multi-stage manufacturers. NTEA stated that the chassis manufacturers do not provide sufficient compliance information to the multi-stage manufacturers and that the test data is not enough to certify compliance under FMVSS No. 201 because validation requires in-system testing. NTEA also argued that engineering analysis and computer modeling are not possible because they require previous dynamic test data that do not exist. Finally, NTEA stated that consortium testing is not an option since the compliance tests developed by NHTSA are so specific that minor differences produce significantly different test results.

III. The Agency's New Approach to Vehicles Built in Two or More Stages and Altered Vehicles

On February 14, 2005, the agency issued a final rule (February 2005 final rule) which enables more final stage manufacturers to take advantage of ``pass-through'' certification by requiring incomplete vehicle manufacturers to assume certification responsibility for the vehicle as further manufactured or completed by a final-stage manufacturer, to the extent that the vehicle is completed in accordance with the Incomplete Vehicle Document (IVD) described below.\19\ Previously, this requirement only applied to chassis-cab manufacturers. The February 2005 final rule also created a new process under which manufacturers of vehicles built in two or more stages and alterers could obtain temporary exemptions from certain dynamic performance requirements. Finally, as a part of that rulemaking, we refined our analysis of the agency's authority to establish different requirements for vehicles built in two or more stages. The February 2005 final rule becomes effective September 1, 2006.

\19\ See 70 FR 7414, Docket No. 1999-5673-54.

The agency is in the process of considering a petition for reconsideration of the February 2005 final rule submitted by NTEA.\20\ We expect to issue our response shortly.

\20\ See Docket No. NHTSA-1999-5673-55. See also comment concerning the NTEA petition for reconsideration submitted by General Motors (Docket No. NHTSA-1999-5673-56).

A. ``Pass-Through'' Certification

Manufacturers of chassis-cabs are currently required to place on the incomplete vehicle a certification label stating under what conditions the chassis-cab has been certified. This allows what is commonly referred to as ``pass-through'' certification. As long as a subsequent manufacturer meets the conditions of the chassis-cab certification, that manufacturer may rely on this certification and pass it through when certifying the completed vehicle. However, the current certification regulations do not impose corresponding certification responsibilities on manufacturers of incomplete vehicles other than chassis-cabs (e.g., incomplete vans, cut-away chassis, stripped chassis and chassis-cowls).

The February 2005 final rule extended these certification responsibilities to all types of incomplete vehicles. More specifically, beginning September 1, 2006, all incomplete vehicle manufacturers and intermediate manufacturers will have certification responsibilities for the vehicles as further manufactured or completed by final-stage manufacturers, to the extent that the vehicle is completed in accordance with the conditions specified in the IVD.\21\

\21\ The IVD details, with varying degrees of specificity, the types of future manufacturing contemplated by the incomplete vehicle manufacturer and must provide, for each applicable safety standard, one of three statements that a subsequent manufacturer can rely on when certifying compliance of the vehicle, as finally manufactured, to some or all of all applicable FMVSSs. First, the IVD may state, with respect to a particular safety standard, that the vehicle, when completed, will conform to the standard if no alterations are made in identified components of the incomplete vehicle (this representation is most often made with respect to chassis-cabs,

since a significant portion of the occupant compartment is already complete). Second, the IVD may provide a statement for a particular standard or set of standards of specific conditions of final manufacture under which the completed vehicle will conform to the standard (this statement is applicable in those instances in which the incomplete vehicle manufacturer has provided all or a portion of the equipment needed to comply with the standard, but subsequent manufacturing might be expected to change the vehicle such that it may not comply with the standard once finally manufactured). Third, the IVD may identify those standards for which no representation of conformity is made (for example, a manufacturer of a stripped chassis may be unable to make any representations about conformity to any crashworthiness standards if the incomplete vehicle does not contain an occupant compartment).

B. The Agency's Authority to Exclude Multi-Stage Vehicles From FMVSSs

In the February 2005 final rule, the agency reconsidered a previous position and concluded that it has authority to exclude multi-stage vehicles as a group from FMVSSs that are impracticable as they applied to these vehicles, or to subject these vehicles to different requirements. NHTSA concluded that it is appropriate to consider multi-stage vehicles as a vehicle type subject to consideration in the establishment of a regulation. For a detailed discussion of this issue, see 70 FR 7014 at 7421.

C. New Temporary Exemption Procedures Available to Final Stage Manufacturers and Alterers

The February 2005 final rule established new procedures available to manufacturers of vehicles built in two or more stages and alterers for obtaining temporary exemptions from FMVSSs for which the agency specifies certain dynamic test procedures to determine compliance. The new procedures streamline the temporary exemption process by allowing an association or another party representing the interests of multiple manufacturers to bundle exemption petitions for a specific

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vehicle design, thus permitting a single explanation of the potential safety impact and good faith attempts to comply with the standards. The new exemption procedures specify that each manufacturer seeking an exemption is required to demonstrate financial hardship and good faith efforts to comply with applicable requirements. Exemptions based on financial hardship are available to companies manufacturing less than 10,000 vehicles per year, and any one exemption cannot apply to more

than 2,500 vehicles per year.

We note that, given the regulatory text specifying the new temporary exemption procedure, there is an issue whether that procedure is available for the head impact protection requirements at issue in the NTEA and RVIA petitions. That regulatory text reads as follows:

* * *An alterer, intermediate or final-stage manufacturer, or industry trade association representing a group of alterers, intermediate and/or final-stage manufacturers may seek * * * a temporary exemption or a renewal of a temporary exemption from any performance requirement for which a Federal motor vehicle safety standard specifies the use of a dynamic crash test procedure to determine compliance. [Emphasis added]

The procedure for the head impact protection requirements does not incorporate a full scale crash test except as an option for vehicles equipped with a dynamically deployable upper interior head protection system, which we do not believe is relevant to vehicles that are subject of the RVIA and NTEA FMVSS No. 201 petitions. Nevertheless, the upper interior requirements have a number of similarities to crash tests. For purposes of this rulemaking, we are proposing to extend the scope of the new temporary exemption procedures such that multistage manufacturers would be able to petition NHTSA for an exemption from FMH impact requirements.

First, we observe that small volume multistage manufacturers are currently able to petition the agency for temporary exemptions from all FMVSSs, including FMH impact requirements, under the existing temporary exemption procedures currently in effect. Therefore, our proposal to expand the scope of the new temporary exemption procedures to include consideration of petitions related to FMH impact testing relates to the availability of the more streamlined procedures rather than to the possibility of a manufacturer obtaining an exemption, in appropriate circumstances, at all.

Second, we believe that, in limited circumstances, the difficulty or impracticability of testing a multitude of unique vehicle configurations, or otherwise obtaining an appropriate basis for certification, with the associated financial hardships, may extend to FMH impact requirements. Specifically, there is a considerable cost associated with FMH impact tests and vehicles are usually damaged during testing.

Finally, we expect the number of instances in which an exemption will be needed to be very small because in order to petition for an exemption, the petitioner would have to show why FMH impact tests would cause substantial economic hardship. This showing must include detailed financial information and a complete description of the petitioner's good faith efforts to comply with the standards. Specifically, the

petitioner would have to explain the inadequacy of IVD documents furnished by one or more incomplete vehicle manufacturers or by prior intermediate manufacturers pursuant to 49 CFR part 568. The petitioner would also have to show why generic or cooperative testing is impracticable. In addition, each petitioner is required to explain under Sec. 555.13(c) why the requested temporary exemption would not unreasonably degrade safety.

We are not proposing specific regulatory text in this document. We note that this issue is also before the agency in the context of petitions for reconsideration of the February 2005 final rule establishing the new exemption procedures. We also note that depending on the agency's decision in that proceeding, this issue could become moot as to this rulemaking.

IV. Response to the RVIA and NTEA Petitions for Rulemaking

As discussed above, RVIA and NTEA petitioned the agency to permanently exclude certain altered vehicles and vehicles manufactured in two or more stages from all or a portion of the FMH impact requirements. We are granting the petition in part, by proposing to further limit the area that is subject to FMH impact requirements in ambulances, motor homes, and extending this limitation to other vehicles manufactured in two or more stages, as well as altered vehicles. We are also proposing to exclude vehicles delivered to a final stage manufacturer without an occupant compartment from the FMH impact requirements. We are denying all other parts of the petitions.

A. Proposal To Limit the Occupant Compartment Area Subject to the FMH Impact Requirements in Ambulances, Motor Homes, and Other Vehicles Manufactured in Two or More Stages, and Altered Vehicles

In ambulances and motor homes, the current standard excludes the occupant compartment area located more than 600 mm (24 inches) behind the seating reference point of the driver's seating position from the FMH impact requirements. For all other vehicles, the occupant compartment area located more than 600 mm (24 inches) behind the seating reference point of the rearmost designated seating position is similarly excluded from the FMH impact requirements.

For altered vehicles and vehicles manufactured in two or more stages, including motor homes and ambulances, we are proposing to limit the area subject to the FMH impact requirements to not more than 300 mm (12 inches) behind the seating reference point of the driver's seating position. This would have the effect of limiting the FMH impact requirements to the front seating positions for these vehicles. We believe that the distance reduction to 300 mm (12 inches) is more representative of the distance between the seating reference point and the upper seat back/head restraint location where the occupant's head

is located. Because of the front head restraint height requirements, we believe it is unlikely that the head of a seated occupant would come in contact with bulkheads, partitions, or overhead cabinets and storage shelves located further than 300 mm (12 inches) behind the seating reference point of the driver's seating position. However, we are not granting the NTEA proposal to limit the seat position for this exclusion to the foremost design H-point (rather than the seating reference point) since we believe that a large portion of the seated driver's head would not be provided head protection in the areas of B-pillars and side rails between the A-pillar and the B-pillar.

In developing this proposal, we have carefully considered both the safety benefits of the FMH requirements and practicability concerns relating to multistage vehicles. Based on previous estimates of the benefits of the FMVSS No. 201 final rule, and estimates from the National Automotive Sampling System, Crashworthiness Data System of the percent of injuries occurring to light truck occupants in multi-stage vehicles, the agency derived the following estimate of safety benefits. Requiring all multi-stage manufactured vehicles to

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meet FMVSS No. 201 would have annual benefits in the front seat of 16-22 fewer fatalities and 19-22 fewer AIS 2-5 injuries. However, in the rear seats, the benefits are estimated to be less than 1 fatality (which would round down to 0) and 1 AIS 2-5 injury. Thus, based on this analysis, excluding multi-stage vehicles from target points that could not be struck by the front row occupants would have a very small impact on safety.

Given the small safety benefits associated with the FMH impact requirements for rear seating positions and practicability concerns, we have tentatively concluded that the FMH impact requirements should be limited to the front seating positions for these vehicles.

As indicated in its petition, many commercial vehicles manufactured by NTEA members feature bulkheads or partitions located less than 600 mm (24 inches) behind the rearmost designated seating position. Bulkheads or partitions are used in a variety of work vehicles that haul odd-shaped objects that cannot be readily secured in the cargo area. These structures protect the driver and passenger from loose or shifting or shifting cargo or work equipment. NTEA argued that the installation of bulkheads or partitions would likely require relocation of target areas originally certified by the incomplete vehicle manufacturer, thus significantly adding to the compliance burden.

As discussed above, RVIA argued that most CVs and motor homes feature unique interior designs. Specifically, these vehicles include overhead cabinets, side valances, raised roof structures, and other unusual interior components. Among other things, RVIA stated that

cooperative testing, suggested by NHTSA as a way to lessen compliance costs associated with FMH requirements, is not practicable because each RVIA member manufactures unique vehicles, each substantially different from its competitors. RVIA argued that cooperative testing would eliminate interior customization, which would in turn result in a loss of market for CVs and motor homes.

We believe our proposal to effectively limit the FMH impact requirements to the front seating positions for these vehicles would provide appropriate relief to the industries represented by NTEA and RVIA, while continuing to meet the need for safety. As discussed above, the benefits related to rear seating positions are very small.

We note that NTEA and RVIA members can ordinarily purchase incomplete vehicles that are already designed to meet the FMH impact requirements for the front seating positions. Under our proposal, final stage manufacturers would ordinarily be able to take advantage of pass-through certification by not changing the upper interior portions of the front of the vehicle.

We believe the requirements are justified by safety. As indicated above, we estimate that requiring all multi-stage manufactured vehicles to meet FMVSS No. 201 would have annual benefits in the front seat of 16-22 fewer fatalities and 19-22 fewer AIS 2-5 injuries. Given the safety significance of these requirements, we believe, in situations where final stage manufacturers use incomplete vehicles that have occupant compartments that either are designed to meet the FMH impact requirements for the front seating positions or can be purchased in a configuration that is designed to meet those requirements, it would be inconsistent with the need for safety to generally exclude the vehicles from these head impact protection requirements. We also note that while final stage manufacturers will be able to submit petitions under subpart B of part 555, it is unlikely in this type of situation that the agency would find it in the public interest to exclude final stage manufacturers from the front seat head impact protection requirements of FMVSS No. 201 to facilitate customization of the upper interior portions of the front of the vehicle.

Our proposal would, however, facilitate customization of the rear of vehicles, including conversion vans, where there would be no significant impact on safety. Moreover, we continue to believe that final stage manufacturers can use cooperative testing to determine the types of changes that can be made while enabling vehicles to continue to comply with the FMH requirements, including ones related to use of overhead cabinets, raised roof structures, and so forth. Thus, while customization of the front portion of occupant compartments will be more difficult and may be more limited, it will by no means be eliminated.

B. Proposal To Exclude Vehicles Manufactured in Two or More Stages,

Other Than Motor Homes, Chassis Cabs, Cutaway Vans, and Other Incomplete Vehicles With a Furnished Front Compartment, From FMH Impact Requirements

We tentatively conclude that a narrow group of multi-stage vehicles contains physical attributes that make compliance with the FMH impact requirements impracticable. These are vehicles built on a ``stripped'' chassis; i.e., an incomplete vehicle without an occupant compartment. The manufacturers of these vehicles would not be able to rely on pass-through certification. This is because these vehicles are highly customized and produced in quantities that would make compliance prohibitively expensive. Further, these vehicles are often equipped with partitions and bulkheads that present a further impediment to the compliance efforts. We note that for vehicles manufactured from stripped chassis, the cost of meeting the FMH impact requirements could be substantial because the alternative means of compliance such as pass-through certification are not available.

In the context of serving niche markets demanding specialized work vehicles that are not delivered to the final stage manufacturers with an intact occupant compartment (unlike for example, chassis cabs and cut-away vans), we believe that the physical limitations of these vehicles can adversely affect the ability of multi-stage manufacturers to design safety performance into their completed vehicles. Accordingly, we believe it appropriate to exclude this narrow group of vehicles from FMH impact testing.

C. Question Regarding Multistage Vehicles With Raised Roofs

Certain multistage vehicles are manufactured with raised roofs. The final-stage manufacturer cuts out a portion of the original roof and attaches a raised roof, typically made of fiberglass that may also have metal inserts imbedded for strength. The manufacturers of these vehicles may not be able to take advantage of pass through certification because raising the roof affects the location of certain targets subject to FMH impact testing. The raised roof has a different shape than the van portion of an incomplete vehicle. Therefore, the reference points located on the exterior, i.e., APR and BPR, will probably not be the same and the FMH targets inside the vehicle may be in different locations from those that the incomplete vehicle manufacturer stated could be certified as pass through. In addition, the portion of the roof over the front seating area would be affected when the final-stage manufacturer installs a headliner and/or padding in a vehicle with a raised roof or a non-raised roof.

We believe that the original targets in raised roof vehicles, e.g., those along the pillars and side rails, may be as appropriate for safety as the targets that would be calculated for the new

configuration. We are therefore considering permitting manufacturers to meet requirements for either the target locations as calculated for the original configuration or changed configuration. This would also make compliance easier for final stage manufacturers. We are asking for comment on this approach to targets in vehicles with raised roofs.

D. Additional Relief Is Not Warranted

After carefully considering RVIA's and NTEA's petitions, we have decided not to propose a broader exclusion from the FMH requirements for front seat areas of conversion vans, motor homes, ambulances, fire fighting, rescue, emergency, law enforcement, and altered vehicles. As explained above, we believe that the head impact protection requirements provide important safety benefits in front seating positions of vehicles manufactured in two or more stages, and our proposal would provide appropriate relief to the industries represented by NTEA and RVIA, while continuing to meet the need for safety.

RVIA and NTEA did not provide any convincing reasons why occupants of its members' vehicles would not benefit from the same level of protection as required for other vehicles. Conversion vans, light duty motor homes, and other altered vehicles are typically driven by regular passenger vehicle drivers who require the same type of occupant protection as other passenger vehicle drivers. Furthermore, the petitioners did not explain why the occupants of ambulances, fire fighting, rescue, emergency, and law enforcement vehicles that may additionally travel at high rates of speed through unconventional traffic paths would not benefit from countermeasures designed to reduce head impacts in the event of a collision.

We note that the petitioners are also able to purchase incomplete vehicles that are already designed to meet the FMH impact requirements for the front seating positions. Under our proposal, the rear portions of multi-stage and altered vehicles, where the majority of vehicle customization is performed, would be excluded from the FMH requirements. Furthermore, final stage manufacturers would ordinarily be able to take advantage of pass-through certification by not changing the upper interior portions of the front of the vehicle. Accordingly, compliance costs and test burdens, (i.e., the petitioners' main concerns), would be substantially reduced when certifying these vehicles.

We further believe that the compliance costs provided by the RVIA and NTEA in their petition were overstated. For example, the compliance test cost estimates provided by RVIA were not averaged over the years of vehicle production. Instead, the costs were reflective of only the first production year. RVIA did not provide the actual production

cycles for its various vehicles, so its cost estimates were based on a one-year production cycle. Typically, when vehicle compliance costs are amortized over the vehicle production years, the costs are a lot smaller, as evidenced by the rulemaking involving small school buses where the estimated compliance cost per multi-stage vehicle was less than $1,000 in 1993 economics.\22\

\22\ See 62 FR 16718, April 8, 1997.

NTEA estimated that compliance with the FMH requirements would cost its industry a minimum of $160 million and 64 years to comply. However, this was based on the availability of two test laboratories that conducted FMH testing in 2001 and no pass-through certification was applied. We believe that laboratory experience has improved greatly since that time, and the exclusions that we are proposing in this notice will have a large impact on reducing the actual compliance costs.

RVIA and NTEA did not provide any convincing reasons why it is not generally practicable for these vehicles to comply. With respect to conversion vans and motor homes, the agency believes that there are alternative locations for the installation of hardwood cabinetry, and audio/video entertainment systems (other than mounted over the heads of front seat occupants). There are also other more compliant materials than hardwood that could be utilized by conversion van and motor home customization specialists.

As to fire fighting and rescue vehicles (with a gross vehicle weight rating of 4,536 kg or less), these vehicles are basically multi-stage work vehicles furnished with special equipment and tools designed exclusively for the purpose of rescuing people in emergency situations. We are proposing to exclude the rear compartment area of these vehicles from FMH target requirements, as we are for other multistage. We do not believe there is any reason to treat the front occupant compartment of these vehicles differently from other multistage vehicles (such as utility company trucks, contractor vehicles, snow removal vehicles, etc). Thus, we believe that no additional relief is necessary.

The agency has also previously considered and denied the exclusion of police cars from the FMH requirements.\23\ Our position on that issue has not changed substantially. Previously, the NTEA requested that police cars be excluded since these cars have special equipment, including gun racks and spotlight control mounted on the upper roof interior, and a bulkhead behind the front seats. However, the agency believes that interior components, such as gun racks and spotlight controls do not necessarily have to be mounted on the vehicle roof interior surface in the vicinity of the driver's head, and can

alternatively be accommodated with padding. Furthermore, we are aware that there are available equipment packages (such as remote-controlled spotlights and A-pillar mounted spotlights below the AP3 target location) that would facilitate compliance with the FMH requirements.

\23\ See id.

VII. Effective Date

We are proposing to delay the effective date of the FMH impact requirements as they apply to final stage manufacturers and alterers from September 1, 2006 until September 1, 2008.

VIII. Submission of Comments

A. How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long.\24\ NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

\24\ 49 CFR 553.21.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under ADDRESSES. You may also submit your comments to the docket electronically by logging onto the Docket Management System (DMS) Web site at http://dms.dot.gov. Click on ``Help & Information'' or ``Help/

Info'' to obtain instructions for filing your comments electronically. Please note, if you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.\25\

\25\ Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or

electronic fax file, into computer-editable text.

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How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under FOR FURTHER INFORMATION CONTACT. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under ADDRESSES. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in NHTSA's confidential business information regulation (49 CFR part 512).

Will the Agency Consider Late Comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, the agency will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for the agency to consider it in developing a final rule (assuming that one is issued), the agency will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under ADDRESSES. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation http://dms.dot.gov.

2. On that page, click on ``search.''

3. On the next page http://dms.dot.gov/search, type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ``NHTSA-1998-1234,'' you would type ``1234.''

After typing the docket number, click on ``search.''

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the ``pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, NHTSA will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, the agency recommends that you periodically check the Docket for new material.

VIII. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

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

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This proposal was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. If adopted, it would not impose any new burdens on manufacturers of vehicles built in two or more stages or vehicles alterers. Further, if adopted, this proposal would limit certain existing requirements as they apply to multistage vehicles, and exclude a narrow group of multi-stage vehicles manufactured from chassis without occupant compartments from the same requirements. The agency believes that this impact is so minimal as to not warrant the preparation of a full regulatory evaluation.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires agencies to evaluate the potential effects of their proposed rules on small businesses, small organizations and small governmental jurisdictions. I have considered the possible effects of this rulemaking action under the Regulatory Flexibility Act and certify that it would not have a significant economic impact on a substantial number of small entities.

Under 13 CFR 121.201, the Small Business Administration (SBA) defines small business (for the purposes of receiving SBA assistance) as a business with less than 750 employees. Most of the manufacturers of recreation vehicles, conversion vans, and specialized work trucks are small businesses that alter completed vehicles or manufacture vehicles in two or more stages. While the number of these small businesses potentially affected by this proposal is substantial, the economic impact upon these entities will not be significant because this document proposes to limit certain existing requirements as they apply to multistage vehicles, and exclude a narrow group of multi-stage vehicles manufactured from chassis without occupant compartments from the same requirements. For other multistage manufacturers, recent agency action described above will enable the manufacturers to more fully utilize pass-through certification.

C. National Environmental Policy Act

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment. Accordingly, no environmental assessment is required.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federal implications to warrant consultation with State and local officials or the preparation of a

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federalism summary impact statement. The proposal would not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually ($120.7 million as adjusted annually for inflation with base year of 1995). The assessment may be combined with other assessments, as it is here.

This proposal is not likely to result in expenditures by State, local or tribal governments or automobile manufacturers and/or their suppliers of more than $120.7 million annually. If adopted, it would not impose any new burdens on manufacturers of vehicles built in two or more stages or vehicles alterers. Further, if adopted, this proposal would limit certain existing requirements as they apply to multistage vehicles, and exclude a narrow group of multi-stage vehicles manufactured from chassis without occupant compartments from the same requirements.

F. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, ``Civil Justice Reform'', \26\ the agency has considered whether this proposed rule would have any retroactive effect. We conclude that it would not have such an effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file a suit in court.

\26\ See 61 FR 4729, February 7, 1996.

G. Paperwork Reduction Act

There are no information collection requirements in this proposal.

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of

Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

Have we organized the material to suit the public's needs?

Are the requirements in the rule clearly stated?

Does the rule contain technical language or jargon that isn't clear?

Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

Would more (but shorter) sections be better?

Could we improve clarity by adding tables, lists, or diagrams?

What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

J. Privacy Act

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

IX. Proposed Regulatory Text

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA proposes to amend chapter V of title 49 of the Code of Federal Regulations by amending 49 CFR 571.201 to read as follows:

PART 571--[AMENDED]

1. The authority citation of part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 2011, 30115, 30166 and 30117; delegation of authority at 49 CFR 1.50.

2. Section 571.201 would be amended by revising S6.1.4, S6.3(b) and S6.3(c) to read as set forth below:

Sec. 571.201 Standard No. 201; Occupant protection in interior impact.

* * * * *

S6.1.4 Phase-in Schedule #4 A final stage manufacturer or alterer may, at its option, comply with the requirements set forth in S6.1.4.1 and S6.1.4.2.

S6.1.4.1 Vehicles manufactured on or after September 1, 1998 and before September 1, 2008 are not required to comply with the requirements specified in S7.

S6.1.4.2 Vehicles manufactured on or after September 1, 2008 shall comply with the requirements specified in S7.

* * * * *

S6.3 * * *

(b) Any target located rearward of a vertical plane 600 mm behind the seating reference point of the rearmost designated seating position. For altered vehicles and vehicles built in two or more stages, including ambulances and motor homes, any target located rearward of a vertical plane 300 mm behind the seating reference point of the driver's designated seating position.

(c) Any target in a walk-in van-type vehicle or a vehicle manufactured in two or more stages that is delivered to a final stage manufacturer without an occupant compartment.

Note: Motor homes, ambulances, and other vehicles manufactured using a chassis cab, a cut-away van, or any other incomplete vehicle delivered to a final stage manufacturer with a furnished front compartment are not excluded under this paragraph.

* * * * *

Issued on April 18, 2006.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

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